



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

CIVIL APPEAL NO. 81 OF 2016

NASHON KERATI MURIRI t/a

MURIRI AUCTIONEERS.....APPELLANT

-VERSUS-

SOUTH NYANZA SUGAR CO. LTD.....1ST RESPONDENT

MARGARET T. OBONYO.....2ND RESPONDENT

(Being an appeal from the ruling and order of Hon.

E. M. Nyaga, Senior Resident Magistrate in Migori

Chief Magistrate's Misc. Application No. 69 of 2016

delivered on 11/10/2016).

JUDGMENT

1. This judgment relates to the appeal filed by the Appellant against the ruling of **Hon. E. M. Nyaga**, then Senior Resident Magistrate made on 11/10/2016 upon the assessment of the Appellant's Bill of Costs dated 03/08/2016.
2. The Appellant is a Licensed Auctioneer under the law and was ordered by the lower court to commence execution of the lawful decree in **Migori Chief Magistrate's Civil Case No. 1695 of 2015**. To that end the court issued Warrants of Attachment and Sale accordingly. The Auctioneer proceeded and discharged his duty and filed a Bill of Costs for Kshs. 59,046/74 for assessment.
3. The Bill of Costs had 13 items and upon assessment items 3, 4, 5, 8, 11 and 12 were disallowed on the ground that the same were not provided for under the Auctioneers Act.
4. The Appellant then aggrieved by that decision preferred an appeal the subject of this judgment. In a Memorandum of Appeal filed on 07/11/2016, the Appellant raised ten grounds of appeal.
5. The Appellant then filed a Notice of Motion dated 05/06/2017 seeking to strike out the second Respondent herein from the appeal. The application was served and allowed by the consent of the parties. The appeal therefore proceeded against the first Respondent only.
6. The appeal was heard by way of written submissions where both parties duly complied. At the hearing of the appeal the Appellant appeared in person and condensed all the ten grounds of appeal to mainly one ground that the Learned Magistrate erred in law in holding that items 3, 4, 5, 8, 11 and 12 in the Bill of Costs were not provided for under the Auctioneers Act and thereby disallowing them as against the Respondents. The Respondent was represented by Counsel. In their detailed submissions, Counsels contended that the items under appeal were rightly taxed off because some were truly not provided for in the Auctioneers Act while others were not proved to have been incurred and therefore due.
7. I have intently looked at this appeal and the same is meritorious. It is a fact that the Auctioneer fees are indeed provided for under the Auctioneer Act more so under the Fourth Schedule thereof. The Learned Magistrate therefore misdirected himself on that legal point and hence arrived at a wrong finding. On the other hand, the taxing officer did not state that some items were not proved as required in law, but only gave one reason and it was that the items were not provided for in the law.

8. Whereas the fees are so provided aforesaid, the same can only be awarded to an Applicant upon proof and as provided in law. I have looked at the disputed items against the provisions of the Fourth Schedule and I am of the considered view that the entire Bill of Costs ought to be re-assessed. Needless to say, courts while issuing warrants of attachments and sale must clearly satisfy themselves that the Auctioneer/Applicant is duly licensed in law to carry out the execution in the first instance. That will be a sure way of taking an active role in upholding not only the integrity of the Court system but of the Judiciary as an institution.

9. The following final orders do issue: -

a) The appeal be and is hereby allowed and the ruling delivered on 11/10/2016 is hereby set-aside;

b) The Bill of Costs dated 03/08/2016 shall be placed for assessment before any other Magistrate / Taxing Officer other than Hon, E. M. Nyaga, now Principal Magistrate;

c) The costs of the appeal shall be borne by the First Respondent herein.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 22nd day of March 2018.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Nashon Kerati Muriri the Appellant in person.

Mr. Marvin Odero Counsel instructed by Messrs. Okong'o, Wandago & Company Advocates for the First Respondent.

Ms. Nyauke - Court Assistant