

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 98 OF 2015

BETWEEN

SOUTH NYANZA SUGAR COMPANY LIMITED APPELLANT

AND

WALTER GUYARESPONDENT

(An appeal from the judgment of Hon. P.Y. Kulecho, RM,

in Migori CMCC No.511 of 2014 dated 30/04/2015)

JUDGMENT

1. **SOUTH NYANZA SUGAR COMPANY LIMITED** (the appellant) is dissatisfied with the decision where the trial court entered judgment in favour of **WALTER GUYA** (the respondent) in the sum of Kshs.666,145/= plus costs and interest arising out of claims for compensation based on loss suffered when the appellant failed to harvest mature sugar cane planted by the respondent on a piece of land measuring 4.3 Hectares.

2. He claimed to have had a yield of 100 tons per acre which was worth Kshs.2500/= per ton. The trial magistrate wholly relied on these figures in working out what was due to the respondent.

3. The appellant challenged the decision on grounds that the trial magistrate had disregarded the expert witnesses evidence on the expected tonnage, hence arriving at erroneous award of tonnage.

4. The trial magistrate was also faulted for using evaluation of the evidence and making findings for what the respondent had not prayed for.

5. The court directed that the appeal be canvassed by way of written submissions but by the date for confirmation only the respondent had filed written submissions.

6. The respondent's counsel pointed out that the appeal was *res judicata* as there exists **Migori HCCA No.88 of 2015** in respect of the same matter which was heard and determined. He referred the court to the judgment dated 21/07/2015 by Majanja, J which allowed the appeal in part.

7. Indeed a reading the judgment referred to discloses that it relates to the same subject as the present appeal including the grounds thereto. I am in agreement with the respondent's counsel that this appeal is *res judicata* and the same is dismissed with costs to the respondent.

Written and dated this 21st day of February, 2017 at Homa Bay

H.A. OMONDI

JUDGE

Delivered and dated this 27th day of February, 2017 at Migori

A.C. MRIMA

JUDGE