



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CIVIL APPEAL NO. 362 OF 2005

(Being an appeal from the judgment in the original Kilgoris SRMCC No. 641 of 2004 – Mr. Wilson Kaberia, RM)

BETWEEN

SOUTH NYANZA SUGAR CO.
LTD.....APPELLANT

VERSUS

SAMSON OMENGE
MOSETIRESPONDENT

RULING

The respondent's application dated 15th January 2010 seeks striking out of this appeal for being a duplicity of **Kisii HCCA No. 341 of 2005, South Nyanza Sugar Co. Ltd. –vs- Samson Omenge Moseti** which the appellant had filed earlier. The respondent's application was supported by an affidavit sworn by **Don Z. Ogweno**, the respondent's advocate, to which is annexed a copy of the memorandum of appeal in respect of HCCA No. 341 of 2005.

I have perused the two appeals and it is evident that they all arise from **Kilgoris RMCC No. 64 of 2004, Samson Omenge Moseti –vs- South Nyanza Sugar Company Ltd.** The two appeals are identical in every respect.

Although the appellant's advocate, Patrick J.O. Otieno, stated in his replying affidavit that the application was premature since directions had not been taken, given that the appellant filed two separate but identical appeals, the applicant's contention that the second appeal is an abuse of the court process is insurmountable. Consequently, I allow the respondent's application and hereby strike out this appeal. The appellant shall bear the costs of the appeal as well as of the application aforesaid.

DATED, SIGNED AND DELIVERED AT KISII THIS 30TH DAY OF SEPTEMBER, 2010.

D. MUSINGA

JUDGE.

30/9/2010

Before D. Musinga, J.

Mobisa – cc
Mrs. Adoyo for the Appellant
Mr. Ogweni for the Respondent

Court: Ruling delivered on 30th September 2010 in open court.

D. MUSINGA

JUDGE.