

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CIVIL APPEAL NO. 80 OF 2016

NAHASHON KERATI MURIRIT/A MURIRI AUCTIONEERS.....APPELLANT

-VERSUS-

SOUTH NYANZA SUGAR CO. LTD.....RESPONDENT

RULING

1. The Appellant herein is an Auctioneer who filed Migori Chief Magistrate's Misc. Application No. 71 of 2016 on 10/08/2016 towards the assessment of the Auctioneer charges. The assessment was done by **Hon. Nyagah** on 11/10/2016. Dissatisfied with the assessment the Auctioneer filed the instant appeal which was heard and determined by a decision of this Court rendered on 05/07/2018 where the Bill of Costs was ordered to be re-assessed.

2. It seems that the Bill of Costs was indeed re-assessed and the Respondent herein was dissatisfied with the ruling and filed the Chamber Summons dated 17/09/2018.

3. There is a serious administrative error in this matter. Appeal No. 80 of 2016 was determined by the judgment delivered on 05/07/2018 and the Court file was accordingly closed. It was Migori Chief Magistrate's Misc. Application No. 71 of 2016 which was ordered to be re-assessed. Any party dissatisfied with the resultant re-assessment was to lodge a fresh appeal but not to attempt to revive this appeal. The issues raised in this appeal were long judicially settled. The current appeal cannot therefore be alleged to be an extension of the earlier appeal or at all.

4. The current appeal cannot therefore stand in this file. The proceedings and documents filed after the delivery of the judgment on 05/07/2018 are hereby struck out. Given that the Registry ought to have declined to accept the Chamber Summons dated 17/09/2018 as part of this record, the Respondent cannot be wholly blamed.

5. I will hence grant leave to the Respondent herein to lodge a fresh appeal/reference against the decision rendered in Migori Chief Magistrate's Misc. Application No. 71 of 2016 on 16/08/2018 within 30 days of this order.

6. This file shall henceforth be marked as closed.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 14th day of February 2019.

A. C. MRIMA

JUDGE

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

Nashon Kerati Muriri the Appellant in person.

Mr. Marvin Odera instructed by the firm of Okongo Wandago & Company Advocates for the Respondent.

Evelyn Nyauke – Court Assistant