

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 110 OF 2016

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

-VERSUS-

PAMELA AWUOR ORUON.....RESPONDENT

(Being an appeal from the judgment and decree by Hon. M. M. Wachira, Senior

Resident Magistrate in Migori Chief Magistrate's Civil Suit No. 16 of 2005 delivered on 25/10/2016)

JUDGMENT

1. There is an issue which came to my attention as I was writing the judgment which I must first deal with. Upon perusal of the proceedings before the trial court I noted the court proceedings of 09/09/2009 before **Hon. Kibet Sambu** Resident Magistrate.
2. The said record has it that the suit which was filed by the Respondent herein before **Migori Chief Magistrate's Court** being **Civil Suit No. 16 of 2005** against **South Nyanza Sugar Co. Ltd** was dismissed under the then **Order XVI** of the then **Civil Procedure Rules**. The said Rules were revoked by the the current **Civil Procedure Rules, 2010** where the old **Order XVI** was replaced with the current **Order 17** which deals with 'Prosecution of Suits'.
3. From the record, the suit having been dismissed on 09/09/2009 has not been reinstated to date. However, further proceedings were initiated 7 years later where the suit was fixed for hearing, evidence was taken and culminated with the judgment under appeal. The suit having been dismissed and not reinstated could not therefore legally proceed for hearing. The proceedings post 09/09/2009 and the resultant judgment are therefore a nullity and cannot stand. The same be are hereby set aside and are expunged from the record accordingly.
4. The upshot is that the appeal succeeds on that issue and not on any of the grounds raised by the Appellant. Therefore, the suit, **Migori Chief Magistrate's Court Civil Suit No. 16 of 2005**, stands dismissed as from 09/09/2009. Parties to bear their respective costs of the appeal.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 11th day of July 2019.

A. C. MRIMA

JUDGE

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

Mr. Marvin Odero Counsel instructed by the firm of Messrs. Okong'o Wandago & Company Advocates for the Appellant.

Mr. Mwita Kerario Counsel instructed by the firm of Messrs. Kerario Marwa & Company Advocates for the Respondent.

Evelyne Nyauke – Court Assistant