



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MIGORI**

**CIVIL APPEAL NO. 2 OF 2017**

**NASHON KERATI MURIRI t/a**

**MURIRI AUCTIONEERS.....APPELLANT**

**-VERSUS-**

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

***(Being an appeal from the ruling and order of Hon. R. Odenyo, Senior Principal Magistrate***

***in Migori Chief Magistrate's Misc. Application No. 86 of 2016 delivered on 18/01/2017).***

**JUDGMENT**

1. This judgment relates to the appeal filed by the Appellant against the ruling of **Hon. R. Odenyo**, Senior Principal Magistrate made on 18/01/2017 upon the assessment of the Appellant's Bill of Costs dated on 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. 1737 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. 23,275/= for assessment.
3. The Bill of Costs had 13 items and the court received written submissions from both sides and upon consideration thereof rendered the ruling subject of this appeal.
4. The Appellant then aggrieved by that decision preferred an appeal the subject of this judgment. In a Memorandum of Appeal filed on 25/01/2017, the Appellant raised seven grounds of appeal.
5. The Appellant then filed a Notice of Motion dated 13/03/2018 seeking to strike out the then second Respondent herein from the appeal. The application was served and allowed by the consent of the parties. The appeal therefore proceeded against the Respondent herein 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 contended that the assessment was not done in accordance with the Auctioneer rules hence erroneous. The Appellant called upon this Court to allow the appeal with costs and order a re-assessment of the Bill of Costs by another Magistrate. The Respondent was represented by Counsel. In their detailed submissions, Counsels contended that the items under appeal were rightly assessed after the court exercised its discretion properly.
7. This Court is now called to determine whether the Learned Magistrate erred in the assessment of the Appellant's Bill of Costs. I have intently looked at the record before me, the ruling in issue and the parties' submissions. The Learned Magistrate considered the matter and referred to the then submissions before him. He addressed every single item in the Bill of Costs and agreed with the submission by the now Respondent's Counsel.
8. I have as well relooked at the reasoning by the trial court and find that the same was guided by the Auctioneer Rules and the settled rules of evidence requiring proof of special damages. The reasons put forth by the Respondent's Counsel before the lower court on why some items in the Bill of Costs were either to be disallowed or be reduced were and remain sound in law and that is what the court agreed with.
9. This Court cannot therefore fault the assessment by the lower court on the Bill of Costs. The same was assessed in accordance with the law and the appeal cannot stand. The same is for rejection.

10. Consequently, the appeal is dismissed with costs.

Orders accordingly.

**DELIVERED, DATED and SIGNED at MIGORI this 5<sup>th</sup> day of July 2018.**

**A. C. MRIMA**

**JUDGE**

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

**Nashon Kerati Muriri** the Appellant in person.

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

**Evelyne Nyauke** - Court Assistant