



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

CIVIL APPEAL NO. 82 OF 2016

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. E. M. Nyaga,

Senior Resident Magistrate in Migori Chief Magistrate's

Misc. Application No. 73 of 2016 delivered on 11/10/2016).

JUDGMENT

1. This judgment relates to the appeal filed by the Appellant against the 'ruling' of **Hon. E. M. Nyaga**, then Senior Resident Magistrate made on 11/10/2016.
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. 1606 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. 25,775/= for assessment.
3. The Bill of Costs had 13 items and the 'ruling' delivered on 11/10/2016 aggrieved the Appellant who preferred an appeal the subject of this judgment. In a Memorandum of Appeal filed on 07/11/2016, the Appellant raised ten grounds of appeal.
4. The Appellant then filed a Notice of Motion dated 05/03/2018 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 now Respondent only.
5. 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 condensed all the ten grounds of appeal to mainly one ground that the Learned Magistrate erred in law in taxing off items 3, 4, 5, 8, 11 and 12 in the Bill of Costs without giving any reasons. The Respondent was represented by Counsel. In their detailed submissions, Counsels contended that the items under appeal were rightly taxed off because some were truly not provided for in the Auctioneers Act while others were not proved to have been incurred and therefore due.
6. I have intently looked at this appeal and the same is meritorious. I say so because the alleged decision by the lower court cannot be described as a ruling which attained the required legal bar. The said decision does not indicate what it relates to, does not capture the arguments by the parties and most importantly has no reasons for the alleged figures. A decision especially in a defended matter must contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. It is for those reasons that I do not consider it worth to re-assess the Bill of Costs since according to me the Bill of Costs was not assessed in the first instance. Had the lower court so properly assessed the Bill of Costs I would forthwith exercise my discretion under **Section 78(1)(a) of the Civil Procedure Act** and re-assess the Bill of Costs if I find that the appeal is merited.
7. Consequently, the following final orders do issue: -

a) The appeal be and is hereby allowed and the 'ruling' delivered on 11/10/2016 is hereby set-aside;

b) The Bill of Costs dated 03/08/2016 shall be placed for assessment before any other Magistrate other than Hon, E. M. Nyaga,

now Principal Magistrate;

c) The costs of the appeal shall be borne by the Respondent herein.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 5th 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 Odero Counsel instructed by Messrs. Okong'o, Wandago & Company Advocates for the First Respondent.

Evelyne Nyauke - Court Assistant