



REPUBLIC OF KENYA
IN THE HIGH COURT
AT MIGORI
MISC. CIVIL APPLICATION NO. 13 OF 2015
BETWEEN
SOUTH NYANZA SUGAR COMPANY LTD.....APPELLANT
AND
JONES MARWA T/A IKIMWANYA AUCTIONEERS.....RESPONDENT
RULING

1. The application before the court relates to the assessment of auctioneers charges assessed in several applications filed by the auctioneer at the Senior Resident Magistrates Court at Kehancha as follows;

a. Misc. Civil Application No. 4 of 2015

Jones Marwa t/a Ikimwanya Auctioneers v South Nyanza Sugar Company Limited & Martin Origa Ongondo

b. Misc. Civil Application No. 5 of 2015

Jones Marwa t/a Ikimwanya Auctioneers v South Nyanza Sugar Company Limited & Musa Omolo Adonija

c. Misc. Civil Application No. 6 of 2015

Jones Marwa t/a Ikimwanya Auctioneers v South Nyanza Sugar Company Limited & Miriam Atieno Manyala

d. Misc. Civil Application No. 7 of 2015

Jones Marwa t/a Ikimwanya Auctioneers v South Nyanza Sugar Company Limited & Juliana Dira Ongesa

e. Misc. Civil Application No. 8 of 2015

Jones Marwa t/a Ikimwanya Auctioneers v South Nyanza Sugar Company Limited & Matinde Orony

2. It is not in dispute that the bills of costs arose out of instructions issued to the auctioneer to execute

respective decrees in several suits arising from suits against the applicant.

3. According to the application, the applicant seeks two substantive prayers;

[5] This appeal as envisaged by the provisions of Rule 55(3) and (4) of the Auctioneers Rules, 2009 be allowed and the respective Bills of Costs filed in court by the respondent be struck out as offending section 34(1) of the Civil Procedure Act (Chapter 21 of the Laws of Kenya).

[6] In the alternative the court be pleased to reconsider the said respective bills of costs, set aside the assessment of Auctioneers charges by the learned magistrate and by way of an appeal render decision in respect of the disputed items as shown in each bill of costs and taxed.

4. As the prayers are set out in the alternative, I will deal with the issue that disposes of this application *in limine*. This application is an appeal under **rule 55(4) and (5)** of the **Auctioneers Rules, 2009** which provide as follows;

(4) An appeal from a decision of a registrar or a magistrate or the board under sub-rules (2) and (3) shall be to a judge in chambers.

(5) The memorandum of appeal, by way of chamber summons setting out the grounds of appeal, shall be filed within 7 days of the decision of the registrar or magistrate.

5. The provisions I have cited envisages a memorandum of appeal, by way of a chamber summons filed in respect of each decision made in respect of each bill of costs taxed. What the applicant has done in this matter is to file a so-called appeal in an omnibus fashion bundling all the bills together. An appeal is in respect of each decision made in respect of each application filed before the subordinate court and must be filed separately. It is at the appeal stage that the court may elect to consolidate the appeals.

6. The application is incompetent. It is struck out. There shall be no order as to costs.

DATED and DELIVERED at MIGORI this 6th day of May 2015.

D.S. MAJANJA

JUDGE

Mr Kanyangi instructed by Okong'o Wandago and Company Advocates for the appellant.

Mr Mudeyi instructed by Mudeyi Okumu and Company Advocates for the respondent.