



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

(Coram: A. C. Mrima, J.)

CIVIL APPEAL NO. 47 OF 2017

EUNICE N. MWANGI.....APPELLANT

-VERSUS-

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

(Being an appeal from the judgment and decree by Hon. C. M. Kamau, Senior Resident Magistrate

in Rongo Senior Resident Magistrate's Civil Suit No. 46 of 2014 delivered on 07/03/2017)

JUDGMENT

1. The Appellant herein, *Eunice N. Mwangi*, filed **Rongo Senior Resident Magistrate's Court Civil Suit No. 46 of 2014** (hereinafter referred to as '**the suit**') against **South Nyanza Sugar Co. Ltd**, the Respondent herein, claiming that by a Growers Cane Farming and Supply Contract dated 99/09/2003 (hereinafter referred to as '**the Contract**') the Respondent contracted the Appellant herein to grow and sell to it sugarcane at the Appellant's parcel of land Plot No. 48E Field No. 10 in Kongudi Sub-Location within Migori County measuring 0.5 Hectares.
2. The Appellant pleaded that the Contract was for a period of five years or until one plant crop and two ratoon crops of the sugarcane were harvested from the subject parcel of land whichever event occurred first. That, the Respondent ploughed, furrowed and harrowed the land and also supplied the cane seed. That, the Appellant discharged her part of the contract until the plant crop was mature. The Respondent harvested the plant crop. The Appellant developed the first ratoon crop until maturity but the Respondent never harvested the crop. The Appellant then suffered loss.
3. Aggrieved by the alleged breach of the contract the Appellant filed the suit in 2014 claiming compensation for the loss of two ratoon crops, costs and interest at court rates.
4. The Respondent entered appearance and filed a Statement of Defence dated 22/04/2015 wherein it denied the contract and put the Appellant into strict proof thereof. The Respondent further averred that if at all there was any such contract then the Appellant is entitled to the costs of the services and inputs it rendered to the Appellant otherwise the Respondent prayed for the dismissal of the suit with costs.
5. The suit was finally settled down for hearing. Both parties were represented by Counsels. The Appellant was the sole witness who testified and adopted her Statement as part of her testimony. She also produced the documents in her List of Documents as exhibits. The Respondent called its Senior Field Supervisor as its sole witness who produced the documents in the List of Documents as exhibits. The Respondent's witness conceded that the contract existed and that the Respondent never harvested any cane.
6. The trial court rendered its judgment on 07/03/2017. The suit was partly allowed. The court awarded Appellant the value of the plant crop at 38,843/= with interest from the date of judgment.
7. The Appellant was aggrieved by the judgment and lodged an appeal. In praying that the appeal be allowed, and appropriate compensation be awarded, she proposed the following six grounds in the Memorandum of Appeal dated 16/03/2017 and filed in Court on 29/03/2017: -

1. The learned trial magistrate erred in law and in failing to award the appellant the damage claimed in respect of the two (2) ratoon crops, having found the respondent to have been in breach of the contract without assigning any reason for the failure or omission.

2. The learned trial magistrate erred in treating the suit as a general damage claim rather than a special damage claim in which damages are at large as to attract interest from the date of judgment and thereby fell into error.

3. The learned trial magistrate erred in law and fact in purporting to exercise a 'discretion' on the issue of interest which discretion he did not have in the face of

a) The provisions of Section 6(d) of part 2. Second schedule of the at market rates and monthly penalty of 3%.

b) The fact that as pleaded, the suit was a special damage claim.

4. The trial magistrate erred in law in his appreciation of the appellant's case on interest and the applicability of the authority *Prem Lata vs Peter Musa Mbiyu* (1965) E. A. 593.

5. The trial magistrate erred in law by refusing / failing to follow judicial precedent as set out in the Court of Appeal decision of *John Richard Okuku Oloo vs. South Nyanza Sugar Co. Ltd* CA No. 278 of 2010 (2013 Eklr) and in the High Court case of *James Maranya Ruita vs. South Nyanza Sugar Co. Ltd* HCCA No. 92 of 2015, Migori, even though the said authorities were binding on him on the issue raised on interest.

6. The trial magistrate erred in law in ultimately failing to award interest and further interest adjudged before the institution of the suit and further interest at court rates in view of the contract law of statute.

8. Directions were taken, and the appeal was disposed of by way of written submissions where both parties duly complied. The Appellant challenged the finding of the trial court vigorously and more so claiming that the court erred in making a finding that the Appellant was not entitled to the proceeds for the ratoon crops. The Appellant relied on previous decisions of this Court and of the Court of Appeal in support of the prayers.

9. The Respondent supported the judgment. It however raised the issue of limitation of time which it contended that the court did not address although it formed part of its defence.

10. As the first appellate Court, it is now well settled that the role of this court is to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. (See the case of *Selle & Ano. vs. Associated Motor Boat Co. Ltd* (1968) EA 123). This court nevertheless appreciates that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in *Mwanasokoni – versus- Kenya Bus Service Ltd. (1982-88) 1 KAR 278* and *Kiruga –versus- Kiruga & Another (1988) KLR 348*).

12. I have certainly perused and understood the contents of the pleadings, proceedings, judgment, grounds of appeal, submissions and the decisions referred to by the parties.

12. According to the Plaintiff, the Appellant prayed for the proceeds from the two ratoon crops in accordance with the contract. The trial court found that the Respondent breached the contract. The court however awarded the Appellant the proceeds for the plant crop instead.

13. From the pleadings and evidence the Appellant did not have any claim on the plant crop. Her claim was on the ratoon crops. The court hence awarded the Appellant what was not sought for. Certainly, the Appellant did not seek the proceeds of the plant crop. The award made in the judgment cannot therefore stand.

14. The court found the Respondent in breach of the contract. The Respondent neither appealed against that finding nor filed a cross-appeal. The Respondent hence improperly raised the issue of limitation of time in its submissions on appeal. If the Respondent was aggrieved by the way the trial court handled the issue then the appellate avenue was clear.

15. I have as well reviewed the evidence and I am satisfied that the Respondent breached the contract. The evaluation of the evidence by the trial court was proper.

16. In the face of such breach the Appellant was entitled to compensation. In *Migori High Court Civil Appeal No. 10 of 2016 South Nyanza Sugar Co. Ltd vs. Joseph O. Onyango* (2017) eKLR I found that once a farmer proves that the Miller failed to harvest the plant crop at maturity then the farmer is entitled to the proceeds of the plant crop as well as the ratoon crops subject to the pleadings. Equally, when a Miller fails to harvest the first ratoon crop then the farmer is entitled to compensation for the first and second ratoon crops subject to the contract.

17. The foregone is however subject to the legal position that disputes based on breach of contracts are subject to the principles of *remoteness, causation* and *mitigation*. However, the principles must be proved for applicability. (See *Migori High Court Civil Appeal No. 74 of 2018 South Nyanza Sugar Co. Ltd vs. Rehema Joseph Nkonya* (unreported)).

18. In this case therefore the Appellant was entitled to the value of the two ratoon crops as she so pleaded.

19. I am also in agreement with the acreage, tonnage and prices adopted by the trial court. The trial court was also alive to and made the appropriate deductions under the contract.

20. The net value of the two ratoon crops would have been Kshs. 85,750/=.

21. On the issue of interest, the Court of Appeal at Kisumu in **Civil Appeal No. 278 of 2010 John Richard Okuku Oloo vs. South Nyanza Sugar Co. Ltd (2013) eKLR** settled the same. It held that interest must run from the date of filing the suit and as such the trial court erred in finding otherwise.

22. I must add that the Court of Appeal was alive to the fact that the lower court case had been filed in 1998 when it rendered its judgment in 2013 after a period of 15 years. The simple reason thereto is that it is well settled in law and has been so held over time that interest starts running from filing of suit in special damages claims like in this case. The Respondent was denied the use of his money for all that period and the interest remain the sole consolation.

23. Consequently, the following final orders do hereby issue: -

- a) **The appeal hereby succeeds and the finding of the learned magistrate awarding Kshs. 38,843/= be and is hereby set aside accordingly;**
- b) **Judgment is hereby entered for the Appellant as against the Respondent for Kshs. 85,750/= which amount shall attract interest at court rates from the date of filing of the suit;**
- c) **The Appellant shall have both the costs of the suit before the trial court and of the appeal.**

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 28th day of May 2020.

A. C. MRIMA

JUDGE

Judgment delivered electronically through: -

1. **odukuze@gmail.com** for Messrs. Oduk & Co. Advocates for the Appellant.
2. **morongekisii@yahoo.com** for Messrs. Moronge & Co. Advocates for the Respondent.
3. Parties are at liberty to obtain hard copies of the Ruling from the Registry upon payment of the requisite charges.

A. C. MRIMA

JUDGE