



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

[Coram: A. C. Mrima, J.]

CIVIL APPEAL NO. 11 OF 2019

TRANS MARA SUGAR CO. LTDAPPELLANT

versus

BOAZ ABWAO AMBWERE.....RESPONDENT

(Being an appeal from the judgment and decree by Hon. R. Odenyo Senior Principal Magistrate in Migori Magistrate's Civil Suit No. 2703 of 2015 delivered on 05/12/2018)

JUDGMENT

1. On 17/09/2019 this Court gave directions in **Migori High Court Civil Appeal No. 10 of 2019 Trans Mara Sugar Co. Ltd vs. Nelson Dedege Mbai**. One of those directions was that the judgment in the said appeal do apply to this appeal on similar issues. The judgment dealt with three issues.
2. The first issue was the effect of a contract not signed by the farmer on the execution part which was on the last page although the contract was signed by both the farmer and the miller at the foot of every single page. The second issue was the interplay between the contract and the **Sugar Act** on the duty of harvest the cane. The contract vested that duty on the farmer whereas the **Sugar Act** vested the duty to harvest the cane on the miller. The third issue was whether transport charges attracted 16% VAT in the financial year 2013/2014.
3. This Court found the contract valid. It also found that the miller had the duty to harvest the cane since the contract could not override a statute. On the third issue this Court found that the 16% VAT on transport charges was applicable in the financial year 2013/2014. I hence incorporate the said judgement herein by reference.
4. In this appeal, the issue of the unsigned contract was raised. The issue of the duty to harvest the cane was also raised. As stated, the two issues in this appeal were settled in **Migori High Court Civil Appeal No. 10 of 2019** (supra). It is of essence to note that the contract between the parties herein was entered on 22/03/2011.
5. Following the finding on the Appellant's duty to harvest the mature cane in **Migori High Court Civil Appeal No. 10 of 2019** (supra), the Appellant was in breach of the contract.
6. In the face of such breach the Respondent 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.
7. 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).
8. In this case the Respondent prayed for the proceeds of three crop cycles.
9. The trial court awarded the sum of Kshs. 82,944/= for the plant crop and the first ratoon crop. There was no cross-appeal by the Respondent.
10. On the yields, the court was rightly guided by the expert report on yields prepared by the KESREF. There was no dispute on the size of the land. The price of the cane was as per the Cane Schedule prepared by the Sugar Directorate and which was produced in evidence. The

court took into account the relevant deductions. However, since the plant crop was ready sometimes in the financial year 2013/14 the court ought to have taken the issue of VAT deduction into account. That was 16% of Kshs. 14,400/= which translated to Kshs. 2,304/=.

11. The appeal therefore succeeds to that extent. The sum of Kshs. 82,944/= is hence set aside and substituted with that of Kshs. 80,640/=.

12. As the appeal has partly succeeded each party to bear its own costs.

Orders accordingly.

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

A. C. MRIMA

JUDGE

Judgment delivered electronically: -

1. ronaldoyagi@rediffmail.com for Oyagi, Ong'uti, Magiya & Company Advocates for the Appellant.
2. sirkanyangi2000@yahoo.com for Odhiambo Kanyangi & Company 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