REPUBLIC OF KENYA

IN THE HIGH COURT OF KENY AT MIGORI

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

CIVIL APPEAL NO. 94 OF 2018

SOUTH NYANZA SUGAR CO. LTD.....APPELLANT

-VERSUS-

MELKIZEDEKI NAMWEL RAGIRA.....RESPONDENT

(Being an appeal from the judgment and decree by Hon. M. M. Wachira, Senior Resident Magistrate in Migori Chief Magistrate's Civil Suit No. 1856 of 2015 delivered on 21/06/2018)

JUDGMENT

1. *Melkisedek Namwel Ragira*, the Respondent herein, filed **Migori Chief Magistrate's Court Civil Suit No. 1856 of 2015** (hereinafter referred to as '**the suit'**) against *South Nyanza Sugar Co. Ltd***,** the Appellant herein. The Respondent claimed that by a Growers Cane Farming and Supply Contract entered into on 13/03/2012 (hereinafter referred to as **'the Contract'**) the Appellant contracted the Respondent to grow and sell to it sugarcane at the Respondent's parcel of land Plot No. 1122 Field No. 6 in North Kanyajuok Sub-Location within Migori County.

2. The Respondent 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. The contract was Initially Non-Contracted Cane (INCC) as the cane had long been planted and was growing at the contract date.

3. The Respondent further pleaded that he discharged his part of the contract until the plant crop was ready for harvesting but instead the Appellant for no apparent reason refused and/or failed to harvest the plant crop. The plant crop dried up. The Respondent posited that he suffered loss of the plant crop, first and second ratoon crops.

4. Aggrieved by the alleged breach of the contract the Respondent filed the suit. He sought for compensation for the loss.

5. The Appellant entered appearance and filed a Statement of Defence dated 22/10/2015. The Appellant denied the contract as well the alleged breach thereof. It put the Respondent into strict proof thereof. The Appellant further pleaded that the Respondent suffered no loss and if at all he suffered any such loss then the Respondent was the author of his own misfortune in that he failed to properly maintain the sugar cane crops to the required standards or at all to warrant the same being harvested and milled as the same was uneconomical. The Appellant prayed for the dismissal of the suit with costs.

6. The suit was finally settled down for hearing where both parties were represented by Counsels. The Respondent was the sole witness who testified and adopted his Statement as part of his testimony. He also produced the documents in his List of Documents as exhibits. The Respondent called its Senior Field Supervisor, George Ochieng *(DW1)*, as its sole witness who adopted the statement of Richard Muok and produced the documents as exhibits.

7. The trial court rendered its judgment on 21/06/2018. It allowed the suit and awarded Kshs. 295,427/60/= as compensation. That is the judgment subject of this appeal.

8. The Appellant in praying that the appeal be allowed and the suit be dismissed proposed the following 5 grounds in the Memorandum of Appeal dated 18/06/2018 and filed in Court on 19/07/2018: -

> **1. The Learned Trial magistrate erred in law and in fact by finding in favour and awarding the Plaintiff Ratoon 1 and Ratoon 11 Crop cycles when the evidence showed the Framer did not develop the same.**
>
> **2. The Learned Trial magistrate erred in law and in fact by suo motu amending and or attempting to amend the Plaintiff's**

pleadings when it is not the role of the Court to do so thereby awarding him the Two Crop Cycles.

3. The Learned Trial magistrate erred in law and in fact by making assumptions that the Ratoon I and Ratoon II Crop Cycles were developed which was contrary to the Plaintiff's testimony and pleadings that he has not developed the same.

4. The learned Trial magistrate erred in Law and in fact by failing to consider and apply the Defendant's submissions in their entirety

5. The Learned Trial magistrate erred in law and in fact by no dismissing the Plaintiff's suit with costs despite the overwhelming evidence that the Plant Crop was harvested and the Plaintiff did not develop the Ratoon 1 thereafter.

9. Directions were taken, and the appeal was disposed of by way of written submissions where the parties duly complied. They also relied on various decisions in support of their rival positions.

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).**

11. 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. There are two issues for determination in this matter. They are whether the suit was proved and whether the Respondent was entitled to the proceeds for the ratoon crops.

13. I will begin with whether the suit was proved. The trial court found that the Appellant had harvested and paid for the plant crop. That finding was not challenged on appeal. Therefore, for the Respondent to have succeeded on his claim for the value of the ratoon crop yields, the Respondent was under a duty to prove that he took good care of and applied the expected plant husbandry for the first ratoon crop until maturity but the Appellant failed to harvest the crop.

14. The record has it that the Respondent maintained that the plant crop was not harvested at maturity. He in particular stated in examination-in-chief as follows: -

…. The Defendant was to harvest 3 cycles. They did not harvest at all. It dried in the land……. I was unable to develop 1st ratoon as a result.

15. The Respondent therefore did not develop the first ratoon crop. Even when the trial court found that the Appellant harvested and paid him for the plant crop still the Respondent did not challenge that finding. The issue was hence settled by the trial court and it is not one of the disputed issues in this appeal.

16. From the record there is no evidence that the Respondent developed the first ratoon crop to maturity. As such, the Respondent did not lay a sound basis for his claim in the suit. With such a state of affairs the suit was not proved.

17. The finding of the trial court and the award of the value of the proceeds for the first and second ratoon crops was hence erroneous. The finding was not based on the evidence on record. It cannot stand.

18. The upshot is that the Respondent failed to prove its case as required in law. The judgment of the trial court delivered on 21/06/2018 be and is hereby set-aside and is substituted with an order dismissing **Migori Chief Magistrate's Court Civil Suit No. 1856 of 2015.**

19. The Appellant shall have both costs of the suit as well as costs of the appeal.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 24th day of August 2020.

A. C. MRIMA

JUDGE

Judgment delivered electronically through: -

1. morongekisii@yahoo.com for the firm of Messrs. Moronge & Company Advocates for the Appellant.

2. advocate685@gmail.com for the firm of Messrs. Nelson Jura & Company Advocates for the Respondent.

3. Parties are at liberty to obtain hard copies of the judgment from the Registry upon payment of the requisite charges

A. C. MRIMA

JUDGE