



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

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

CIVIL APPEAL NO. 17 OF 2019

BETWEEN

SOUTH NYANZA SUGAR CO. LTDAPPELLANT

AND

JEKONIA O. ONDEGI.....RESPONDENT

(Being an appeal from the judgment and decree by Hon. R. O. Odenyo, Senior Principal Magistrate in Migori Chief Magistrate's Civil Suit No. 717 of 2005 delivered on 17/12/2018)

JUDGMENT

1. The appeal subject of this judgement only raised one issue. It was on when interest ought to run from.
2. **Jekonia O. Ondegi**, the Respondent herein, filed **Migori Chief Magistrate's Court Civil Suit No. 717 of 2005** (hereinafter referred to as '**the suit**') against **South Nyanza Sugar Co. Ltd**, the Appellant herein, claiming that by a Growers Cane Farming and Supply Contract entered into sometimes in 2004 (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. 192 Zone C Toku Site in Kanyajuok Sub-Location measuring 0.4 Hectare within Migori County.
3. The suit was defended. The trial court rendered its judgment and allowed the suit by remedying the Respondent the value of one crop at Kshs. 57, 600/= with interest from the date of filing the suit.
4. The Appellant was aggrieved by the aspect of the interest. It preferred an appeal.
5. Directions were taken, and the appeal was disposed of by way of written submissions. The Appellant filed its submissions.
6. The Appellant however raised several other issues in the submissions including the manner in which the claim was pleaded and whether the contract was proved. It also referred to several decisions on the issue of the interest.
7. 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**).
8. 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.
9. I must say from the outset that I will only deal with the issue of interest since it was the only one raised in the Memorandum of Appeal and on which directions were taken. All the other issues raised in the submissions are non-issue in this appeal. (See the Supreme Court ruling in **Raila Amolo Odinga & Another vs. IEBC & 2 others (2017) eKLR** and the Court of Appeal in **The Independent Electoral and Boundaries Commission & Ano. vs. Stephen Mutinda Mule & 3 others (2014) eKLR**).
10. 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 issue of when interest ought to run from in sugar matters. The Court held that interest must run from the date of filing the

suit.

11. In this case therefore the trial court did not err in making that order. I must add that the Court of Appeal aforesaid was alive to the fact that the lower court case had been filed in 1998 when it rendered its judgment in 2013. That was 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. The suit is a special damage claim.

12. The Respondent was denied the use of his money for all that period and the interest remain the sole consolation. Further, if the trial court was to otherwise find that interest ought to begin running from any other date then that was a factual issue which ought to have been pleaded and the Respondent given an opportunity to respond.

13. The Appellant did not lay a factual basis in challenging the issue of interest right from the lower court. The argument on appeal therefore comes too late in the day and is for rejection.

14. The judgment of the trial court is hereby affirmed and the appeal is dismissed with costs.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 28th day of November, 2019.

A.C. MRIMA

JUDGE

Judgment delivered in open court and in the presence of: -

Mr. Marvin Odero Counsel instructed by the firm of Messrs. Okong'o Wandago & Company Advocates for the Appellant.

Mr. Mwita Kerario Counsel instructed by the firm of Messrs. Kerario Marwa & Company Advocates for the Respondent.

Evelyne Nyauke – Court Assistant