



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 98 OF 2017

EZEKIEL OMAMBIA OMOKE.....APPELLANT

-VERSUS-

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

(Being an appeal from the judgment and decree by Hon. Kamau, C.M., Resident Magistrate in Rongo Senior Resident Magistrate's Civil Suit No. 235 of 2016 delivered on 20/09/2017).

JUDGMENT

1. There is only one issue for determination in this appeal. It is whether the learned trial court erred in not awarding damages for the first and second ratoon crops.
2. There is no cross-appeal against the judgment. The Appellant submitted that the trial court having found that the Respondent herein was in breach of the contract, then it was bound to award damages for the two ratoon crops in accordance with the contract entered to by the parties on 06/09/2013 which the court upheld its validity. The Respondent was of the contrary position. It contended that the Appellant did not plead for such damages hence he was not entitled in law for such judgment.
3. 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**).
4. I have carefully and keenly read and understood the proceedings and the judgment of the trial court as well as the grounds and the parties' submissions on appeal. I have previously dealt with the issue in this appeal at length in **Migori High Court Civil Appeal No. 92 of 2015 James Maranya vs. South Nyanza Sugar Company Limited (2017) eKLR** where on the guidance of the decision of 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** I found that in a contract similar to the one in this matter a farmer is not only entitled to the value of the proceeds from the plant crop, but also from the ratoon crops. However, it all depends on how a party tailored its pleading.
5. In this case the Appellant pleaded in paragraph 5 of the Pleat that he 'lost Kshs. 2,400,000/= worth of sugar cane of each crop cycle'. He then sought a declaration that the Respondent was in breach of the contract and damages for the breach. The contract was clear on the duration and the expected yields. The Appellant was to earn from the plant crop and two ratoon crops and as such he was entitled to such compensation. As admitted by the Appellant at the trial, those earnings were subject to harvesting and transport charges.
6. There is no dispute that the expected yields for the ratoons was 40.36 tons per hectare. Likewise, there is no contention on the size of the land and the then prevailing cane prices. The Appellant was hence entitled to judgment for the two ratoon crops at Kshs. 1,291,520/= thereby bringing the total compensation to Kshs. 2,312,640/=. This figure must however be subjected to the transport and harvesting charges. I have noted from the record that there was no evidence tendered to that effect, but this Court takes judicial notice of the fact that such charges are standardized in accordance to zones within the Respondent's operational areas.
7. Following the foregone discourse, the upshot is that the following final orders do hereby issue: -
 - a) **The appeal hereby succeeds, and the award in the judgment of the learned trial magistrate is set-aside and substituted with an award of Kshs. 2,312,640/= subject to transport and harvesting charges which charges will be agreed upon by the parties and deducted therefrom before the Deputy Registrar of this Court.**
 - b) **The net sum shall attract interest at court rates from the date of filing of the Pleat.**

c) The Appellant shall have costs of the appeal.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 8th day of August 2018.

A. C. MRIMA

JUDGE

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

Mr. Gembe Counsel instructed by the firm of Gembe Capis Omolo & Co. Advocates for the Appellants.

Mr. Bosire Counsel instructed by the firm of Moronge & Company Advocates for the Respondent.

Evelyne Nyauke – Court Assistant