



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 61 OF 2017

JACKSON A. MATUNGA.....APPELLANT

-VERSUS-

SOUTH NYANZA SUGAR CO. LTDRESPONDENT

(Being an appeal from the judgment and decree by Hon. C. M. Kamau, Resident Magistrate in Rongo Senior Resident Magistrate's Civil Suit No. 95 of 2012 delivered on 09/05/2017)

JUDGMENT

1. The Appellant herein, **Jackson A. Matunga**, filed **Rongo Senior Resident Magistrate's Civil Suit No. 95 of 2012** (hereinafter referred to as '**the suit**') contending that the Respondent herein, **South Nyanza Sugar Co. Ltd**, was in breach of the Growers Cane Farming and Supply Contract dated 22/09/2003 (hereinafter referred to as '**the Contract**') wherein the Respondent contracted the Appellant to grow and sell to it sugarcane at the Appellant's parcel of land Plot No. 436 Field No. 54 in Kakmasia Sub-Location measuring 0.7 Hectares within Migori County. The suit was dated 20/12/2010.

2. The Appellant further contended 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 Appellant's land and supplied the cane seed and fertilizers. That, the Appellant discharged his part of the contract until the plant crop was mature, but the Respondent failed to harvest thereby occasioning loss to the Appellant. The Appellant then prayed for appropriate compensation for the loss of the plant crop and the two ratoon crops.

3. The Respondent entered appearance and filed a Statement of Defence dated 11/07/2012 wherein it denied the contract *in toto* and put the Respondent into strict proof of all his averments. The Respondent prayed for the dismissal of the suit with costs.

4. The suit was finally settled down for hearing. Both parties were represented by Counsels. The Appellant testified and adopted his statement as part of his evidence. He also produced several documents as exhibits. The Respondent was represented by its Senior Field Supervisor one **Richard Muok** who testified and adopted his statement as part of his evidence. The trial court then rendered judgment and found the Respondent in breach of the contract and only allowed compensation for the plant crop and ordered interest to run from the date of the judgment. It is that dismissal that prompted the appeal.

5. The Appellant in praying that the appeal be allowed, and that the Appellant be fully compensated proposed the following three grounds in the Memorandum of Appeal dated 02/06/2017 and filed in Court on 05/06/2017: -

1. The learned trial magistrate erred in law and fact in failing to award the plaintiff damages for the loss of the subsequent two ratoon crops following the loss of the plaintiff plant crop.

2. The learned trial magistrates erred in law in failing to award interest on the awarded sum from the date of filing of suit or an earlier date.

3. The learned trial magistrates wrongly disregard the law and policy of stare decisis, and thereby brought the practice of law into disrepute.

6. Directions were taken, and the appeal was disposed of by way of written submissions where both parties duly complied.

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. The existence of the contract was confirmed by the trial court and no appeal is pending against that finding. As to whether the contract was breached the trial court was once again satisfied that the Respondent breached the contract by not harvesting the plant crop. Again, there is no appeal against that finding. The trial court then awarded the Appellant compensation only for the plant crop. Arguing its case for the compensation in respect of the ratoon crops the Appellant referred to several decisions by this Court where the Court stated that once a farmer proves that he/she discharged his/her obligations under the contract until the plant crop matured but the Miller failed to harvest the cane then the farmer was not only entitled to compensation for the plant crop but the ratoon crop(s) as well, but subject to the contract and the pleadings. That was in **Wilkista Akumu Adongo vs. South Nyanza Sugar Co. Limited (2017) eKLR** among others.

10. That being the case, this Court can only reiterate its earlier position in *inter alia* **Wilkista Akumu Adongo vs. South Nyanza Sugar Co. Limited (2017) eKLR** and find that the Appellant was entitled to compensation for the two ratoon crops in line with the contract and the pleadings. The trial court erred in its finding that the Appellant was only entitled to compensation from the plant crop. The trial court relied on the Respondent's Cane Yields Report as opposed to the document produced by the Appellant whose authenticity cannot be vouched. I will likewise be guided by the Respondent's Cane Yields Report.

11. According to the said Report, the ratoon crops within Kakmasia Sub-Location would yield 48.76 tonnes per hectare. The price was Kshs. 2,015/= per tonne. Given that the area of the farm was 0.7 Hectares then the Appellant was entitled to Kshs. 68,775/= per ratoon thereby translating to Kshs. 137,550/= for the two ratoon crops.

12. On the issue of when the interest should run from, the same was settled by the Court of Appeal in **John Richard Okuku Oloo vs. South Nyanza Sugar Co. Ltd (2013) eKLR** and it starts from the date of filing the suit. That decision is not only binding on this Court but the trial court as well.

13. Having considered all the grounds of appeal, this Court hereby makes the following final orders: -

a. The appeal succeeds and the finding of the trial court to the extent that the Appellant was not entitled to compensation for the two ratoon crops is hereby set-aside and substituted with a finding that the Appellant was entitled to compensation for the first and second ratoon crops.

b. The award of Kshs. 93,883/= is hereby substituted with an award of Kshs. 231,433/= with interest from the date of filing of the suit.

c. Costs of the appeal to be borne by the Respondent.

14. Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 23rd day of November, 2018.

A. C. MRIMA

JUDGE

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

Mr. Ezekiel Oduk instructed by the firm of Ezekiel Oduk & Co. Advocates for the Appellant.

Messrs. Otieno Yogo Ojuro & Company Advocates for the Respondent.

Evelyne Nyauke – Court Assistant