



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 100 OF 2017

JOHN O. OBEL.....APPELLANT

-VERSUS-

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

(Being an appeal from the judgment and decree by Hon. C. M. Kamau, Resident Magistrate in Rongo Senior Resident Magistrate's Civil Suit No. 40 of 2014 delivered on 10/10/2017)

JUDGMENT

1. **John O. Obel**, the Appellant herein, filed **Rongo Senior Resident Magistrate's Civil Suit No. 40 of 2014** (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 25/07/2004 (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. 1456 Field No. 111 in Kakmasia Sub-Location measuring 0.7 Hectares within Migori County. The suit was dated 14/10/2014.

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 20/04/2015 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's wife one **Hellen Aoko Olala** who was the manager of the farm testified and adopted her statement as part of her evidence. She 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 one ratoon crop. 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 two grounds in the Memorandum of Appeal dated 24/10/2017: -

1. The learned trial magistrate erred in law and fact in holding as he did that for the breach committed by the Respondent / Defendant, he Appellant / Plaintiff was only entitled to the award of the damages for the plant crop which holding was unreasonable in the circumstances, and the compensation therefore inadequate.

2. The learned trial magistrate in the assessment of the award by making several deductions to the award, which deductions were neither pleaded as a set and/or counterclaim, and the trial magistrate's said act was in contradiction of the law and public policy in that he rewarded the respondent for its breach.

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. In this appeal there is no dispute on the existence of the contract. As to whether the plant crop was developed to maturity, the trial court found in the affirmative and also found that the Respondent was in breach of the contract for failure to harvest the plant crop. 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. I have perused the record and noted that the Appellant *vide* its Advocates demand letter dated 03/12/2010 which was produced as an exhibit acknowledged that the Respondent harvested the plant crop but not the ratoon crops. The demand letter therefore sought for compensation in respect of the two ratoon crops. The trial court having found the Respondent guilty of breach of the contract entered judgment for the Appellant for compensation in respect for the plant crop only. Since the Respondent did not appeal against that finding I find no basis to disturb it.

11. 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 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.

12. According to the said Report, the ratoon crops within Kakmasia Sub-Location would yield 48.76 tonnes per hectare. The price was Kshs. 2,000/= per tonne. Given that the area of the farm was 0.7 Hectares then the Appellant was entitled to Kshs. 68,264/= per ratoon. The amount shall be subject to the harvest and transport charges as provided for under **Clause 3.1.2** of the contract as read together with the statement of **Richard Muok**. I have also noted that the transport and harvesting charges given by the Respondent were not contested by the Appellant.

13. Therefore, the harvesting charges would have been Kshs. 10,240/= whereas the transport charges would have been Kshs. 33,640/= thereby bringing a total of Kshs. 43,884/=. The net pay in respect of each ratoon crop would have then been Kshs. 24,380/= thereby translating to Kshs. 48,760/= for the two ratoon crops. Infact the Appellant was lucky that the trial court did not deduct the transport and harvesting charges in respect to the plant crop. Likewise, I cannot do so since the award was not appealed against by the Respondent.

14. 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. 93,184/= is hereby substituted with an award of Kshs. 141,944/= with interest from the date of filing of the suit.

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

15. 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.