



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL APPEAL NO. 61 OF 2016**

**DANIEL OMARE BARONGO .....APPELLANT**

**VERSUS**

**CHEMELIL SUGAR COMPANY LTD. .... RESPONDENT**

**[Being an Appeal against the entire judgment of Hon. Patrick Olengo (PM) sitting at Nyando Law Courts dated the 21st July 2016 in Civil Case No. 36 of 2015]**

**JUDGMENT**

The Appellant sued the Defendant for -

- (a) A sum of Kshs.91,615/= in special damages.
- (b) General damages as prayed in paragraph 10 (Grand total 4,879,615/=).
- (c) Costs of the suit.
- (d) Any other relief.

The claim was based on a breach of contract allegedly between him and the Respondent for cane harvesting. It was his case that the Respondent neglected to harvest his cane causing it to rot on the farm. After hearing the case the trial magistrate found there was no contract between the parties and that the appellant was not entitled to the damages sought.

He appealed based on the Memorandum of Appeal. The appeal was canvassed orally with the Appellant appearing in person and the Respondent through Counsel – Mr. Emukule.

The Appellant submitted that the trial magistrate omitted many things in the proceedings. He contended that the Manager cut his cane and burnt it but then left it in the field to rot a fact which the trial magistrate did not consider. He described as baffling the trial magistrate's finding that there was no contract between him and the Respondent. He referred this court to documents which he alleged showed he had transacted with the Company. He wondered what other evidence the court required and further stated that he saw with his own eyes the Respondent cultivate and plant the cane while he worked at the Company. He contended that they paid other farmers but not him.

Mr. Emukule, Learned Counsel for the Respondent maintained that there was no contract. He contended that a copy of the contract or authorization form is always given to a private farmer or a Society and even if it was not supplied the Appellant would have issued a notice to produce which he did not do. He contended that the allegation that the trial magistrate did not take notes cannot be raised at this stage and

the Appellant should have raised that during the hearing.

As the first appellate court I have analysed the evidence in the court below all the while bearing in mind that I did not see the witnesses giving evidence.

At the trial the Appellant relied and adopted as evidence a statement he filed together with the plaint and the allegation that the trial magistrate left out a lot of things in the proceedings cannot be correct. His claim revolves on whether there was a contract between him and the Respondent for buying of the cane. The documents he tendered in the lower court and which he has annexed are for work done on his farm by the Respondent – ploughing and area survey. Joel Kiproop Kiplaget (DW1) testified that those services were paid for in cash by the Appellant a fact that was not denied. On his part the Appellant exhibited lease agreements between him and Aloice Ayien Nandi, Jane Moraa and Samuel Songok. These were people from whom he either leased land to grow cane or from who he purchased seedlings. He also tendered his resignation letters, which in my view were not relevant to the case. He however failed to tender cogent evidence of a contract between him and the Respondent that would have obliged the latter to purchase/harvest his cane. My suspicion is that he acted under the mistaken belief that because the farmers from who he leased land had contracts with the Respondent the same flowed to him automatically. Although in his submissions in the court below he alleged that in 1997 one Philemon Oyoyo had authorized the harvesting of his cane and the same was done but the cane was not collected he did not produce evidence of such authorization. It is my finding that he did not prove his claim against the Respondent on a balance of probabilities and the trial magistrate cannot be faulted for dismissing the case. Likewise this appeal is dismissed with costs to the Respondent. It is so ordered.

**Signed, dated and delivered at Kisumu this 3rd day of August 2017**

**E. N. MAINA**

**JUDGE**

**In the presence of:-**

Appellant in person

Mr. Emukule for the Respondent

Evon – Court Assistant