



REPUBLIC OF KENYA



**Onyambu v South Nyanza Sugar Co Ltd (Civil Appeal E063 of 2021)
[2024] KEHC 2295 (KLR) (7 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2295 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E063 OF 2021
RPV WENDOH, J
MARCH 7, 2024**

BETWEEN

MOSES ONGAKI ONYAMBU APPELLANT

AND

SOUTH NYANZA SUGAR CO LTD RESPONDENT

*(An Appeal from the Judgement and Decree of Hon. D. ONYANGO (CM) Migori
Law Courts in Migori Civil Suit No. 675 of 2016 delivered on 23rd June 2021)*

JUDGMENT

1. This is an appeal by Moses Ongaki Onyambu (the appellant) against the judgement and decree of the Hon. D. Onyango dated and delivered on 23/6/2021. The appellant is represented by the firm of Nelson Jura & co Advocates while the respondent is represented by the firm of Oyagi, Ong’uti, Magiya & co Advocates.
2. By a plaint dated 15/6/2016, the appellant sued the respondent for damages being the value of unharvested sugarcane, costs of the suit, interest at court rates and any other relief. The respondent entered appearance and filed a defence dated 20/6/2016.
3. The suit proceeded to hearing. The appellant testified as PW1 while Nathan Nyakwabe a contractor with the respondent testified as DW1.
4. The trial court delivered its judgement on 23/6/2021 in favour of the appellant. The trial court awarded the appellant ksh 471,150/= as damages and interest from the date of the court’s judgement.
5. Being dissatisfied, the appellant commenced this appeal challenging the decision of the trial Magistrate to award interest from the date of the court’s judgement as follows:-
 - a. The learned trial Magistrate erred in law and fact when he ordered interest to accrue on the principal award from the date of judgement in total disregard to the binding decision of the



Superior Courts and Court of Appeal which have consistently held that interest in a matter like this accrues on the Principal amount from the date of filing the suit.

The appellant prayed that this appeal be allowed by: -

- i. Setting aside and/or substitution the judgement of the trial court with suitable orders that interest on the principal amount do accrue from the date of filing suit;
 - ii. Costs of this appeal be in the cause.
6. Directions were taken that the appeal be canvassed by way of written submissions. It is only the appellant who complied. The appellant filed written submissions dated 23/1/2023 and urged this court to find that interest on the principal amount do run from the date of filing the suit,
 7. I have considered the appeal, the appellant's submissions and the trial court's record. The only issue for determination is when interest should start running.
 8. This being the first appellate court, the court has a duty to re-evaluate and analyse all the evidence tendered in the lower court and arrive at its own conclusions but bearing in mind that it neither saw nor heard the witnesses testify. It has to establish whether the decision of the lower court was well founded. The court is guided by the decision in *Selle & Another v Associated Motor Boat co Ltd* (1968) EA 123.
 9. The claim by the appellant was one of special damages. In *South Nyanza Sugar Company Limited v Oreko* (Civil Appeal of 2017) (2022) KECA 570 (KLR) (24 June 2022) (Judgment) the Court of Appeal had this to say on award of special damages in sugar matters as this one: -

“The objective for awarding interest is to ameliorate the loss suffered by a party who has been kept out of use of money that would otherwise be due to him... The indubitable outcome is that interest on special damages will be from the date of filing of suit as the money would have been due to the claimant at the very least on that date. General damages, which is the product of an assessment process by the court, is due on the date when the assessment is made which is in the judgment date... The contract was then subject to the provisions of the repealed Sugar Act...the effect of paragraph 9 (1) (e) as read together with 9 (2) of the Second Schedule of the Act was that a miller who failed to pay an out grower institution within thirty days of sugar cane delivery was liable to pay interest. The spirit is to compensate the farmer by way of interest for late payment. I see no reason why the same principle should not be extended to where there is breach by the miller like here.”

10. Being bound by the decision of the Court of Appeal, I find that the appeal has merit. The decision of the Hon. D. Onyango (CM) is set aside to the extent that interest on special damages should start running from the date of filing suit.
11. There will be no orders as to costs since the respondent did not participate in these proceedings.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 7TH DAY OF MARCH, 2024.

R. WENDOH

JUDGE

Judgment delivered in the presence of;

Mr. Jura for the Appellant.

No appearance for the Respondent.

Emma & Phelix Court Assistants.

