**Sukari Industries Limited v Oyoko (Civil Appeal E051 of 2022) [2024] KEHC 3584 (KLR) (15 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 3584 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT HOMA BAY**

**CIVIL APPEAL E051 OF 2022**

**KW KIARIE, J**

**APRIL 15, 2024**

**BETWEEN**

**SUKARI INDUSTRIES LIMITED ........................................................ APPELLANT**

**AND**

**JOHN OWA OYOKO ............................................................................ RESPONDENT**

***(Being an Appeal from the judgment in Ndhiwa Senior Resident Magistrate's SRMCC No.137 of 2016 by Hon. Mary A. Ochieng –Principal Magistrate)***

## JUDGMENT

1. In civil case No. 137 of 2016 at the Ndhiwa Principal Magistrate's Court, the respondent sued Sukari Industries Company Limited for a breach of contract claim. The respondent was seeking compensation for three unharvested crops. On June 21, 2022, Hon. Onzere delivered the judgment on behalf of the trial magistrate and ruled in favour of the respondent. The appellant was ordered to pay Kshs. 160,800.00 as compensation.
2. The appellant was aggrieved by the judgment and filed this appeal. The firm of Olendo, Orare & Samba Advocates LLP represented the appellant. He raised the following grounds of appeal:
    a. That the learned trial magistrate erred in fact and law in treating the evidence and submissions before him superficially and consequentially, coming to a wrong conclusion.
    b. The learned trial magistrate erred in fact and law by ignoring the principles applicable to awarding a quantum of damages and the relevant authorities on the quantum cited in the appellant's written submissions.
    c. The learned trial magistrate erred in fact and law by awarding the respondent exemplary damages, yet in the plaint, the respondent did not plead for the said award.

d. The learned trial magistrate erred in fact and law in finding that the respondent had proved his case on a balance of probability.

e. The learned trial magistrate erred in fact and law in ignoring the pleadings and submissions for the defence.

f. The learned trial magistrate erred in fact and law in failing to appreciate sufficiently or at all that the evidence tendered in favour of the appellant controverted and rebutted the respondent's evidence, thus lowering the respondent's probative evidentiary value.

g. Without prejudice to the foregoing, the award of damages in the circumstance was excessive.

3. The firm of Kerario Marwa & Company Advocates represented the respondent. The respondent opposed the appeal and contended:

   a. The court had jurisdiction to hear and determine the matter.

   b. There was a contract between the parties herein.

   c. The appellant was in breach of the contract.

4. As the first appellate court, it is my responsibility to carefully review all of the evidence presented and consider that I did not have the opportunity to observe the witnesses testify and their demeanour. I will follow the principles outlined in the Selle vs Associated Motor Boat Co. Ltd. [1965] E.A. 123, which states that the first appellate court must examine and assess the evidence presented in the trial court and then come to its conclusions.

5. The appellant did not raise the issue of jurisdiction. Though the respondent submitted it, I will not address my mind to it.

6. In the trial court, two issues were considered: whether a contract existed between the parties and, if it existed, whether it was breached.

7. In the statement of defence, the appellant denied the existence of a contract between the parties. However, Cane Farming and Supply Contract No. 10804 contradicted this denial. Both parties signed the contract on page 6 of the agreement, and Samuel Okinyi, the assistant chief of the Kaguria sub-location, witnessed it. If there was forgery as alleged, no evidence was adduced to prove the allegation at the trial court.

8. The learned trial magistrate's determination that the parties had a contract cannot be faulted.

9. Parties are bound by their pleadings. The Court of Appeal in David Sironga Ole Tukai vs Francis arap Muge & Others, Ca No. 76 Of 2014, expressed itself as follows:

   It is well established in our jurisdiction that the court will not grant a remedy, which has not been applied for, and that it will not determine issues, which the parties have not pleaded. In an adversarial system such as ours, parties to litigation are the ones who set the agenda, and subject to rules of pleadings, each party is left to formulate its own case in its own way. And it is for the purpose of certainty and finality that each party is bound by its own pleadings. For this reason, a party cannot be allowed to raise a different case from that which it has pleaded without due amendment being made. That way, none of the parties is taken by surprise at the trial as each knows the other's case is as pleaded. The purpose of the rules of pleading is also to ensure that parties define succinctly the issues so as to guide the testimony required on either side with a view to expedite the litigation through diminution of delay and expense. The court, on its part, is itself bound by the pleadings of the parties. The duty of

the court is to adjudicate upon the specific matters in dispute, which the parties themselves have raised by their pleadings. The court would be out of character were it to pronounce any claim or defence not made by the parties as that would be plunging into the realm of speculation and might aggrieve the parties or, at any rate, one of them. A decision given on a claim or defence not pleaded amounts to a determination made without hearing the parties and leads to denial of justice.

10. The duties of the Grower (respondent) are spelled out in clauses 7.1 to 7.15. Clause 7.2 of the agreement states:

    The grower shall offer for delivery on maturity in accordance with clause (1) above and deliver to the miller all such cane as is derived from his contracted field and no other using the Miller's transport or the Grower's appointed transporter approved in advance by the Miller.

11. According to the clause, the grower was responsible for informing the miller when the sugar cane was ready for harvesting. The phrase "The Grower shall offer for delivery on maturity" explicitly states this obligation.

12. The respondent did not testify that he notified the appellant that the cane was ready for harvesting. After such notification, he was to issue a notice as envisaged under clause 3 of the agreement in case of failure to harvest. Since the respondent did not perform his part of the contract, he cannot blame the appellant. He, therefore, did not prove that the appellant was in breach of the contract.

13. From the preceding, therefore, I set aside the finding by the trial magistrate that the appellant was in breach of the contract and the award. The appeal is allowed with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 15TH DAY OF APRIL 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**