



**Odoyo v South Nyanza Sugar Company Ltd (Civil Appeal E126 of 2022)
[2024] KEHC 14849 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEHC 14849 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E126 OF 2022
A. ONG'INJO, J
SEPTEMBER 19, 2024**

BETWEEN

TIMON ISAAC ODOYO APPELLANT

AND

SOUTH NYANZA SUGAR COMPANY LTD RESPONDENT

*(An appeal from the Judgment / Decree of the P. M. C. C. No. 454 of 2017
at Rongo by Hon. R.K. Langat (PM) dated and delivered on 4/10/2022)*

JUDGMENT

1. The Appellant's claim vide Plaintiff dated 13th December, 2017 filed in Rongo PMCC No. 454 of 2017 was for the value of the unharvested plant crop and exemplary damages for Ratoons 1 and 2; Costs of the suit and interest at Court rates.
2. The trial magistrate vide judgment delivered on 4th October 2022 found the Appellant had not proved his case as there was evidence the plant crop was harvested by the Respondent and that he was dully paid.
3. The Appellant was dissatisfied with the trial magistrates' decision and he prepared the appeal herein on the following grounds: -
 - 1) The learned trial magistrate erred in dismissing the plaintiff's claim for damages for the unharvested ratoon 1 and ratoon 2 when there was no evidence that the appellant did not develop the ratoon 1 and 2;
 - 2) The learned trial magistrate erred in dismissing the plaintiff's claim for exemplary damages for the unharvested Ratoon 1 and 2;
 - 3) The learned trial magistrate erred in dismissing the plaintiff's claim on the basis that the claim was not proved on a balance of probability;



- 4) That the learned trial magistrate failed to consider the evidence and testimony of the Appellant in proof of the claim.
4. The Appellant prayed for orders:-
- 1) That the appeal be allowed and judgment in Rongo PMCC No. 454 of 2017 be set aside;
 - 2) That the court does assess the award of damages due to the Appellant;
 - 3) Cost of the appeal and of the subordinate court be awarded.
5. This appeal was canvassed by way of written submissions, the Appellants submissions were filed on 20th February, 2024. The Appellant's counsel relied on the authorities in Migori High Court Civil Appeal No. 51 of 2017 between Lucas M. Nyankobosa vs. South Nyanza Sugar Co Ltd (2018) eKLR and Court of Appeal in Kisumu Civil Appeal No. 278 of 2010 John Richard Okuku Oloo vs. South Nyanza Suga Limited where it was held that a farmer in a sugarcane contract is entitled to full compensation from what he / she would have earned had the breach not been occasioned. The court further stated that from the unique way the contracts were tailored it was possible for the court to calculate and pronounce itself on the final awards even where special damages are not specifically pleaded.
6. The Appellants counsel argued that the Appellant was entitled to the remedies sought as the terms of the contract were breached by the Respondent.
7. In High Court Migori HCCA NO. 138 of 2015 and HCCA No. 92 of 2015 Mrima J held that an awarding of General damages cannot be made for a claim of breach of contract but the claimant must be put as far as possible in the same position he would have been if the breach complained of had not occurred.
8. Having considered the grounds of appeal and the submissions by the parties and having re-evaluated the evidence on record, pleadings and the judgment of the trial magistrate, this court noticed that the trial magistrate indicated that the claim for exemplary damages was pegged on non-harvested plant crop and could not therefore stand. The trial magistrate did not distinguish whether claim for exemplary damages would have been allowed if it was not pegged on the plant crop.
9. The agreement between the Appellant and the Respondent was for a period of five (5) years or the period of 24 months for the plant crop, 22 months after harvest of plant crop for 1st Ratoon and 22 months after harvest of 1st Ratoon for the 2nd Ratoon. Evidence was adduced that the Respondent harvested the plant crop and duly paid the Appellant.
10. From the statement of the Respondents witness Justus Otieno George it is clear that they supplied the Appellant with DAP fertilizer for the development of the first Ratoon 1. It is however say that the Appellant abandoned the development of first ratoon 1 upon receipt of the fertilizer. The contract between the Appellant and the Respondent provided at Clause 15 that the miller could suspend or terminate the contract where the grower defaulted or was in breach of any of his obligations. No such suspension or termination of the contract was exhibited by the Respondent to confirm that the Appellant defaulted or breached any if his obligations in the contract after he had been supplied with fertilizer to develop the 1st Ratoon.
11. This court is therefore persuaded by the decisions of Mrima J that the claim arose out of a contract whose terms and conditions are clear and cannot be rewritten by the court and that the Appellant should be restituted to the position in which he would have been had the contract not been breached.



12. The Respondents have alluded to the Appellant having breached the terms of the contract at clause 3 (3,8) but a perusal of the contract shows there is no such clause as 3.8. The Appellant did not admit in his evidence in Chief or cross examination that he diverted sugarcane to 3rd parties as alluded in the Respondents submissions. This court finds that the appeal has merits. The Appellant is entitled to be paid for what was due to him for the 1st and 2nd Ratoons from his 8.45 hectares of Plot No. 205 Kajulu.
13. According to paragraph 3 of the Respondent's witness statement dated 13th May 2022 that the prevailing cane prices by then was 3,128/= per ton less costs of inputs and services and that ratoon cane yields was 46.93 tons per hectare.
14. The upshot of the above finding is that judgment is entered for the Appellant as follows:-
 1. 1st Ratoon 8.45Ha x 46.93 tons x 3,128/= (Kshs.1,240,434,988/=)
Less costs of inputs and service if any;
 2. 2nd Ratoon 8.45Ha x 46.93 tons x 3128/= (Kshs. 1,240,434,988/=)
Less costs of inputs and services if any;
 3. Costs of the suit in the subordinate court;
 4. Costs of the Appeal;
 5. Interest in 1, 2 and 3 from date of judgment herein;
 6. Orders accordingly;
 7. Right of Appeal 14 days explained.

DATED, DELIVERED AND SIGNED AT MIGORI THIS 19TH DAY OF SEPTEMBER, 2024

A. ONGINJO

JUDGE

Ruling delivered in the presence of:-

Mr. Bunde Advocate for the Appellant – No appearance.

Mr. Odhiambo for the Respondent.

Victor Court Assistants.

