



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT HOMA BAY
CIVIL APPEAL NO.30 OF 2019

BETWEEN

MARTIN OUMA OYUGI.....APPELLANT

AND

SUKARI INDUSTRIES CO. LIMITED.....RESPONDENT

(Being an Appeal from the judgment in Ndhiwa Senior Resident Magistrate's SRMCC No. 338 of 2016 by Hon. S.K Arome –Senior Resident Magistrate).

JUDGMENT

1. Martin Ouma Oyugi, the appellant herein was the plaintiff in Ndhiwa Senior Resident Magistrate's SRMCC No. 338 of 2016. He had sued the respondent for compensation for three crops on allegations of breach of contract. The learned trial magistrate delivered judgment dated 14th December, 2018 in which the claim was dismissed.

2. The appellant was aggrieved by the said judgment and filed this appeal. He was represented by the firm of Nelson Jura & Company Advocates. He raised two grounds of appeal as follows:

a. That the learned trial magistrate erred in law and in fact when he failed to consider evidence and pleadings thereby reaching to a wrong conclusion that the defendant/respondent is not liable to the plaintiff/appellant and by dismissing the appellant's/plaintiff's suit with costs to the defendant/respondent.

b. That the learned trial magistrate erred in and in fact when he delivered judgment that was against the weight of pleadings, evidence and the submissions made by the parties.

3. The respondent was represented by the firm of Ogejo, Olendo & Company, Advocates who contended that the appellant did not prove his case.

4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of **Selle vs. Associated Motor Boat Co. Ltd. [1965] E.A. 123**, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.

5. According to the evidence of the appellant, he planted his cane in October 2010. At the time of signing of the contract with the respondent, his cane was six months old. The agreement is dated 29th April, 2011. His evidence was that cane took between 18 and 24 months to mature. This therefore meant that the cane was mature for harvesting latest by October 2012. He testified that he reported that his cane was mature in 2016.

6. In the agreement between the parties clause 7. 2 gives the obligation of the grower as follows:

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.

7. Since the appellant testified that he reported that his cane was ready for harvesting in 2016 instead of making the report in October 2012, he cannot claim that the respondent was liable for any damage that he may have incurred. In any case, he never explained why the inordinate

delay to notify the respondent. He equally did not prove that he actually notified the respondent about the maturity of the cane.

8. I therefore find that the appellant did not adduce any evidence to show that he discharged his obligation to notify the respondent that the cane was mature for harvesting.

9. The Cane Farming and Supply Contract at clause 6 provided for arbitration in case of a dispute or disagreement between the parties. This ought to have been raised at the earliest opportunity before the commencement of the trial before the learned trial magistrate. The parties did not do so. The parties therefore brought themselves under the jurisdiction of the trial court. It was erroneous therefore for the learned trial magistrate to make this one of the reasons for the dismissal of the appellant's suit. The appeal will however not turn on this issue.

10. The upshot of the foregoing analysis of the evidence is that the appeal lacks merit and the same is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 7TH DAY OF DECEMBER, 2021

KIARIE WAWERU KIARIE

JUDGE