

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MIGORI

CIVIL APPEAL NO. 46 OF 2017

PIUS ODONGO M. KABUYA.....APPELLANT

-VERSUS-

SOUTH NYANZA SUGAR CO. LTD.....RESPONDENT

(Being an appeal from the judgment and decree by Hon. C. M. Kamau, Resident Magistrate

in Rongo Principal Magistrate's Civil Suit No. 74 of 2014 delivered on 07/03/2017)

JUDGMENT

1. There is only one issue for determination in this appeal. It is on when interest should start running from. The trial court ordered interest to run from the date of the judgment as it considered the dispute between the parties herein as a general damages claim. The Appellant on the other hand was of the position that interest ought to run from the date of filing of the suit since the dispute is a special damages claim.

2. The issue as to when the interest ought to run from has been greatly litigated on in sugar cases and was finally settled by the Court of Appeal in **John Richard Okuku vs. South Nyanza Sugar Co. Ltd Kisumu Court of Appeal Civil Appeal No. 278 of 2010** where the Court held that disputes arising from the sugar contracts under the now repealed **Sugar Act** (like the one in this case) are special damages claims and interest must run from the date of filing of the suit.

3. Since the said decision is binding on this Court as well as the lower courts, I find that the trial court erred in not holding on to the settled legal principle of *stare decisis*. To that end, respectfully, the trial court erred and the finding that interest ought to start running from the date of judgment is hereby set aside and substituted with an order that the interest shall run from the date of filing the suit in the Magistrates Court at Rongo.

4. The appeal therefore succeeds with costs to the Appellant.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 14th day of February 2019.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Mr. Oduk Counsel instructed by the firm of Messrs. Oduk & Company Advocates for the Appellant.

Mr. Bosire instructed by the firm of Moronge & Company Advocates for the Respondent.

Evelyn Nyauke – Court Assistant