



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CIVIL APPEAL 60 OF 2017

SUKARI INDUSTRIES LIMITED APPELLANT

VERSUS

JEREMIAH OTIENO MADARA RESPONDENT

(Being and appeal from the award of the magistrate's court at Ndhiwa given on the 14th day of September 2017 in Ndhiwa Civil Suit No.103 of 2016 – Hon. Ochieng, SRM)

JUDGMENT

1. This appeal arises from the ruling of the Senior Resident Magistrate in **Ndhiwa SRMCC No.103 of 2016**, in which the appellant, **Sukari Industries Limited**, was sued by the Respondent, **Jeremiah Otieno Madara**, for compensation arising from the appellant's breach of a contract entered between itself and the respondent for the harvest and purchase of sugarcane cultivated by the respondent on land parcel/plot No.1608.

2. The appellant denied the claim in its statement of defence and denied the jurisdiction of the court to deal with the claim. To that extent, it raised an oral preliminary objection prior to the hearing of the suit. This was based on the provision of **Section 38** of the **Crops Act** and it was the appellant's contention that the lower court had no jurisdiction to hear the claim.

3. The learned trial magistrate considered the objection and overruled it.

Being aggrieved, the appellant preferred the four (4) grounds of appeal set out in the memorandum of appeal dated and filed herein on 28th September 2017 and in which the appellant prays for orders that the appeal be allowed and that the ruling of the trial court be set aside.

4. The appeal proceeded by way of written submissions and in that regard, the appellant filed its submission dated 25th March 2019 on 3rd April 2019, through **Ogejo, Olendo & Co. Advocates**, while the respondent's submissions dated 19th July 2019 were filed on 22nd July 2019 through **Kerario Marwa & Co. Advocates**.

The duty of this court was to re-consider the preliminary objection raised in the trial court and draw its own conclusions.

5. In dismissing the objection, the trial court rendered itself as follows:-

“In the instant case there is a dispute purely arising out of a contract entered into between the parties herein. Does such dispute fall under Section 38 of Act, No.16 of 2013?

The answer is no. This dispute is premised on the law of contract. It should not be construed to mean that since sugarcane is a crop listed under the first schedule of the Crops Act, then it is the High Court to hear any claim of such nature filed in court.

A breach of contract does not fall under the provisions of this Act to warrant the court to down its tools.”

6. Clearly, the trial court was alive to the established principle that a court must down its tools and refrain from hearing any matter before it the moment it finds that it lacks the necessary jurisdiction to hear and determine the matter. This explains why the objection was heard and determined prior to the commencement of the main suit.

Indeed, as was held in the celebrated case of **Owners of M/V “Lillian’s” –vs- Caltex Oil (K) Ltd. (1989) KLR 1**, jurisdiction is everything and without it a court has no power to make one more step.

7. The jurisdictional frontiers within which courts of law must operate were set out by the Supreme Court of Kenya (SCOK) in **Samwel Kamau Macharia & Another –vs- Kenya Commercial Bank & others, Supreme Court Civil Application No.2 of 2011**, in the following terms:-

“A Court’s jurisdiction flows from either the constitution or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by the constitution or other written law.

It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

8. In this matter, the preliminary objection by the appellant was anchored on **Section 38** of the **Crops Act No.16 of 2013**.

The trial court held that the Crops Act did not apply since the dispute was basically premised upon a breach of contract.

Basically, the **Crops Act 2013**, was meant to consolidate and repeal various statutes relating to crops and provide for the growth and development of agricultural crops.

9. Dealing in crops under **Section 2** of the **Act** includes collecting, transporting, storing, buying or selling crops or crop products but in case of food crops excludes non-commercial activity.

Scheduled crop means any of the crops listed under the first schedule of the Act. These include sugarcane, tea, coffee etc etc.

Section 3 of the **Act** provides for its objective which is to accelerate the growth and development of agriculture in general, enhance productivity and incomes of farmers and the rural population, improve investment climate and efficiency of agribusiness and develop agricultural crops as export crops that will augment the foreign exchange earnings of the county through promotion of the production, processing, marketing and distribution of crops in suitable areas of the country.

10. The scope of the Act is provided under **Section 5** to the extent that it applies to all scheduled crops specified in the first schedule and to all agricultural land whether privately or communally held as well as to farmers, farmer’s organizations, co-operatives and community associations.

The material **Section 38** of the **Act** provides for restraint of breaches of the Act in that:-

“Any person who has reason to believe that the provisions of this Act have been, are being or are about to be violated may petition the High Court for:-

(a) A declaration that the provisions of the Act are being, have been, are about to be contravened;

(b) An injunction restraining any specified person from carrying out the contravention;

(c) A writ of mandamus against an officer or a person who has failed to perform a duty imposed by or under the act or

(d) Any other lawful remedy.”

11. In its grounds of appeal, the appellant faults the trial court in its findings that the court had jurisdiction to hear the matter and that the matter in dispute was a breach of contract and also that the provisions of the Civil Procedure Act superseded the Crops Act which specifically empowers the High Court to hear and determine matters involving scheduled crops.

The appellant submitted that the main dispute is premised on allegations of breach of contract between the farmer (respondent) and the miller (appellant) who is qualified as a crop-dealer. Therefore, it is the High Court and not the Magistrate’s Court, which is possessed of the necessary jurisdiction to hear and determine the matter by dint of **Section 38** of the **Crops Act**.

12. In his submissions, the respondent contended that the contract in issue was under the **Sugar Act 2001** (now repealed) which provided that disputes between parties in sugar contracts were to be referred to the **Sugar Arbitration Tribunal** created under the said **Act** and that the contract was entered in the year 2011 before the enactment of the **Crops Act 2013** and contained a clause 6.3 which stated that an unsatisfied party may refer a dispute to the **Sugar Arbitration Tribunal**.

13. The respondent submitted that the Sugar Arbitration Tribunal ceased to exist after the repeal of the Sugar Act and therefore, any sugar dispute such as the present one between the appellant and respondent could be dealt with by the ordinary courts encompassing both the subordinate courts and the high courts.

The respondent further submitted that **Section 38** of the **Crops Act** does not talk about disputes between individuals or resolution of disputes between institutions as they relate to sugar cane contracts and that if the provision gave exclusive jurisdiction to the High Court to determine sugarcane contract disputes, then **Section 41** of the **Act** would not have been enacted to enable a Cabinet Secretary make rules to provide for arbitration of disputes arising between farmers and other crop dealers.

14. From the foregoing submissions it is clear that the subject contract related to the sugarcane crop which is classified as a scheduled crop in the first schedule of the **Crops Act 2013** which replaced the **Sugar Act 2001**, among other statutes. With that replacement, the contract fell

within the ambit of the **Crops Act, 2013** in so far as it involved dealing in the sugarcane crop by its production by one party (respondent).

If a breach or attempted breach of the contract occurred in the process, the aggrieved party was expected to petition the High Court for necessary orders under **Section 38** of the **Crops Act** and more so, where a Cabinet Secretary has failed or neglected to make rules under **Section 41** of the **Act** to provide for the creation of a tribunal to deal with such disputes.

15. In any event, under **Section 42** of the **Act**, anything done under the provisions of the repealed **Acts** including the **Sugar Act 2001**, was deemed to have been done under the **Act** (i.e Crops Act 2013).

For all the foregoing reasons, this court would find that the dispute between the applicant and the respondent arose from an extra ordinary contract revolving around a crop whose production, sale and purchase is currently within the scope of the **Crops Act 2013**, which under **Section 38** confers jurisdiction to the High Court to deal with it.

16. The appellant's preliminary objection in the trial court was therefore merited and is hereby sustained with the result that the ruling of the trial court made on 14th September 2017, is hereby set aside and the main suit by the respondent against the appellant is struck out and dismissed for want of jurisdiction.

The appellant shall have the costs of the appeal.

Ordered accordingly.

J.R. KARANJAH

JUDGE

02.10.2019

[Dated and delivered this 2nd day of October, 2019]