



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

[CORAM: A. C. MRIMA, J.]

CIVIL APPEAL NO. 77 OF 2018

BETWEEN

SOUTH NYANZA SUGAR CO. LTD.....APPELLANT

AND

THOMAS CHACHA IROGA.....RESPONDENT

(Being an appeal from the judgment and decree by Hon. M. M. Wachira, Senior Resident Magistrate in Migori Chief Magistrate's Civil Suit No. 222 of 2015 delivered on 29/05/2018)

JUDGMENT

1. On 01/03/2004 the parties herein entered into a Growers Cane Farming and Supply Contract (hereinafter referred to as '**the Contract**'). The Respondent, **Thomas Chacha Iroga**, was contracted by the Appellant, **South Nyanza Sugar Co. Ltd**, to grow and sell to the Appellant sugarcane at the Respondent's parcel of land Plot No. 24B Field No. 7 in Moheto Sub-Location measuring 0.8 Hectare within Migori County.
2. Alleging breach of the contract the Respondent filed **Migori Chief Magistrate's Court Civil Suit No. 222 of 2015** (hereinafter referred to as '**the suit**') against the Appellant.
3. The Respondent pleaded that the Contract was for a period of five years or until one plant crop and two ratoon crops of the sugarcane were harvested from the subject parcel of land whichever event occurred first. The contract was company developed since the Appellant supplied the Respondent with farm inputs and services including cane seed. The Respondent further pleaded that he discharged his part of the contract until the plant crop was ready for harvesting but the Appellant refused and/or failed to harvest it. The plant crop dried up. The Respondent posited that he suffered loss.
4. The Respondent sought for compensation on the loss of the unharvested two cycles of the sugar cane amounting to Kshs. 400,000/= with costs and interest at court rates.
5. The Appellant entered appearance and filed a Statement of Defence dated 14/03/2013. The Appellant denied both the existence of the contract and any breach thereof. It put the Respondent into strict proof thereof. The Appellant prayed for the dismissal of the suit with costs.
6. The suit was finally settled down for hearing where both parties were represented by Counsels. The Respondent was the sole witness who testified and adopted his Statement as part of his testimony. He also relied on the documents in his List of Documents in support of his case. The Appellant called its Senior Field Supervisor as its sole witness.
7. The trial court rendered its judgment on 29/05/2018. The suit was allowed as prayed. The Appellant was aggrieved by the judgment and lodged an appeal. In praying that the appeal be allowed and the suit be dismissed with costs the Appellant proposed 9 grounds in the Memorandum of Appeal dated 28/06/2018.
8. Directions were taken, and the appeal was disposed of by way of written submissions. Both parties duly complied. The Appellant challenged the entire judgment vigorously. It vehemently submitted that the court erred in improperly allowing the suit despite failure of proof. The Appellant relied on several decisions in support of the appeal.
9. The Respondent opposed the appeal. It supported the judgment and prayed for the dismissal of the appeal with costs. It also relied on various decisions.

10. As the first appellate Court, it is now well settled that the role of this court is to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. (See the case of **Selle & Ano. vs. Associated Motor Boat Co. Ltd (1968) EA 123**). This court nevertheless appreciates that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in **Mwanasokoni – versus- Kenya Bus Service Ltd. (1982-88) 1 KAR 278** and **Kiruga –versus- Kiruga & Another (1988) KLR 348**.

11. I have certainly perused and understood the contents of the pleadings, proceedings, judgment, grounds of appeal, submissions and the decisions referred to by the parties.

12. The I have reviewed and evaluated the evidence. I am satisfied that the trial court addressed itself so well on all areas in dispute. The court also arrived at correct findings on each disputed item. There was a binding contract between the parties. The size of the land subject of the contract was proved in the contract and evidence. The Respondent narrated the steps he took in maintaining the plant crop up to maturity. The Appellant's position that the plant crop was abandoned was rightly not proved. The trial court correctly found the Appellant in breach of the contract.

13. The court was further rightly guided by the independent Cane Yields Report by Kesref. The Cane Price Schedule used was by the Appellant. The court awarded only the value of the plant crop and the first ratoon crop. That was what had been prayed for by the Respondent and proved.

14. The Appellant contended that the Respondent did not produce the documents in his List of Documents as exhibits. I have perused the evidence of the Respondent. He testified on 18/11/2018. He stated that he filed a statement and a list of documents to rely on in proof of his case. There was no objection by the Appellant. Although the trial court did not indicate on the record that the statement was adopted as part of the Respondent's evidence and the documents produced as exhibits I find that it will be unfair to visit such lapse on the Respondent. I say so because the Respondent did his part. He indicated that he relied on the statement ad the documents. That position was not objected to. The error on the part of the court was purely unintentional. It did not occasion any prejudice and miscarriage of justice to the Appellant. It is excusable. The contention therefore fails.

15. The Appellant further contended that the pleadings were not supported by the evidence. I must state that the contention is not supported by the record. The record is clear. The Statement of Claim pleaded the cause of action. That mode of pleading was approved by the Court of Appeal in **Kisumu Civil Appeal No. 278 of 2010 John Richard Okuku Oloo v. South Nyanza Sugar Company Limited (2013) eKLR**.

16. The evidence supported the claim.

17. On the question of quantum, the court again was properly guided by the evidence and precedents. It did not err.

18. As I stated above the appeal is unmerited. I hereby dismiss it with costs.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 8th day of November, 2019.

A. C. MRIMA

JUDGE

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

Mr. Marvin Odero Counsel instructed by the firm of Messrs. Okong'o Wandago & Company Advocates for the Appellant.

Mr. Mwita Kerario instructed by the firm of Kerario Marwa & Co. Advocates for the Respondent.

Evelyne Nyauke – Court Assistant