



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

CIVIL APPEAL NO. 75 OF 2016

OHURU OYONDI.....APPELLANT

-VERSUS-

SOUTH NYANZA SUGAR CO. LTD...RESPONDENT

(Being an appeal from the judgment and decree by Hon. P. K. Rugut,

Senior Resident Magistrate in Rongo Senior Resident

Magistrate's Civil Suit No. 60 of 2005

delivered on 29/09/2016)

JUDGMENT

1. There is only one issue for determination in this appeal: It is when interest ought to start running from.
2. This appeal traces its background from a Plaint filed in Rongo **Senior Resident Magistrate's Court Civil Suit No. 60 of 2005** (hereinafter referred to as '**the suit**') on the 09/06/2005 wherein the Appellant herein, **Ohuru Oyondi**, claimed damages for breach of contract, compensation for the loss of the expected income, costs and interest at court rates from **South Nyanza Sugar Co. Ltd**, the Respondent herein.
3. The suit was premised on an alleged agreement dated 30/12/2004 and it was duly defended. The trial court rendered its judgment on 29/09/2016 and allowed the suit. Interest was however ordered to run from the date of the judgment. It is that part of the judgment that prompted the judgment subject of this appeal.
4. Directions were taken, and the appeal was disposed of by way of written submissions where both parties duly complied with the filing of the submissions. Both parties relied on various judicial decisions. Parties also agreed that this decision do apply *mutatis mutandis* in **Migori High Court Civil Appeal No. 74 of 2016, Migori High Court Civil Appeal 76 of 2016 and Migori High Court Civil Appeal 77 of 2016**.
5. 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. I must acknowledge that I have in the past dealt with like appeals and settled the issue raised in this appeal. I will therefore benefit from such decisions since I have not changed my position on the issue.
6. The issue of when interest ought to run from in such type of contracts is by now well settled. The issue found its way to the Court of Appeal in the case of **John Richard Okuku Oloo vs. South Nyanza Sugar Co. Ltd (2013) eKLR** where my Lordships *Onyango-Otieno, Azangalala and Kantai, JJ.A.* upon considering the parties arguments, various decisions and the law held that interest must start running from the date the suit was filed. That decision is binding on this Court and I have previously so applied it in several appeals. Since the position at the appellate Court has not changed either by way of appeal or review and since I am further not persuaded otherwise by the Respondents submissions, I find and hold that interest in the suit ought to have been awarded as from the date the suit was filed. Respectfully, the learned trial magistrate erred in not following the above precedent which she even referred to in the partly impugned judgment.
7. I must therefore interfere with the judgment to the extent that the part of the judgment that interest was to apply as from the date of judgment is hereby set-aside and an order that interest is to run from the date of filing of the suit is hereby made in its place.
8. Consequently, the following final orders apply; which orders shall also apply *mutatis mutandis* in **Migori High Court Civil Appeal No. 74 of 2016, Migori High Court Civil Appeal 76 of 2016 and Migori High Court Civil Appeal 77 of 2016: -**

a. The appeal is hereby allowed and the order that interest is to apply as from the date of judgment is hereby set-aside and substituted with an order that interest is to run from the date of filing of the suit.

b. Costs of the appeal to be borne by the Respondent.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 10th day of May 2018.

A. C. MRIMA

JUDGE

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

Mr. Ezekiel Oduk instructed by the firm of Messrs. Oduk & Co. Advocates for the Appellant.

Mr. Emukhule instructed by the firm of Messrs. Otieno, Yogo, Ojuro & Company Advocates for the Respondent.

Evelyne Nyauke – Court Assistant