



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: D. S. MAJANJA J.

CIVIL APPEAL NO. 114 OF 2012

BETWEEN

JOSEPH OKOTH ONGENGOAPPELLANT

AND

SOUTH NYANZA SUGAR CO. LTDRESPONDENT

(An Appeal arising from the ruling and order of Hon. K. Sambu PM dated 24th July 2012 at the Chief Magistrate's Court at Kisii in CMCC No. 482 of 2010)

RULING

1. The issue raised in this case is whether the suit filed by the appellant ought to have been filed before the Sugar Tribunal. When the appellant filed his suit seeking damages for breach of contract and attendant compensation for the loss of his sugar crop, the respondent in its defence raised the issue of jurisdiction as follows;

In any event, the Sugar Act, Act No. 10 of 2001 vests the resolution of disputes between parties to a Sugar Industry Agreement, such as between the grower and miller in the Sugar Arbitration Tribunal established for that purpose.

2. The learned trial magistrate agreed with position taken by the respondent and struck out the suit precipitating this appeal.

3. The issue of jurisdiction is a fundamental and was expressed clearly by Nyarangi JA., in *Owners of Motor Vessel "Lillian S." Vs Caltex Oil (K) Limited [1989] KLR 1* as follows;

Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.

4. The *Sugar Act, Act No. 10 of 2001* came into force on 1st April 2002. It created the Sugar Arbitration Tribunal with jurisdiction to determine disputes in accordance with the Act including disputes between growers and millers such as the case between the appellant and respondent. The creation of the Tribunal effectively ousted the jurisdiction of the Magistrates Court in matters dealt with by the Tribunal.

5. I do not agree with counsel for the appellant that the *Sugar Act* retained the jurisdiction of the Magistrates Court. In any case our courts have also held that where a statute provides for a mode of resolving a dispute that procedure must be followed. For example in *Peter Muturi Njuguna v Kenya Wildlife Service NKU CA Civil Appeal No. 260 of 2013 [2017]eKLR*, the Court of Appeal reiterated this principle that, "[It] is abundantly clear to us that where there is a specific procedure as to redress of grievances, the same ought to be strictly followed." (See also *Speaker of the National Assembly v Njenga Karume [2008]1 KLR 425*).

6. The *Crops Act, 2013* repealed the *Sugar Act* and abolished the Tribunal. The issue in this case, though, concerns the applicable statute at the time the ruling was made. The law was very clear and the trial magistrate did not err. Further, there is nothing in the *Crops Act, 2013* validating cases filed in the wrong jurisdiction during the pendency of the *Sugar Act*.

7. I have also taken into account the provisions of **Article 159** of the Constitution. Those provisions do not affect jurisdiction as jurisdiction is a matter of the Constitution or statute. On this issue, the following observations of the Court of Appeal in *Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 Others NBI CA Civil Appeal No. 154 of 2013[2013] e KLR* are apposite:

The right of appeal goes to jurisdiction and is so fundamental that we are unprepared to hold that absence of statutory donation or

conferment is a mere procedural technicality to be ignored by parties or a court by pitching tent at Article 159(2) (d) of the Constitution. We do not consider Article 159 (2)(d) of the Constitution to be a panacea, nay, a general white wash, that cures and mends all ills, misdeeds and defaults of litigation.

8. The appeal is dismissed but with no order as to costs.

Dated and delivered at KISII this 11th day of October 2018.

D.S MAJANJA

JUDGE

Mr. Oduk instructed by Oduk and Company Advocates for the appellant.

Mr. Odero instructed by Okongo Wandago and Company Advocates for the respondent.