

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CIVIL APPEAL NO. 91 OF 2015

BETWEEN

GEORGE O. ODIEDO APPELLANT

AND

SOUTH NYANZA SUGAR COMPANY LTD RESPONDENT

(Being an appeal from the Judgment and Decree of Hon.P. Y. Kulecho, RM at the Chief Magistrates Court in Migori in Civil Case No. 488 of 2014 dated 30th April 2015)

JUDGMENT

1. The case before the subordinate court originated from the Sugar Arbitration Tribunal from where it was transferred after the repeal of the ***Sugar Act, 2001*** consequent upon the enactment of the ***Crops Act, 2013*** which led to the dissolution of the Tribunal.
2. The appellant's claim against the respondent was for loss suffered as a result of the failure by the respondent to harvest his sugarcane grown on his property which according to the statement of claim measured 0.6Ha.
3. After considering the parties evidence and submissions, the learned magistrate awarded Kshs. 93,730 net of harvest and transport charges for the plant crop and 1st ratoon based on the appellant's farm measuring 0.3Ha.
4. The single ground of appeal presented by the appellant in the memorandum of appeal dated 18th May 2015 is that, *"The learned trial magistrate erred in law and in fact when she failed to consider evidence and pleadings thereby reaching a wrong conclusion that the appellant's farm only measured 0.3 Ha instead of 0.6 Ha."*
5. Mr Marwa, learned counsel for the appellant, submitted that the area of the farm as pleaded was 0.6Ha and that the Outgrowers cane agreement between the parties showed that the plot area was 0.6Ha. Mr Odhiambo, learned counsel for the respondent, stated that the appellant, in his testimony, confirmed that cane was developed on 0.3Ha of the property.
6. As this is a first appeal, I am expected to review the evidence and come to an independent decision as whether or not to uphold the appeal having regard to the fact that I never saw or heard witnesses (see ***Selle v Associated Motor Boat Co. [1968] EA 123***).
7. Although appellant pleaded that his plot measured 0.6Ha. In his own evidence in chief and in cross examination he affirmed that he only developed 0.3Ha for sugarcane growing. Hence the conclusion by the learned magistrate that, *"[T]he plaintiff in the course of his testimony was categorical that the subject piece of land measures 0.3Ha"* was supported by clear testimony. The appellant was not re-examined on this point. In the circumstances, to allow the appeal would be to disregard the appellant's own testimony.
8. The appeal is dismissed with costs. I assess costs at Kshs. 35,000/- only.

DATED and DELIVERED at MIGORI this 20th day of July 2015.

D.S. MAJANJA

JUDGE

Mr Marwa instructed by Kerario Marwa and Company Advocates for the appellant.

Mr Odhiambo instructed by Otieno, Yogo and Company Advocates for the respondent.