REPUBLIC OF KENYA

IN THE HIGH COURT

AT MIGORI

CIVIL APPEAL NO. 90 OF 2015

BETWEEN

LAWRENCE OLUOCH NGORE..........................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. 487 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 0.8Ha.

3. After considering the parties evidence and submissions, the learned magistrate awarded Kshs. 134,976/- net of harvest and transport charges for the 1st ratoon and 2nd ratoon based on the appellant's farm measuring 0.4Ha based on the valuer's report which showed that the land measured under sugarcane measured 0.4 Ha.

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 0.4 Ha instead of 0.8 Ha."*

5. Mr Marwa, learned counsel for the appellant, submitted that the area of the farm as pleaded was 0.8Ha and the acreage was supported by the evidence. Mr Odhiambo, learned counsel for the respondent, submitted that according to clause 11 of the Outgrowers cane agreement, the acreage was subject to a final survey carried out by the company of the land to be cultivated. According him the final survey showed that the land was 0.4Ha.

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. This case was determined on the basis of written submissions and exhibits presented before the Tribunal. The list of documents was filed by the appellant before the tribunal on 24th September 2010. According to the Inputs and Supplies documents, the plot area is shown to be 0.4Ha while the Crop Yield Assessment Report dated 15th February 2009 prepared by P.M. Simo states the acreage to be 0.4Ha. The record of appeal contains another Crop Yield Assessment report prepared by P.M. Simo dated 10th December 2008 which shows the acreage as 0.8Ha. The farmers statement in the record of appeal shows that plot area to be 0.4Ha.

8. There was no explanation why the two reports differed in the acreage and because of this I accept, like the magistrate, the report that was filed before the Tribunal. Furthermore farmers' statement issued by the respondent produced by the appellant confirms the acreage to be 0.4Ha. I therefore find and hold that on the preponderance of evidence the plot acreage was 0.4Ha.

9. The appeal is dismissed with costs. I assess costs at Kshs. 30,000/- 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.