REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CIVIL APPEAL NO. E069 OF 2024

BARASA EVANS----------APPELLANT

VERSUS

CENTRINE NAFUNA----------RESPONDENT

(Being an appeal against the judgment of Hon. Gladys Kiamah, court Adjudicator, delivered on the 19th March in Kakamega Small Claims Court No. E009 of 2024)

JUDGMENT

Background

1. The appeal arises from the judgment delivered in SCCC E009 of 2024 at the Small Claims Court, Kakamega. The appellant, Barasa Evans, had instituted a suit against the Respondent Centrine Nafuna seeking judgment in the sum of Kshs. 200,000/=
2. According to the appellant/claimant, he agreed with the respondent that she would lease him land for planting sugarcane; however, before the sugarcane reached maturity, the respondent harvested the sugarcane, which was a breach of their agreement.
3. CW1, Barasa Evans, testified that he sued the respondent, Centrine Nafuna, who had leased him her land to plant sugarcane for three seasons for Kshs. 37,000/=. He testified that he paid her Kshs. 39,000. 20,000/= on 9/8/2019 and later paid the second instalment of Kshs. 17,000/=
4. The claimant testified that he went to school at the University of Eldoret for a crash programme and was unable to harvest his sugarcane . He received a call informing him that his sugarcane had been cut and carried away.
5. He went to his land, he found that the sugarcane had been cut and the stems uprooted; however, he failed to get a valuer from the Ministry of Land to assess the damage. He produced a copy of the agreement marked CWEXH 1 and 2.

6. During cross-examination, he said he reported the respondent for cutting his sugarcane he denied that they had agreed he would plant and recover the sugarcane, as the land he is using currently is different from what they had agreed on.

7. The respondent, Centrine Nafuna Wangiro, testified that the claimant was his brother, and after her husband died, she asked him to come and assist her in putting up a house for herself and her children.

8. She gave the claimant one acre of land to plant sugarcane. He gave her Kshs. 20,000/= for which she bought household items, the claimant plowed the land and applied fertilizer on it.

9. The claimant went to school. The sugarcane matured, when people started grazing on the land, she decided to cut the canes as they were being destroyed by the cows and sold them for Kshs. 12,000/= which she used for treatment after an accident.

10. The respondent further testified the police advised them to solve the case among themselves as they were relatives, she decided to give the Appellant another land to farm in return but it later became unappreciative.

11. On inquiry by the trial court, the claimant admitted farming in both lands and has been utilizing them since 2019 until the respondent cut his sugarcane in November 2021, allegedly because recovered his lost harvest.

12. The respondent confirmed receiving Kshs. 20,000/= from the claimant and later Kshs 20,000/=

13. The court delivered its judgment on 19th March 2024, the trial court, upon analysing the evidence of both the respondent and the claimant, and the agreement dated 6/5/2019 produced as CWEXH 1 for the agreed sum of Kshs. 39,000/= took judicial notice that the respondent was an illiterate widow and vulnerable and accepted a raw deal if the claimant was to plant on the land for 6 years, hence the respondent had a lesser bargaining power

given the fact that she was poor and illiterate, and further given the relationship between a brother and sister.

14. He dismissed the claimant's claim of Kshs. 200,000/= which he failed to justify how he arrived at the figure, as there was no evidence produced in court.

15. The court ruled that the claimant had overstayed in the claimant's land and that it was time for him to leave, and such dismissed the claim, stating that it lacked merit.

16. Being aggrieved by the decision of the learned Adjudicator, the Appellant lodged a Memorandum of Appeal in which it set down one ground of appeal as follows: -

    i. *That the learned trial magistrate failed to apply herself judicially and adequately by failing to evaluate the evidence on record properly, thereby occasioning an injustice to the appellant herein.*

17. The court directed, the appeal to be canvassed by way of a written submission. At the time of writing this appeal, only the appellant had filed submissions.

Appellant's submissions.

18. In his submission, the appellant avers that the respondent admitted leasing to him the parcel of land for three harvests and in return she received Kshs. 37,000/= for which she acknowledged and signed.

19. He avers that his money was never refunded, even though it was proved that he gave the respondent, which he claimed formed the basis of his case.

20. He finally submitted that the trial court was wrong in its decision and prays that the appellant court allow his appeal and award him the damages prayed for in the lower court.

Analysis and determination

21. This being a first appeal, the duty of this court is well settled. As held in **Selle & Another v Associated Motor Boat Co. Ltd &**

Others [1968] EA 123, a first appellate court is mandated to re-evaluate the evidence adduced before the trial court and draw its own conclusions, while bearing in mind that it neither saw nor heard the witnesses.

22. The main issue for determination in this appeal is whether the learned Adjudicator erred in dismissing the appellant's claim and in finding that the appellant had failed to prove his case on a balance of probabilities

23. In Small Claims Court appeals, section 38 (1) of the Small Claims Court Act, 2016 limits appeals to questions of law, requiring this Court to focus on whether the Adjudicator's decision was legally sound.

24. The Court of Appeal in **Kenya Breweries Ltd v Godfrey Odoyo [2010] eKLR** stated that an appeal limited to matters of law requires the appellant to demonstrate that the trial court either:

    (a) misapprehended the evidence to such an extent that it applied wrong principles of law; or

    (b) acted on no evidence or on irrelevant evidence; or

    (c) misapplied established legal doctrines.

25. The appellant's case was based on his testimony and the lease agreement (CWEXH 1, dated 6th May 2019), which confirmed a lease for three sugarcane seasons for Kshs 39,000/=. He acknowledges paying the respondent Kshs 20,000/= on 9th August 2019 and Kshs 17,000/= later on. The respondent admitted receiving the payment and to the premature harvesting of the appellant's sugarcane in November 2021.

26. The appellant claimed Kshs 200,000/= for the loss of the sugarcane crop but produced no valuation or evidence to justify this figure that he had quoted.

27. The respondent, on the other hand, admitted receiving Kshs: 20,000/= and later another Kshs. 20,000/= from the appellant, but explained that the appellant was her brother, that the payment was for leasing him the land. She further explained that

she cut the sugarcane after it had over-matured and was being destroyed by animals, and that she later allocated the appellant an alternative portion of land to farm as a form of compensation.

28. The learned Adjudicator evaluated the testimonies of both parties and found that the transaction was informal and premised largely on family goodwill rather than a strict commercial lease. The court observed that the respondent was an illiterate and a vulnerable widow and that, as between the two, the appellant appeared to have taken advantage of her vulnerability and desperation. On that basis, the court held that the appellant had failed to prove his monetary claim of Kshs. 200,000/=, as there was no evidence showing how that figure was arrived at, nor any expert valuation to support the alleged loss.

29. In re-evaluating the record, I note that the appellant produced a handwritten agreement (CWEXH 1), but the same did not expressly stipulate the duration of the lease or the measure of damages in the event of premature harvesting. The appellant also conceded during cross-examination that he never engaged a valuer to assess the expected yield or value of the sugarcane allegedly destroyed. His claim of Kshs. 200,000/= therefore lacked an evidential foundation.

30. The appellant's argument that the respondent's admission of harvesting constituted a breach ignores her explanation, which was reasonable, that the sugarcane was over-matured and at risk of being destroyed by the animals that were feeding on the land.

31. In **David Bagine v Martin Bundi [1997] eKLR (Court of Appeal at Nairobi, Civil Appeal No. 283 of 1996),** the court held that a defendant's reasonable actions to mitigate loss negate liability for breach.

32. The respondent, to mitigate the loss of the appellant's crops, went further to offer an alternative land, which the appellant utilized.

33. The trial court correctly noted the appellant's continued use of the land beyond the agreed term. **In Mary Wambui Kabugu v Kenya Bus Service Ltd [1997] eKLR (Court of Appeal at Nairobi, Civil Appeal No. 195 of 1995),** the court held that a claimant's conduct inconsistent with the alleged loss undermines their claim. The appellant's farming on both the original and alternative land since 2019 suggests he suffered no substantial loss.

34. On the claim of whether the appellant was entitled to the claim of Kshs. 200,000/= as was pleaded for the loss he had incurred. Section 107 of the Evidence Act, Cap 80, similarly provides that he who alleges must prove.

35. **In Hahn v Singh [1985] KLR 716,** the Court of Appeal held that the burden of proof in civil cases rests on the plaintiff to establish his claim on a balance of probabilities, and that where the evidence is evenly balanced, the party bearing the burden must fail.

36. The trial court found that the appellant did not discharge this burden, and I find no reason to depart from that finding. The mere existence of a payment or an informal agreement does not automatically translate to a proven loss. As stated in **Kirugi & Another v Kabiya & 3 Others [1987] KLR 347,** the burden of proof is not lessened merely because the opposite party has not called evidence; the plaintiff must still establish his case to the required standard.

37. In **Statpack Industries v James Mbithi Munyao [2005] eKLR (High Court at Nairobi, Civil Appeal No. 152 of 2003),** the court held that a claimant must prove actual loss with cogent evidence, not mere allegations. The appellant's failure to produce a valuation or evidence of the sugarcane's worth rendered the Kshs 200,000/= speculative.

38. On the issue of breach, even if the court were to accept that the sugarcane was harvested before the appellant's return from

school, the respondent's explanation that she did so to prevent wastage and destruction by animals was plausible and uncontroverted.

There was no evidence that the respondent acted maliciously or in deliberate disregard of the agreement. The circumstances were consistent with good faith within a family arrangement, rather than a commercial transaction governed by strict contractual obligations.

39. As the learned Adjudicator correctly observed, the courts are guided by equity and fairness, particularly where dealings arise within a family relationship, such as the trial court was presented with. The court was entitled to take judicial notice of the respondent's illiteracy and vulnerability, consistent with Section 60(1)(o) of the Evidence Act, which permits courts to take judicial notice of matters of common knowledge. The finding that the respondent accepted "a raw deal" in the agreement was therefore not an error of law but a recognition of the imbalance in bargaining power between the parties.

40. The appellant has urged this court to interfere with those findings. However, as held in **Peters v Sunday Post Ltd [1958] EA 424 and reaffirmed in Mwangi v Wambugu [1984] KLR 453,** an appellate court will not lightly interfere with a finding of fact by a trial court unless it is based on no evidence, or on a misapprehension of the evidence, or the trial court demonstrably acted on wrong principles.

41. Having re-evaluated the record, I am satisfied that the trial court's findings were well supported by the evidence and applicable law. The evidence before the Small Claims Court, the appellant's assertions of loss were speculative, while the respondent's testimony remained consistent and credible.

42. In light of the above, I find that the learned Adjudicator properly evaluated the evidence, correctly applied the law on burden of

proof and special damages, and judiciously exercised discretion in declining to award speculative damages.

Conclusion

43. After thoroughly reviewing the evidence and considering the submissions from both parties, I find that the appeal lacks merit. The appellant did not prove, on a balance of probabilities, that the respondent violated a legally binding lease agreement or that he incurred any substantiated loss justifying compensation. Consequently, the appeal is dismissed in its entirety, and the judgment of the Kakamega Small Claims Court in SCCC No. E009 of 2024 is upheld.
44. This being a family matter, each party shall bear their own cost.
45. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 15TH DAY OF OCTOBER, 2025.

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a

Appellant, present.

Respondent, absent