



**Akiri v South Nyanza Sugar Company (Civil Appeal E101 of 2022)
[2025] KEHC 15994 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E101 OF 2022
ACA ONG'INJO, J
NOVEMBER 6, 2025**

BETWEEN

JOHN O AKIRI APPELLANT

AND

SOUTH NYANZA SUGAR COMPANY RESPONDENT

JUDGMENT

1. By a plaint dated 15/5/2014, the Appellant sued the Respondent for damages for breach of contract together with costs and interest from 16th August,2006.
2. The Appellant contracted the Respondent to grow sugarcane on his land parcel being plot No.173A in field Number 181 in South Kabuoch Sub-location measuring 0.5 Hectares. The Appellant was then assigned Account Number 482897.
3. It is the Appellant's case that by an agreement dated 16/8/2006, the Respondent was to grow and harvest sugarcane on the Appellant's parcel of land measuring 0.5 Ha.
4. It was the term of the contract both express and implied that the contract would come into force on the 16/8/2006 and would remain in force for a period of five years or until one plant and two ratoon crops of sugar cane were harvested on the plot whichever period was less.
5. Further to the terms of the agreement, it was agreed that within the five (5) year period or less the plant crop and ratoon crops would be harvested at the ages of 22-24 months and 16-18 months after planting and subsequent harvest respectively.
6. In breach of the terms of the contract, the Respondent failed, refused and or neglected to harvest the plant crop on the said plot when it matured and the same dried up an act that occasioned the 1st and 2nd ratoon crops to be undeveloped and that as a result of the Respondent's action, the Appellant incurred loss of income for the plant crop and subsequent ratoons.



7. The Appellant further averred that the plot was capable of producing an average of 135 tonnes per hectare for the plant crop and 135 tonnes per hectares for the ratoon crops. The estimated loss was a gross yield of 405 tonnes which the appellant claimed against the respondent.
8. The Respondent filed a defense dated 17/6/2014 in which liability was denied and the Appellant was put to strict proof thereof.
9. The Trial Magistrate upon consideration of the evidence on record entered judgement in favor of the Appellant in the sum of ksh.119, 148/= being damages for breach of the contract to harvest the Plant and Ratoon crops developed by the Appellant. The Trial Magistrate having found that the Appellant proved his claim on a balance of probability however found out that the Appellant did not
10. prove that he developed Ratoon 2 and thus made an award of damages for the Plant Crop and Ratoon 1 only.
11. Being aggrieved by the Judgement and decree of the subordinate court the Appellant lodged the appeal herein vide Memorandum of Appeal dated 8th August 2022 on the following grounds:
 - a. The trial magistrate failed to properly and adequately evaluate the evidence adduced at the trial so as to come to just and fair award of damages.
 - b. The trial magistrate unfairly and prejudicially faulted the pleadings when it was neither a correct and reasonable appreciation of the pleadings and evidence on record.
 - c. The trial magistrate erred in law in failing to award the appellant damages for the loss of the two ratoons, when the stated loss was a natural and foreseeable consequences of the breach.
12. The appeal herein was canvassed by way of written submissions. The Appellant's submissions are dated 14th February 2025 and were filed on 21st February 2025.
13. The Respondents had not filed submissions by 19th May 2025 and a date was fixed for determination of the claim.
14. In their submissions the Respondent also stated that the plot was not capable of producing a gross yield of 135 tonnes and that where the Respondent's plot was situated could only yield a maximum of 64.53 per Hectare while the ratoon crop would yield only 50.49 per Ha. It was the Respondent's contention that the farm in question expected a plant crop yield of 32 tonnes (0.5ha x 64.53). The Respondent further contends that the yield would be subject to statutory deductions which charges were for transport, harvesting, cess, levy and interest.
15. The Respondent in submissions at the trial further stated that the plant crop was poached by the Appellant at 16 months and sold to third parties. An act which the Respondent warned the Appellant vide a letter dated 10/2/2008.
16. It was further averred by the respondent that the ratoon crop were never developed by the plaintiff which contributed to the breach of the contract.
17. It is further averred by the Respondent that the suit is statutorily barred as envisaged under Section 4 of the *Limitation of Actions Act* and it ought to be struck out with costs.

Analysis And Determination

18. This being the first appeal, the court has a duty to re-evaluate and analyse all the evidence tendered in the lower court and arrive at its own conclusions but bearing in mind that it neither saw nor heard the witnesses testify. It has to establish whether the decision of the lower court was well founded.



19. See the decision in *Selle & Another vs Associated Motor Boat Co. Ltd* (1968) EA 123. 26. It is also settled that an appellate court will not ordinarily interfere with the findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or on demonstrably wrong principles not supported by evidence or on wrong principles of the law. This was the finding of the Court of Appeal in *Mbugua Kiruga v Mugecha Kiruga & another* [1988] eKLR where the Court of Appeal held: -
20. An appeal court cannot properly substitute its own factual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An appellate court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand but this is a jurisdiction which should be exercised with caution.”
21. Having considered the grounds of appeal, the submissions by the Appellant and having re-evaluated the evidence on record in the trial court and the judgement of the Trial Magistrate the issue that arises for determination by this court is whether the Trial Magistrate erred in finding that the Appellant was not entitled to damages for the 2nd Ratoon Crop having found that the Respondent breached the agreement to harvest the sugarcane developed by the Appellant for the period of the agreement.
22. The purpose of damages for breach of contract is subject to mitigation of loss, the claimant is to be put as far as possible in the same position he would have been if the breach complained of had not occurred
23. This principle is demonstrated in the latin phrase *restitutio ad integrum* meaning restoration to the original condition.
24. This measure of damages is such as may be fairly and reasonably be considered arising naturally from the breach itself or such as may be reasonably contemplated by the parties at the time the contract was made and a probable result of such breach.
25. In the instant appeal, it is now settled by the Court of Appeal that failure to harvest Plant Crop affects the development of the Ratoon crops and therefore the farmer contracted to plant such unharvested sugarcane is entitled to compensation for the ensuing damages suffered as the agreement between the farmer and the Miller is fixed for a specific period of time which can only be terminated in accordance with the terms and conditions of the Contract.
26. In the circumstances this court finds that the Appellant was entitled to an award of general damages for the 2nd Ratoon crop at Kshs 63,112.20 similar to the 1st Ratoon Crop.
27. This appeal therefore succeeds with cost and interest to the Appellant. Interest on damages to accrue from date of filing of the suit.

DATED, SIGNED, AND DELIVERED AT MIGORI THIS 6TH DAY OF NOVEMBER, 2025.

SIGNED BY/FOR:

HON. LADY JUSTICE ANNE ONG'INJO

THE JUDICIARY OF KENYA.

MIGORI HIGH COURT

HIGH COURT DIV

DATE: 2025-11-06 12:34:48

