



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

COUNTY COURT NAME: MIGORI HIGH COURT

CASE NUMBER: HCCA/E122/2021

PAMELA OSIDE MALOVA VS SOUTH NYANZA SUGAR COMPANY LIMITED

JUDGMENT

By a plaint dated 16th April 2016 the Appellant sued the Respondent seeking for damages for breach of contract where 2 crop cycles on 1.22Ha was not harvested. Costs and interest were also sought by the Appellant.

The Respondent entered appearance and filed statement of Defence dated 4th July 2016 and denied the claiming and put the Appellant to strict proof.

The Appellant filed a rejoinder to the statement of Defense dated 28th April 2016.

Upon consideration of the evidence on record the Trial Magistrate found that he could not compute the damages that the Appellant was entitled to in the absence of production of the yield Report for the area and price list for sugarcane at the time of the expected harvest or payment statement for the Plant Crop. The Trial Magistrate also ordered that each party bears their own costs for reasons that although the Appellant suffered loss when the Respondent failed to harvest her sugarcane but her advocate failed to prosecute her case well.

Being aggrieved by the Judgement and decree of the subordinate court the Appellant lodged the appeal herein vide Memorandum of Appeal dated 24th November, 2021 on the following grounds:

- a) The trial magistrate misdirected himself in failing to make a finding against the Respondent.
- b) The Learned Trial Magistrate erred in fact and law by failing to appreciate the evidence tendered with regard to the breach of the contractual obligation by the Respondent against the Appellant.
- c) The Trial Magistrate failed, and/ or refused to acknowledge the fact that the Appellant had notified the Respondent that her crop was ripe and evidence was adduced in this regard which ought to have been taken into consideration while determining the claim.
- d) The Learned Magistrate erred in failing to award ratoon one and two yield equal proceeds in a straight line.
- e) The Learned Magistrate erred in acknowledging the fact that the contract was to last until the second Ratoon is harvested.
- f) The Learned Magistrate erred in acknowledging and appreciating that it was the Respondent who was in breach of the contract and not the Appellant.



g) The Learned Magistrate failed to cumulatively and / or exhaustively evaluate the entire evidence on record and accord such evidence its due weight and merits and hence failed to capture and decipher the salient dispute before him thus arriving at an unconsidered decision.

IT IS PROPOSED TO ASK THE COURT FOR ORDERS THAT:

(a) That the appeal be allowed and the entire judgement and decree of the trial court dated 12th November 2021 be set aside and / or varied.

(b) That the court substitutes the decision dated 12th November 2021

(c) Costs of the Appeal and those of the subordinate court be borne by the Respondent

(d) Such further and / or other orders the court may deem fit and expedient to grant.

The appeal herein was canvassed by way of written submissions. The Appellant's submissions are dated 16th January, 2023 were filed on 3rd February 2023.

The Respondents Advocate requested for time to file submissions on 12th May 2025 but when the matter came up on 22nd September 2025 it was not confirmed whether the submissions had been filed or not.

ANALYSIS AND DETERMINATION

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.

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: -

“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.”

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 arise 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.

In the Court of Appeal decision in *South Nyanza Sugar Company Ltd Vs Mary Anyango* it was held:

“There was evidence on record where the respondent testified that she developed the ratoon crop to maturity and that the respondent failed to harvest it for no reason. This evidence was uncontroverted. The learned trial magistrate overlooked this evidence by ruling that the respondent had not provided any “documentary proof” that she had developed the ratoon crop. With respect, there is no rule of law or precedential authority that provides that a plaintiff must provide documentary proof in order to prevail in a claim for breach of contract. The rule of law is that a plaintiff is required to prove her claim on a balance of probabilities using any competent and admissible evidence. In this case, the evidence of breach was provided through the oral testimony of the respondent. Nothing bars a finding of breach based on such evidence if it is, in fact, believed by the fact finder.”

In the circumstances of the above authority and in consideration that the Appellant proved that the contract between her and the Respondent was breach this court finds that she was entitled to an



award of general damages for the 2nd Ratoon crop similar to the 1st Ratoon Crop.at Kshs 63,112.20. 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 12:40:24

