



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

COUNTY COURT NAME: MIGORI HIGH

COURT

CASE NUMBER: HCCA/E095/2022

KENNEDY OMORO VS SOUTH NYANZA SUGAR CO.

#### JUDGMENT

Upon the Trial Magistrate allowing the Appellant's claim he ordered that interest on the damages accrue from the date of judgement.

The Appellant was aggrieved by the said decision and he lodged the appeal herein vide Memorandum of Appeal dated 14th July 2022 and filed on 15th August 2022 on the following ground:

1. THAT the Learned Trial Magistrate erred in law and fact when he ordered interest to accrue on the principal award from the date of judgment in total disregard to the binding decisions of the Superior courts and the Court of Appeal which have consistently held that interest in a matter like this accrues on the principal amount from the date of filing of the suit.

REASONS WHEREFORE the Appellant prays that the appeal be allowed by:

(a). Setting aside and / or substituting the judgment of the Trial Magistrate with a suitable order that interest on the principal sum do accrue from the date of filing of the suit.

(b). Costs of the appeal be in the cause.

The appeal was heard by way of written submissions. The Appellant's submissions are dated 30th November 2024 and the Respondent's submissions are dated 21st January 2025.

#### 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 ground of appeal, the rival submissions 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 interest should accrue from the date of judgement and not from date of filing of the suit.

Section 26(1) of the Civil Procedure Act provides that the court may order interest at such rates as it deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged in the principal sum for any period before the institution of the suit with further interest at such rate as the court deems reasonable on the aggregate sum as adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.

In the Court of Appeal case of South Nyanza Sugar Co. Ltd Vs Awino Oreko it was held:

“Pleadings in my view is as specific as can be. It gives the estimate yield per acre, the rate of payment for the crop per tonne and the three cycles for which the claim is made ...”

“I have found that the damages due to the respondent are special in nature and I see no reason to depart from what is almost conventional that interest on such damages ought to run from the date of filing suit as the money will have been due to the Respondent from that date”

Similarly in the Court of Appeal case of John Richard Okuku Oloo Vs South Nyanza Sugar Co, Ltd it was held that the degree and certainty must necessarily depend on the circumstances and nature of the act complained of and interest in a matter like this do run from the date of filing and not of judgment.

Further the Court of Appeal in South Nyanza Sugar Co. Ltd Vs Mary Anyango Kisumu Civil Appeal No 171 of 2019 while making reference to the provisions of Section 26(1) of the Civil Procedure Act held:

“The section is explicit that the court has discretion to award interest on the principal sum where the decree is for the payment of money; and further that the court has discretion to determine the appropriate rate of such interest. None of the limitations the appellant urges us to impose are found in the statutory provision. This was a liquidated claim based on a breach of contract. There is absolutely no justification to limit the interest payable on account of the fact that the ultimate amount payable would exceed the principal amount claimed: the fact that it is so, is merely a reflection of the delay of the appellant in meeting its obligations. There is, also, no principle in law that public companies are absolved from their financial obligations merely on account of them being “public”. Finally, the fact there was a termination clause in the agreement has no bearing on the calculation of interest payable or the rates to be used. It may have a bearing on the calculation of damages in appropriate cases (which, we have found does not apply in the present case) but not on interest payable upon adjudgement of a breach. In short, this ground of appeal fails as well”

In view of the now settled position by the Court of Appeal in similar sugarcane claims this court finds it a matter of necessity to overturn the Trial Magistrates finding on interest on the damages awarded and order that the same accrues from the date of filing of the suit. Costs of the appeal to be borne by the Respondent.

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 12:37:37

