Transmara Sugar Company Limited v Oino (Civil Appeal E004 of 2020) [2025] KECA 2259 (KLR) (19 December 2025) (Judgment)

Neutral citation: [2025] KECA 2259 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CIVIL APPEAL E004 OF 2020

MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA

DECEMBER 19, 2025

BETWEEN

TRANSMARA SUGAR COMPANY LIMITED .... APPELLANT

AND

RONALD OBUOGE OINO .... RESPONDENT

(Being an appeal against the judgment of the High Court of Kenya at Migori (A.C. Mrima, J.) dated 19{{^th}} September, 2019 in Civil Appeal No. 88 of 2018)

JUDGMENT

1. By way of a plaint dated 7th November, 2017, the respondent, a sugarcane farmer, instituted a civil suit against the appellant, before the Principal Magistrates' Court at Rongo, claiming compensation for breach of contract. It was the respondent's case that on 24th July, 2014, the parties entered into a Sugar Growing and Supply Contract, whereby, the respondent was to cultivate sugarcane on his plot No. 767A, and the appellant agreed to purchase/harvest the sugarcane from the respondent upon maturity. Pursuant to the said agreement, the respondent cultivated sugarcane on his plot measuring approximately 0.3 hectares, but upon maturity, the appellant failed to perform their end of the contract. The respondent averred that as a result of the said breach, he incurred a loss of approximately 30 tonnes of sugarcane, valued at Kshs.3,800 per tonne, at the time. The respondent sought compensation for the two unharvested cycles.

2. The appellant entered appearance, and filed an application dated 27th February, 2018, seeking that the proceedings before the trial court be stayed, and the dispute be referred to arbitration, in accordance with clause 9 of the agreement entered into by the parties. The respondent, in rebuttal, urged that the arbitration clause provided for in the said agreement had since become inoperative, by dint of enactment of the *Crops Act*, 2013, which repealed the Sugar Act, 2001, and made defunct the Arbitration Committee, as well as the Sugar Arbitration Tribunal.

3. The trial court, vide a ruling dated 6th June, 2018, allowed the appellant's application, stayed the suit before it, and referred the dispute to arbitration. The trial court held that the change in legislation did not vitiate the arbitration clause contained in the agreement, and further, that if any party was aggrieved by the decision of the Arbitration Committee, such party was at liberty to challenge the decision before a court of law, since the Sugar Arbitration Tribunal was abolished.

4. The respondent challenged this decision of the trial court before the High Court at Migori. The respondent faulted the learned trial magistrate for: failing to consider that the enactment of the new legislation did substantially change the contract; failing to find that certain clauses of the contract were compromised by operation of the law; failing to consider that any appeal arising from a decision of the Arbitration Committee was to be lodged before the Sugar Arbitration Tribunal which ceased to exist; failing to acknowledge that the parties entered into the agreement in contemplation of the terms under the repealed Sugar Act, 2001; and lastly, for making a finding which was against the weight of the evidence and the law.

5. The first appellate court (Mrima, J.), in a judgment dated 19th September, 2019, found in favour of the respondent. The learned Judge found that by the time the parties entered into the agreement in 2014, the Sugar Act had been repealed, which meant that some parties to the Arbitration Committee were non-existent, and the Sugar Arbitration Tribunal had been disbanded by repeal of the law. The learned Judge determined that parties cannot be forced into a dispute resolution mechanism which is legally non-existent ab initio. He therefore allowed the respondent's appeal.

6. The appellant challenges this decision of the High court, and has lodged an appeal before us, which is premised upon six (6) grounds. The gist of the appeal was that the appellant faulted the learned Judge for failing to apply the provisions of *the Constitution* under Article 159(2)(c), and failing to appreciate that the intention of the parties was to be bound by the contract, to the effect that disputes arising between them under the contract, were to be referred to arbitration. He maintained that the learned Judge erred in failing to apply the provisions of the *Arbitration Act*, Section 3 of the Agriculture, Fisheries and Food Authority Act, 2013, as well as the transitional provisions contained in the fifth schedule of the said Act. The appellant was aggrieved that the learned Judge failed to consider the provisions of Sections 2, 3, 5, 38 and 41 of the *Crops Act*, and for overlooking the fact that sugarcane was a crop classified in the first schedule of the said Act. He faulted the superior court for failing to uphold the decision of the trial court which, in its view, was sound in law.

7. The appeal was canvassed by way of written submissions. Mr. Ongegu appeared for the appellant. It was his submission that the parties were bound by the terms of the agreement, which intended for any disputes arising between them to be resolved through arbitration. He submitted that the court cannot interfere in arbitration matters unless in circumstances envisaged under Section 6(1) of the *Arbitration Act*. Counsel urged that the *Crops Act*, just like the Sugar Act, provides for arbitration as the dispute resolving mechanism, for resolution of disputes between farmers and crop dealers. Counsel urged that even though the Arbitration Committee and the Tribunal established by the Sugar Act were disbanded, the dispute could still be resolved through arbitration by succeeding committees. He was of the view that Sections 42 and 43 of the *Crops Act*, 2013, constituted transitional provisions, and that any acts done under the repealed law, should otherwise be deemed to have been done under the *Crops Act*.

8. No appearance was made by the respondent during the hearing of the appeal, and neither did they file written submissions.

9. This being a second appeal, we are alive to our mandate as a second appellate court to resist the temptation of delving into matters of facts, and confine ourselves to matters of law, unless it is shown

that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. (See the decisions of this Court in Kenya Breweries Ltd v Godfrey Odoyo [2010] eKLR; and Stanley N Muriithi & another v Bernard Munene Ithiga [2016] eKLR).

10. The crux of this appeal is whether the arbitration clause provided under Clauses 9.1 to 9.4 of the agreement entered into by the parties, was rendered inoperable, on account of repeal of the Sugar Act, by the *Crops Act*, 2013. The said clauses stated as follows:

> " 9.1 All questions or differences which at any time hereafter arise between the parties hereto touching or concerning this Agreement or the construction hereof or as to the rights, duties and obligations of either party hereto, or as to any subject matter in any way arising out of or connected with the committee of five people comprising:
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> a. The District Officer in whose area the land on which the cane supply contract relates is situated.
>
> b. One person representing the Kenya Sugar Board.
>
> c. One nominee of the Transmara Sugar Co. Ltd.
>
> d. One nominee of the Transmara Out growers Company Limited.
>
> e. The Divisional Agriculture Officer of the area where the cane in question is situated or in his absence an Agricultural Officer holding the rank of Divisional Agricultural Officer or above appointed by the District Agricultural Officer for that purpose.
>
> 9.2. The District Officer shall preside over the meeting of this Arbitration committee.
>
> 9.3. The Arbitration Committee shall have powers to receive evidence from any source including summoning witnesses to testify before it and will have all the powers conferred on arbitrators by the *Arbitration Act* or any statutory Legislation thereof for the time being in force in Kenya.
>
> 9.4. Any party not satisfied with the decision of the Arbitration Committee may refer the dispute to the Sugar Arbitration Tribunal established under the Sugar Act, 2001, whose decision shall be final and binding on all the parties involved."

11. It is clear that the parties entered into the agreement on 24th July, 2014, which agreement was governed by the Sugar Act, 2001. It is also evident that at the time the parties entered into the said agreement, the Sugar Act, 2001 was a repealed law, having been repealed by the enactment of the *Crops Act*, which was assented to on 14th January, 2013. So essentially, the arbitration clause in the agreement entered into by the parties was governed by legislation which was no longer in force at the time of execution of the said agreement. The said arbitration clause directed that disputes between the parties be referred to an arbitral committee made up of the persons named under clause 9.1 and 9.2. It is not in dispute that the committee of said persons named thereunder were non-existent, as the promulgation of the new Constitution of Kenya 2010, changed the governance structure, which abolished the then existing Provincial Administration including the office of the District Commissioner, which was replaced by the office of the County Commissioner. Further, the Sugar Act, 2001 was repealed by the enactment

of the *Crops Act*, 2013, and the Agriculture, Fisheries and Food Authority Act. In addition, clause 9.4 provided for an appeal mechanism to the Sugar Arbitration Tribunal, established under the repealed Sugar Act, which meant that the said Tribunal had been abolished when the parties entered into the agreement.

12. We agree with the appellant that *the Constitution* and the Agriculture, Fisheries and Food Authority Act contain transitional provisions. However, the conundrum in this case arises from the fact that at the time the parties entered into the agreement on 24th July, 2014, the Sugar Act, 2001, was already repealed, and *the Constitution* of Kenya, 2010 was already in place. We are in agreement with the holding of the learned first Appellate Judge that if the parties intended to be bound by the succeeding legislation and institutions, nothing would have been difficult than for them to include it as an addendum to the agreement. As it is, the arbitration clause in the said agreement provided for a process of dispute resolution which was legally non-existent ab initio, and cannot therefore be rendered valid.

13. We have said enough to show that this appeal is not merited.

    We accordingly dismiss it. We make no orders as to costs since the respondent did not participate in this appeal.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF DECEMBER,2025.

ASIKE-MAKHANDIA

JUDGE OF APPEAL

....

H.A. OMONDI

JUDGE OF APPEAL

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L. KIMARU

JUDGE OF APPEAL

I certify that this is a true copy of original.

Signed

DEPUTY REGISTRAR.