

REPUBLIC OF KENYA
HIGH COURT OF KENYA AT MIGORI
CIVIL APPEAL NO. E061 OF 2024
CAROLYNE ANYANGO MANYALA
APPELLANT

- versus -

SOUTHNYANZASUGARCO.LTD.....
..RESPONDENT

(Being an appeal from the judgment and decree by Hon. C.N.C Oruo in Rongo PMCCC No.196 of 2018 delivered on 5th July, 2024).

JUDGMENT

By an amended Plaintiff dated 14th August 2023 the Appellant sued the Respondent seeking compensation in the form of special damages for the 2nd Ratoon, costs of the suit and interest at court rates.

The claim arose out of the Growers Cane Farming and Supply Contract Account No 424467 dated 30th August, 2010 where the Appellant was contracted by the Respondent, to grow and sell to it sugarcane at the Appellant's parcel of land being Plot No. 512P Field No304 measuring 0.17 Hectares.

The Appellant in her evidence in chief claimed that the Respondent failed to harvest the 2nd Ratoon crop and thus she suffered loss of the proceeds of the 2nd Ratoon. It was her evidence that at the time of the said contract, the price of sugar cane per tonne was Kshs. 4,300/= . She claimed to be compensated for the one cycle together with costs and interest at 14% from the date of filing of the suit.

Upon consideration of the claim and the Respondent's defense the Trial Magistrate in judgment delivered on 5th July 2024 found that the Respondent had breached the contract between it and the Appellant and awarded the damages for the 2nd Ratoon at Kshs 40,897.23 together with costs and interest.

The Appellant was however, aggrieved by the finding of the Trial Court and lodged appeal herein vide Memorandum of Appeal dated 26th July, 2024 on the ground that the Learned Trial Magistrate failed to state when the interest should start running or failed to state that the interest should start running from the date of filing of the suit.

Reasons wherefore the Appellant prayed that this appeal be allowed; the judgment and decree of the trial court be set aside and substituted with suitable orders that interest on the principal amount to accrue from the date of filing the suit. The Appellant also prayed for costs of the appeal.

Directions were taken for hearing of the appeal by way of written submissions. The Appellant's Advocate filed his submissions but the Respondent had not filed submissions by the time the appeal was reserved for judgment.

The Appellant's submissions are dated 11th March 2025 and are to the effect that the Trial Magistrate disregarded the binding decisions of the Court of Appeal which have consistently held that interest in a matter like the instant one accrues interest from the date of filing suit. The Appellant cited the Court of Appeal authority in ***Kisumu Civil Appeal No. 138 of 2017 South Nyanza Sugar Co. Ltd Vs Awino Oreko*** where it held:

“Pleading 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”

Similarly, the Appellant relied on the case of ***John Richard Okuku Oloo Vs South Nyanza Sugar Co. Ltd in Court of Appeal at Kisumu Civil Appeal No. 278 of 2010*** where the court in ordering interest to run from the date of filing the suit because the damages were special in nature stated as follows:

“The degree and certainty must necessarily depend on the circumstances and the nature of the act complained of”

The Appellant argued that his claim was special in nature as it was specifically pleaded in terms of area of land, expected yield per harvest/cycle, the price per ton and number of harvests or cycles.

Further the Appellant sought to rely on the holding in ***South Nyanza Sugar Co. Ltd Vs Awino Oreko***(supra) where it was held:

“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 out to run from the date of filing suit as the money will have been due to the Respondent from that date”

In consideration of the above authorities the Appellant urged the court to allow the appeal.

ANALYSIS AND DETERMINATION

As a first appellate court, this Court is obliged to re-evaluate, re-analyse, and reconsider the evidence on record and draw its own conclusions, bearing in mind that it did not see or hear the witnesses. This position was settled in the case of **Selle & Ano. vs. Associated Motor Boat Co. Ltd (1968) EA 123**. This court is also aware of the principle that an appellate court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of evidence or the court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in ***Mwanasokoni - versus- Kenya Bus Service Ltd. (1982-88) 1 KAR 278 and Kiruga -versus- Kiruga & Another (1988) KLR 348***).

Having carefully considered the records of the trial court, the ground of appeal and the submissions by the Appellant as well as the decisions referred thereto, the issue for determination is when should interest on the awarded sum begin to accrue in sugar contract compensation claims

The Appellant's claim was based on a specific acreage under contract, 0.50 Ha as found by the trial court; expected tonnage per cycle; standard yield projections (via KESREF Report); the price per tonne, and the number of ratoon cycles. These matters were specifically pleaded and supported by evidence, making the claim a special-damages claim.

Under **Section 26(1)** of the **Civil Procedure Act**, courts have discretion to award interest and to determine the date from which such

interest accrues. For special damages, interest runs from the date of filing suit whereas for general damages, interest runs from the date of judgment.

The Appellant relied on two leading authorities which directly govern sugar contract disputes namely, **South Nyanza Sugar Co. Ltd v Awino Oreko, Kisumu Civil Appeal No. 138 of 20** where the Court of Appeal held that sugarcane damages are special in nature, and:

“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.”

In John Richard Okuku Oloo v South Nyanza Sugar Co. Ltd, Kisumu Civil Appeal No. 278 of 2010 the Court held that due to the specificity and certainty of the pleadings, interest should run from the date of filing suit.

These decisions are binding on this Court and are consistently applied in outgrower contract disputes.

The Trial Magistrate after correctly assessing liability and quantifying the award failed to specify when interest begins to run. Given that the claim was special in nature, the money became due upon breach and filing of suit and the binding precedent directs interest to run from the date of filing suit. The omission by the Trial Court amounts to an error warranting appellate interference.

In the circumstances the appeal herein succeeds and interest on the principal sum of Kshs. 40,897.23 shall accrue at court rates from the date of filing suit, being 19th April 2018, until payment in full. Costs of

this appeal are awarded to the Appellant. The judgment of the Trial Court is varied only to the extent that it failed to specify the commencement date of interest.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MIGORI THIS 12TH DAY OF
FEBRUARY, 2026.**

**ANNE ONG'INJO
JUDGE**