REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. E017 OF 2022

BETWEEN

TRANSMARA SUGAR COMPANY LIMITED……. APPELLANT

AND

ZACHEAUS OKECHI ONYONI……...…….. RESPONDENT

(Being an Appeal from the judgment in Migori Chief Magistrate's CMCC No.1385 of 2016 by Hon. S. Ouko –Resident Magistrate).

JUDGMENT

1. In civil case No. 1385 of 2016 at the Migori Chief Magistrate's Court, the respondent sued Transmara Sugar Company Limited for breach of contract. The respondent sought compensation for three crops that were not harvested. On December 19, 2018, Hon. S. Ouko delivered the judgment, ruling in favour of the respondent. The appellant was required to pay Kshs. 857,850.00 as damages.
2. The appellant company was dissatisfied with the judgment and submitted this appeal. They were represented by Oyagi, Ong'uti, Magiya & Company Advocates. Their appeal was based on the following grounds:
    a) The learned trial magistrate failed to acknowledge the note that the appellant has several weighbridges, including two weighbridges at the respondent's locality, and that it was the absolute duty of the respondent to deliver cane at the weighbridge for it to be weighed and tonnage taken.
    b) The learned trial magistrate failed, refused and/or neglected to acknowledge and agree that it was the sole duty of the plaintiff/respondent to harvest and transport his cane from the alleged contracted.
    c) The learned trial magistrate failed, and or refused to acknowledge the fact that the plaintiff never at any time notified the appellant that his crop was ripe, and if he did so, no evidence was adduced to conclusively arrive at that determination.

d) The learned trial magistrate assumed and presumed that cane production for plant crop, ratoon one and ratoon two yield equal proceeds in a straight line, when evidence has been repeatedly adduced that as the crop ages, there is a steady reduction in crop yields.

e) The learned trial magistrate erred in law and in fact in awarding compensation for three harvests, yet the plaintiff, on his own admission, never incurred any damages for two harvests as the plant crop had dried up in the field.

f) The learned magistrate erred in awarding compensation for three harvests, yet no evidence was adduced by the plaintiff to prove that the alleged parcel of land had remained fallow for the entire duration of the contract.

g) The learned trial magistrate erred in law in awarding and assessing compensatory damages, in the sum of Kshs. 857,850/= only in favour of the respondent, whereas the said damages had neither been pleaded nor proved, in accordance with the law.

h) The learned trial magistrate erred in law and in fact when he used a pricing range per ton that was not applicable at the relevant time when the crop could have matured and harvested.

i) The learned magistrate erred in law and in fact when he discerned the appropriate and applicable law, but subsequently either misapplied that applicable law or ignored it in his judgment, therefore making the judgment a *per in curium* judgment.

j) The learned magistrate erred in law and in fact by failing to appreciate that there was no contractually agreed price for the cane and that the document placed on record did not originate from the appellant.

k) The learned magistrate failed to acknowledge and appreciate that it was the plaintiff who was in breach of the contract and not the defendant.

l) The learned magistrate erred in law and in fact in awarding compensation that was quite above the actual yields per acre by relying on a Kenya Sugar Research Foundation (KESREF) report that was not on record, as the report on record indicated so much lower expected yield from out growers' fields.

m) 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.

n) The learned magistrate erred in law and in fact by failing to deduct transport and harvesting charges from the decretal amount, yet he had arrived at the conclusion that it was the duty of the appellant to transport and harvest sugarcane from the plaintiff's farm.

3. Odingo & Company Advocates represented the respondent. They, however, did not file any grounds of opposition or submissions.
4. As the first appellate court, it is my responsibility to carefully review all of the evidence presented and consider that I did not have the opportunity to observe the witnesses testify and their demeanour. I will follow the principles outlined in **Selle v Associated Motor Boat Co. Ltd. [1965] E.A. 123,** which holds that the first appellate court must examine and assess the evidence presented in the trial court before reaching its conclusions.
5. The dispute between the parties herein revolves around an alleged contract between them. In contractual matters, courts are careful not to appear to rewrite the contract for the parties. The Court of Appeal in **Pius Kimaiyo Langat vs Co-operative Bank of Kenya Ltd [2017] eKLR,** after reviewing case law on the subject, reiterated as follows:

   We are alive to the hallowed legal maxim that it is not the business of Courts to rewrite contracts between parties. They are bound by the terms of their contracts, unless coercion, Fraud or undue influence are pleaded and proved.
6. The duty of this court, therefore, is to establish:
   a) Whether there was a contract between the parties; and if so,
   b) Whether there was a breach.
7. A document numbered 0001066, titled 'Sugar Cane Growing and Supply Contract,' was produced. The Parties involved were Transmara Sugar Company Limited and Zacheaus Okechi Onyoni. Both parties signed this document on the 24th day of March 2011.
8. The learned trial magistrate reasonably concluded that a valid contract existed between the parties.
9. Zacheaus Okechi Onyoni stated that when his sugar cane matured, the appellant did not harvest them, causing the crops to dry on the farm. He mentioned he cannot recall whether he wrote to the appellant to harvest the cane.
10. Clause 10 (c) states:

    The sugar cane farmer shall: -

c) Offer for delivery on maturity and deliver to the Miller all such sugar cane as derived from his contracted cane field and no other using the Miller's transport or the Cane Farmer's appointed transporter approved in advance by the Miller.

11. In his evidence, the respondent did not state that he offered his sugar cane for delivery to the miller. The phrase **"The Farmer shall offer for delivery on maturity"** explicitly states this obligation.
12. During cross-examination, he admitted he could not remember if he had written to the appellant. Writing could have been the best way to demonstrate that he had offered the cane for delivery. Consequently, he failed to prove that he fulfilled his contractual obligation.
13. Considering the above, I set aside the trial magistrate's finding that the appellant breached the contract. Similarly, the award is annulled. Consequently, the appeal is allowed with costs.

Delivered and signed at Migori, this 24th day of February 2026

KIARIE WAWERU KIARIE
JUDGE