

**REPUBLIC OF KENYA**  
**HIGH COURT OF KENYA AT MIGORI**  
**CIVIL APPEAL NO. E090 OF 2023**  
**SAMWEL OKOTH NYAMWANGO.....**  
**APPELLANT**

- versus -

**SOUTHNYANZASUGARCO.LTD.....**  
**..RESPONDENT**

***(Being an appeal from the judgment and decree by Hon. C.N.C Oruo in Rongo PMCCC No.190 of 2018 delivered on 25<sup>th</sup> October, 2023).***

**JUDGMENT**

By a plaint dated 28<sup>th</sup> November, 2017 the Appellant sued the Respondent seeking compensation for 3 unharvested cycles, costs of the suit and interest at court rates.

The claim arose out of the Growers Cane Farming and Supply Contract Account No 415519 dated 18<sup>th</sup> December, 2009 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. 672 Field No.352 measuring 0.3 Hectares.

The Appellant in his statement which he relied on in his evidence in chief claimed that the Respondent failed to harvest the Plant Crop, thereby compromising the development of the 1<sup>st</sup> and 2<sup>nd</sup> Ratoon crops. He said that at the time price of sugar cane per tonne was Kshs. 3,128/=. He claimed to be compensated for the 3 cycles 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 25<sup>th</sup> October, 2023 found that the Respondent had breached the contract between it and the Appellant and awarded the damages for the 3 cycles at Kshs 151,363.92 together with costs of the suit and interest.

The Appellant was however, aggrieved by the failure of the Trial Magistrate to specify to state when interest was to start accruing on the principal sum awarded and lodged appeal herein vide Memorandum of Appeal dated 4<sup>th</sup> December 2023 on the ground that the Learned Trial Magistrate failed to state when the interest should start running or failed to state that the interest do start running from the date of filing of the suit.

**Reasons wherefore** the Appellant prayed that this appeal be allowed by setting aside and/ or substitute the judgment of the trial court with suitable orders that interest on the principal amount do 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 12<sup>th</sup> 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.**

In ***Mwanasokoni - versus- Kenya Bus Service Ltd. (1982-88) 1 KAR 278.*** It was held that an appellate court will ordinarily not 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 (see also ***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 only issue for determination is whether interest on the awarded sum should begin to accrue from the date of filing suit or from the date of the judgment of the court.

The Appellant's claim was based on a specific acreage under contract, 0.30 Ha as found by the trial court; expected tonnage per cycle was particularized; standard yield projections were also provided by KESREF Report; the price per tonne, and the number of ratoon cycles were also ascertainable. These matters having been specifically

pleaded and supported by evidence, made 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 out grower 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. 151,363.92 shall accrue at court rates from the date of filing suit, being 15<sup>th</sup> May 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 26<sup>TH</sup> DAY OF  
FEBRUARY, 2026.**

**ANNE ONG'INJO  
JUDGE**