Orech v South Nyanza Sugar Company Limited (Civil Appeal E092 of 2024) [2026] KEHC 2417 (KLR) (27 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2417 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CIVIL APPEAL E092 OF 2024

KW KIARIE, J

FEBRUARY 27, 2026

BETWEEN

GEORGE OUMA ORECH .... APPELLANT

AND

SOUTH NYANZA SUGAR COMPANY LIMITED .... RESPONDENT

(Being an Appeal from the judgment in Rongo Principal Magistrate's PMCC No. 268 of 2016 by Hon. Susan N. Mutava (Resident Magistrate)

JUDGMENT

1. In civil case No. 268 of 2016 at the Rongo Principal Magistrate's Court, the appellant sued South Nyanza Sugar Company Limited was sued for breach of contract. The appellant requested compensation for three crops that were not harvested. On December 14, 2022, Hon. Susan N. Mutava delivered judgment, dismissing the appellant's claim of Kshs. 206,887.50 in general damages.

2. The appellant was aggrieved by the judgment and filed this appeal. The firm of Oduk & Company Advocates represented him. He raised the following grounds of appeal:

   a. The learned magistrate erred in law and fact when he found and held that the appellant breached the contract made between the appellant and the respondent on 24/7/2009, by determining the suit on an issue that was not pleaded and thereby arrived at a wrong decision and conclusion.

   b. The learned trial magistrate erred, in any event, in placing reliance on a so-called warning letter, which was not proved to be authentic, served on or received by the appellant, and which was incapable of discharging the respondent from its obligation owed to the appellant under the contract, and had no probative evidential value.

c. The trial magistrate failed to properly and correctly evaluate the evidence on record, and her determination of the suit was convoluted, illogical and ultimately, unreasonable and wrong.

d. The finding of the magistrate was unsupportable in all circumstances of the case.

3. The firm of Moronge & Company Advocates represented the respondent. The respondent opposed the appeal and contended that the finding of the learned trial magistrate was sound and ought not to be disturbed.

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 KenyaLtd [2017] eKLR, after reviewing case law on the subject, reiterated as follows:

6. 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.

    a. The duty of this court, therefore, is to establish:

    b. Whether there was a contract between the parties, and if so,

    c. Whether there was a breach.

7. A copy of the agreement signed by both parties was presented. Based on my review of the evidence, I agree with the trial magistrate's conclusion that a contract existed between the parties.

8. In his plaint, the appellant averred that the respondent failed to harvest either the plant crop or the subsequent two ratoons when the same were ready and mature.

9. Clause 3.8 and clause 3.1.2 of the agreement placed an obligation on each party. Clause3.8 states:

    3.8 During the duration of this agreement to employ a full-time manager or agent for purpose of managing the cane development and coordination with the Miller and at all times to allow the Miller's representatives access onto the plot for purposes of but not limited to inspection of the plot cane, sampling of the crop compulsory weeding and maintenance, harvesting, necessary operations and construction of by-passes and access tracks to other fields.

10. While clause 3.1.2 provides as follows:

    3.1.2 Inspect the cane and determine its maturity before authorizing the Grower or Out grower to harvest and deliver the same to the Miller's weigh bridge.

11. In my view, these two clauses work together to guarantee that each party fulfils their responsibilities in the contract. The manager described in clause 3.8 is intended to coordinate activities involving the miller and to notify the miller when the miller's input is required. This input might include, but is not limited to, cane harvesting. The appellant, in his oral evidence, alleged to have notified the respondent that the cane was mature for harvesting on the three occasions. However, in his written statement, he

did not state that he had ever notified the respondent. It is also baffling why he should allow himself to incur losses for a second and a third time.

12. The respondent exhibited a warning letter issued to the appellant against selling his cane to a jaggery dealer.

13. The appellant did not prove that the respondent was in breach of the contract.

14. The upshot of the foregoing is that the appeal lacks merit. The same is dismissed with costs.

DELIVERED AND SIGNED AT MIGORI, THIS 27TH DAY OF FEBRUARY 2026

KIARIE WAWERU KIARIE

JUDGE