Otieno v Sukari Industries Limited (Civil Appeal E075 of 2024)
[2026] KEHC 2418 (KLR) (27 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2418 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MIGORI

CIVIL APPEAL E075 OF 2024

KW KIARIE, J

FEBRUARY 27, 2026

BETWEEN

WILLISH OYUGI OTIENO ..... APPELLANT

AND

SUKARI INDUSTRIES LIMITED ..... RESPONDENT

(Being an Appeal from the judgment in Rongo Principal Magistrate's PMCC No. E157 of 2022 by Hon. Susan N. Mutava (Resident Magistrate)

JUDGMENT

1. In civil case No. E157 of 2022 at the Rongo Principal Magistrate's Court, the appellant sued Sukari Industries Limited for breach of contract. The appellant sought compensation for three unharvested crops. On October 27, 2024, Hon. Susan N. Mutava delivered the judgment, ruling in favour of the appellant and awarding him Kshs. 70,000.00 exemplary damages.
2. The appellant was aggrieved by the judgment and filed this appeal. The firm of B.M. Ouma & Company Advocates represented him. He raised the following grounds of appeal:
    a. The learned trial magistrate erred in law and in fact in disregarding the available evidence, hence arriving at a wrong conclusion.
    b. The learned trial magistrate erred in law and in fact when she grossly misdirected herself by substituting special damages with exemplary damages for special damages, hence arriving at an extremely legally erroneous conclusion.
    c. The learned trial magistrate grossly misdirected herself in principle on the law regarding the award of special damages and exemplary damages, thus coming to a wrong conclusion.
    d. The learned trial magistrate erred in law in awarding a prayer that the appellant never prayed for, thus arriving at a wrong conclusion.

3. The firm of Olembo, Orare & Samba Advocates represented the respondent. The respondent filed a civil Appeal number E085 of 2024 on the following grounds:

    a. The learned magistrate erred in fact and law in rendering a self-contradictory decision by awarding the respondent (the appellant in Civil Appeal number E075 of 2024) exemplary damages of Kshs.70,000.00 even after finding that the respondent had failed to produce the cane price list and the cane yield reports that would have aided the court in assessing damages.

    b. The learned magistrate erred in fact and law by ignoring that the respondent's pleadings are of special damages and awarding exemplary damages that were not pleaded and that were not in issue in the suit.

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.

7. 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.

8. Upon my assessment of the evidence on record, I find that the learned trial magistrate's determination that the parties had a contract cannot be faulted.

9. In his plaint, the appellant in Civil Appeal No. E075 of 2024 had not pleaded for exemplary damages. Parties are bound by their pleadings. The Court of Appeal in David Sironga Ole Tukai vs Francis arap Muge & Others, Ca No. 76 Of 2014, expressed itself as follows:

> It is well established in our jurisdiction that the court will not grant a remedy, which has not been applied for, and that it will not determine issues, which the parties have not pleaded. In an adversarial system such as ours, parties to litigation are the ones who set the agenda, and subject to rules of pleadings, each party is left to formulate its own case in its own way. And it is for the purpose of certainty and finality that each party is bound by its own pleadings.

10. The award of exemplary damages was explained in the matter of Juma Mikidadi v Ali Khalfan & another [2004] KEHC 2665 (KLR), Ochieng J as he then was), as follows:

> As regards exemplary damages, the same are only to be awarded in limited instances.
>
> The categories of cases in which exemplary damages should be awarded are set out, at paragraph 243 of Halsbury's Laws of England, as follows: -

Exemplary damages should be awarded only in cases within the following categories: -

(1) Oppressive, arbitrary on unconstitutional action by servants of government;

(2) Conduct calculated by the defendant to make him a profit which may well exceed the compensation payable to the plaintiff; or

(3) Cases in which the payment of exemplary damages is authorized by statute.

When elaborating on the three categories, the learned authors of Halsbury's emphasize that: -

> "In demonstrating the defendant's calculation as to profit, it is not sufficient to show merely that the words were published in the ordinary course of business run with a view to profit; the publication must be intended to make a specific profit.

11. It is evident that the exemplary damages were erroneously awarded. Both parties agree on this issue. The award is set aside.

12. The duties of the Grower (respondent) are spelt out in clauses 7.1 to 7.15. Clause 7.2 of the agreement states:

> The grower shall offer for delivery on maturity in accordance with clause (1) above and deliver to the miller all such cane as is derived from his contracted field and no other, using the Miller's transport or the Grower's appointed transporter approved in advance by the Miller.

13. According to the clause, the grower was responsible for informing the miller when the sugar cane was ready for harvesting. The phrase "The Grower shall offer for delivery on maturity" explicitly states this obligation.

14. At the time of the trial, the appellant did not adduce evidence that she had notified the respondent that the cane was ready for harvesting. Upon such notification, she was to issue a notice as envisaged under clause 3 of the agreement in the event of failure to harvest. Since the respondent failed to perform her part of the contract, she cannot blame the other party. He, therefore, did not prove that the respondent breached the contract.

15. From the preceding, therefore, I set aside the finding by the trial magistrate that the respondent in Civil Appeal No. E075 of 2024 was in breach of the contract and the award thereof. The appeal is dismissed with costs.

16. Consequently, the appeal in Civil Appeal No. E085 of 2024 is allowed with costs.

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

KIARIE WAWERU KIARIE

JUDGE