



**South Nyanza Sugar Company Limited v Basweti (Civil Appeal
E075 of 2022) [2026] KEHC 2581 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2581 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E075 OF 2022
KW KIARIE, J
FEBRUARY 27, 2026**

BETWEEN

SOUTH NYANZA SUGAR COMPANY LIMITED APPELLANT

AND

JOSEPH OMBUI BASWETI RESPONDENT

*(Being an Appeal from the judgment in Rongo Principal Magistrate's
PMCC No.261 of 2018 by Hon. R.K. Lang'at –Principal Magistrate)*

JUDGMENT

1. In civil case No. 261 of 2016 at the Rongo Principal Magistrate's Court, the respondent sued South Nyanza Sugar Company Limited for breach of contract. The respondent sought compensation for three crops that were not harvested. On June 7, 2022, Hon. R.K. Lang'at delivered the judgment, ruling in favour of the respondent. The appellant was required to pay Kshs. 1,122,300.00 as damages.
2. The appellant company was dissatisfied with the judgment and submitted this appeal. They were represented by Okong'o Wandago & Company Advocates. Their appeal was based on the following grounds:
 - a. The learned magistrate erred in law and facts when he found and held that the appellant breached the contract made between the appellant and the respondent on 24/7/2009, by the appellant's failure to harvest the respondent's crop, whereas the respondent never led admissible and satisfactory evidence of the date/day when she in fact planted the plant crop, and notwithstanding that despite the commencement date of that contract being 24/7/2009, the respondent was required to prove the specific date/days when she planted the cane, before the appellant could be found to have breached the contract, to enable court assess damages.



- b. The learned trial magistrate erred in law and fact when he entered judgment for the respondent, against the appellant, for a principal sum of Kshs. 1,122,300/= whilst that sum was neither pleaded specifically, with a required particularity, nor proved strictly, in law.
 - c. The learned trial magistrate erred in law and fact in adopting a yield of 87 tons per hectare.
 - d. The learned trial magistrate erred in fact and law in failing to make provision for transport and harvesting charges, when, in the circumstances of that suit, the learned magistrate had the power and discretion, and was duty bound, to make provision for such charge, by causing further proceedings thereon, or by discounting a reasonable amount of money from the award.
 - e. The learned trial magistrate erred in law and fact when, after he had assessed damages in his judgment at Kshs. 1,122,300/= and awarding the respondent the Kshs. 1,122,300/= as damages for breach of contract, on the basis of that assessment and award of damages, he ordered that interest on the principal award be computed from the date of the filing of the suit, as opposed to such interest being computed from the date of that judgment, and without assigning this reasons for so ordering and, whereas in the circumstances of that suit, it was altogether unlawful, unjust and disproportionate to award interest from the date of the filing of the suit before that subordinate court and, therefore, he exercised his discretion wrongly.
3. Kerario Marwa & Company Advocates represented the respondent. The appeal was opposed on the following grounds:
 - a. The appellant failed to perform her part of the contract.
 - b. The learned trial magistrate did not err in making the impugned award.
 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. During the case hearing, the appellant acknowledged the existence of a contract with the respondent. The sole remaining issue in both the trial court and this court is whether the appellant breached that contract.
 8. Joseph Ombui Basweti, the respondent, stated that when his sugar cane matured, the appellant failed to harvest as agreed.



9. Clause 3.8 and clause 3.1.2 of the agreement placed an obligation on each party. Clause 3.8 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. 1. 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. There was no demonstration that the respondent discharged his obligation. Without such evidence, the trial court had no sufficient evidence to conclude that the respondent was in breach of the contract.
12. During cross-examination, Justus Otieno (DW1) admitted they were responsible for supervision. However, this alone does not establish that the appellant breached the contract terms, particularly in light of clause 8 of the agreement. Therefore, I conclude that the respondent has not proven the alleged breach by the appellant.
13. The upshot of the foregoing is that the trial magistrate's finding and award are set aside. Accordingly, the appeal is allowed with costs.

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

KIARIE WAWERU KIARIE

JUDGE

