



**Nyasinga v Kenya Tea Development Agency Limited (Civil Appeal
167 of 2019) [2025] KECA 162 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KECA 162 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL 167 OF 2019
HM OKWENGU, HA OMONDI & JM NGUGI, JJA
FEBRUARY 7, 2025**

BETWEEN

JOEL OTOIGO NYASINGA APPELLANT

AND

KENYA TEA DEVELOPMENT AGENCY LIMITED RESPONDENT

*(Being an appeal from the Judgment and decree of the High Court of
Kenya at Kisii (Majanja, J.) dated 9th May, 2019 in HCCA No. 9 of 2018)*

JUDGMENT

1. The origin of the present appeal was a suit filed by the appellant against the respondent in 2010. The suit was Kisii Chief Magistrate’s Court Civil Suit No. 524 of 2010. It was a claim for breach of contract in which the appellant sought the following prayers:
 - a. Salaries and bonus unpaid from July 2008 to 2010 June 30th.
 - b. Salaries from the months of July 2008 to date.
 - c. General damages.
 - d. Costs of the suit.
 - e. Interest.
 - f. Any other remedy that the Honourable Court deems fit and just to grant.
2. The facts of the case are that the appellant was a farmer and a sole shareholder with the respondent since 1983. He was shareholder number KK 430-192 and had been actively selling his tea leaves to the respondent who made payments thereof including bonuses which were termed as 2nd payments. However, on 28th July, 2008, he was not paid his dues and when he inquired from the respondent the



reason for its non-payment, he was informed that he did not have the relevant letters of administration to LR No. Nyaribari/Chache/B/B/Boburia/412 (suit land), which was registered under the name of the late Mariko Nyasinga Miyianda (appellant's father/deceased). The appellant averred that his father allocated the suit land to him and his four brothers in 1961 and he had developed his portion since 1983 by building a house and planting tea bushes, trees, bananas, maize, napier grass and coffee. Hence, he did not require letters of administration to be paid his dues especially since his shareholding number was in his sole name and he had been doing business with the respondent for many years; and it had never asked for the said letters of administration.

3. The appellant also averred that in 2002, one Anne Kwamboka Nyasinga (Kwamboka), fraudulently obtained letters of administration of the deceased's estate in Succession Cause No. 320 of 2002; which was nullified by the High Court in May 2009. Soon thereafter, on 18th August, 2009, she was evicted together with her children as they had forged documents. The appellant also alleged that it was found out that she was never married to the deceased and none of her children belonged to him. In addition, the said Kwamboka had sub-divided the deceased's land into six parcels; but after the nullification of the letters of administration, the title deed which had been issued to her was revoked.
4. The appellant claimed that due to the non-payment of his dues, he underwent agony, stress and torture; he suffered loss which included lack of fees for his children, death of three of his grade cows valued at over Kshs. 120,000/= as he lacked money to pay the veterinary officers, and he lacked money to carry out day to day activities.
5. In its statement of defence dated 19th October, 2010, the respondent admitted that the appellant was a registered shareholder with KTDA Growers, but his growers number, KK430192 belongs to Kiamokama Tea Factory Company Limited, and not the respondent who is merely the managing agent. It also averred that the appellant had been dealing and/or transacting with Kiamokama Tea Factory Company and not the respondent; hence the appellant lacked the requisite locus standi to sue the respondent and that the suit was barred by reason of section 82 of the *Law of Succession Act*. As such, the appellant had no cause of action against the respondent.
6. Further, the respondent averred that due to a land dispute between the appellant and one Geoffrey Nyasinga regarding payments of tea leaves and bonuses arising out of the suit land, it became necessary to suspend the payments pending the determination of the land dispute as to who were the legal beneficiaries of the deceased's estate. The respondent stated that since the appellant's registration and growers number arose and are attendant to the suit land whose owner was deceased, it was necessary that it be furnished with the letters of administration of the deceased's estate before it could make any payments.
7. In response to the respondent's defence, the appellant maintained that as a shareholder under registration number KK 430-192, he had been receiving payments for tea leaves from the respondent since 1983, as the contract between them was simply to the effect that the appellant supplies quality leaves whereas the respondent was to pay on time. According to the appellant, the contract between them did not imply that the appellant had to be the registered owner of the suit land; and he could as well be a lessee. He contended that the suit related to goods already supplied to the respondent who acknowledged receipt and continued to receive the same. Thus, the issue was not succession but simply an unpaid debt.
8. He further contended that when the deceased died in 2001, the respondent continued to perform its contractual duty up to July 2008 when the respondent elected to suspend it to date. Lastly, he denied the existence of any dispute between himself and the said Geoffrey Nyasinga.



9. During trial, the appellant reiterated the contents of his plaint and added that he did not know Anne Kwamboka Nyasinga and that she was not married to the deceased. He called two witnesses, Nemwel Momanyi Mainya (PW1) and Charles Nyang'au Gwako (PW3); both of whom testified that the appellant was a farmer and he used to sell tea leaves to Kiamokama Tea Factory.
10. The respondent defended the suit on the ground that the appellant did not prove his claim, which he was obliged to plead and prove but he did not. It called two witnesses, Sylvester Maticha (DW1) and Ann Kwamboka Nyasinga (DW2).
11. DW1, who was one of the respondent's employees, testified that in 2009, a land dispute arose between the appellant and one Geoffrey Bosire over payments and bonuses concerning tea leaves from the suit land. For this reason, the said payments were stopped pending the resolution of the said land dispute and the grant of letters of administration from either the appellant or the said Geoffrey Bosire.
12. DW2 testified that she was Geoffrey Bosire's mother and that the appellant was a son to her co-wife. She confirmed to the court that there was a land dispute which began when her late husband, the deceased, divided the suit land amongst the family members. She stated that her son was given grower number 616 and when the respondent paid him, the appellant lodged a complaint and the payment thereof was stopped; and all efforts to mediate the land dispute had failed. She also added that on the strength of the Chief's letter, she had received payment on behalf of her son who died..
13. In his judgment, the learned trial magistrate held that the respondent's exhibits showed that it was the one that stopped payments to the appellant when there arose a land dispute between the appellant and the said Geoffrey Bosire and that, therefore, it was the proper party to be sued. However, learned trial magistrate held that the claim for damages must fail because the liquidated damages were neither specifically pleaded nor proved at trial; and the claim for general damages was similarly not sufficiently proved. In the circumstances, the learned magistrate concluded that the appellant's suit lacked merit and dismissed it.
14. The appellant was aggrieved by the decision of the lower court and filed an appeal against it.
15. Upon analyzing the record of appeal and the submissions by both parties, the High Court (D.S. Majanja, J.) found that it was not in dispute that the suit land belonged to the deceased and following his death, there were conflicting claims regarding its ownership, which was yet to be resolved by the Probate Court. He stated that contrary to the appellant's claim that there was no land dispute between himself and anyone else, evidence (especially that of DW2) showed that there, in fact, existed such a dispute. Finding that the tea plants on the suit land could not be dealt with separately from the land itself, the learned Judge ultimately held that at the appropriate time, the administrators of the deceased's estate would be entitled to an account of the moneys withheld by the respondent or its principal.
16. On the issue of salaries and unpaid bonuses, the learned judge agreed with the trial magistrate that the same was specific in nature and ought to have been pleaded with particularity and proved.
17. Consequently, the learned judge dismissed the appeal with costs to the respondent, which he assessed at Kshs. 20,000/= exclusive of court fees.
18. Aggrieved by the decision of the High Court, the appellant filed a Notice of Appeal dated 15th May, 2019. Typical of the fact that the appellant was acting pro se, his appeal and submissions contain a number of errors.



19. During the virtual hearing of the appeal, the appellant appeared in person, and learned counsel Mr. Nyachiro, appeared for the respondent. Both parties filed written submissions and relied entirely on them.
20. First, there is no memorandum of appeal identifying the grounds upon which the appellant appeals from the High Court judgment. We have, nevertheless, been able to deduce the sources of his dissatisfaction with the High Court judgment and rendered a substantive decision on them notwithstanding this technical inadequacy of the appeal.
21. Second, the first part of the appellant's submissions alludes to a decree that states that the judgment of the High Court was entered in his favour and against the respondent; and that an order for declaration and permanent injunction as sought in his plaint dated 11/10/2010 was made. Also unpaid salaries and bonuses from July 2008 to 30th June, 2010; and salaries from the month of July 2008 to date, general damages and costs of the suit and interest were due to him. However, from the background herein above, it is clear that what the appellant alludes to is absolutely incorrect.
22. Third, the appellant has noted down the calculated summary of the benefits and losses he says he incurred for fourteen years; together with a KTDA advice slip. In doing so, the appellant appears to be responding to the judgments of the two courts below which found that he had not specifically pleaded or proved the damages he sought. Unfortunately for the appellant, it is too late in the day to introduce that evidence or particulars by way of submissions on a second appeal.
23. Finally, the appellant has submitted that he suffered from the acts of the respondent, in conjunction with KTDA and has written in length and even quoted the Bible with regard to how his family, as God's people, have been oppressed and have suffered. In doing so, again, the appellant seems to be responding to the findings by the two courts below that he had not proved the damage he allegedly suffered to warrant findings that he was entitled to general damages. Again, his submissions in this regard at this stage are irrelevant in the circumstances.
24. Regarding the substantive appeal, the appellant presses his argument before the two courts below that he was entitled to the sums he has calculated in his submissions; and that he should be compensated for the harm the respondent caused on him. He also submitted that he did not understand why the respondent paid Anna Kwamboka Nyasinga and yet she was neither a tea farmer or grower, nor was she married to his late father. He further submitted that he did not know how the said Anna Kwamboka Nyasinga used a letter from the area chief to plead her case before KTDA and what method was used to calculate the total amount of money she was paid.
25. Opposing the appeal, the respondent addressed three issues: whether the appellant sued the right party; whether the appellant proved its case on a balance of probabilities; and whether the appellant is entitled to any reliefs.
26. On the first issue, the respondent submitted that during trial, the appellant testified that he used to take his tea leaves to Kiamokama Tea Factory Limited and not to Kenya Tea Development Agency (the respondent). In this regard, the respondent maintained that it was only an agent to Kiamokama Tea Factory Limited, whose services cut across the entire tea value chain and includes inputs and Agri extension transportation, warehousing, processing, marketing and financing. Therefore, it was not its duty to pay the farmers. Rather, that duty fell upon the individual tea factories. For this reason, the respondent submitted that the appellant sued the wrong party and the suit against it should have been struck out with costs.
27. Regarding the second and third issues, the respondent contended that it is trite law that he who alleges must prove. Therefore, since the appellant neither pleaded the amount claimed in his plaint nor during



examination in chief, he failed to prove his case on a balance of probability. It relied on the case of *Shabani vs. Nairobi City Council* (1195) KLRD; (1982 – 1988), KAR 681, for this proposition. Specifically, the respondent argued that the appellant did not demonstrate any grounds to warrant a grant of the reliefs sought. It also relied on *Gianchore Tea Factory Company Limited vs. Oyagi Ontomwa* [2015] eKLR; *Samwel Muciri vs. Kenya Tea Development Agency Limited & Another*; and *Insurance Co. East Africa vs. Nandwa* [1995 – 1998].

28. This is a second appeal. The standard of appellate review in a second appeal such as this one was stated in *Mwita v Woodventure (K) Limited & another (Civil Appeal 58 of 2017)* [2022] KECA 628 (KLR) (8 July 2022) (Judgment), where the Court of Appeal, through the lead judgment of Mumbi Ngugi, JA, while referring to a second Appeal stated:

This is a second appeal. Accordingly, the jurisdiction of this Court is limited to the consideration of matters of law. As was held in the case of *Stanley N. Muriithi & Another v Bernard Munene Ithiga* [2016] eKLR, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the court below considered matters it should not have considered, or failed to consider matters it should have considered, or, looking at the entire decision, it is perverse.

See also *Kenya Breweries Limited v Godfrey Odoyo* [2010] eKLR, in which it was held that:

In a second appeal, however, such as this one before us, we have to resist the temptation of delving into matters of fact. This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or, looking at the entire decision, it is perverse.”

29. Having exhaustively considered the record of appeal, the judgment of the two lower courts, and the rival submissions of the parties, the singular issue for resolution is whether the two courts below were correct in dismissing the appellant’s claim for damages.
30. We begin by noting that the question whether the respondent was the correct party to have been sued, one which the respondent has devoted a considerable amount of ink on, is not properly before us. Both the courts below concluded that the respondent was the correct party to have been sued. The respondent did not file any cross-appeal against that aspect of the judgment; and it cannot spring it up in its submissions for determination by this Court.
31. Turning to the substantive question, after perusal of the High Court judgment, the learned Judge proffered two reasons for dismissing the appellant’s claims. We will explore each using the standard of review we described above.
32. On the question whether the appellant could legally make the claims against the respondent, the learned Judge found that:

“The reason I have quoted the two conflicting demands by the appellant and his brother, or stranger, as the case may be, is that they provided a basis for the defendant [respondent] demanding the grant of letters of administration for the deceased’s estate. It was not in dispute that the land belonged to the deceased and following his death there were conflicting claims on the land which are yet to be resolved by the court dealing with the succession cause. These claims were buttressed by the testimony of DW2. The tea on the land cannot be dealt



with apart from the land. At the appropriate time, the administrators of the deceased's estate are entitled to demand an account of moneys withheld by the appellant or its principal.”

33. Here, the learned Judge is simply stating a basic legal principle related to estates of deceased's persons: only administrators or those who have been given limited grants is authorized to sue on behalf of the estate of a deceased. This is by dint of section 82 of the *Law of Succession Act*. In the present case, it is not in dispute that the land on which the tea was grown was still registered in the name of the deceased. Tea, which grows on the land, is, legally, part of the land. Both the tea and the land, therefore, legally belonged to the estate of the deceased. The appellant had no legal right to press any claim on his own behalf or on behalf of the estate of the deceased since he was not an administrator or a personal representative to the estate.

34. This, in itself, would have been sufficient to dispose of the appellant's suit. However, the learned Judge proceeded to address the question whether the appellant had succeeded in establishing his claim on the merits anyway. He held:

“As regards the claim for the salaries and unpaid bonus, I agree with the trial magistrate that such a claim is specific and it is the nature of special damages which must be pleaded with particularity and proved. This (sic) clear statement of this principle from the Court of Appeal is to be found in several decisions including Provincial Insurance Co. East Africa Ltd v Nandwa [1985-1998] 2 EA 288, 291 where the Court expressed the need to plead specifically a claim that is ascertainable and quantifiable thus: it is now well settled that special damages need to be specifically pleaded before they can be awarded. Accordingly, none can be awarded for failure to plead.

Although Mr. Sagwe submitted that the particulars of the claim were within the respondent's knowledge, I hold that the appellant is not relieved of its duty to plead its claim specifically. It has prior to setting down the suit for hearing, the right to seek discovery of any documents in the respondent's power or possession or seek an account where a sufficient basis is laid.”

35. In short, we agree with this statement of principle by the learned Judge and its application to this case. It is readily obvious that the appellant was seeking special damages but he neither specifically pleaded them in his pleadings nor prove them at trial. He simply cannot succeed in his quest for such damages, and, as we pointed out above, it is too late for him to try and do so in his submissions before us.

36. In the same vein, the two courts below concluded that the appellant had not, as a matter of fact, proved that he was harmed in a tortious way by the respondent and that he was, thereby entitled to compensation for the harm. This was a factual finding by both lower courts. We have no basis for finding otherwise as we do not find that holding to be perverse or against the grain of evidence.

37. The upshot is that the appeal herein is without merit. It is dismissed in entirety with costs to the respondent.

DATED AND DELIVERED AT KISUMU THIS 7TH DAY OF FEBRUARY, 2025.

HANNAH OKWENGU

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JUDGE OF APPEAL

H. A. OMONDI



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JUDGE OF APPEAL
JOEL NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

