REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CIVIL APPEAL NO. 209 OF 2001

JOHN RICHARD OKUKU OLOO……APPELLANT

VERSUS

SOUTH NYANZA SUGAR CO. LTD..... RESPONDENT

(An appeal from the judgment and decree of Hon. N. OWINO (Senior Resident Magistrate) dated and delivered on the 22ND day of JULY 1999 in the ORIGINAL KISII SRMCC NO. 798 OF 1998.)

JUDGMENT

1. The appellant's claim before the trial court was that the respondent neglected to harvest sugar cane on his 0.2 hectares piece of land pursuant to a contract for growing and supply of sugar cane. The appellant therefore claimed damages for his loss, but his case before the trial court was dismissed on 22nd July 1999 and a subsequent appeal before this court was similarly dismissed thereby triggering an appeal before the Court of Appeal whose successful outcome is the subject of this judgment.

2. The Court of Appeal, upon finding that the appellant's case was merited, set aside the judgment of both the High Court and the trial court and further directed that this court assesses the damages due to the appellant for breach of contract.

3. The Court of Appeal expressed itself as follows on the issue of the assessment of damages payable to the appellant:

"As we note that at paragraph 3 of the plaint, the acreage is pleaded as 0.2 hectares whereas at paragraph 12 of the plaint proceeds are pleaded in acre thus raising the need to use an acceptable conversion rate of hectare and acre. We refer the calculation of the actual amount to be paid to the appellant by the respondent to the High Court for that purpose."

4. From the above extract of the Court of Appeal's judgment, it is clear that the role of this court in this judgment is basically to calculate the actual amount payable to the appellant based on his pleadings.

5. At the hearing of this matter, parties to this case intimated to this court that they intended to have an out of court settlement of the claim. My take is that a prompt out of court settlement of the claim upon the delivery of the Court of Appeal's decision, would have been the most reasonable way to proceed with the case bearing in mind the age of the case as it commenced in 1998, and the fact that the appellate court's decision had not been challenged by the respondent.

6. It is therefore quite unfortunate and regrettable that over 4 years after the delivery of the judgment by the court of Appeal, the parties have not made any tangible efforts to resolve the dispute by agreeing on the quantum of damages payable to the appellant thereby leaving the burden of assessing the quantum to this court even though the parties are very much aware of the terms of their engagement according to the contract that they entered into way back in 1995. This court notes that it is this kind of conduct and procastination by parties that leads to the much touted huge backlog of cases in our registries with parties subjecting even the most obvious and simple cases to the determination of the court.

7. Be that as it may and turning to the issue of the assessment of damages payable to the appellant, I note that he prayed for the payment for 135 tonnes of cane being the average yield per hectare for 0.2 hectares. However, paragraph 12 of the plaint, the appellant stated that his claim was for payment of 135 tonnes of cane per acre at the rate of 1,553/= per tone being the average yield. It is this confusion on the unit of land measurement between acreage and hectare that prompted the Court of Appeal to refer the matter to this court for assessment of damages.

8. The appellant submitted that the correct unit of measurement was hectare and not acre as confirmed by the documents produced in court as exhibits. The appellant further stated that the use of hectare in the calculation damages would not prejudice the respondent in any way as it is a unit that would translate into a much lower yield as opposed to the acre.

9. As I have already stated in this judgment, the appellant's claim was for the payment for 135 tonnes of cane at the rate of 1,553/= per tone being the average yield of un harvested cane on his 0.2 hectare plot.

10. Even though the appellant submitted that he is entitled to payment for 3 cycles of harvest, I find that the prayer for 3 cycles was not specifically made in the plaint and therefore my assessment will only be in respect to one harvest.

11. Consequently I quantify and make an award to the appellant at Kshs. 41,931/= made up as follows 0.2 hectares x 1,553/= x 1 crop x 135 tonnes = Kshs. 41, 931/=.

12. The appellant shall have the costs as directed and/or ordered by the Court of Appeal in its judgment of 20th December 2013.

Dated, signed and delivered in open court this 27th day of February, 2018

HON. W. A. OKWANY

JUDGE

In the presence of:

- N/A for the Appellant
- N/A for the Respondent
- Omwoyo court clerk