Case Number:	Civil Appeal 95 of 2017
Date Delivered:	23 Nov 2018
Case Class:	Civil
Court:	High Court at Migori
Case Action:	Judgment
Judge:	Antony Charo Mrima
Citation:	Charles Obuogi Kwanya v South Nyanza Sugar Co. Ltd [2018] eKLR
Advocates:	Mr. Oduk & Co. Advocates for the Appellant Mr Moronge & Company Advocates for the Respondent
Case Summary:	-
Court Division:	Civil
History Magistrates:	-
County:	Migori
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CIVIL APPEAL NO. 95 OF 2017

CHARLES OBUOGI KWANYA.....APPELLANT

VERSUS

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

(Being an appeal from the judgment and decree by Hon. Kamau, C.M., Resident Magistrate in Rongo Senior Resident Magistrate's Civil Suit No. 88 of 2014 delivered on 19/09/2017).

JUDGMENT

1. Only one issue is for determination in this appeal. It is whether the learned trial court erred in not awarding damages for the first and second ratoon crops.

2. There is no cross-appeal against the judgment. The Appellant submitted that the trial court having found that the Respondent herein was in breach of the contract, then it was bound to award damages for the two ratoon crops in accordance with the contract entered to by the parties on 29/08/2007 which the court upheld its validity.

3. As the first appellate Court it is now well settled that the role of this court is to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. (See the case of **Selle & Ano. vs. Associated Motor Boat Co. Ltd (1968) EA 123**). This court nevertheless appreciates that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in **Mwanasokoni – versus- Kenya Bus Service Ltd. (1982-88) 1 KAR 278** and **Kiruga –versus- Kiruga & Another (1988) KLR 348).**

4. I have carefully and keenly read and understood the proceedings and the judgment of the trial court as well as the grounds and the parties' submissions on appeal. I have previously dealt with the issue in this appeal at length in **Migori High Court Civil Appeal No. 92 of 2015 James Maranya vs. South Nyanza Sugar Company Limited (2017) eKLR** where on the guidance of the decision of the Court of Appeal at Kisumu in **Civil Appeal No. 278 of 2010 John Richard Okuku Oloo vs. South Nyanza Sugar Co. Ltd (2013) eKLR** I found that in a contract similar to the one in this matter a farmer is not only entitled to the value of the proceeds from the plant crop, but also from the ratoon crops. However, it all depends on how a party tailored its pleading.

5. In this case the Appellant pleaded in paragraph 7 of the Plaint that he lost a total sum of Kshs. 607,500/= worth of sugar cane for the plant crop, first ratoon crop and the second ratoon crop. He then prayed for damages for the breach. The contract was clear on the duration and the expected yields. The Appellant was to earn from the plant crop and two ratoon crops and as such he was entitled to such compensation. The trial court therefore erred in not awarding the Appellant the expected proceeds from the two ratoon crops.

6. On the expected yield for the ratoon crops, the Appellant relied on a document he claimed to be the Respondent’s Sugar Cane Productivity Schedule. The Respondent availed its Cane Yields in Out growers Schedule. I have considered the twin documents on record and opt to be guided by the Respondent’s Sugar Cane Productivity Schedule. I decline to be guided by the document produced by the Appellant since it does not disclose its source and it contains the alleged schedules just on a plain paper. As such its contents cannot be verified.

7. According to the foregone Schedule the expected yields for the ratoons in Kakmasia Location within Migori County was 48.76 tons per hectare. Likewise, there is no contention on the size of the land and the then prevailing cane prices. The Appellant was hence entitled to judgment for the two ratoon crops at Kshs. 146,280/= thereby bringing the total compensation to Kshs.

232,107/=.

8. Following the foregone discourse, the upshot is that the following final orders do hereby issue: -

a) The appeal hereby succeeds, and the award in the judgment of the learned trial magistrate is set-aside and substituted with an award of Kshs. 232,107/=.

b) The sum of Kshs. 232,107/= shall attract interest at court rates from the date of filing of the Plaint.

c) The Appellant shall have costs of the appeal.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 23rd day of November, 2018.

A. C. MRIMA

JUDGE

Judgment delivered in open court and in the presence of: -

Mr. Ezekiel Oduk Counsel instructed by the firm of Oduk & Co. Advocates for the Appellant**.**

Mr. Bosire Counsel instructed by the firm of Moronge & Company Advocates for the Respondent.

Evelyne Nyauke – Court Assistant