THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HCCS NO. 50 OF 2000

NAMAIZI GRACE :::::: :: :::::::::::::::::::::::::: PLAINTIFF

VERSUS

KINYARA SUGAR WORKS LTD…….... DEFENDANT

BEFORE: THE HON. LADY JUSTICE M.S. ARACH -. AMOKO

JUDGMENT:

The Plaintiff is a sugar cane farmer of Kabahara, Bujenje County, and Masindi District. The Defendant is a sugar milling factory in the same district.

The facts of this case are briefly that the Plaintiff and the Defendant entered into a contract dated 24/7/96 under the Kinyara Sugar Works Outgrowers Scheme whereby the Plaintiff agreed to grow sugar cane in her field specified in the contract, and the Defendant undertook to harvest and purchase the said sugar cane from the Plaintiff. In March 1998, the Defendants servants entered into the said field and harvested the sugar cane pursuant to the said contract. The Defendant then transported the sugar cane to its factory, where at, the same was weighed and found to be 402.5 tons; for which the Defendant paid.

The Plaintiff is dissatisfied with the result, and contends that her field yielded approximately 753 tons out of which the Defendant transported only 4025 tons, leaving approximately 350 tons of cut sugar cane lying to waste all over the field. The Plaintiff alleges the failure by the Defendant to collect the 350 tons amounted to breach of contract by the Defendant. That she was also further denied any income from sugar cane for that season as the sugar cane purchased was only just enough to pay off her loan from the Defendant. She contended further that the Defendants failure to collect the 350 tons of cut sugar cane from her field also led to her incurring expenses in clearing the field in preparation for the next seasons planting and also led to the next season's diminished harvest, thereby occasioning her further financial loss and damage. Therefore the Plaintiff prays for Judgment against the Defendant for:

a. Specific damages in the sum of Shs.7, 780,500/.
b. General damages for breach of contract.

c. Costs.

d. Interest on (a) (b) and (c) at a rate of 20% p.a from date of the cause of action till payment in full.

The Defendant denied the Plaintiffs claim and averred that:

a. it harvested, transported, weighed and purchased 402.5 tons of sugar cane from the Plaintiffs field valued at Shs.8,077,374/ only.

b. It was a term of the loan transaction that the Defendant offsets the loan advanced to the Plaintiff, with interest at the time of buying the Plaintiffs
sugar cane; which it did. The outstanding loan was Shs.8,133,222/. The balance due from the Plaintiff is Shs 5,848.

c. The cane was weighed after transportation to the Defendants factory and the Plaintiff was notified of the total harvest.

d. The Plaintiff was fully paid for the 402.5 tons of cane by offsetting her loan advances. She is therefore not entitled to any relief claimed.

The following facts were agreed at the commencement of the hearing:

1. That there was a contract between the parties.
2. 402.5 tons of cane was harvested, collected and paid for.
3. The Defendant was to ferry the cane to the factory and deduct the cost from the Plaintiff.
4. The particular field was 5 hectares.
5. The Defendant was under obligation to purchase all the cane grown by the Plaintiff.

The agreed issues were:

1. Whether the Plaintiffs field was capable of yielding 753 tons.
2. Whether the Defendant harvested *753* tons.
3. If so, whether the Defendant left 350 tones of cane in the field.
4. Remedies available if any.
5. I have also added another issue under the Courts powers under 0.13 r 5 to include the issue:

Whether or not the Defendant breached the contract at all.

Apart from the plaintiff, four other witnesses testified in a bid to prove the plaintiffs case-they were

1. Bitamazire Keith(PW2)
2. Kaija David (PW3)
3. Yosam Byaruhanga Rwakaikara
4. Theopilus Kairagura(PW5)

The defendant called 4 witnesses namely;

1. Omoding Francis(DW1)

2. Kajura Francis (DW2)

3. Dr. Andrew Musoke (DW3)

4. Tumwine Joseph (DW4)

The first issue is whether the plaintiff's field was capable of yielding 753 tons of sugar cane; Counsel for the plaintiff submitted that it was. He relied on the testimony of the plaintiff's four witnesses to support his argument. Learned counsel for the defendant on this part submitted that the plaintiff has failed to adduce sufficient evidence to prove that her field was capable of yielding 753 tones of sugar. Her claim was not supported by evidence. She only said that she was told in a seminar that a model field could yield 150 tones per hectare. She did not support this proposition by scientific evidence. Her evidence was just general, that hers was a model garden.

I have carefully perused the evidence of the Plaintiff on this issue, starting with the Plaintiff's testimony.

As can be gathered from her testimony, the Plaintiff honestly believed that her field was capable of yielding 750 tons of sugar cane because:
- It was a model garden in the area used by Kinyara Sugar Works as a model to train other

outgrowers.
- She is able to estimate that the cane left was 350 because they were trained during seminars by Kinyara Sugar Works Superintendent called George Batuusa, who conducted seminars for outgrowers two months after planting that one hectare would yield 150 tons. Her field was 5 hectares.
- The sugar cane she is complaining about was from the first harvest.
- The second harvest was 450 tons. The first harvest is usually greater than the second.

According to PW2, a fellow farmer, and Chairman of the Kinyara Sugar Cane Growers Association, who went to the Plaintiffs field after receiving her complaint, he saw a lot of cane in the field. Grace had maintained her field so well that they sometimes used it as a model field at training workshops. According to how the cane looked, and the way it was looked after, one would expect to harvest 140 tons of cane per hectare - that is about 700 tons. Under cross examination, PW2 stated that his first harvest yielded 136 tons per hectare on average. His field is however 53 km away from the Plaintiffs in the Western zone. He got 98 tons per hectare in 2000. In 1998, there was El Nino and the best farmer scored 198 tons per hectare and 152 per hectare in 1999.

PW4 is also a sugar cane cultivator and chairman of the Association in the same area. He estimated the cane left in the Plaintiffs field to be 300-400 tons. He had also attended the seminars where they learnt from the Defendant's officials that a farmer can get 150 tons of sugar cane out of every hectare from a properly looked after field. The Plaintiffs field was one of those fields which had been properly looked after. Her field was one of those the Defendant brought visitors to learn from.

It is clear from the foregoing evidence that the Plaintiff has not produced any scientific evidence that her field was capable of yielding the *753* tons of sugar cane alleged. Her evidence is general; that hers was a model garden. On this issue, I agree therefore with the Defence Counsel and therefore answer it in the negative.
The second and 3rd issues are whether the Defendant harvested 753 tons of sugar cane and whether they left 350 tons in the field. The Plaintiff testified that she was physically present when the Defendants workers were cutting sugar cane from her field. They did not cut all the sugar cane from the field. Some were cut, others were not cut. Some of the sugar cane was taken and the rest were left behind. Apart from estimating the cane left behind as 350 tons,

she has not adduced any evidence to support the contention that the Defendant harvested 753 tons. If, as stated, a model field like hers was capable of yielding 753 tons, and yet according to her, some of the sugar cane was not cut, it is inconceivable then that the cane which was harvested amounted to 753 tons.

PW2 informed Court that he could not tell how much sugar cane he saw in the field. PW3 did not take the photograph of the whole field. PW4 said he saw about 300- 400 tons of sugar cane left in the field. He based his estimate on the seminar conducted by the Defendant's officials who had told them that a well tendered field would yield about 150 tons per hectare.

All in all, I find that the Plaintiff has also failed to establish to the satisfaction of this Court that Defendant harvested 753 tons of sugar cane from her field. The Plaintiff has however established that the Defendant did leave sugar cane on her field which was over and above the accepted loss of 3 tons per hectare. That she was dissatisfied with the way her sugar cane was harvested by the Defendant's workers. This was her first harvest and she had looked after it very well to the extent that it was regarded as a model field in the area. She therefore expected more sugar cane from her field than the 402 tons. She was expecting at least 150 tons per hectare, making a total of 750 tons. 402 tons was therefore a bit too low in the circumstance. She was even able to harvest more sugar cane in the second harvest and yet the evidence of the other witnesses including the Defence witnesses is to the effect that the yield reduces with the subsequent harvest. She stated that she got 450 tons of sugar cane during the second harvest. This was because the heap of cane which was left in the field affected the growth of the later sugar cane.

PW2 visited her field and said he saw a lot of cane in the field, some cut and some not cut; and covered with trash. PW2 stated that he inspected the field with the extension officer of the Defendant called Mr. Awilia. He then reported to Mr. George McIntyre, the Defendant's Manager; who advised that the Plaintiff should plant the cane that had remained in the field. In my view, Mr. McIntyre could not give this advice unless he was also aware that a lot of sugar cane had been left in the Plaintiffs field. He said the Defendant also refused to send back the harvesting team and equipment to transport the cane on the ground that it was too expensive. PW2 estimated about 300 tons of cane left in the field. His first harvest was 136 tons per hectare and yet his was not a model field.

I have also seen the photographs in Exhibit D2. It shows that a lot of sugar cane was left on the field under trash although some of it has now been heaped together. I find the evidence of the Defence witnesses merely calculated to support the case for their employer and to save their jobs. They are not independent witnesses. I have therefore placed very little value on their evidence. DW4 who said he participated in transportation of the sugar cane from the Plaintiffs field for instance stated in cross - examination that no cane was left in the Plaintiffs field, and in the same breath, admitted that some cane was left in the field. He also stated that he never checked under the trash for any cane before leaving the field. DW2, stated that he was the Defendants harvesting supervisor at the material time. He described how sugar cane was supposed to be harvested. That it was harvested green and not burnt. He stated that he controlled the harvesting operation throughout until it was over. In cross - examination however, he stated that he could not tell how many cutters or field assistants they used in the Plaintiffs field.

That it was impossible for him to supervise each cutter. He admitted that sometimes cane can be mixed with trash during harvesting; when a worker has not detrashed the cane properly or when he has not cleared the ground where to pile the cane or when cane drops on the trash at the time of loading. In the case of the Plaintiff, as the photos showed, some cane remained in the field, although he could not tell how much. DW1's testimony was full of contradictions and outright lies. He testified that he was asked by the Senior Superintendent Mr. Batuse to investigate the Plaintiff1s case. He went to the field in the company of the Plaintiff. This was after 2 weeks. He saw some stalks of sugar cane in some few heaps. He deliberately underestimated the cane in the photographs (Exhibit P2) to be only 40 kg, 20 kg, and 4 kgs only with a lot of trash. He then contradicted himself when he said:

"I reported to my supervisor that I had seen a few sugar cane stalks in
the field. I informed him that it was 0.2 tons that is 200 kgs. It is normal to find such sugar cane after harvest. There is acceptable loss of 3 tons per hectare."

and where he stated:

"I was there at the time of harvest and loading:::::::::: I made sure that all the cane had been properly cut and loaded. I found everything properly harvested. There was nothing left."

and then where he stated:

'When sugar cane is harvested green, there is a possibility that some cane falls under the trash. Some may be under the trash because the trash is thick ::::::::

You cannot see any cane buried under the trash even when the toppings wither unless the

farmer re-arranges when I visited the field, the trash was not re-arranged. I saw the sugar cane when the trash was not re-arranged."

He insisted that the Plaintiff's farm was not properly looked after and was never visited during seminars. During cross examination he stated that:

"I went to the field, the trash was not cleared. I raised the trash myself to see whether there was cane under the trash. I did not raise the trash all over the 5 hectares. I made spot checks at some points. I was alone.

He admitted that the photos in Exhibit P2 reflect what he saw in the Plaintiff's field. He stated that there was too much trash at the time of cutting, so some sugar cane was left under the trash; all over the field which could not be detected at the time of harvest.

I have also not placed much weight on the evidence of DW 3, the Agronomist firstly because the report (Exhibit D2) he sought to rely on is not signed by him. An unsigned report has no evidentiary value. The sketch map of Kabahara does not also help much. It is not related to any official map of the area. It could have been drawn anywhere. The Agronomist carried out his study in March 2000 that is two years after the fact. The study was actually carried out after the filing of this suit.

He did not carry out any tests on the soil before planting. He took photos in Exhibit D3 during dry season to show how unproductive and unimpressive the Plaintiffs garden was. The season complained of was in 1998 where he also acknowledged that there was El nino; so the garden was nice and green. I do found his report and his testimony is full of theories and biased in favour of the Defendant, his employer. It l9ts in the category of expert evidence referred to by J.D Heydon in his text book entitled 'evidence - Cases and Materials' at page 384 on Opinion evidence where he states that:

"There is a general feeling also that expert witnesses are selected to prove a case and are often close to being professional liars: 'it is often quite surprising to see with what facility, and to what an extent, their view can be made to correspond with the wishes or the interests of the parties who call them. They do not, indeed, willfully misrepresent what they think, but their judgments become so warped by regarding the subject in one point of view, that, even when conscientiously disposed, they are incapable of forming an independent opinion. Being zealous partisans, their Belief becomes synonymous with faith as defined by the Apostle, and

it too often is but " substance of things hoped for, the evidence of things not seen" (Taylor, P 59). Lord Campbell put it more harshly: 'hardly any weight is to be given to the evidence of whet are called scientific witnesses; they come with a bias on their minds to support the cause in which they are embarked' (Tray Peerage Claim (1843) 10 CI & Fin 154 at 191). And Best says: 'there can be no doubt that testimony is daily received in our Courts as "scientific evidence" to which it is almost profanation to apply the term; as being revolting to common sense and inconsistent with the commonest honesty on the part of those by whom it is given (P491)."

Counsel for the Plaintiff pointed out that the study was carried out to manufacture evidence for the suit. 1 am inclined to agree with him.

In conclusion under these two issues, I rule that the Plaintiff has not established that the Defendant harvested 753 tons of sugar cane from her field at the material time, and that the Defendant left 350 tons of sugar cane in the field. The Plaintiffs has however, established that the Defendant left a large part of the sugar cane it had harvested under trash in the field, which is over and above the accepted loss, which brings me to the issue whether the Defendant breached the contract or not. Section 5 provided that:
"The Miller shall:
5.1. Undertake to purchase all sugar cane that is cultivated on the land between the age 15 & 27 months, and shall become the owner of the sugar cane once it has issued to the farmer a certificate of its weight as delivered to the buying station."
The section obliged the Defendant to purchase all sugar cane harvested on the Plaintiffs field. The evidence shows that the Defendant left a lot of sugar cane on the Plaintiffs field and hence did not pay for it in accordance with the contract. This amounted to breach of contract. Under the law, a breach of contract exists where
one party to contract fails to carry out a term, promise or condition of the contract.
See: Blacks Law Dictionary 5th Edn at 171.

The last issue is remedies available. The Plaintiff prayed for:
a. Special damages in the sum of Shs.7, 780,500/. It is trite law that special damages must not only be pleaded, but must be strictly proved, although they need not be proved by documentary evidence in all cases. See: **Kyambadde**
-Vs- Mpigi District Administration (1983) HCB 44.

In the case before me, I have ruled that Plaintiff has failed to establish that her field was capable of yielding 753 tons and that the cane left on her field was 350 tons; which was the basis for the Shs.7, 780,500/ claim. This prayer is therefore not proved and it is disallowed accordingly.

Prayer (b) is for general damages for breach of contract. I have ruled that the Plaintiff has established that the Defendant left a substantial amount of sugar cane in her field, which was over and above the accepted loss. This was breach of contract. The evidence on record shows that the Plaintiff went through a lot of inconvenience as a result of the Defendant's action. As soon as she noticed that some cane had been left on her field, she went to their Chairman and reported the matter. She even went to the extent of hiring a freelance photographer (PW2) to take the photograph of the field (Exhibits P2). She could not use the sugar cane left in the field for gapping because they were too old. The second harvest was also affected because of the heap, which was left in the field. She got only 450 tons as a result.

In the second planting, her garden was no longer a model garden. She could not get the highest output. PW2 corroborated her testimony, when he stated:

"I did not agree with the advice. In the first place, the said cane had outgrown, it could not be used as a planting seed. Secondly, he field was not ready for planting. Thirdly, it involved a lot of labour because some of it was not out."

Learned counsel for the Plaintiff has not proposed any sum under this head. Doing the best I can and taking all the circumstances of the case, I am of the view that the sum of Shs.5m would adequately compensate the Plaintiff and I award it to her. She is also entitled to the costs of this suit.

In the result, I enter Judgment in favour of the Plaintiff as follows:

1. Shs.5m general damages for breach of contract.
2. Costs of the suit.
3. Interest on 1 and 2 at Court rate from date of Judgment till payment in full.

M.S. Arach – Amoko

JUDGE

29/09/2003

Judgment delivered in the presence of:

1. Mr. Alex Bashasha of Bashasha & Co. for the Plaintiff.

2. David Sempala holding brief for Mr. Sentomero for Defendant.

3. Okuni - Court clerk.

M.S. Arach - Amoko

JUDGE

29/09/2003