



REPUBLIC OF KENYA



**Masai Mara Wilderness Lodge Limited v Soni (Civil Appeal
E261 of 2023) [2024] KEHC 7686 (KLR) (Civ) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7686 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E261 OF 2023

WM MUSYOKA, J

JUNE 24, 2024

BETWEEN

MASAI MARA WILDERNESS LODGE LIMITED APPELLANT

AND

RUPA SONI RESPONDENT

(An appeal arising from the judgment of Hon. SA Opande, Principal Magistrate, delivered on 22nd March 2023, in Milimani Commercial Courts CMCCC No. 6914 of 2017)

RULING

1. While reading the record herein, for the purpose of writing judgment in the appeal, I came across an order that was made and recorded by my sister, Janet Mulwa J, on 31st July 2023, on an application, dated 14th April 2024, as follows:

“I have looked at the application and the replying affidavit. The judgement is a money decree.

No security has been offered other than the sum of Kshs. 1 million deposited in court.

- a. I therefore allow the application in terms of Prayer 2, but varied to order that the applicant/Appellant shall pay out 50% of the decretal sum to the Respondent (Rupa Soni) within 30 days of this order.
- b. The balance of 50% to be deposited in an interest earning A/C in the joint names of the parties advocates, also within 30 days.
- c. The appellant shall cause the money deposited in court (Kshs. 1 million) to be released to itself to facilitate compliance with Order (b) above.
- d. The Record of Appeal shall be filed within 60 days of this order.



- e. In default of orders (a),(b) & (c), the stay orders shall lapse.
- f. Mt for directions on the appeal on 31/10/2023.
Orders accordingly.”

- 2. The said order was not based on a consent by the parties to the appeal, and my understanding of it is that it partially disposed of the appeal, to the extent that it ordered that 50% of the judgment amount be paid over to the respondent. I believe it would embarrass me, and Janet Mulwa J too, were I to come to the conclusion that the appellant was not liable at all, by way of negligence or breach of statutory duty of care, for what befell the respondent. Prudence would point towards disposal of what was left outstanding, on the appeal, being handled, to conclusion, by Janet Mulwa J.
- 3. Consequently, I hereby return the file herein, without, regrettably, having written the judgment, for the foregoing reasons. Let the Deputy Registrar, at the Civil Division, Milimani, cause the same to be placed before the Presiding Judge, Civil Division, High Court, Milimani, Nairobi, for further directions. Orders accordingly.

RULING IS DELIVERED VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 24TH DAY OF JUNE 2024

W MUSYOKA

JUDGE

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.

Advocates

Ms. Atieno, instructed by Koceyo & Company, Advocates for the appellant.

Mr. Otieno, instructed by Mucheru Law LLP, Advocates for the respondent.

