



REPUBLIC OF KENYA



KENYA LAW
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**Amola v Kenya Wildlife Services (Civil Appeal E093 of 2022)
[2023] KEHC 24333 (KLR) (25 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24333 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E093 OF 2022
KW KIARIE, J
OCTOBER 25, 2023**

BETWEEN

MWEGENYA EDWARD AMOLA APPELLANT

AND

KENYA WILDLIFE SERVICES RESPONDENT

(Being an Appeal from the judgment and decree in Mbita Senior Resident Magistrate's SRMCC No. E002 of 2021 by Hon. Nicodemus N. Moseti—Senior Resident Magistrate)

JUDGMENT

1. The appellant was the plaintiff in SRMCC No. E002 of 2021 at Mbita Senior Resident Magistrate's Court. The respondent had been sued for special and general damages following injuries the appellant sustained after he was attacked by a hippopotamus while fishing in Lake Victoria. The learned trial magistrate delivered a judgment dated 7th September 2022. He held the appellant 50% liable and awarded Kshs. 120,000 in general damages before factoring in the contribution.
2. The appellant was aggrieved by the said judgment and filed this appeal. The appellant was represented by the firm of Moriasi Osoro & Company Advocates. He raised the following grounds of appeal:
 - a. The learned trial magistrate erred in law and fact by making a finding and holding that the appellant was partly to blame for the attack of a hippopotamus on the public beach along the shore of Lake Victoria.
 - b. The learned trial magistrate erred in law and in fact by disregarding the evidence and submissions of the appellant's counsel heavily relying on the submissions of the respondent counsel and coming out with his own jurisprudence that is not backed by any law.



- c. The learned trial magistrate erred in law and fact by failing to appreciate and apply the law more specifically section 25 of the *Wildlife Conservation and Management Act* which stipulates the mode of payment of compensation by the KWS when a person has been injured by a wildlife.
 - d. The learned trial magistrate erred in law and fact by not appreciating the fact that the applicant was seriously injured by the hippopotamus and deserved to be compensated as per the *Wildlife Conservation and Management Act* and not as per the *Traffic Act*.
 - e. The learned trial magistrate erred in law by apportioning liability on the appellant who was attacked by a hippopotamus while fishing on a public fishing beach where the respondent who is supposed to be responsible for the safety of human fishing and drawing water for domestic consumption abdicated their responsibility by not manning the area.
 - f. The learned trial magistrate erred in law and fact by not appreciating the fact that the appellant had filed a claim form to the Kenya Wildlife Office for compensation and the Kenya Wildlife had refused/ignored and/or failed to pay/compensate him forcing him to file a suit in court to get compensated as per the *Act*.
 - g. The learned trial magistrate erred in law and fact by not appreciating the fact that the appellant was hospitalized for a period of three days and thereafter continued attending an outpatient clinic and had suffered trauma as a result of the attack by the hippopotamus.
3. The respondent was represented by the firm of Benta N. Musima Advocates. The respondent did not file any submissions.
 4. As the first appellate court, I understand my responsibility to carefully review all of the evidence presented on record without having the advantage of witnessing the witness's testimony or demeanor. In accordance with *Selle v Associated Motor Boat Co. Ltd.* [1965] EA 123, I will consider and assess the evidence presented before the trial court and draw my own conclusions on the matter.
 5. The genesis of this case was that as the appellant was preparing to enter the lake to fish, a marauding hippopotamus attacked him ferociously and bit him on the left rib cage and on the pelvis. He became unconscious and was taken to hospital where he was admitted for three days.
 6. During the trial, Joshua Opiyo Ojjo (PW2), a clinical officer from Sori Lakeside Hospital, provided testimony regarding the patient's injuries. He stated that the patient had suffered a deep cut wound on the left iliac region as well as another deep cut wound on the upper thigh.
 7. The defendant called Sergeant Amos Nyaoro (DW1) as their only witness. His evidence was on compensation. He said that they paid in accordance with the provision of the Act.
 8. There was no evidence of contributory negligence. The learned trial magistrate therefore erred in finding the appellant 50% liable. I set aside the finding on liability and substitute it with a finding that the respondent is 100% liable.
 9. An appellate court will only interfere with an award of the trial court in general damages if certain circumstances are satisfied. In *Butt v Khan* [1981] KLR 349 at page 356 Law JA stated:

...an appellate court will not disturb an award of damages unless it is so, inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived a figure which was either inordinately high or low.



10. Section 25 of the *Wildlife Conservation and Management Act* provides guidelines for Compensation for personal injury, death, or damage to property. Subsection 3 (c) states:

The Cabinet Secretary shall consider the recommendations made under subsection (2) and where appropriate, pay compensation to the claimant as follows—

c) in the case of any other injury, a maximum of two million shillings, depending on the extent of injury. [Emphasis added]

11. The appellant argued as if two million shillings were a mandatory award. My understanding of this provision is that injuries under this subsection depending on the extent of injury can only be compensated up to the limit of two million shillings.

12. The authorities cited by both in the trial court and in this court do not assist much on the issue of the quantum of damages. I am of the considered view that the award was inordinately low. Factoring in the evidence of the injuries and the inflation I am compelled to set aside the award of Kshs. 120,000 and substitute it with an award of Kenya shillings three hundred thousand (Kshs. 300,000.00).

13. I therefore allow the appeal with cost.

DELIVERED AND SIGNED AT HOMA BAY THIS 25TH DAY OF OCTOBER 2023

KIARIE WAWERU KIARIE

JUDGE

