



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Wildlife Services v Thirindi (Civil Appeal E068 of 2022)
[2022] KEHC 13297 (KLR) (29 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13297 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E068 OF 2022
TW CHERERE, J
SEPTEMBER 29, 2022**

BETWEEN

KENYA WILDLIFE SERVICES APPELLANT

AND

MWAJUMA THIRINDI RESPONDENT

*(Being an appeal from the judgment and decree in Maua CMCC
NO. 39 of 2017 by Hon. C.K.Obara (SPM) on 09th May, 2022)*

JUDGMENT

1. By a plaint dated March 10, 2017, respondent sought damages as against the respondent for injuries he suffered on April 5, 2014 when she says she was attacked by a hyena.
2. Appellant in a statement of defence dated June 15, 2017 denied the claim and blamed the appellant for moving too close to the wild animals.
3. A consent judgment on liability at 80:20 % in favour of the respondent as against the appellant was entered on May 24, 2017. Thereafter, respondent testified and respondent closed its case without calling any witness.
4. By a judgment delivered on May 9, 2022, respondent was awarded damages in the sum of KES 900,000/- and special damages in the sum of KES 14,761/- which sums were subject to 20% contribution.

The Appeal

5. The appellant being dissatisfied has appealed on the grounds that:
 - a. The trial court award of general damages in the sum of Kshs 900,000 is inordinately excessive and a wholly erroneous estimate of damages payable.



- b. That the trial court enhanced general damages on account of inflation without setting out the rate of inflation
- c. The award on general damages was erroneous and inflated

Submissions By The Parties

- 6. On July 7, 2022, this court directed that the appeal be canvassed by way of written submission which both parties dutifully filed.

Appellant's Submissions

- 7. Appellant by submissions dated and filed on July 7, 2022 holds the view that the court the award of KES 900,000 is excessive and urged the court to reconsider it downwards to KES 400,000/- or KES 500,000/- which they submit would be adequate compensation in the circumstances of this case. Appellant relied on the following authorities which were the same ones cited during the trial.
 - i. *Tabro Transporters Ltd v Absalom Dova Lumbasi* [2015] eKLR where the court on appeal set aside an award for KES 500,000/- and substituted it with KES 400,000/- for blunt trauma to the chest, blunt trauma to the back, blunt trauma to the spinal column, injury to the left leg and fracture of the left tibia and fibula
 - ii. *Soren Peterson & another v Charles Muhavi Singa* [2008] Eklr where the court was of the view that injuries sustained were compound fracture of the tibia and fibula. The rest of the injuries were soft tissue injuries but were extensive. On appeal court reduced the award from KES 500,000/- to KES 400,000/-.
 - iii. *Odinga Jactone Ouma v Moureen Achieng Odera* [2016] eKLR where the court addressed itself to application of reasonable inflation in awarding damages.

Respondent's Submissions

- 8. It was submitted for the respondent that the award of general damages was well founded and court was urged not to interfere with the findings of the trial court. Reliance was placed on *Selle & another v Associated Motor Boat Co Limited & others* [1968] EA 123 and *Margaret T Nyaga v Victoria Wambua Kioko* [2004] eKLR and *Butt v Khan* [1981] KLR 349 where the courts stated an appellate court can only disturb an award of damages if it is inordinately high or low as to represent an entirely erroneous estimate.
- 9. Concerning inflation, respondent relied on *Idi Ayub Omari Shabani v City Council of Nairobi* [1985] eKLR and *Mohamed Mahmoud Jabane v Highstone Butty Tongoi Olenja* [1986] eKLR where the court stated that it was perfectly proper, and right, for a court to take inflation into account when comparing other cases in making an award of damages.

Analysis and Determination

- 10. I have considered this appeal in the light of evidence on record, submissions and cited authorities.
- 11. A report by Dr Nicholas Koome dated October 28, 2016 reveals that Appellant suffered multiple bites on upper limbs, face, torso, lower limbs, fracture of left tibia and fibula and lacerations on back and upper limbs. The doctor noted that the injuries are disfiguring.
- 12. As was rightly observed by the trial magistrate, the respondent suffered comparable injuries to those in the cited authorities.



13. Quantum is a matter of judicial discretion which can only be interfered with if the court is satisfied that a decision is clearly wrong, because the court has misdirected itself or because it has acted on matters on which it should not have acted or because it has failed to take into consideration matters which it should have taken into consideration and in doing so arrived at a wrong conclusion. (See *Mbogo v Shah* (1968) EA 93 and [*Kemfro Africa Limited t/a Meru Express Services \[1976\] & Anor v Lubia & Anor, No 2*](#) [1987] KLR 30).
14. The Court of Appeal in *Stanley Maore v Geoffrey Mwenda* NYR CA Civil Appeal No 147 of 2002 [2004] eKLR settled the principles to be applied in assessing damages and stated that:
Having so said, we must consider the award of damages in the light of the injuries sustained. It has been stated now and again that in assessment of damages, the general approach should be that comparable injuries should, as far as possible, be compensated by comparable awards keeping in mind the correct level of awards in similar cases. (emphasis added).
15. Whereas I agree that the trial magistrate was entitled to take inflation into account, I agree with the submission by the appellant that an increase in the award by about 50% to take account of inflation was not within reasonable limits and a proper estimate of the damage in the circumstances.
16. Accordingly, I am persuaded that this is a suitable case for exercise of discretion to interfere with the trial court's finding. It is therefore hereby ordered:
 - 1) The award of Kshs 900,000/- is substituted with an award of Kshs 500,000/- less 20% contributory negligence.
 - 2) Special damages remain as awarded by the trial court.
 - 3) Appellant is awarded costs of the appeal.

DATED AT MERU THIS 29 TH DAY OF SEPTEMBER 2022

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Appellant - Otieno for Hamilton, Harrison & Mathews Advocates

For Respondent - Ms. Aketch for Vivian Loice Aketch & Co. Advocates

