



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL. NO. 06 OF 2017

KENYA WILDLIFE SERVICES.....APPELLANT

VS

JAMES MIRITI M'LINTARI (SUING ON BEHALF

OF DORCAS KANARIO MIRITI- MINOR).....RESPONDENT

JUDGMENT

The Appellant Kenya Wildlife Service's filed this appeal following Judgment delivered by Hon Wanyaga Resident Magistrate on 19th January 2017 in CMC C.C. No. 211 of 2015 where an award of Kshs 600,000/= was made as general damages.

This award aggrieved the appellants who filed their memorandum of appeal on the 3rd February 2017 on the grounds:-

- 1) That the Learned trial Magistrate erred in law in failing to find that he had no jurisdiction to entertain the claim in light of Section 25(1) of The Wildlife Conservation and Management Act.
- 2) That the Learned Trial magistrate erred in law in failing to give effect to the provisions of section 25(1) of The Wildlife Conservation and Management Act which establishes compensation mechanism for the claim presented before court.
- 3) That the award of the Learned trial Magistrate is inordinately excessive.
- 4) That the Judgment of the trial magistrate was against the law and weight of evidence or record.

Reasons wherefore the appellant prayed that the judgment be set aside and the suit be dismissed, with costs to the appellant.

James Miriti M'Lintari sued the appellant as a friend of his daughter 13 years old Dorcas Kanario who was attacked by stray Leopard on 7th May 2015 outside her father's compound while looking after goats. She said the Leopard attacked goats and then turned on her. The court observed injuries on the girls left eye which appeared swollen. Her left hand was broken. It is the girl's father who responded to her screams and scared away the leopard. The injured was taken to Maua Methodist Hospital where she was admitted for 7 days.

PW2 said the leopard killed 2 of his goats as well as injured his daughter. Treatment notes were produced – Ex P1. An invoice for Hospital bill of Kshs 33138 was also produced ExP2. PW1 said he paid the

entire amount but only travelled receipt for Kshs 18,000/= Ex P3. He also produced OB No. 3/15/2015.

Dr James Kihumba produced P3 form on behalf of his colleague Dr Nicholas Koome who examined PW2 and filled P3 form in which the doctor was of the opinion that the complainant suffered serious injuries necessitating 7 days of inpatient treatment.

Being an appellate court of the 1st calling I have perused the evidence, pleadings and submissions in Maua Chief Magistrates Court C. No. 211 of 2015 and seen that the plaintiff through counsel M/s F.K. Gitonga and Co. Advocates wrote a letter dated 22nd June 2015 to The Director Kenya Wildfire services, which letter was duly received on 25th June 2015 demanding for compensation pursuant to Section 25(1) demanding for compensation but by 19th January 2017.

When the trial court delivered its judgment, there was no acknowledgment of the demand nor even a denial or admission of liability.

The defendants didn't call any witnesses to controvert the claim or plaintiffs averments in the plaint or even evidence in chief Section 19(i) provides that one of the functions of County Wildlife and Compensation Committee shall be to reviewed make appropriate recommendations on claims resulting from loss or damage caused by wildlife for payment of compensation;

There is no evidence that the County Committee has made any recommendations to the Cabinet Secretary to consider for payment or otherwise. In the view of this court although it is not specified how long such considerations should take it is important to note that the appellant having instructed counsels to defend suit on their behalf and even file this appeal have all along been aware of the injuries suffered by the victim herein a child aged 13 years and have ignored and/or neglected to take appropriate action in the circumstances.

It would therefore not be fair and just to unsettle the determination of the trial court based on the provisions of section 25(1) of the Act, sufficient authorities have been cited by the plaintiff/Respondents counsel to support this position.

Concerning whether or not the award of general damages is excessive this is discretionary and the Act provides for a maximum of Kshs 2,000,000/- for injuries. Having not been privileged to observe the injuries personally I would not interfere with the award as it appears reasonable in the circumstances of injuries suffered i.e fracture of the left numerous injury to the chin, injury to the ring and small finger of left upper limb etc.

The Respondents evidence on record was not challenged at all and therefore it is misconceived for the appellant that judgment was against weight of evidence on record.

This appeal cannot therefore succeed. It is dismissed with costs. The trial magistrate should make an order ensuring a reasonable portion of the award of damages deposited in a fixed deposit account for the minor when she turns 18 years old; the interest accrued being used for upkeep. Orders accordingly.

HON. A.ONG'INJO

JUDGE

Ruling Signed, Delivered and Dated this 16th of Nov 2017.

In the presence of:

C/A:

Appellant: Mr Munene Advocate holding brief for Kaimba for Application

Respondent: M/S F.K Gitonga Advocate – N/A

HON. A.ONG'INJO

JUDGE

Mr Munene Advocate

I pray for stay for 30 days.

Orders Application to stay to be made formally and served upon Respondents counsel for consideration

HON. A.ONG'INJO

JUDGE