



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1132 OF 1996

PETER WASONGA LAKTAR.....PLAINTIFF

V E R S U S

BOMAS OF KENYA LIMTIED..... 1ST DEFENDANT

KENYA WILDLIFE SERVICES 2ND DEFENDANT

R U L I N G

This is a case where the Plaintiff a former employee of Bomas of Kenya Limited is suing his employer and the Kenya Wildlife Services Limited for damages in negligence. He was mauled extensively by a wild leopard on 14.1.1995 when he was working as a security guard at Bomas.

At the hearing of this case on 14.5.03, Mr. Bundi for the second Defendant raised a preliminary point to the effect that this case did not lie in view of Section 62 of The Kenya Wildlife (Conservation and Management) Act Cap 376 which requires that all such claims be made first to a committee for compensation. But Mr. Wakiaga, Advocate for the Respondent opposed the application saying the Act does not bar the suit and is not mandatory but merely directive.

The issue is one of construction and the point is whether the words of the statute bar any claim for Wildlife injury to be referred to committee exclusively and may not be brought to Court or whether there are any conditions.

SECTION 62(1) OF THE KENYA WILDLIFE (CONSERVATION AND MANAGEMENT) ACT
says ; -

“where any person suffers any bodily injury from or is killed by any animal, the person injured or in the case of a deceased person, any other person who was dependent upon him at the date of his death may make application to a district committee established by this section for the injury or death;

**PROVIDED that no compensation shall be claimable where the injury or death occurred – a)
in the course of any conduct on the part of the person concerned which would constitute an offence under this Act: -**

2) for the purposes of receiving and considering applications under subsection (1) and of

awarding compensation thereunder, there is hereby established in each district a committee which shall consist of : -

(a) the District Commissioner, who shall be the Chairman of the Committee

c) ...

d) ...

e) ...

f) ...

(g)

“A District Commissioner may co-opt any person whom it considers may assist if either generally or for the consideration of any particular case of compensation awarded under this section shall be payable out of moneys provided by Parliament for that purpose.”

The question is whether this section bars any claim being taken to Court by an injured person. The word used is “may” and that means it is directory. Normally when the word “may” is used it means it is not compulsory. It is enabling word merely and only confers capacity, power or authority.

COTTON LJ said in RE NICHOLS vs. BAKER 59 LJ Ch. (663) that; -

“‘May’ can never mean ‘must’ so long as the English language retains its meaning; but it gives a power and then it may be a question in which cases, when any authority or body has a power given to it by the word may it becomes a duty to exercise that power..”

It appears to me that there is a discretion for the injured person who may decide to sue in Court and not to make application to the committee. Further, it may be unusual that statute may bar a person injured from having access to the Courts. Civil Courts are courts of general jurisdiction and people should have access to them as a matter of course.

There is a presumption of law that civil Courts have jurisdiction to decide all questions of civil nature. The exclusion of the jurisdiction of the Court to decide such matters must be clearly expressed. This is a fundamental rule and cannot just be easily implied. It has been held in Indian Court that provisions conferring jurisdiction on authorities and tribunals other than civil courts are to be strictly construed.

Ref. KASTURI & SONS vs. SALIVATES WAREN AIR 1964 SC 444

For these reasons, I think Section 62 of the WILDLIFE (CONSERVATION AND MANAGEMENT) ACT CAP 376 does not bar civil Courts from assuming jurisdiction over such claims.

Preliminary objection, therefore fails.

DATED at Nairobi this 23rd day of May 2003.

A.I. HAYANGA

JUDGE

Read to: -

