



**JO (Suing as a Legal Representative of VA a Minor) v Kenya Wildlife Services  
(Civil Appeal E032 of 2023) [2024] KEHC 6613 (KLR) (5 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6613 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL APPEAL E032 OF 2023**

**KW KIARIE, J**

**JUNE 5, 2024**

**BETWEEN**

**JO (SUING AS A LEGAL REPRESENTATIVE OF VA A MINOR) .... APPELLANT**

**AND**

**KENYA WILDLIFE SERVICES ..... RESPONDENT**

*(Being an Appeal from the judgment and decree in Homa Bay Chief Magistrate's  
CMCC No. E005 of 2021 by Hon. J.S. Wesonga–Principal Magistrate)*

**JUDGMENT**

1. JO , suing as a legal representative of VA , a minor, the appellant, was the plaintiff in CMCC No. E005 of 2021 at Homa Bay Chief Magistrate’s Court. The respondent had been sued for special and general damages following injuries the appellant sustained after the minor was attacked by a hippopotamus while fetching water from Lake Victoria. The learned trial magistrate delivered a judgment dated the 14<sup>th</sup> day of April 2023. She apportioned liability at 50:50 and awarded Kshs. 400,000.00 in general damages before factoring in the contribution.
2. The appellant was aggrieved by the judgment and filed this appeal. The firm of Moriasi Osoro & Company Advocates represented him. 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/minor was partly to blame for the attack of a hippopotamus on a public beach along the shore of Lake Victoria, ignoring the supreme court of Kenya authority in the case of KWS vs Rift Valley Agricultural Contractors Ltd (2018) eKLR, where the court held that by dint of section 3A of the wildlife Act liability for damages occasioned falls on it.
  - b. The learned trial magistrate erred in law and fact by disregarding the evidence and submissions of the appellant/minor counsel and heavily relying on the judgment of a High Court judgment whose jurisdiction is lower than the Supreme Court of Kenya.



- c. The learned trial magistrate erred in law and fact by failing to appreciate and apply the law as it is, more specifically, section 25 of the Kenya Wildlife Services Act, which stipulates the mode of payment of compensation by the KWS when a wildlife has injured a person.
  - d. The learned trial magistrate erred in law and fact by not appreciating that the appellant/minor was seriously injured by the hippopotamus and deserved compensation as per the [Kenya Wildlife Act](#) and not 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 beach. The respondent, who is supposed to be responsible for the safety of humans 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 her 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/minor was hospitalized for one month (from 6th May 2017 to 7<sup>th</sup> June 2017) and, after that, continued attending the outpatient clinic and had suffered trauma as a result of the attack by the hippopotamus.
3. The respondent was served, but they did not file any responses or 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 demeanour. I will be guided by the decision in *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, consider and assess the evidence presented before the trial court and draw my conclusions.
  5. The appellant had gone to fetch water at the lake when the unfortunate incident occurred. The minor sustained a cut wound on the left posterior medial thigh and the left hand. She was awarded Kshs. 400,000.00 in general damages, which she argues is inordinately low. An appellate court will only interfere with an award of the trial court in general damages if certain circumstances are satisfied. In [Butt vs Khan](#) [1981] KLR 349 on 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.
  6. The appellant's argument that the learned trial magistrate approached the issue as if it arose from a road traffic accident is untenable. When awarding compensation, the cause of the injuries is immaterial. The severity of the injuries guides courts.
  7. Section 25 of the [Wildlife Conservation and Management Act](#) provides guidelines for Compensation for personal injury, death, or property damage. 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]
8. This section prescribes the maximum compensation the Cabinet Secretary awards. This does not mean it must be the minimum award, as the appellant contended. Secondly, this section does not limit the court on how much to award. Each case must depend on its circumstances.
9. The award cannot be viewed as low in this case. The appeal is dismissed with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 5<sup>TH</sup> DAY OF JUNE 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

