

**IN THE HIGH COURT OF TANZANIA  
DAR- ES -SALAAM DISTRICT REGISTRY  
AT DAR ES SALAAM**

**CIVIL CASE NO 42 OF 2016**

**SAID SULTAN NGALEMWA..... PLAINTIFF**

**VERSUS**

**ISACK BOAZ NG'IWANISHI.....1<sup>st</sup> DEFENDANT**

**CLEMENT GODFRAY MALLYA .....2<sup>nd</sup> DEFENDANT**

**VICENT DONALD.....3<sup>rd</sup> DEFENDANT**

**P/S MINISTRY OF NATURAL**

**RESOURCES & TOURISM.....4<sup>th</sup> DEFENDANT**

**ATTORNEY GENERAL.....5<sup>th</sup> DEFENDANT**

**JUDGEMENT**

30<sup>th</sup> November 2020 & 15<sup>th</sup> January 2021

**A.K Rwizile. J**

In 2013, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were game wardens working in the Selous game reserve. The North-East Zone of the reserve is in contact with Rufiji District within Pwani/Coastal Region, where the plaintiff lived. The plaintiff among other people used to do fishing at the Utunge fishpond. Around the same area, hunting tourism takes place.

On 2<sup>nd</sup> September 2013, while at the edge of the pond preparing to stage a fishing undertaking, the plaintiff was shot by game wardens. He got injured at his leg and hand. He managed to pull himself away from the place towards his home. He identified the 1<sup>st</sup>,

2<sup>nd</sup> and 3<sup>rd</sup> defendants. They were arraigned and convicted of the offence of wounding by the District Court of Rufiji. The plaintiff therefore filed this action claiming for;

- i. The sum of 40,190,000/= against the defendants for compensation for physical injury and economic loss
- ii. General damages to be assessed by the court
- iii. Interest at the court rate from date of judgement
- iv. Costs incidental to the suit and
- v. Any other relief which this court may deem fit and just to grant.

The plaintiff appeared without representation. The 1<sup>st</sup> defendant also appeared in person. For the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, the matter was heard *ex parte* against them since they did not appear to file the defence and defend the case. This followed publication of the summons in the Mwananchi Newspaper dated 21<sup>st</sup> October 2017. The 4<sup>th</sup> and 5<sup>th</sup> defendants were represented by Mr. Kamihanda learned State Attorney. Before hearing, parties agreed on the issues as follows;

- i. Whether the injuries on the plaintiff were negligently caused by the defendants*
- ii. Whether there was contributory negligence on party of the plaintiff*
- iii. Whether the plaintiff suffered damages*
- iv. To what reliefs are the parties entitled to*

To properly answer the issues raised, the plaintiff testified without calling other witnesses. For the defence, it was the 1<sup>st</sup> defendant who testified on his behalf, while the 4<sup>th</sup> and 5<sup>th</sup> defendants called one witness namely Shaban Chande (Dw2).

Having gone through the evidence, it is important to note that there is not dispute that the plaintiff suffered injuries as the result of the gun shots. It is also clear from his evidence that he was shot by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, as per exhibit P1, which is the judgement of the District Court of Rufiji in Criminal Case No. 118 of 2013. The same did so as game wardens in the Selous game reserve. The 1<sup>st</sup> defendant (Dw1), denies to have committed that offence despite not disputing the contents of the judgement. He does not therefore admit negligence on his part.

This being an action arising from negligence, four things must be imminent in the plaintiff's case, **one** that the defendants had a duty of care towards the plaintiff. This however has to depend on the peculiar circumstances of the case. **Second**, it is by the actions of the defendants that the plaintiff actually suffered injuries. **Third**, that the defendants' legal duty towards the plaintiff was breached by the defendants' actions or omissions and **last** that the plaintiff suffered damages due to the defendants' actions.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants as the record shows were game wardens at the Selous game reserve. The plaintiff has testified so and the first defendant did not dispute the fact. There is evidence also that the plaintiff was shot by the three persons in the game reserve. Although, the plaintiff did not in actual fact state clearly how the negligent acts were committed by the defendant but what he has pleaded and testified shows with certainty that the same committed the acts by design and this is breach of duty towards

the plaintiff. The same being responsible to keep security within the reserve, they were duty bound to do so not only to wild animals and tourists but also to the plaintiff and such people coming for fishing.

From the foregoing, it is crystal clear that the four elements as above named have been proved. Having so held, I have to also say, the first issue has been answered in the affirmative.

The second issue, is easy to answer. There is no any evidence showing that the plaintiff went in the place without license. The plaintiff actually, told this court how he met the game wardens and showed them his permit to fish. These facts were evasively denied by the 1<sup>st</sup> defendant. He did not even admit to have been in contact with the plaintiff. As I said before, exhibit P1 which is a judgement proved that it was the 1<sup>st</sup> defendant and the fellow game wardens that shot him. This also proves that the second issue has to be answered in the affirmative, as I hereby do.

The third issue is about whether the plaintiff suffered damages. Normally, damages are awarded either in tort or for breach of contract. The matter arises out of tort of negligence as previously stated. Damages in monetary terms as claimed by the plaintiff are usually awarded to one who suffered loss or harm. The plaintiff was shot at his leg and his hand. Exhibit P1 also substantiates his testimony.

Without mincing words, I would hold that he suffered damages which should be compensated. This takes me to the crucial point of what amount of damages is the plaintiff entitled.

Of course, the plaintiff has claimed for damages under two separate heads; 40,190,000/= for physical injury and economic loss and general damages. On the second head, he was categorical that the same will be assessed by the court. I take it that, the claim under the first head is for specific damages. I think so because damages whether liquidated or otherwise may be in two forms; specific or general. The distinction between the two was shown by Lord Macnaghten, in the case of **STROMS BRUKS AKTIE BOLAG v. HUTCHINSON** [1905] AC 515 @525-526

*'General damages' are such as the law will presume to be the direct natural or probable consequence of the action complained of. 'Special damages' on the other hand, are such as the law will not infer from the nature of the act. They do not follow in ordinary cause. They are exceptional in character and therefore they must be claimed specially and proved strictly'*

I am now in the position to hold that the plaintiff on his first claim did not prove the amount of 40,190,000/= claimed for physical damages and economic loss. There is no such evidence since as said, specific damages though pleaded must be proved. This is the law which he ought to strictly comply with (see the case of **STRABAG INTERNATIONAL (GMBH) VERSUS ADINANI SABUNI**, CIVIL APPEAL NO. 241 OF 2018 (CA Unreported) at page 19. Secondly, the plaintiff is entitled to general damages to be assessed. Here, it is a measure of suffering that the plaintiff went through. The plaintiff testified he was shot three times, two on the leg and one at the hand. He walked three days before he arrived at the village for medical care. Definitely, he suffered injuries as I said before, worth compensation.

In the final analysis, I enter judgement for the plaintiff against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants who are responsible for their negligent acts that caused damages to the plaintiff. The plaintiff therefore is to be paid general damages assessed at 10,000,000/=.

He also should be paid costs of this case.

**A.K. Rwizile**

**JUDGE**  
**15.01.2021**



Recoverable Signature

X



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Signed by: A.K.RWIZILE

