



**Dahir (Suing as next of kin of Sahra Mohamed) v Kenya Wildlife Service & another
(Tribunal Appeal 33 of 2022) [2023] KENET 208 (KLR) (Civ) (18 April 2023) (Ruling)**

Neutral citation: [2023] KENET 208 (KLR)

**REPUBLIC OF KENYA
IN THE NATIONAL ENVIRONMENT TRIBUNAL - NAIROBI
CIVIL**

TRIBUNAL APPEAL 33 OF 2022

**MOHAMED S BALALA, CHAIR, BAHATI MWAMUYE, WAITHAKA
NGARUIYA, KARIUKI MUIGUA & WINNIE TSUMA, MEMBERS**

APRIL 18, 2023

BETWEEN

**MOHAMED HANSHI DAHIR (SUING AS NEXT OF KIN OF SAHRA
MOHAMED) APPELLANT**

AND

KENYA WILDLIFE SERVICE 1ST RESPONDENT

**MINISTERIAL WILDLIFE CONSERVATION AND COMPENSATION
COMMITTEE 2ND RESPONDENT**

RULING

1. The Appellant herein filed a Notice of Appeal dated 20th September 2022 in which he sought to set aside a decision of the Respondents who rejected his claim for compensation arising from the death of Sahra Mohamed Hanshi who suffered death after being eaten by a crocodile as she fetched water at river Tana in Ijara Sub County.
2. The Appellant stated that he is the father to the deceased child who was 15 years of age as at the date of the accident. According to the Appellant's affidavit on record, he states that on 12th August 2015 at Masalani in Ijara Sub County at around 5 p.m while fetching water at river Tana, his daughter Sahra Mohamed Hanshi was attacked by a crocodile and since then her whereabouts are not known. In the absence of any other evidence of the death of the child such as recovery of her corpse or skull and in the absence of any other evidence to the contrary of her death, the Appellant made an application for presumption of his daughter's death. In his view, the circumstances surrounding his daughter's death leave no doubt that she must have died in the attack by the crocodile.



3. The Claim is supported by the Chief-Gababa Location who wrote two letters on two separate occasions and claimed that the deceased went to fetch water at River Tana on 12th August 2015 in the company of other ladies and was attacked and killed by a crocodile and her corpse was not found as she was eaten away by the said reptile.
4. On 22nd July 2020, the Kenya Police Commander Masalani Ward, wrote to the officer in charge of the Kenya Wildlife Service, Ijara Sub County and confirmed that a report on the incident was made to Masalani Police Station vide OB No 24/12/08/2015 at 1800 hours and upon conducting a search of the body of the deceased through the help of the Kenya Police and the local divers for two days without success, it was presumed that the body must have been eaten by the crocodile hence no post mortem was carried out. There was opened an inquest file No. 2/2015 but nothing came out of it in connection with finding the body of the deceased.
5. In its Reply to the Appeal, the 1st Respondent reiterated that the lack of a post mortem report as well as the lack of an inquest report were proper reasons for the rejection of the Claim. On the basis of the two grounds, the 1st Respondent pleaded that it will raise a preliminary objection that the Appellant lacked locus standi to institute the Appeal.
6. Upon laying sight on the Reply to the Appeal, the Tribunal ordered the 1st Respondent to first argue its objection to the jurisdiction of the Tribunal on the grounds of the Appellant's lack of locus standi. The 1st Respondent filed its submissions on the said issue but the other parties did not file theirs in spite of having been allowed time to file the same.
7. The Tribunal had due regard to the submissions filed by the 1st Respondent in this matter. In its submissions to the Tribunal, the 1st Respondent cites section 118 A of the Evidence Act which states as follows,

“Where it is proved that a person has not been heard of for seven years by those who might be expected to have heard of him if he were alive, there shall be a rebuttable presumption that he is dead.”
8. The Appellants further relied on section 386 (d) of the Criminal Procedure Code to argue that in a case where a person is thought to be dead, the police should report to the nearest Magistrate empowered to carry out inquests and at the lapse of the inquest, the court should order the Registrar of Deaths to make an appropriate entry in the Register and issue a certificate of death based on the presumption of death of the person. The 1st Respondent argues that the Appellant has not furnished this Tribunal with such court orders hence the plea of presumption of death is not available to him thus depriving him of locus standi in this Appeal.
9. In his bundle of documents, the Appellant filed a letter dated 22nd July 2020 authored by Mr. Michael M. Munyalo (C.I) who signed out as the Kenya Police Commander of Masalani Ward. The said letter indicate that an inquest file number 2/2015 was opened in relation to this case but nothing had come up in connection with the finding of the body of the deceased.
10. The circumstances of the Appeal before the Tribunal are that the deceased was not just reported as missing and was believed to be dead. The conclusion of the fact of the deceased's death is supported by the Appellant, the Chief Gababa Location and the Police Commander – Masalani Ward who actually carried out their investigations in the matter and concluded that the deceased was eaten by the crocodile as she fetched water at River Tana. There is no legal requirement whatsoever that a death by way of an accident such as the one reported in this matter must be processed through an inquest as to require a



Court Order as the basis for locus standi as pleaded by the Respondent. In any event, the Kenya Police returned a verdict that there was nothing forthcoming from the said inquest.

11. Considering the above, we find that the 1st Respondent has misapprehended the contents of section 386 of the Criminal Procedure Code on this matter and we hold that the Appellant had locus standi to institute the current Appeal before the Tribunal and we proceed to make our orders as follows:

Orders

- a. The Tribunal finds that the Appellant has locus standi to institute the Appeal dated 20th September 2022.
- b. The Tribunal to fix the matter for directions on the disposal of the Appeal and notify the parties.
- c. The Appellant did not file any submissions to the objection thus each party shall bear own costs.

DATED AND DELIVERED AT NAIROBI, THIS 18TH DAY OF APRIL 2023.

MOHAMMED BALALACHAIRPERSON

BAHATI MWAMUYE.....MEMBER

WAITHAKA NGARUIYA.....MEMBER

KARIUKI MUIGUA.....MEMBER

WINNIE TSUMA.....MEMBER

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