**Siree v Lake Turkana El Molo Lodges Ltd**

**Division:** Court of Appeal of Kenya at Nairobi

**Date of judgment:** 28 May 2000

**Case Number:** 229/98

**Before:** Omolo, Shah and Owuor JJA

**Sourced by:** LawAfrica

**Summarised by:** H K Mutai

*[1] Damages – Special damages – Loss of profits – Continuing damages – Failure to fully plead loss of*

*profits – Amendment of plaint required – Award of loss of profits by trial court under the head of general*

*damages – Whether the Respondent was entitled to recover special damages not pleaded.*

*[2] Public Office – Abuse of – Closure of lodge by government officer – Application for damages –*

*Whether the officer was empowered to close the lodge – Whether the government was liable for his*

*actions.*

**Editor’s Summary**

On 2 April 1990, the First Appellant, the Loiyangalani Division district officer, directed the local police commander to close the Respondent tourist lodge and ensure that it remained closed until further notice. In a letter to the lodge he gave the reason for the closure as being that its proprietor had failed to pay various rents and fees and was not in possession of certain statutorily required licences. The lodge responded promptly and, in a letter dated 5 April, gave full details of its compliance with all the statutory requirements it was obliged to meet. Later that year, on 29 October, the District Officer wrote to the Marsabit District Commissioner detailing a long list of grievances against the lodge and recommending that its liquor licence not be renewed. The lodge thereafter commenced proceedings against the District Officer and the Attorney-General seeking damages on the grounds that the closure of the lodge was wrongful, arbitrary and unlawful. At the hearing of the suit the District Officer testified that during a visit to collect funds from the lodge he had noticed that various licences were either not displayed or unavailable. He had then ordered the closure of the lodge to pressure it into obtaining the licences. He further claimed that as a District Magistrate III he was empowered to close the lodge. The managing director of the lodge testified on its behalf and produced a total of eleven licences proving that he had complied with the relevant laws. The trial Judge found the Appellants liable as the closure was wrongful and done without any reasonable cause and ordered them to pay the Respondent KShs 72 340 890,50. The Appellants appealed claiming that the trial Judge erred in finding them liable and that in the circumstances, the District Officer, as an employee of the government, was entitled to close down the lodge.

**Held** – The various licensing statutes governing the operations of a lodge such as the Respondent’s, to wit, the Trade Licensing, the Hotels and Restaurants, the Liquor Licensing and the Local Government Acts, contained provisions regarding what procedures were to be followed by the relevant authorities in the event of non-compliance with the requirements therein. None of those statutes empowered the District Officer to close down an operation. Accordingly, in acting as he did, the District Officer not only exceeded his authority, he also misused his powers and behaved like a village tyrant. Since his actions were purportedly done on behalf of the government, the grounds of appeal relating to liability failed. When damages could be calculated to a cent, they ceased to be general in nature and had to be claimed as special damages. Damages for loss of profits were classified as special damages and as such, had to be specifically pleaded and proved; *Sande v Kenya Co-operative Creameries Ltd* applied. Where a plaintiff claimed loss of profits on a continuing basis, he was obliged to amend the plaint at or before the time of hearing to quantify and claim those damages. In this instance, the trial Judge erred in awarding the Respondent damages for claims that it had not specifically pleaded and those awards would be disallowed. *Per curiam*: The circumstances of this case would have justified the award of punitive or exemplary damages but, as those had not been claimed, they could not have been awarded.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Coast Bus Services Ltd v Danyi and others* [1992] LLR 318 (CAK)

*Eldama Ravine Distributors Ltd and another v Chebon* civil appeal number 22/1991 (