ANIMALS BEHAVING BADLY: AN ANGRY OSTRICH AND A R6.75M CLAIM

Your dog bites the neighbour or a visitor is hurt running away from an angry ostrich on your property – can you be sued?

A recent SCA (Supreme Court of Appeal) decision illustrates.

R6.75m claimed for a snapped Achilles tendon

A visitor was invited to a farm (roamed by a variety of game including ostrich, giraffe and buck) to assist in capturing wildebeest.

When he ran from an ostrich that he thought was chasing him, he fell and snapped his Achilles tendon.

He sued for damages of R6.75m and the High Court held the farm owner liable for whatever losses he could prove.

The SCA overturned this decision, finding that the visitor had, despite his denials, previously teased the ostrich on several occasions and made it angry. On the day in question he had also, found the Court, thrown a stone at the bird whilst it was peaceably minding its own business, and this had provoked the chase.

That provocation, held the Court, provided the farmer with a good defence to the visitor’s claim.

But be careful - you face liability without fault!

The Court in reaching its decision analysed how our modern courts have applied and interpreted several ancient Roman laws dealing with the question of liability for damage/injury caused by animals (domesticated and wild).

Lawyers of an academic bent will doubtless spend many happy hours analysing the SCA’s judgment, but unless you are interested in learning about the theory and ins-and-outs of arcane concepts like *actio de pauperie, edictum de feris, qua vulgo iter fit* and the like, best confine yourself to understanding these practical issues –

Let’s start with the really risky part for animal owners. You are “strictly liable” (i.e. you are liable without any fault or negligence on your part) for the consequences of your animal’s behaviour. In the case of a domestic animal (like a dog) you have a bit of protection – you are liable only if the animal acted from “inward excitement or vice” and against its natural behaviour. If it’s a wild animal there is no such restriction.

You do also have several defences you can raise, those relevant in this case being that the victim contributed to his/her own loss either through a deliberate action (like provoking a chase or an attack), or through contributory negligence. Take advice in need on the other defences you may be able to shelter behind.

You also risk being sued under the normal principles of liability for negligence.

How to protect yourself

Bottom line - protect yourself by reducing the risks your animals pose to others, and check that your insurance will cover you if you are sued. Disclaimers of liability are also a no-brainer for commercial operations like game farms and reserves, but they need careful wording to afford any hope of protection.