



**China Jiangxi International (K) Limited v Munyithya (Civil Appeal
E152 of 2021) [2023] KEHC 1399 (KLR) (27 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E152 OF 2021
JM CHIGITI, J
FEBRUARY 27, 2023**

BETWEEN

CHINA JIANGXI INTERNATIONAL (K) LIMITED APPELLANT

AND

JOHN MUMO MUNYITHYA RESPONDENT

*(Being an appeal from Judgment of Chief Magistrates Court at Thika Law Courts.
(Hon. Ekhubi) delivered on 29th July, 2021 in Thika CMCC No. 391 of 2016)*

JUDGMENT

Brief Background

1. On June 3, 2014, The Respondent was attacked by the Appellants four guard dogs as a result of which he sustained injuries which led to his hospitalization.
2. The parties settled liability through a consent that apportioned liability 80:20 % in favour of the Respondent.
3. The matter proceeded into hearing on the issue of quantum of general damages. The court rendered its judgment in favour of the Respondent on July 28, 2021 for Kshs.2,000 special damages, kshs 602, 000 for general damages less 20 % plus costs and interest.
4. Being dissatisfied with the award of general damages, the Appellant has filed the instant appeal.

Analysis and Determination

5. This being a first appeal the court is obliged to reconsider and re-evaluate the evidence adduced in the trial court and to draw its own conclusions on the same.



6. In the case of *Selle & another vs Associated Motor Boat Co Ltd* [1968] EA the court held as follows: -

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

7. The principles guiding an appellate court in determining whether to interfere with an award of general damages have also been enunciated in the case of *Butt vs Khan* [1981] KLR 349, wherein Law, J A observed that:

“An appellate court will not disturb and 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 at a figure which was either inordinately high or low.”

8. The Appellant relied on the Court of Appeal case of *Catholic Diocese of Kisumu v Sophia Achieng Tete* Civil Appeal No 284 of 2001 (2004) 2KLR 55 as quoted in *Mumbi Ngumbi Kasamu (Suing as the legal representative of the Estate of Boniface Mulinge Mbithe (deceased v Mutua Mulaa & Another* (2019) eKLR stated as follows:

“It is trite law that the assessment of general damages is at the discretion of the trial court and an Appellate Court is not justified in substituting a figure of its own for that awarded by the Court below simply because it would have awarded a different figure if it had tried the case at first instance. The Appellate Court can justifiably interfere with the quantum of damages awarded by the trial court only if it is satisfied that the trial court applied the wrong principles, As by taking into account some irrelevant factor or leaving out of account some relevant one) or misapprehended the evidence and so arrived at a figure so inordinately high or low as to present an entirely erroneous estimate”

9. The Appellant also relied on the case of *Kim Pho Choo v Cam dem & Islington Area Health Authority* (1979) 1 All ER 332 cited in the case of *Nancy Oseko v Board of Governors Masai Girls High School* (2011) eKLR where the court said that:

In assessing damages, the injured person is only entitled to what is in the circumstances, a fair compensation, for both the plaintiff and the defendant at.

10. On its part, The Respondent relied on the case of *Anthony Maina Mwaniki v Munyara Estate*, Civil Appeal No.493 of 1999,D.KS Aganyanya J stated that the principle on which an appellate court will interfere with the lower court’s assessment of damages are now well settled in Kenya. Kneller J.A as he was then, said in *Robert Msioki Kitavi v Coastal Bottlers Ltd* (1985) 1KAR 981 AT 895 (1982-88) 1 KAR 891 at page 895)

“The court of Appeal in Kenya, then should as its fore runners did, only disturb an award of damages when the trial judge has taken into account a factor he ought not to have taken into account or failed to take into account something he ought to have taken into account or the award is so low or so high that it amounts to an erroneous estimate.”



11. This is a first appeal and this Court is has the power to review, reevaluate and analyze the evidence on record and arrive at its independent conclusions.
12. I have considered the nature of the dog attack, the nature of the injuries sustained as highlighted in paragraph 6 and 7 of the medical report of Dr.R.A.O. Wandugi dated November 17, 2015.I have also considered the age of the authorities that parties relied on as well as the inflationary trend of the Kenya Shillings and I am of the view that the trial court award of Kshs 600,000/= was inordinately high as compensation for general damages in the circumstances.
13. Looking at the injuries in the cases cited by both sides I observe that the Respondent has cited authorities wherein the injuries are more severe than those sustained by the Appellant herein. On its part The Appellant relied on authorities that are of less serious in nature.
14. I have taken judicial notice of the fact that the attack was by four guard dogs. These are not regular dogs. Guard dogs are usually trained to attack their enemy as they guard their master's property.
15. The attack was not by one dog, it was by four guard dogs. No doubt this must have occasioned a lot of trauma and pain on the Respondent. I have considered that he was admitted in hospital for one month. This must be because of the severity of the injuries.
16. I am of the view that the sum of Kshs 400,000/ would be a reasonable compensation for the Respondent.
17. Orders;
 1. Liability shall be apportioned at 80%:20% in favour of the Respondent.
 2. Special damages of Kshs 2,000.
 3. General damages for injuries sustained by the Respondent at Ksh 400,000/=.
 4. Costs of the lower court to the Respondent and of the appeal to the Appellant.
 5. Interest.

DATED AND DELIVERED AT KIAMBU THIS 27TH DAY OF FEBRUARY, 2023.

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JOHN CHIGITI (SC)
JUDGE

