



**China Quinjian International Group v Kariuki (Civil Appeal E052 of 2022)
[2023] KEHC 26046 (KLR) (Civ) (30 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 26046 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E052 OF 2022

DAS MAJANJA, J

NOVEMBER 30, 2023

BETWEEN

CHINA QUINJIAN INTERNATIONAL GROUP APPELLANT

AND

GEORGE MWANGI KARIUKI RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. J. Omollo, Adjudicator/RM dated 13th January 2022 at Milimani, Small Claims Court Case No. 1051 of 2021)

JUDGMENT

1. The cause of the suit in the Small Claim's Court was a dog bite. The respondent in his claim pleaded that he was employed as a driver delivering mixed cement at the appellant's premises and he was attacked by dogs when he disembarked from the lorry. He later said in his testimony in court that he was not the appellant's employee but a driver of a truck belonging to one of the companies contracted by the appellant.
2. The appellant on its part pleaded that the respondent was not its employee and that he went on its premises to look for casual work. That he was bitten by the dog on his way out from the premises. He suffered injuries in form of a dog bite, wounds on the right lower leg and lacerations on the leg. He was taken to hospital by an agent of the Appellant where he was treated.
3. After hearing the claim, the adjudicator found the appellant fully liable and awarded the respondent Kshs. 200,000.00 as general damages. The adjudicator observed that the respondent was on the premises legally and not as a trespasser. That the appellant, knowing that it kept fierce dogs on the premises, ought to have restrained the dogs so that they do not harm visitors.



4. The appeal challenges the trial court's finding on liability and damages in the memorandum of appeal dated February 11, 2023. The appeal was disposed of by way of written submissions which I have considered.
5. In dealing with appeals from the Small Claims Court, this court's jurisdiction is limited by section 38(1) of the [Small Claims Court Act, 2016](#) which provides that 'A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.' A court limited to matters of law is not permitted to substitute the subordinate court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them ([John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others](#) [2018] eKLR).
6. It is not in dispute that the respondent suffered the dog bites while at the appellant's premises. The injuries suffered by the respondent as particularized in the medical report of Dr Cyprianus Okoth dated December 7, 2020 have also not been disputed. The appellant submits that the respondent was not an employee of the appellant but only a visitor who had gone to seek employment at the appellant's place hence it is not liable. It seeks to rely on the common law maxim of *volenti non fit injuria* which holds that a person who knowingly and voluntarily risks danger cannot recover for any resulting injury.
7. I reject the appellant's submission because the appellant did not prove that the respondent knowingly and willingly risked danger. The appellant did not establish that respondent was alerted about the existence of the fierce dogs on the premises. The appellant did not controvert the assertion by the respondent that he was allowed to access the premises. Whether the respondent was an employee of the appellant delivering mixed cement or a visitor seeking employment is immaterial. He was not an illegal trespasser on the premises. DW 1, in his testimony, confirmed that the premises were guarded by security guards and trained dogs. He further stated on cross examination that there was tight security at the premises and no stranger could gain access unless they were allowed by security and only after having stated the reason for their visit.
8. I agree with the adjudicator's finding that the appellant being in possession of dogs on its premises owed a duty of care to any person legally admitted on the premises. The appellant had a duty to secure the dogs as long as visitors were being allowed into its premises. This was the same conclusion the court arrived at in [Moses Thuo v Joseph Ojuang](#) [2017] eKLR.
9. In the case of [Iqbal Manji & 2 others v Richard Kipkoech Ngeno](#) [2017] eKLR, the court sustained the trial court's finding of 90:10 liability in favour of the respondent on the ground that there was a notice of the presence of dogs in the compound thus the respondent ought to have waited for the 'clear' before getting into the compound. In the present case, the appellant did establish that there was a notice alerting any visitor to the premises of the presence of dogs. The present case can also be distinguished from [Joseph Waweru v James Marcus Vernom T/A Kiambethu Farm](#) [2012] eKLR where the appellant was found 50% liable because he knew about the presence of fierce dogs on the premises but ignored the respondent's advice to engage an escort. All in all, in the present case, there is no evidence that the respondent was made aware of the dogs before being allowed on the premises.
10. Turning to the issue of quantum of damages, it is established that the appellate court cannot interfere with the discretion of the trial court to award damages unless it is shown that in arriving at the sum awarded, the court acted on wrong principles or misinterpreted the evidence and arrived at a figure that is totally erroneous as an estimate in damages (see [Bashir Ahmed Butt v Uwais Ahmed Khan](#) [1982 -88] KAR 5).



11. The trial Court awarded Kshs. 200,000.00 as general damages on the basis of the injuries set out in the medical report of Dr. Okoth Okere dated December 7, 2020. The court also considered the authorities supplied by the parties. The Respondent quoted *Iqbal Manji & 2 others v Richard Kipkoech Ngeno* (*supra*) to support his proposal for Kshs. 500,000.00. The court in that case awarded Kshs. 450,000.00 for injuries on the scrotum, left leg, left wrist joint and scratch wound on the left chest wall. The Appellant called for an award of Kshs. 40,000.00 and relied on *Joseph Waweru v James Marcus Vernom T/A Kiambethu Farm* (*supra*), where the court upheld an award of Kshs. 30,000.00 for a bite on the buttocks.
12. The trial court relied on *G4S Security Services (K) Ltd v Fred Wanyonyi Simiyu Mutinyo & another* [2018] eKLR where the court upheld an awarded KShs. 150,000.00 for soft tissue injuries caused by a dog bite. Having looked at the decisions cited by the parties, I do not consider the award herein too high to warrant interference. Both parties cited cases which are outliers on either side. The case cited by the trial magistrate was appropriate.
13. Regarding the award of costs and interest by the trial court, it is trite that costs follow the event unless there are cogent reasons to hold otherwise. Having found the Claimant's case meritorious, the Adjudicator was entitled to award costs to the successful party.
14. This appeal lacks merit. It is dismissed. The appellant shall pay costs of the appeal assessed at Kshs. 30,000.00.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF NOVEMBER 2023.

D. S. MAJANJA

JUDGE

Mr Orangi instructed by Ondieki Orangi and Company Advocates for the Appellant.

Mr Mwangi instructed by Irungu Mwangi Ng'ang'a T.T. and Company Advocates for the Respondents.

