

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 205 OF 2012

IQBAL MANJI1ST APPELLANT

NOREEN MANJI2ND APPELLANT

JARIBU MOTORS LIMITED3RD APPELLANT

VERSUS

RICHARD KIPKOECH NGENORESPONDENT

RULING

The lower court gave judgment in favour of the plaintiff, now respondent following a suit against the defendants, now appellants based on injuries sustained by the respondent while in the course of his employment. The respondent was the employee of the 3rd defendant when he was detailed by the 2nd appellant to collect and drive the 1st and 2nd defendants' daughter to the airport.

He was attacked by a pack of dogs belonging to the 1st and or 2nd appellants and or the 3rd appellant at the residence of the 1st and 2nd appellants which was within the premises of the 3rd appellant. The judgment shows that he was awarded Kshs. 450,000/= general damages, Kshs. 2000/= special damages and costs. The appellants were aggrieved by that decision and lodged this appeal.

When the appeal came up for hearing before Mabeya J, on 8th July, 2015 Mr. Olouch for the respondent raised the issue of jurisdiction which needed to be addressed first. The learned Judge then made an order that the issue of jurisdictions be addressed. Both parties have filed submissions on the issue. Reference has made to Article 162 (2) and Article 165 (3) (a) of the Constitution relating to the jurisdiction of the court.

The suit in the lower court was filed in November, 2006 long before the establishment of The Employment and Labour Relations Court under Article 162 (2) of the Constitution. The judgment of the lower court was however delivered on 2nd April, 2012 and the Memorandum of Appeal filed on 24th April, 2012 after the promulgation of the new Constitution and Establishment of the Employment and Labour Relations Court.

The Employment and Labour Relations Court was established to deal with disputes relating to **“employment and labour relations”**. The respondent suffered injuries perhaps as a result of negligence on the part of the appellants for not restraining or caging the dogs within their residence. Although it may be argued that this was in the cause of employment, it cannot be said that it is a cause of action that can be related to employment and labour relations contemplated under Article 162 (2) of the Constitution aforesaid.

This was clearly a cause of action based on tort and paragraph 5 of the plaint reinforces the said position. To decide otherwise would be stretching the jurisdiction of The Employment and Labour Court beyond the mandate contemplated by the Constitution. In any case, this matter comes before this court at appellate stage and no persuasive argument has been advanced that the court may bend backwards to

address matters instituted before the coming into effect of this court (Employment and Labour Relation Court) either in the lower court or at this stage.

I hold that his court has jurisdiction to deal with this matter and now invite counsel to make submissions on the merits or otherwise of the appeal. The costs shall be in the cause.

Dated and delivered at Nairobi this 27th day of July, 2016.

A.MBOGHOLI MSAGHA

JUDGE