



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Civil Appeal 870 of 2006**

**JOSEPH WAWERU. .... APPELLANT**

**VERSUS  
JAMES MARCUS VERNOM**

**T/A KIAMBETHU FARM. .... RESPONDENT**

***(From the Judgment and Decree of A O Aminga, Resident Magistrate in Limuru SRMCC No. 554 of 2005)***

**J U D G M E N T**

In this case the Appellant was bitten by the Respondent's dog on 3<sup>rd</sup> September, 2005 at the Respondent's home compound. The Appellant had gone to the compound to purchase and indeed purchase old gunny bags. He borrowed the Respondent's wheelbarrow to escort the bags out of the compound two times. On each of the first three occasions, that he entered the compound, he had to be escorted by one or the other, of the domestic workers of the Respondent. This was so because the Respondent to Appellant's knowledge, kept four fierce dogs which were likely to attack any visitor who was not escorted. That is why the Appellant first called out for such protection while he was still standing at the gate.

It is not in dispute that on the fourth and last entry when the Appellant was returning the wheelbarrow, he decided to enter the compound without seeking an escort as before. This is when, unfortunately he was attacked and beaten on the buttocks by one of the dogs. The Respondent, who soon after witnessed the bite, applied some ointment on it and allowed the Appellant to leave with the remaining ointment. He did not go to see a doctor until three weeks later when he went to Tigoni Hospital where treatment was not given except on advise that he should buy a certain medicine which would costs Ksh.4,280/-.

Later the Appellant saw Dr. Kinuthia, a private practitioner who prepared a medical report which was produced in evidence among other documents. The Appellant sought compensation in the lower court on the basis that the Respondent had in relation to the dogs, failed to exercise reasonable precaution and care leading to the dogs attack. The lower court found for the Appellant partly because it found that the Appellant partly because it found that the Appellant was as well, negligent in entering the Respondent's compound without an escort while well knowing the danger that he exposed himself to. The court apportioned liability at 50% to 50%. It awarded total damages of Ksh.30,000/- with special damages of Ksh.1500/-. The award aggrieved the Appellant who filed this appeal seeking a higher award.

I have carefully considered the evidence upon which the honourable trial magistrate made the award he made. I have also carefully examined the medical evidence. I observe that the dogs bite was not serious at all. The Appellant got immediate treatment from the Respondent who applied a relevant ointment. It is in evidence also that the Respondent refunded the sum of Ksh.4,280/- which the Appellant used to purchase the additional prescribed medicines although there is no evidence where the medicines were used. There is further evidence that the Appellant did not immediately find need to seek medical treatment immediately after the dog bite, showing that the injury was minimal.

A further note that when the Appellant got a refund of Ksh.4,280/- he signed an agreement not to

seek a further payment from the Respondent, a fact the Appellant admitted and one which should have been held against him by the lower court, as there was no evidence of coercion by the Respondent.

I have considered all the above factors and the evidence in the record. There is no indication that the trial magistrate misdirected himself in matters of fact or law. Indeed, the award level simply depended on the seriousness of the injury caused by the Respondent's dog. The learned magistrate who listened to the dirt evidence and examined the medical documents, stood the best opportunity to make better conclusions. This court finds no lawful or reasonable grounds to interfere with the trial court's findings.

On the above basis, I find no merit in this appeal, which I hereby dismiss with costs. Orders accordingly.

Dated and delivered at Nairobi this 21<sup>st</sup> day of December 2012.

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**D A ONYANCHA**

**JUDGE**