



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL CASE NO. 6098 OF 1992**

**DAVID MUGO .....PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL .....DEFENDANT**

**JUDGMENT**

This is a fairly old suit. It has been filed by David Mugo (herein referred to as the plaintiff) against the Attorney General (herein referred to as the defendant) on the 16th of November 1992, for the defendants agent or as servant maliciously causing him personal injury through deliberately releasing a police dog to attack and bite him.

**A) Background of the case**

The Plaintiff, on the material night of the 13th day November 1991, within the Embu Town area had been watching a cinema. He was now on his way home. There was a lady walking the same way. He did speak to her when he was approached by two police officers. One had a police dog. They asked him for a bribe which he did not have. He then informed them that if they would get to his home he may give them something. He did this fearing to be detained to the following day. The next day was a working day whereby he would miss his casual labour work, an only source of income and be sacked. He therefore misled the police to saying he would take them to his house. His intention was to take them to a friend's house and request the friend to give him some money. Unfortunately the friend was not in. They had travelled in a taxi for about 15 Kilometers. The police were the ones who paid Kshs200/= for the taxi and were hoping to get money to be able to pay back the taxi and some for themselves.

It was then that realising there was no money, the two police officers were very angry. They began to beat up the plaintiff. The lady who had earlier been picked up with him was in the vehicle with the taxi driver. The police holding the police dog then signaled to the dog. The dog at once jumped on him and bit his elbow.

They returned back to Embu town using the same taxi. He was then locked up in the cells. As he was bleeding so badly, he became weak.

He was then rushed to the Embu Provincial Hospital on the same night of the 13.11.91 and was not discharged until the 18.11.91. This was about 5 days later.

He sued the Defendant in tort.

**B. Liability**

The Plaintiff in his evidence established that the police acting so negligently that they attacked him by battering him (assault). That due to their malice they purposely and deliberately allowed a police dog to maliciously attack the plaintiff.

In the circumstances the State Counsel representing the defendant called no evidence stated that the plaintiff was unable to identify the police dog as a dog belonging to the police. That the plaintiff failed to prove that the dog that bit him was a police dog and indeed could have been a dog belonging to any security guards in the town. The case had not been proved and the same be dismissed.

(I did permit the parties to further address me as the advocate for the Plaintiff had not been present on one day stating he had a vehicle breakdown).

The arguments put further by the defence advocate was that that plaint was defective. There was no cause of action. The Advocate for the plaintiff replied that it was not defective.

I must state at this point that the defence filed was just a mere denial to each of the allegation save that the jurisdiction of this court was admitted. This point was never taken up at the crossexamination of the plaintiff nor as a preliminary objection. I bring the parties attention to Order 6 r 12 C.P.R. that states:-

“no technical objection may be raised of any  
pleading on ground of want of form”

I find that the evidence the plaintiff had given was spoken by a truthful person. He has proved his case on a balance of probability. The State Counsel is not correct in stating that this evidence must be proved beyond any reasonable doubt. These are standards that are a requirement under a criminal court.

I find that the servants of the defendant's action were malicious and that the defendant is vicariously liable for the acts of their agent and or servant at 100%.

## C. Quantum

### I, General Damages

#### a) Pain and Suffering

The Plaintiff was examined by

Dr. S. Maina Kanyi

M.B: ChB; M.MED.Surgery (NBI)

Consultant Surgeon

He examined the plaintiff on the 28.9.92.

It is advisable that the medical reports should be the recent report of the examination of a victim. In this case a report 10 years later would have been of assistance.

Nonetheless he described the injuries sustained as

- 1) multiple bite wound on the left elbow
- 2) a bite in the pubic region (not pleaded)
- 3) Scratch marks [on] the back

He had been given tetanus antibiotics and pain relieving medication but no rabies vaccination. He was in hospital for five days.

I hereby confirm that the plaintiff indeed sustained injuries. None of the parties referred me to case law. The advocate for the State asked I award Kshs25,000/=. The advocate for the defendant recommended Kshs 200,000/=.

I note that the plaintiff was traumatized by the attack of the dog. Though he appeared to have healed well I would under the circumstances award Kshs150,000/= for the head of damage for pain and suffering.

## II. Special Damages

A claim for medical report of Ksh800/= was made. Prior to the trial the plaintiff abandoned this claim. I hereby mark the claim as abandoned and dismissed.

## III Obiter dictum

The advocate for the plaintiff admitted that he failed to plead and pray for:-

- a) Exemplary damages
- b) Malicious prosecution
  - i) It is believed that the plaintiff was charged in a court of law for possessing cannabis sativa.
  - ii) He was placed in the police cells.
  - iii) He was assaulted

The advocate did not exercise his option to amend the Plaintiff.

I would make no award under the above claim in the circumstances.

I enter Judgment for the plaintiff on the proved claims In Summary

1. Tort
2. Malicious police harassment and battery
3. Failure to give and or obtain bribe
  - police dog released
  - and attacked plaintiff.
4. Injuries – Pleaded
  - i) Multiple bite wound on left elbow
5. Liability 100% against the Defendant
6. Quantum

I. General Damages Pain and suffering Kshs150,000/=

II. Special Damages Nil abandoned

Total Kshs 150,000/=

I award the costs of this suit to the plaintiff. I award interest from the date of this judgment.

Dated this 27th day of April 2004 at Nairobi.

**M. A. ANG'AWA**

**JUDGE**

Kamau Kinga & Co. Advocates for the plaintiff

C.O. Oyura State Counsel for the Attorney General- defendant