



**Wachira v Muriuki (Civil Appeal Suit 8 of 2019)  
[2023] KEHC 1897 (KLR) (16 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 1897 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL SUIT 8 OF 2019  
RM MWONGO, J  
MARCH 16, 2023**

**BETWEEN**

**RICHARD GICHANGI WACHIRA ..... APPELLANT**

**AND**

**CATHERINE WAWIRA MURIUKI ..... RESPONDENT**

**JUDGMENT**

**Background**

1. This appeal is against the award of damages by the trial court in the sum of Kshs 100,000/= for general and special damages of Kshs 7,400. The award was for compensation for injuries suffered by the plaintiff who was bitten by the appellant's dog.
2. Aggrieved by the judgment, the Appellant filed a memorandum of appeal on the February 15, 2019. The grounds of appeal are that:
  - i. The Learned Magistrate erred in law and fact by holding that the Respondent had proved her case as required by law which finding was not supported by weight of evidence tendered before court.
  - ii. The Learned Magistrate erred in law and fact by holding that the Appellant's dog did bite the Respondent on November 17, 2014 and inflicted her with personal injuries whereas there was no sufficient evidence to conclude and identify the alleged dog to be owned by the Appellant.
  - iii. The Learned Magistrate erred in law and fact by holding that the Appellant's dog was fierce and prone to inflicting dog bites upon the respondent and other 3<sup>rd</sup> parties whereas no sufficient evidence was tendered in respect of predisposition of the alleged dog to inflict dog bites upon members of public.



- iv. The Learned Magistrate erred in law and fact by making a finding against weight of evidence and issued awards against the appellant not supported by the relevant laws and decided case law.
- v. The Learned Magistrate erred in law and fact by departing from the well settled maxim in law to effect that ' A dog has only one free bite' without giving sufficient reasons for the departure.
- vi. The Learned Magistrate erred in law and fact by not fully considering the evidence tendered by the Appellant and his submissions.
- vii. The Learned Magistrate erred in law and fact by awarding a hefty sum of General damages of Kshs 100,000/= and special damages of Kshs 7,400/= against the weight of evidence.

## **Facts**

- 3. On November 17, 2014 at Kiamuruga village within Kerugoya Township around 7.30 am, the respondent was walking from her residence to her work station. Suddenly she was attacked by the defendant's dog which bit her 3 times on the left leg. The dog is female and brownish in colour.
- 4. According to her, the appellant responded and ordered the dog to return to his compound. He then took the plaintiff to Kerugoya District Hospital where she was given emergency treatment but the defendant later neglected her and failed to meet the full cost of her treatment.
- 5. The respondent testified that the defendant was the owner of the dog which he kept at his residence, and it was a fierce dog.
- 6. In cross-examination she testified that she knew the defendant/appellant before the incident and that the dog belonged to him; that after the dog bit her, the workers came and took it That he is a veterinary officer and there are no other homesteads near the defendant's home.
- 7. She did not have a medical report but she produced medicine payment receipts. Further, she produced a P3 form which confirmed the injuries caused by the dog attack.
- 8. The Defendant is a veterinary officer. He said he kept four dogs in a kennel and has a worker who takes care of them. The dogs are cross breeds, two of them brown and the other two black in colour. The dogs are normally locked in the compound and are not fierce. He testified that stray dogs normally come when they hear his dogs barking.
- 9. On the material day when the plaintiff was bitten, he didn't remember telling his worker to lock the dogs but he let them out.
- 10. He was not at home at the time of the incident but insisted that the plaintiff was bitten outside his compound. When he went home after being told of the incident, He found the plaintiff at his home and gave her first aid. He washed her with soap and water and left the wound open. He saw the wounds. He saw two marks.
- 11. He then proceeded to take the plaintiff to Kerugoya General Hospital for further treatment and paid for her medication including anti-rabies jabs. He refused to pay for her 3<sup>rd</sup> dose. He stated that it was not possible to identify where the dog that attacked her came from.

## **Appellant's Submissions**

Grounds 1,2,4 and 5 of Memorandum of Appeal- Whether there was proof of sufficient connection between the dog that attacked the respondent and the appellant



12. The appellant argued grounds 1,2,4 and 5 of the appeal together, and grounds 3 and 6 together. He submitted that no sufficient evidence was tendered to conclusively link the alleged dog to the Appellant.
13. He submitted that the respondent testified that while she was bitten by the appellant's dog at his gate as she walked to work in the morning, she also said she had never seen the dog before although she uses the same road daily. There was no eyewitness and that the dog was a female, brown in colour. The Respondent testified that she met a dog that bit her, however, she failed to prove that the dog belonged to the Applicant.
14. The Respondent failed to prove whether the dog came from the Appellant's compound or whether the gate was ajar. It therefore follows that the only weighty evidence is that of the Appellant that every morning before going to work he made sure that his dogs are back in their kennel. And on that material morning the Appellant was already at work.

Ground 3 & 6 of Memorandum of Appeal- Whether Negligence was proved

15. The Appellant was not negligent hence liability could not arise. The appellant also took issue with the trial court's application of the rule in Rylands v Fletcher in that the alleged dog that bit the Respondent, was not his dog. It was never under his control nor had it escaped from the Appellant's compound.
16. On quantum, the appellant submitted that the general damages awarded of Kshs 100,000 and special damages of Kshs 7,400 was excessive. He pointed out that the respondent did not produce a medical report for her dog bite injuries, which could have aided the court in awarding damages.

Respondent's Submissions

Whether there was proof that the dog belonged to the appellant/identity of the dog

17. The respondent submitted that the plaintiff proved the identity of the dog that bit her and proved that it was the defendant's dog. The plaintiff relied on her written statement. She testified that the dog that bit her came from the defendant's compound. She testified that after it bit her the defendant's son and wife came ordered it to enter its kennel and they locked it in the kennel in the defendant's compound.
18. The plaintiff when cross-examined stated that the dog was brownish and female and even the defendant admitted that he had a brownish female dog. In cross-examination, the plaintiff testified that the defendant's wife and defendant's son took her to the defendant's homestead
19. The fact that the defendant left his work place where he is a veterinary office/ doctor to go home and handle the situation and even pay for the treatment is an indication that he was liable for he knew his dog had bitten the plaintiff. They submit that the plaintiff was able to proof that identity of the dog that bit her and that it belonged to the defendant.

### **On Whether negligence was proved**

20. The plaintiff gave the particulars of negligence in her plaint. She was able to prove that the defendant kept a dangerous animal and let it escape. The defendant admitted that he kept 4 dogs in kennels in his compound. He admitted that his fence is a live fence and is adjacent to a public road.
21. He was negligent as he did not prevent his animals from escaping from the compound and they were accessible to the public road as he had not put a proper fence and they posed a danger to innocent members of the public who use that road.



22. The rule in *Rylands v Fletcher* is one that imposes strict liability on the owner of land for damage caused by the escape of substances to his neighbor and was appropriately cited by the trial court in the circumstances.

### **Whether the reliance on the P3 proved the injuries**

23. Counsel cited the case of *Henry Binya Oyala v Sabera Oltira [2011] eKLR* where the court held that the primary source of information on injuries sustained is by the victim, and that evidence of a medical officer is not mandatory. It was held that a victim's own statement with regard to injuries should not be dismissed merely on the ground that it was not matched by initial treatment from hospital.
24. The defendant admitted that he noted the septic wound on the plaintiff's leg when he took her for treatment for the dog bite and ensured she was given the anti-rabies vaccine.
25. The plaintiff produced treatment notes and receipts from Kerugoya General Hospital showing she was treated for the injuries that she sustained. There is no discrepancy or denial that the plaintiff sustained a dog bite on her leg.

### **Whether award was based on relevant law**

26. Finally, the respondent submitted that the award was well reasoned and based on the authorities relied on by the parties. The appellant did not quote any authorities on quantum to propose to the court what they felt as reasonable general damages to be awarded to the plaintiff.

### **Issues for Determination**

27. The issues for determination are as follows:
- a. Whether the dog that attacked the respondent emanated from the appellant's property
  - b. Whether negligence on the part of the appellant has been proved.
  - c. Whether the Respondent is entitled to the award of damages.

### **Analysis and Determination**

#### **Whether the dog that attacked the respondent emanated from the appellant's property**

28. The evidence on record from the respondent was that the dog when she was passing by the appellant's home a brown dog attacked and bit her; that the appellant's workers and wife came and took the dog; that there are no other homesteads nearby; and that after being bitten, she went into the appellant's compound with the appellant wife Mrs. Kisandi, and his son.
29. On his part, the appellant said the dog was not his though he admitted he kept dogs; that two of them were brown; that he didn't know where the dogs were when he left in the morning, but that they are normally locked in the compound; that is wife called him after the incident; that he didn't ask her where the dog that bit the respondent was; that he attended to the respondent after the dog bite and took her to hospital.
30. Looking at his evidence it is apparent that the plaintiff made out a case that the dog was, in all likelihood, from the defendant's compound. Indeed, the actions of the defendant seem to suggest that he took personal responsibility and action to ensure the plaintiff was attended to. He did not avail his wife as a witness to clarify how she, her son and the worker got involved after the incident occurred.



31. The evidence, on balance of probabilities, supports the outcome arrived at by the trial magistrate on whether the dog came from the appellant's compound, and was sufficient evidence to link the alleged dog to the Appellant.

### **Whether negligence was proved on the part of the appellant**

32. The appellant relied on *Ernest Ogesi Kivai v Jacob Abwao [2014] eKLR* for the proposition that the appellant did not know whether the dog that bit him belonged to the appellant. In the present case, the respondent was bitten by a dog from the appellant's compound and the dog was called off by the appellants worker and wife.
33. The case of *Joseph Waweru v James Marcus Vernom [2012] eKLR* cited by the appellant to suggest that the injury was not serious is not applicable here, because the appellant ended up going to hospital. In addition, in Joseph Waweru's case the parties entered into an agreement that no further claims would be made.
34. I am in agreement with the respondent's suggestion that the fact that the appellant left his work place where he is a veterinary office/ doctor to go home and dress her wound and even pay for the treatment is an indication that he felt responsible to some extent for what had befallen her, knowing his dog had been involved. This is a natural human response however else it may be explained.
35. The appellant took issue with the trial court's application of the rule in *Rylands v Fletcher* in that the alleged dog that bit the Respondent, was not his dog; that it was never under his control nor did it escape from the Appellant's compound.
36. However, having found that the dog was linked to the appellant, and having found that there was no evidence to controvert the plaintiff's evidence; and further given that the appellant's wife son and worker were not called to give evidence of the occurrences and why the wife called the appellant if the dog responsible was a stray, and why she did not just send the respondent directly to a medical facility, it is clear that the evidence tilts, however lightly, in favour of the respondent.
37. In light of the foregoing, I see nothing wrong in the fact that the trial magistrate cited the rule in *Rylands v Fletcher*. The rule refers to the strict liability of a keeper of an animal or thing in his compound to ensure that it does not get out and cause danger, injury or damage. In this case, having found that the dog came from the applicants' compound, on balance, there was a proper basis for invoking the Rule in *Rylands*.

### **Whether the Respondent is entitled to the award of damages.**

38. It was not in dispute that the respondent was bitten by the dog; it was disputed that the dog was the appellants but found that the evidence tilts in favour of the finding that the dog emanated from his compound; it was not in dispute that the appellant treated the respondent's dog bites; it was not disputed that the respondent went to hospital for treatment and that she had a P3 form to support the fact of the injury. Although the respondent did not avail a medical report, it was not disputed that she was injured by the dog.
39. There is no requirement in law that an injury can only be proved by a medical report. In the case of *Henry Binya Oyala v Sabera Oltira [2011] eKLR* the court held that:

'...the primary source of information on injuries sustained is by the victim, and that evidence of a medical officer is not mandatory. It was held that a victim's own statement with regard



to injuries should not be dismissed merely on ground that it was not matched by initial treatment from hospital.'

40. The appellant submitted that the respondent testified that while she was bitten by the appellant's dog at his gate while walking to work in the morning, she also said that she had never seen the dog before but uses the same road daily. There was no eyewitness and that the dog was female and brown in colour. I do not consider that Respondents evidence to be a significant, inconsistency.

#### **Whether the Respondent was entitled to the award of damages**

41. The respondent testified that she was walking from her residence to her work station when she was attacked by the defendant's dog which bit her 3 times on the left leg occasioning her grievous harm. The P3 form, the evidence of the treatment by the appellant and the P3 form all tell the same story: that she was attacked and injured by the dog. The dog ought not to have been there. It ought to have been properly secured.
42. The figure of general damages awarded by the trial court, though challenged by the appellant, there were no authorities cited to challenge the award made. In *G4s Security Services (K) Ltd v Fred Wanyonyi Simiyu Mutinyo & another [2018] eKLR*, the 1st respondent was employed as a guard when in the course of his duties he was bitten by dogs at the premises he was assigned to guard. The court awarded him Kshs 150,000 for dog-bite injuries.

#### **Conclusions**

43. Ultimately, I find that the award made by the trial court was reasonable and would not disturb it.
44. As for special damages, the original receipts which I have seen in the trial file show figures adding up to 5,750/- which is the sum payable in place of the award by the trial court for special damages. It is so awarded.
45. Accordingly, I uphold the trial court's judgment save for special damages which I award at Kshs 5,750/-.
46. Orders accordingly.

**DATED AT KERUGOYA THIS 16<sup>TH</sup> DAY OF MARCH 2023**

**RICHARD MWONGO**

**JUDGE**

**In the presence of:**

- 1. Kahiga - for Appellant**
- 2. Thungu - for Respondent**
- 3. Court Assistant, Murage**

