



**Coast Motorcycles v Ayoo & 2 others (Civil Appeal E028 of 2024)
[2024] KEHC 16900 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 16900 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL APPEAL E028 OF 2024
F WANGARI, J
OCTOBER 31, 2024**

BETWEEN

COAST MOTORCYCLES APPELLANT

AND

JOHN OLUOCH AYOO 1ST RESPONDENT

DENNIS KADOGO 2ND RESPONDENT

BURHANI GENERAL SUPPLIES 3RD RESPONDENT

(Being an appeal from the entire Judgement and of the Honourable G. Sogomo, Principal Magistrate delivered in on 26th January, 2024 in Mombasa CMCC No. E613 of 2021)

JUDGMENT

1. This Appeal arises from a Judgement delivered on 26th January, 2024 by Hon. G. Sogomo, Principal Magistrate in Mombasa Civil Suit No. E613 of 2021.
2. The Appellant filed this Appeal and preferred the following grounds in the Memorandum of Appeal dated 8th February, 2024.
 - a. That Learned Magistrate erred in law in assessing 100% liability in favour of the 1st Respondent herein as against the Appellant and the 2nd and 3rd Respondents herein principally and or vicariously;
 - b. That the Learned Magistrate erred in fact and in law and misdirected himself in law and in fact in failing to consider the evidence, testimonies and submissions adduced by the Appellant and the 1st Defendant;



- c. That the Learned Magistrate erred in fact and in law by misapprehending the evidence and misapplying, misunderstanding and overlooking the Appellant's pleadings, testimony and submissions in making its determination;
 - d. That the Learned Magistrate erred in fact and in law in failing to appreciate that the variation of 24.98% was only in respect of the works carried out by the Respondent being 50% of the contractual works;(sic)
 - e. That the Learned Magistrate erred in fact and in law in concluding that even though the Appellant had proven having sold the suit motorcycle to the third party prior to the accident, that the Appellant was still singularly and absolutely responsible for the causation of the accident either principally or vicariously;
 - f. That the Learned Magistrate erred in fact and in law in holding that the Appellant herein along with the 2nd and 3rd Respondents herein possessed varying degrees of legal and/or equitable ownership of the motorcycle;
 - g. That the Learned Magistrate erred in fact and in law in awarding quantum, costs and interest to the 1st Respondent as against the Appellant herein.
3. It thus prayed that that the judgement dated 26th January, 2024 on liability delivered in Civil Suit No. E613 of 2021, Mombasa by Honourable G. Sogomo and any decree issued pursuant thereto be set aside in its entirety, that this Honourable Court does dismiss Civil Suit No. E613 of 2021, Mombasa as against the Appellant herein, that the costs of this appeal and the suit in the subordinate court be borne by the 1st Respondent herein and any other orders and reliefs this Honourable Court may deem fit to grant.
 4. Directions were taken to have the appeal disposed of by way of written submissions. Both parties duly complied with the court's directions. The Appellant's submissions are dated 20th May, 2024 while those of the 1st Respondent are dated 31st May, 2024. The 2nd and 3rd Respondents did not file any submissions and neither did they participate before the Trial Court nor before this court.
 5. The Appellant condensed grounds 1 to 3 in the Memorandum of Appeal and submitted that on cross examination of the 1st Respondent, he confirmed that the owner of the motor cycle involved in the subject accident was Dennis Kadogo, the 2nd Respondent. It was also submitted that PW2, PC David Mutisya confirmed on cross examination that from the police abstract he produced, the owner was captured as the 2nd Respondent.
 6. The Appellant further submitted that its witness confirmed that the Appellant is in the business of selling motor cycles and as such, it had no control of a motor cycle once it has been sold. The Appellant prayed that judgment on liability against it be set aside, and the appeal be allowed in its favour.
 7. On the other hand, the 1st Respondent, who was the Plaintiff in the lower court suit, submitted that the Appellant was the registered owner of the offending motor cycle. Even though the Appellant carried out 3rd Party Proceedings, it is upon the Appellant to satisfy the decree first, then claim indemnity from the 3rd party.



Analysis

8. This Court has carefully considered the Record of Appeal, the parties' rival submissions, the authorities cited as well as the law and the only issue that falls for this Court's determination is whether the Appellant is liable for the accident caused. Corollary to this is the issue of costs.
9. This being a first Appeal, the Court should with judicious alertness re-evaluate the evidence and consider arguments by parties and apply the law thereto, and, make its own determination of the issue or issues in controversy. Except however, that it should give due allowance to the fact that it neither saw nor heard the witnesses' testimonies.
10. This was aptly stated by the Court of Appeal in the case of *Selle & Another vs. Associated Motor Board Company Ltd.* [1968] EA 123 as follows:

“The appellate court is not bound necessarily to accept the findings of fact by the court below. An appeal to the Court of Appeal from a trial by the High Court is by way of a retrial and the principles upon the Court of Appeal acts are that the court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect, in particular the court is not bound necessarily to follow the trial Judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally.”

11. I have perused the Memorandum of Appeal and the entire record of the Trial Court and I am alive to the fact that my task is to re-evaluate the evidence in order to establish whether or not the Trial Court erred in its findings.
12. It is not in dispute that there was an accident involving the 1st Respondent herein and the motor cycle registration number KMFA 643P. It is also not in dispute that the said motor cycle is registered in the name of the Appellant, who is in the business of selling motor cycles.
13. There is evidence on record that the Appellant sold the motor cycle to the 3rd Respondent, who then sold it to the 2nd Respondent.
14. The trial court in finding the Appellant an owner of the motor cycle relied on section 19 of the [Sale of Goods Act](#). On whether the trial court rightfully found the Appellant as a legal owner of the motor cycle, Section 8 of the [Traffic Act](#), Cap 403 of the Laws of Kenya provides that:

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle”.
15. In the case of [PNM & Another \(The Legal Personal Representative of Estate of LMM\) v Telkom Kenya Limited & 2 Others](#) [2015] eKLR it was held as hereunder:

“of the accident motor vehicle and whose agent was the 3rd defendant in view of the two positions- 1st defendant being registered owner whereas the 2nd defendant being the beneficial owner thereof. This court finds that albeit the search certificate/copy of records produced by the plaintiff showed that the 1st defendant Telkom Kenya Ltd was the registered owner of the accident motor vehicle at the material time, it is clear from the evidence gathered by the police investigating the accident, and the driver's own statement



and the vehicle's insurance policy cover with Kenindia Assurance Co. Ltd, that the owner thereof was the 2nd defendant who was the beneficial owner as the vehicle was then being used for his benefit not the 1st defendant's benefit. The latter had sold the accident motor vehicle and its possession and use thereof passed to the 2nd defendant....”

16. Further, section 8 of the *Traffic Act* was summarized in the case of *Benard Muia Kilovoo v Kenya Fresh Produce Exporters* [2020] eKLR as follows;

- “ 41. The Court of Appeal in these binding decisions is clearly stating: -
- (i) That the presumption that the person registered as owner of the motor vehicle in the logbook is the actual owner is rebuttable.
 - (ii) Where there exists other compelling evidence to proof otherwise then the court can make a finding of ownership that is different from that contained in the logbook.
 - (iii) Each case must however be considered in its own peculiar facts.”

17. In view of the above, I find that the trial court misdirected itself if finding the Appellant as the owner of the motor cycle, for reasons the motor cycle having been sold to a 3rd party, possession and the beneficial use of the same was not with the Appellant. I do agree with the Appellant that property in the motor cycle changed once the same was sold to a third party.

Determination

18. The upshot of the foregoing is that the court renders itself as hereunder: -

- a. The lower court judgment dated 26/01/2024 on liability against the Appellant herein is hereby set aside, and substituted with an order dismissing the suit against the Appellant.
- b. The 1st Respondent is at liberty to execute against the 2nd and 3rd Respondents.
- c. Each party to bear own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 31ST DAY OF OCTOBER, 2024.

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F. WANGARI

JUDGE

In the presence of;

Miss Nyaga Advocate h/b for Abwao Advocate for the Appellant;

Ajigo Advocate for the 1st Respondents;

Ms. Salwa, Court Assistant

