



Mutua v Njogu (Civil Appeal E385 of 2022)
[2024] KEHC 13658 (KLR) (Civ) (31 October 2024) (Judgment)

Neutral citation: [2024] KEHC 13658 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E385 OF 2022

RC RUTTO, J

OCTOBER 31, 2024

BETWEEN

RAPHAEL KYALO MUTUA APPELLANT

AND

SIMON MAINA NJOGU RESPONDENT

(An appeal from the judgment of the Small Claims Court of Kenya at Milimani (Hon. D. S Aswani) delivered on the 11th day of May, 2022 in Milimani SCCC No. E040 of 2022)

JUDGMENT

1. This appeal emanates from the decision of the Adjudicator in the Small Claims Court in Milimani SCCC No E040 of 2022 delivered on 11th May 2022 that dismissed the Appellant’s claim with costs.
2. The claim by the Appellant was for the benefit of the insurer under the doctrine of subrogation. In that claim, the Appellant sought special damages amounting to kshs 395,296/= as loss incurred as a result of a motor vehicle accident involving the Appellant’s motor vehicle Registration No. KBK 806C and the Respondent’s motor vehicle Registration No. KBW 420T. The Appellant also sought compensation to be determined by court as well as costs of the claim.
3. In dismissing the claim, the Adjudicator held that the Appellant failed to prove ownership of motor vehicle registration KBW 420T pleaded to have been blamed for the accident.
4. The Appellant being aggrieved by that decision, lodged this appeal on the following grounds;
 - a. That the trial magistrate erred in fact and in law by finding and holding that the Appellant failed to prove ownership of motor vehicle registration number KBW 420T.



- b. That the trial magistrate erred in fact and in law by failing to appreciate and consider the evidence tendered by the Appellant
 - c. That the trial magistrate erred in fact and in law by dismissing the Appellant's claim on grounds that the Appellant failed to prove the ownership of the Respondent's motor vehicle registration no KBW 420T despite production of Copy of Records for the said motor vehicle and lack of contrary opinion to the same.
 - d. That the trial magistrate erred by failing to follow the laid down principles in determining civil suits.
5. The Appellant seeks that this court allows the Appeal by dismissing the Adjudicator's decision that dismissed the claim and be granted an order allowing the Appellant's claim as prayed in the claim together with the costs of this Appeal.
 6. In support of his Appeal, the Appellant relied on his submissions dated 28th June 2024 in which he submitted that; he filed a claim on behalf of his insurer, CIC General Insurance Limited, under the doctrine of Subrogation following an accident that occurred on 15th January, 2019 involving motor vehicles Registration numbers KBK 806C and KBW 429T. The Respondent did not enter appearance or defend the suit. The Appellant successfully sought interlocutory judgment and proceeded with formal proof.
 7. He submitted that the the Learned Adjudicator erred in dismissing the Claim on the ground that the he had not proved ownership of the Respondent's Motor vehicle registration number KBW 420T despite attaching a copy of records. He alleged that he filed a Motor Vehicle Copy of Records that clearly indicated that at the time of the accident Motor Vehicle Registration number KBW 420T belonged to one Simon Maina Njogu. That this evidence was not contested.
 8. The Appellant made reference to Section 8 of the Traffic Act (Cap. 403 of the Laws of Kenya) to urge that: "The person in whose name a vehicle is registered shall unless the contrary is proven shall, be deemed to be the owner of the vehicle." Also, reference was made to the case of Jared Magwaro Bundi & another v Primarosa Flowers Limited [2018] eKLR to emphasize that the Traffic Act recognizes registration book or the Registrar's extract of the record as prima facie evidence of title to a vehicle and the person in whose name the vehicle is registered is presumed to be the owner thereof unless the contrary is proved.
 9. Further, the Appellant submitted that he had proven that Simon Maina Njogu, the Respondent herein, was the beneficial owner of Motor Vehicle Registration Number KBW 420T at the time of the accident. He sought to rely upon the list of documents dated 14th January, 2022 supplied, which included an investigation report by Kiroro Investigators dated 18th December, 2021 which clearly provided the 3rd Party Insurance Particulars over the motor vehicle as belonging to the Respondent herein.
 10. He urged the court to find that he had proven ownership on a balance of probabilities and proceed to allow the Appeal.
 11. This court notes that despite service of the amended appeal and submission as evident by the Return of Service sworn on 5th July 2024 the Respondent did not take part in these proceedings.



Analysis and Determination

12. To begin with, the duty of this court as an appellate court is well prescribed under Section 38 of the [Small Claims Court Act](#) which limits the jurisdiction of this Court to matters of law only. It provides that:

38.

- (1) A person aggrieved by the decision or an order Appeals of the Court may appeal against that decision or order to the High Court on matters of law.
- (2) An appeal from any decision or order referred to in subsection (1) shall be final.”

13. What constitutes points of law, has been settled. In the case of Peter Gichuki King'ara Vs Iebc & 2 Others, Nyeri Civil Appeal No. 31 of 2013, (Court of Appeal) (Visram, Koome & Odek, JJA), the Court of Appeal stated as follows: -

“The court held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanor – is an issue of law.”

14. Based on the above provision of law and the authority referred to, this Court has considered the grounds of appeal as they appear in the Amended Memorandum of Appeal dated 27th June 2024, the proceedings of the lower court, and the Appellant’s submissions and discerns the primary question of law that calls for determination as: whether the trial court erred in the application of the provision of sections 8 of the [Traffic Act](#).

15. It is noted that this matter proceeded by way of formal proof whereby the Appellant testified and adopted his witness statement as well as the list of documents all dated 14th January 2022.

16. The facts as set out in the Appellant’s statement are that he was the owner of motor vehicle Registration No. KBK 806C and was carefully and lawfully driving it when it was rammed on the side rear causing it extensive damage by motor vehicle KBW 420 T belonging to the Respondent. As a result of the accident the Appellant suffered loss and damage amounting to Kshs.395,296.00 as repairs and other incidental charges.

17. To support his assertion, the Appellant also relied on his list of documents which contained a total of 28 different documents. Upon evaluating the evidence on record, the basis of dismissal of the claim by the Adjudicator was that the Appellant did not prove ownership of the blamed motor vehicle since what was availed was a Copy of Record showing ownership of the motor vehicle as at 06/10/21. Also, that the Copy of Record indicated previous owners and current owners and thus the court could not establish when the motor vehicle was transferred. In fact, the Adjudicator rhetorically asked why not just avail a valid search for 15/01/2019?

18. While this question may be correct, the Court notes that the Adjudicator focused on one aspect of the evidence adduced by the Appellant namely, the copy of the record of the motor vehicle. In evaluating evidence, it is trite that an Adjudicator is obliged to holistically evaluate the evidence in order to make a finding.



19. I have gone through the entire evidence adduced and the list of documents supplied to the Small Claims Court and of utmost importance to the issue at hand are the following documents: police abstract No. 1; Copy of Records for motor vehicle KBW 420T No. 2; Receipt of payment for copy of records No. 3; and Kiroro Investigators Tracing Report dated 18/12/2021 No. 24 on the list of documents.
20. From the face of it, the Copy of Records show that the motor vehicle KBW 420T was first registered on 11/10/2013; it had two other previous owners and as at 6/10/2021 the owner was the Respondent herein. The police abstract produced as number 1 on the appellant list of documents show that as at the time of the accident the motor vehicle KBW 420T was being driven by a James Mwendia Murishi and was insured by the Invesco Insurance Co [Policy No 087/0804/1053858](#). The investigation report by Kiroro Investigators Tracing Report indicate that the motor vehicle KBW 420T was at the time of the accident insured against the [Policy No. 087/0804/1053858](#) and the policy holder was Simon Maina Njogu, the Respondent herein.
21. While the copy of the records of motor vehicle provides for previous owners, the same does not indicate when ownership was transferred from one owner to the other. The production of evidence showing that the Respondent was the policy holder of the insurance for the motor vehicle KBW 420T as at the time of the accident goes to confirming and corroborating the evidence that he was the registered owner of the motor vehicle.
22. A literal reading of section 8 of the [Traffic Act](#) deems the registered owner in the copy records as the actual owner. The only qualification to this position is for a party to prove the contrary. Such proof could only be made by the person registered as such demonstrating intervening factors including sale or lease of the vehicle as to affect the legal culpability over any claims to the vehicle. It was not for the Adjudicator to disprove the registered ownership on the face of it by considering suppositions not backed by evidence or testimony.
23. This court is also cognizant of the provisions of section 31 of the [Small Claims Court Act](#) which excludes the strict application of the rules of evidence and find that the Adjudicator ought to have analysed the Appellant's evidence in totality. On record was an official copy of records from NTSA indicating the Respondent as the current owner. This evidence was buttressed with the evidence of insurance policy holder showing that it was in the name of the Respondent as at the time of the accident, the Adjudicator, without any evidence to the contrary erred in dismissing the claim on the basis that ownership had not been proved.
24. This court also notes that the Adjudicator noted that had the Appellant proved ownership the court would have awarded quantum totalling to Kshs. 395,296/-. In the circumstance therefore, having found that the Respondent was the registered owner of the motor vehicle as at the time of the accident, this Court will not interfere with the finding on quantum.
25. The upshot of this Appeal is that it succeeds in the following terms;
 - a. The finding of the adjudicator that dismissed the claim with costs and the holding that the claimant failed to prove ownership of the motor vehicle KBW 420T pleaded to have been blamed for the accident is set aside.
 - b. The respondent is held liable to pay the Appellant quantum as held below by the trial court:
Repair charges Kshs. 348,500/=
Assessment fees Kshs. 6,380/=
Towing fees Kshs. 5,500/=



Storage charges Kshs. 2,566/=

Tracing fees Kshs. 31,800/=

Search fees Ksh. 550/=

Total: Kshs 395,296/=

- c. Each party is to bear its costs at the Small Claims Court and this appeal.

RHODA RUTTO

JUDGE

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

For Appellants:

For Respondent:

Court Assistant:

