



REPUBLIC OF KENYA



**Gor v Abonyo (Civil Appeal E102 of 2021)  
[2023] KEHC 270 (KLR) (23 January 2023) (Judgment)**

Neutral citation: [2023] KEHC 270 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CIVIL APPEAL E102 OF 2021**

**KW KIARIE, J  
JANUARY 23, 2023**

**BETWEEN**

**CHARLES POLO GOR ..... APPELLANT**

**AND**

**RICHARD O ABONYO ..... RESPONDENT**

*(Being an Appeal from the ruling and order in Homa Bay Chief Magistrate's  
CMCC No.71 of 2019 by Hon. J.M Nang'ea –Chief Magistrate)*

**JUDGMENT**

1. On October 27, 2021 Hon JM Nang'ea granted orders sought in an application brought by way of Notice of Motion dated September 13, 2021. The respondent had objected to the attachment of motor vehicle xxxx for the satisfaction of a decree in Homa Bay CMCC No 71 of 2019. He was not a party in the said suit and he claimed ownership of the said motor vehicle.
2. The appellant was aggrieved by the said ruling and filed this appeal. He was represented by the firm of Nyauke & Company Advocates and later by the firm of Aluoch Odera & Nyauke Advocates. He raised the following grounds of appeal:
  - a. That the honorable learned chief magistrate misdirected himself in fact and in law by upholding an invalid contract.
  - b. The honourable chief magistrate misdirected himself in fact and in law by concluding that the respondent was an innocent purchaser from a person who did not have legal ownership of the said property.
  - c. The honourable chief magistrate misdirected himself in fact and in law by enforcing a contract between the respondent and unknown party.
  - d. The ruling is thus unjust and if sustained would occasion to a miscarriage of justice.



3. The appeal was served on the firm of Reuben Mases & Company Advocates. They did not file any response or submissions.
4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co Ltd [1965] EA 123*, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
5. The issue before the learned trial magistrate was not an issue of contract. The objection raised in respect of the attachment was on ownership of motor vehicle xxxx. Section 8 the Traffic provides:  
  
The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.  
  
The section was subject of interpretation in the case of *Samwel Mukunya Kamunge vs John Mwangi Kamuru Civil Application No 34 of 2002* Hon HM Okwengu, J as she then was stated:-  
  
It is true that a certificate of search from the Registrar of motor-vehicle would have shown who was the registered owner of the motor-vehicle according to the records held by the Registrar of motor vehicle. That however is not conclusive proof of actual ownership of the motor vehicle as section 8 of the *Traffic Act* provides that the contrary can be proved. This is in recognition of the fact that often time's vehicles change hands but the records are not amended.
6. The learned trial magistrate therefore arrived at the correct decision after being satisfied that the ownership of the motor vehicle xxxx had left the judgment debtor in Homa Bay CMCC No 71 of 2019. The appeal lacks merit and the same is dismissed with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 23<sup>RD</sup> DAY OF JANUARY, 2023**

**KIARIE WAWERU KIARIE**

**JUDGE**

