



**NCBA Bank Kenya PLC v Ojweke & 2 others (Civil Appeal
E027 of 2023) [2023] KEHC 24285 (KLR) (25 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24285 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E027 OF 2023
KW KIARIE, J
OCTOBER 25, 2023**

BETWEEN

NCBA BANK KENYA PLC APPELLANT

AND

RAY OTIENO OJWEKE 1ST RESPONDENT

ANTON PETER WACHIAJI OTIENO 2ND RESPONDENT

BYRONE ONGATI OJWEKE 3RD RESPONDENT

*(Being an Appeal from the ruling in Oyugis Senior Principal Magistrate's
SPMCC No.182 of 2022 by Hon. Celesa Okore–Principal Magistrate)*

JUDGMENT

1. NCBA Bank Kenya PLC, the appellant herein, was the 2nd defendant in Oyugis Principal Magistrate's SPMCC No. 182 of 2022. This was a claim that arose from a road traffic accident involving motor vehicle registration number KCT 850P owned by the 2nd respondent who was the plaintiff in the suit and motor vehicle registration number KDB 176C which was jointly owned by the appellant and the 3rd respondent. The driver of the said motor vehicle was the 1st respondent.
2. On the 25th day of September 2022 the two motor vehicles collided and the 2nd respondent blamed the driver of motor vehicle registration number KDB 176C for the accident and claimed damages.
3. On the 5th day of December 2022 the appellant made an application and was seeking the following orders:
 - a. That the name of the 2nd defendant NCBA Bank Kenya PLC be struck out of these proceedings.



- b. That in the alternative and without prejudice to the foregoing the suit against the 2nd defendant be dismissed.
 - c. That costs for the application and the suit be provided for.
4. The application was premised on the following grounds:
 - a. That the 2nd defendant/applicant is improperly joined as a party to this suit.
 - b. That the 2nd defendant/applicant is merely a financier of its customer Byrone Ongati Ojweke the 3rd defendant by way of a loan facility agreement.
 - c. That the suit motor vehicle registration number KDB 176C, Fuso FJ Mitsubishi was the security for the said loan facility.
 - d. That the 2nd defendant/applicant was not in possession and did not have control and/or custody of the suit motor vehicle nor did it exercise control over persons who had the management of the said motor vehicle at all material times prior to the accident.
 - e. That there is no reason cause of action against the 2nd defendant/applicant and the suit against it is an abuse of court process.
5. In her ruling dated the 27th day of April 2023, the learned trial magistrate dismissed the application with no orders as to costs.
6. The appellant was aggrieved by the said ruling and filed this appeal through the firm of Makori & Karimi Advocates. The following grounds of appeal were raised:
 - a. That the learned trial magistrate erred in law and in fact by disregarding the appellant's submissions and documentary evidence tendered in the lower court in support of its application dated 5th December, 2022 and in so doing arrived at a decision that was against the weight of the evidence as set out before the trial court.
 - b. That the learned trial magistrate erred in law and in fact in failing to hold and find that the appellant herein is merely a financier of Motor Vehicle Registration Number KDB 176C, Fuso FJ Mitsubishi.
 - c. That the learned trial magistrate erred in law and in fact in failing to hold and find that the appellant's interest in Motor Vehicle Registration Number KDB 176C, Fuso FJ Mitsubishi is only limited to securing interest of a loan advanced to the 3rd respondent herein.
7. The appeal was opposed by the 2nd respondent through the firm of Onyango, Jonjo & Company Advocates.
8. 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] E.A. 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.



9. A copy of the registration certificate in respect of motor vehicle KDB 176C indicates that the registered owners are NCBA Bank Kenya PLC and Byrone Ongati Ojweke. Section 8 of the [Traffic Act](#) 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.

10. Issues that the appellant had raised in the application could only be addressed by evidence. The ruling of the learned magistrate cannot therefore be faulted.

11. I find that the appeal lacks merit and I dismiss it with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 25TH DAY OF OCTOBER 2023

KIARIE WAWERU KIARIE

JUDGE

