



REPUBLIC OF KENYA



KENYA LAW
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**Chege v Nguata (Civil Appeal 57 of 2015)
[2022] KEHC 15783 (KLR) (30 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15783 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL 57 OF 2015
J WAKIAGA, J
NOVEMBER 30, 2022**

BETWEEN

ARTHUR MACHARIA CHEGE APPELLANT

AND

SIMON KABIRO NGUATA RESPONDENT

(Being an Appeal from the Judgement and decree of the Senior Principal Magistrates Court at Muranga dated and delivered on 26th of June, 2015 by Hon. Mr. Nzyoki SPM at Murang'a)

JUDGMENT

1. By a plaint dated February 28, 2013, the appellant sued the respondent in respect of a road traffic accident which occurred on June 9, 2012 at Sagana along Murang'a – Kenol Road involving the appellants Motor Vehicle Registration No KAV XXXL and the respondent's Motor Vehicle Reg No KAX XXXU as a result of which the same was extensively damaged.
2. It was pleaded that the said accident was solely caused by the negligence of the respondent servant, driver and/or agent as a result of which the appellant incurred damages of Kshs 227,000=.
3. By a defence dated June 20, 2013 the respondent denied the occurrence of the said accident and in alternative pleaded that if it occurred, then it was caused by or substantially contributed to by the negligence of the appellant.
4. By a judgement therein dated June 26, 2015, the trial court dismissed the appellant's claim having held that the driver of KAX XXXU was wholly to blame for causing the accident in that it was overtaking at a bend and rammmed into the rear of Motor Vehicle Registration No KAV XXXL but found that there was no proof of ownership of the motor vehicle by the appellant and therefore no liability.
5. Being aggrieved by the said determination, the appellant filed this appeal and pointed the following grounds of appeal:-



- a. The learned magistrate erred in fact and in law in the way he weighed the evidence produced in court
- b. The learned trial magistrate erred in law and in fact by dismissing the plaintiff's suit on grounds that the liability was never proved and yet the defendant had been charged and convicted of the traffic offence of careless driving
- c. The learned trial magistrate erred in law and fact by finding that the plaintiff never proved ownership of the motor vehicle and yet the same was never raised as an issue
- d. The learned trial magistrate erred in law and in fact by finding that special damages were not proved and yet the plaintiff produced receipts in support of the costs he incurred in repairing the motor vehicle
- e. The learned trial magistrate erred in law and in fact by finding that the owner of the motor vehicle did not prove the income that he generated and yet both the plaintiff and defendant testified that both motor vehicle were being used as matatus at the time of the accident.

SUBMISSIONS

6. Directions were given that the appeal be heard by way of written submissions which have been duly filed. On behalf of the appellant it was submitted that it was not in dispute that the respondent was wholly liable and that the only sole reasons why the trial court dismissed the suit was because a motor vehicle copies of record was not produced to prove that the respondent was the owner of the Motor Vehicle Registration No KAX XXXU yet there were other documents in support thereof for which the case of [Jotham Mugalo v Telkom \(k\) Ltd \[2005\] eKLR](#) was submitted.
7. It was submitted that the respondent did not produce any document to contradict the evidence produced by the appellant as required under sections 106 and 107 of the [Evidence Act](#) for which the cases of [Samuel Mukunya Kamunge v John Mwangi Kamuru \[2005\] eKLR](#) and [JRS Group Ltd v Kennedy Odhiambo Andwak \[2018\] eKLR](#) were tendered in support of the contention that the police Abstract is proof of ownership.
8. It was submitted that the claim was a material as damage and therefore the trial court was wrong in stating that only 160,000/= was proved as the applicant had used Kshs 224,500 as repair cost supported by the report and further that loss of use was proved.
9. On behalf of the respondent it was submitted that in [Thuranira Karani v Agnes Ncheche](#) the Court of Appeal at Nyeri rejected police abstract as proof of ownership which was applied in [Kabir Mohammed Faruk v Posta Corp Of Kenya \[2018\] eKLR](#).
10. It was further submitted that the fact that DW1 was charged and fined Kshs 1,000/= was not proof of liability as was stated in [Chemwsho & Another v Kubende](#). It was further submitted that the appellant did not prove special damages and loss of user and therefore the lower court cannot be faulted.

Determination

11. This being a first appeal, the court is required to re-evaluate the evidence tendered before the lower court and to come its own determination.
12. At the trial the appellant testified as PW1 and confirmed that he was the owner of the subject motor vehicle which had been knocked from behind and that the respondents motor vehicle which was driven



- by one Peter Kabirwa and that the police found the said motor vehicle liable for the accident and thus subsequently charged the driver. He produced document in support of his claim.
13. PW2 Peter Emisembo Owiti a Principal Officer from Polytech Assessors produced the assessment report on the motor vehicle and noted that the damage was Kshs 168,000/= on the open market.
 14. PW3 David Kioko Sila, the driver stated that on June 9, 2012 the respondent 's motor vehicle attempted to overtake from behind but was unable since there was an oncoming motor vehicle and therefore knocked it from behind causing damage therein.
 15. DW1 Peter Manyeki Mbugiri confirmed that he was the owner of the said motor vehicle and that when he reached Sabasaba, Motor Vehicle Registration No KAV XXX L suddenly stopped without giving any indication consequently he knocked it on the right side and that he was charged before Kigumo Law Court and fined Kshs 1,000/=.
 16. The only issue for determination in this appeal is whether having found the respondent to be wholly liable, the lower court was right in dismissing the suit on the ground that he did not prove the ownership of Motor Vehicle Registration No KAX XXX U on the basis of the Authority of *Thuranira v Subra*.
 17. It must be pointed out that the Court of Appeal in many of its decision departed from the Thuranira case which is no longer good law by holding that proof of ownership of a motor vehicle may be by any other means documentary or otherwise and not by way of records from the Registrar of Motor vehicles. This was the position taken by the Court of Appeal in *Willington Nganga Muthaura v Akamba Public Road Services Ltd & Another [2010] eKLR* in which the court held;-

Where the police abstract was produced and there was no evidence adduced by a defendant to rebut it and not even cross examination challenged it, the police abstract being a prima facie evidence not rebutted could be relied on as proof of ownership in the absence of anything else as proof in Civil Case was within the standard of probability and not beyond reasonable doubt”.
 18. This position was further confirmed by the Court of Appeal in *Ibrahim Wandera v P N Mashru Civil Appeal No 332/2003* acted with approval in *Douglas Gisemba Omwonnga v Richard Mutwoi Kipyegon [2020]* to the effect;

The learned judge did not at all make reference to the police abstract report which the appellant tendered in evidence. In that document the accident bus is shown as KAJ 968 W with Mashru of PO Box 98728 Mombasa as the owner. The fact was not challenged. The appellant was not cross-examined on it and that means that the respondent was satisfied with the evidence. The police abstract form established ownership of the accident bus and the appellant was properly given judgment by the trial court against the respondent”.
 19. From these conclusions, it follows that the trial court fell under error thereby exposed his judgement to the court for setting aside which I hereby do and enter judgment against the respondent on liability at 100% as the court had found. The issue of ownership of the motor vehicle does not affect liability at all.
 20. This being a material damage claim, the appellants claim having not been challenged by the respondent during the trial, I see no basis upon which the trial court declined to award, the appellant, the sum pleaded and proved, therefore set aside the judgment in respect of the damages and substitute the same with an award of Kshs 227,000 as pleaded and proved.



21. The appellant is entitled to the cost of this appeal and the costs of the suit before the lower court together with interest therein at court's rate from the date of judgment and it is ordered.

SIGNED DATED AND DELIVERED AT MURANGA THIS 30TH DAY OF NOVEMBER, 2022

J WAKIAGA

JUDGE

In the presence;-

Court assistant: Carol Mutahi

Mr Mbuthia for Njuguna for the appellant

