



1. *Civil Appeal*

2. *Subject of Subordinate Court Case*

TORT

- 2.1 *Running down cause*
- 2.2. *Female adult pedestrian*
- 2.3 *Run down by motor vehicle registration KAN 588G
Matatu – Nissan Homy vehicle
On a foot pavement on 17th December 2001
Sustained injuries*
- 2.4 *Judgment – Hon. Magistrate C Githua
Entered judgment for pedestrian/original plaintiff
Ksh. 200,000/= less 30% contributing negligence*

3. *Subject of appeal:*

OBJECTION PROCEEDINGS

- 3.1 *Tort suit filed 8th February 2005
case concluded and read 13th October 2005*
 - 3.2 *Registered owner of motor vehicle KAN 588G
Matatu Nissan Homy
1st defendant Stephen M Gichuhi
2nd defendant driver*
 - 3.3 *Non appearance by defendant one and two
during case*
 - 3.4 *Execution proceedings
attached KAN 588G motor vehicle*
 - 3.5 *Objection by Joseph Munene Nduachu
who purchased vehicle on 11th March 2005
during pending of case.*
 - 3.6 *Registered owner Stephen M Gichuhi
imported vehicle and sold to Joseph Githiri Githee
who sold vehicle and Joseph Munene Nduachu
objector herein.*
 - 3.7 *New magistrate dealing with objection
proceedings S. Muketi – reads mischief in the sale
of vehicle.
Dismisses objection proceedings but grants stay of execution*
- Pending appeal*
- 3.8 *Objector appeals*

4. *Appeal:*

- 4.1 *Hon Magistrate erred in dismissing appeal when
evidence was before her that objector was owner of vehicle
KAN 588G.*

The objector had made objection proceedings in good faith

5. In Reply:

The respondent original defendant was not the registered owner prior to 28th March 2005.

No proof that objector is new owner of vehicle

No proof that on 11th March 2005 objector was owner of vehicle.

6. Held:

Appeal allowed

Ruling set aside

Objection proceedings allowed

7. Case Law:

a) Bishopgate Motor Corporation Ltd – Vs – Transport Brakes Ltd

(1949) I ALL ER 37

(Bucknill, Singleton & Denning LJJ)

b) Samwel Mutai – Vs – AAR Health Services Ltd & Another

HCC 570/00

Kasanga Mulwa J

c) Securicor Kenya Ltd – Vs Kyumba Holdings Ltd

CA 73/2002

(Tunoi, O’Kubau & Deverell JJA)

8. Advocates :

i) P.R. Amuga instructed by M/s Amuga & Co Advocates for the objector

ii) H. Muturi holding brief for M/s Osoro Omwoyo & Co Advocates for the respondent

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO. 442 OF 2006

JOSEPH MUNENE NDUACHU APPELLANT

VERSUS

BILLY ATIENO OTIENO 1ST RESPONDENT

STEPHEN M GICHUHI 2ND RESPONDENT

PETER KINYANJUI 3RD RESPONDENT

(Being an appeal from the Ruling and Order of Hon. Mrs S. Muketi, Principal Magistrate on 29th June 2006 in CMCC No. 1119 of 2005)

J U D G M E N T

I INTRODUCTION

1. This appeal concerns objection proceedings that were taken out in the subordinate courts by the appellant, one Joseph Munene Nduachu and accordingly dismissed on the 29th June 2006.
2. The objector filed appeal to this High Court on the 3rd July 2006.
3. A brief background of the proceedings being that the original plaintiff, one Bilha Atieno Otieno, an adult female, was a pedestrian along the Limuru Road junction near the Aga Khan hospital. She had just crossed the road and was on the foot pavement when a motor vehicle registration KAN 588G hit her whilst she was on the foot pavement and off the road. She sustained injuries and was later admitted to Kenyatta National Hospital for a week. The accident occurred on the 17th December 2001.
4. On the 8th February 2004, she filed suit in the magistrate's court at Nairobi and sought damages for injuries sustained and expenses incurred. The trial magistrate found that she had contributed negligently by 30% towards the accused. She gave an amount of

Ksh. 200,000/= say Ksh. 143,000/= after apportionment.

5. The original plaintiff executed. She had the motor vehicle registration KAN 588G attached and wished that it be sold in order to be paid her compensation. It was then that Joseph Munene Nduachi filed objection proceedings claiming that the said motor vehicle belonged to him and not to the original first defendant/second respondent, one Stephen M Gichuhi who had been sued as the owner of the said vehicle.
6. Another Hon. Magistrate handled the objection proceedings. After hearing the arguments put forward by Joseph Munene Nduachi, the Hon. Magistrate concluded that there was mischief in the whole matter. This was because the vehicle was sold during the pending of the case in 2005 to the said objector. She declined to grant the objector his prayer and dismissed the application. The Hon magistrate granted stay pending the hearing of the appeal against her ruling.

II APPEAL

7. The objector stated that he was indeed the new owner of the motor vehicle registration KAN 588G. where the Hon. Magistrate recognized this when she stated in her ruling that in Kenya, when you purchased a vehicle, the ownership is not immediately transferred to your name.
8. He produced a sale agreement between another Joseph Gichui Githae and himself dated 11th March 2005 [the judgement of the subordinate court was delivered in October 2005].
9. His advocate relied on case law that disclosed registration was not an absolute proof of ownership. It was just prima facie evidence/proof that one was owner of the vehicle.
10. In the case of:
Bishopgate Finance Motor Corp Ltd
- V -
Transport Brakes Ltd
(1949) 1 ALL ER 37
(Bucknill, Singleton & Denning LJJ)

Where Lord Denning recognized the principle of property and the protection of commercial transaction.

11. "The registration book of a car, or the "log book" as it is called may not itself be a

document of title but it is the best evidence of title. The transfer of the log book does not itself transfer the property in the car. The property, as a rule, is only transferred by sale and delivery, but a transfer is open to suspicion unless the log book is handed over.”

12. Kasanga Mulwa J stated on 2nd June 2000 in the ruling given in **Samwel Muriithi – Vs – AAR Health Services Ltd** HCC 570/00 that a log book to a vehicle is not a necessary document of a title.

13. The Court of Appeal in the case of **Securicor Kenya Ltd – Vs Kyumba Holdings** CA 73/202 (Tunoi, O’Kubasu’ Devereil JJA) Although the appellant was the registered owner of the motor vehicle, the actual possession had passed to a third party. Under Section 8 of the Traffic Act where ‘the person whose name a vehicle is registered shall unless the contrary is proved, be deemed to be the owner of the vehicle.’”

14. In reply, the respondent states that indeed Stephen M Gichuhi is the owner of the vehicle and was the registered owner prior to 23rd March 2005. There was no proof that the objector was the registered owner as of 11th March 2005.

III OPINION

15. My opinion on the matter is that the law is now settled in Kenya. Where one is a registered owner of a motor vehicle and the name appears in the records as such, the said ownership can be proved otherwise.

16. The objector claims he has illustrated that he is the new owner of the vehicle. That Stephen M Gichuhi transferred and or sold the vehicle to a third party namely Joseph Gichuhi who in turn sold the vehicle to him on 11th March 2005 during the pending of the case.

17. In the words of Denning LJ (as he then was) “no one can give a better title than he himself possesses.” (Dealing with the protection of property.)

“The person who takes in good faith and for value intent motive should get a good title” in dealing with common transaction.

18. I would in any event allow this appeal, set aside the trial magistrate’s ruling dismissing the objection proceedings and enter judgment that the objection proceedings are allowed to the objector.

19. There will be costs of this appeal to the appellant and cost of the objection proceedings up in the subordinate court to the original objector appellant.

Dated this 28th Day of September 2011 at Nairobi

M. A. ANGAWA
JUDGE

- Advocates :*
- iii) *P.R. Amuga instructed by M/s Amuga & Co Advocates for the objector*
- iv) *H. Muturi holding brief for M/s Osoro Omwoyo & Co Advocates for the respondent*