



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NYERI**

**CIVIL APPEAL 149 OF 2001**

**JOHN WARUTUMO GACHUGU.....APPELLANT**

**Versus**

**JOHNSON NDUNGU MUCHIRI.....RESPONDENT**

**JUDGMENT**

The Appellant filed this suit against the Respondent in the Chief Magistrate's Court at Nyeri claiming damages as a result of a motor vehicle accident. The Appellant lost the case and as a result he filed this appeal listing seven grounds of appeal. During the hearing of the appeal, Mr. Kebuka Wachira appearing for the Appellant while Mr. Muchiri Wa Gathoni appeared for the Respondent, the two Counsel were in agreement that the main issues were two. One was whether the accident motor vehicle was owned by the Respondent and the second issue was whether the Respondent was the driver of the motor vehicle.

Counsel for the Appellant attached a document at page 70 of the Record of Appeal being a copy of the accident motor vehicle's record from the Office of the Registrar of Motor Vehicles. It was produced during the hearing as an exhibit by the Respondent to prove he was not the registered owner of the accident motor vehicle. The document was admitted in the evidence without any objection and came to be an important document in the judgment where the learned trial magistrate found that the Appellant has sued a wrong person.

In this appeal Counsel for the Appellant is pointing out a number of things in those documents and is asking this court to find that that document is not genuine. The trial magistrate had not been required to make such a finding and I do not know what he would have said had he been asked to make such a finding. Having seen and heard witnesses the magistrate was in a better position than me to make such a finding. On the other hand, if such a finding is made, there will remain no other official document to show whether or not the Respondent is the lawful owner of the accident motor vehicle. The Appellant relied on the evidence regarding the conduct of the Respondent based on circumstances that the Appellant and the Respondent were people from the same locality and knew each other well. When therefore the trial magistrate relied on that document it is being said that he did not take into account the evidence adduced by the Appellant.

It is not clear why the Appellant did not think of bringing better evidence from the office of the Registrar of Motor Vehicle to disprove the document produced by the Respondent.

Then there was evidence from a Police Abstract written following a report of the accident to the Police. It was not clear as to the source of the information in the Police Abstract to the effect that the Respondent was the owner of the motor vehicle. There was a conflict whether the Respondent was the driver of the motor vehicle or there was a different driver whom the Police had kept on looking for. The Appellant himself could not definitely say whether the Respondent was in that motor vehicle and was driving during the time of the accident.

It was clear the Police had made no effort to do a search at the Registrar of Motor Vehicle's Office to establish the official and legal position concerning ownership of the motor vehicle.

The mere fact that the Appellant knew the Respondent and used to see the Respondent on that motor vehicle could not prove ownership even if the Respondent had been active in trying to get an out of court settlement following the accident in this matter – before the case went to court.

I have looked at the evidence on record before the learned trial magistrate and I do not find anything in this appeal which entitles me to disturb the trial magistrate's judgment.

Accordingly, this appeal is hereby dismissed with costs to the Respondent.

*Dated this 10th day of June, 2005.*

J. M. KHAMONI

JUDGE