

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO 118 OF 2003

MOITALEL OLE SAPIT..... APPELLANT

VERSUS

FESTUS MUCHOKI KIBIRA..... RESPONDENT

JUDGMENT

This is an appeal from the Judgment of Hon. T. W. C. Wamae, SRM in Milimani CMCC No 3460 of 1999 delivered on 13th February, 2003.

The Appellant here was sued in the lower court by the Respondent as owner of a motor vehicle (KLN 339) which was involved in a motor vehicle accident with the Respondent's motor vehicle causing the latter personal injuries and damages. He was held vicariously liable for the negligence of his driver. His major defence was that he was not the owner of the offending motor vehicle, the same having been sold to one Letagues Ole Kerema in 1982. His only proof of this sale was a duplicate motor vehicle insurance certificate. On the other hand, the Respondent produced a search from the Registrar of Motor Vehicles showing that the Appellant was the owner. The court agreed with the Respondent, and held the Appellant vicariously liable for damages of Kshs.522,395/= to the Respondent.

It is against that Judgment that the Appellant has appealed. He has outlined six grounds of appeal which are not necessary to reproduce here, except simply to say that his major ground of appeal is that the lower court wrongly found him to be the owner of the motor vehicle. He also submitted that the quantum of damages awarded was excessive, and that the Respondent ought to have been found to have "contributed" to the accident.

With respect to the issue of ownership, I am satisfied that the lower court arrived at the correct decision based on the evidence before it.

The Respondent produced documents from the Registrar of Motor Vehicles that the Appellant was the registered owner of the offending motor vehicle. Under Section 8 of the Traffic Act, Cap 403, he was deemed to be the owner unless he proved the contrary. To rebut that evidence, all he had was a duplicate certificate of insurance, which the lower court correctly held was insufficient to prove ownership. He produced no sale agreement, and no other documents. Section 9 of the Traffic Act requires that he informs the Registrar of the change of ownership within 7 days. There was no proof that he had done this. (See *Francis Nzioka Ngao vs Silas Thiani Nkunga C A 92 of 1998 – Nairobi*).

Accordingly, I find, as did the lower court, that on a balance of probability he was indeed the owner of the motor vehicle registration no KLN 339 at the material time and therefore vicariously liable to the Respondent for damages suffered.

As for quantum, Counsel simply stated that the award was high, but made no submission, and cited no authorities. Nor did he make any submissions on contributory negligence. However, there could not have been any contributory negligence for two reasons: (i) the accident happened when the Respondent's motor vehicle was off the road, and (ii) the Appellant's driver was charged with, and convicted of, dangerous driving.

Accordingly, and for reasons stated, this appeal is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 8th day of December, 2004.

ALNASHIR VISRAM

JUDGE