



**Eurocollection Limited v Odhier & 3 others (Civil Appeal  
E004 of 2023) [2025] KEHC 2105 (KLR) (7 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2105 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CIVIL APPEAL E004 OF 2023  
DK KEMEL, J  
FEBRUARY 7, 2025**

**BETWEEN**

**EUROCOLLECTION LIMITED ..... APPELLANT**

**AND**

**RICHARD OTIENO ODHIER ..... 1<sup>ST</sup> RESPONDENT**

**CHARLES OMOLLO KOWI ..... 2<sup>ND</sup> RESPONDENT**

**MAURICE OMONDI OYARO ..... 3<sup>RD</sup> RESPONDENT**

**PETER MAINA NGUGI ..... 4<sup>TH</sup> RESPONDENT**

*(Being an appeal from the Judgment of S.W.Mathenge (SRM)  
delivered on 16/01/2023 in Bondo PMCC No. 119 of 2019)*

**JUDGMENT**

1. The 1<sup>st</sup> Respondent herein had filed a claim in the trial court against the Appellant, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> Respondents emanating from a road traffic accident that occurred on 11/8/2017 wherein he was a passenger in motor vehicle registration number KAW 092Q which collided with motor vehicle KBX 771K causing him injuries. As a result of the said accident, he claimed compensation for general damages, special damages, costs and interest.
2. The matter was heard and upon conclusion, the trial court ruled in favor of the 1<sup>st</sup> Respondent in the following terms:
  - a. Case against the 4<sup>th</sup> Respondent (Third party) was dismissed with costs to be borne by the Appellant.
  - b. Liability apportioned against the Appellant and 2<sup>nd</sup> Respondent(2<sup>nd</sup> Defendant) jointly and severally at 30% while the 3<sup>rd</sup> Respondent (3<sup>rd</sup> Defendant) held 70% liable for the accident :



General damages Kshs 1000 000/=

Special damages Kshs 58,919.80/=

Net award Ksh 1,058919.80/=

- c. The 1<sup>st</sup> Respondent was awarded costs and interest on the general damages at courts rate to be borne by the Appellant, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to the extent of their liability.
3. Aggrieved by the said judgment and orders of the trial court, the Appellant has appealed to this court raising the following grounds of appeal:
    - i. That the trial magistrate erred in law and in fact in finding the Appellant 30% jointly and severally liable with the 2<sup>nd</sup> Respondent.
    - ii. The trial magistrate erred in law and in fact in applying wrong principles and ignoring the right principle in determining ownership of motor vehicle KBX 771K.
    - iii. The trial magistrate erred in law and in fact in ignoring settled legal authorities on the issue of transfer of motor vehicles.
    - iv. The trial magistrate erred in completely misconstruing the facts and arriving at a plainly wrong decision.
  4. Ultimately, the Appellant prays that the case against it be dismissed with costs, judgment be entered against the 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> Respondents at 100% liability, and the Respondents bear the costs of the appeal.
  5. This being a first appeal, this court stands guided by the cases of *Selle & Anor v Associated Motorboat Co. Ltd & Others* [1968] E.A. 123, *Ogol v Muriithi* [1985] KLR 359 and *Seascapes Ltd v Development Finance Company of Kenya Ltd* [2009] KLR 384. In all these cases, the principle has been restated that its duty as a first appellate court is to revisit the evidence that was tendered before the trial court afresh, analyse it, evaluate it and arrive at its own independent conclusion, but always bearing in mind that the trial court had the benefit of seeing the witnesses, hearing them and observing their demeanour and hence, this court must give due allowance for that.

### **1<sup>st</sup> Respondents case at the trial court**

6. PW1 Richard Otieno Odhier testified that he was the plaintiff. His statement dated 20/6/2018 was adopted as his evidence in chief. He produced the following documents : Receipt West Kenya Kshs 10,000/= P exhibit 1, Nightingale medical treatment notes-P exhibit 2, receipt Kshs 2650/= P exhibit 3a), receipt 2700/= P exhibit 3b), Receipt ksh4705/= P exhibit 3c), receipt Kshs 2260/= (P exhibit 3d), Equity receipt (PMFI 3e), receipt Kshs 2000/= (P exhibit 3f), receipt Kshs 100/- (P exhibit 3g), interim bill and receipt (P exhibit 3 h) (i) and (ii), Receipt Kshs 300/= (P exhibit 3(i), receipt Kshs 20,000/= (P exhibit 3(j), receipt Kshs 4000/= (PMFI 3 k), receipt Kshs 3000/= (PMFI 3 l), receipt NTSA Kshs 550/= (P exhibit 3 m), receipt Dr. Olima (P exhibit 3 n), Harleys receipt Kshs 3100.80 (P exhibit 3 o), Tenwek referral hospital (P exhibit 4), P3 form dated 11/8/2017 (P. exhibit 5), police abstract dated 25/7/2018 (P exhibit 6), demand letter (P exhibit 7) and Report by Dr Olima (P exhibit 8).
7. He stated that he has not fully healed as he still has the metal in his leg and he feels pain on the leg when it is cold. That he feels pain on his left side of the abdomen and that his walking style has changed since the accident.



8. That he was from Rageni heading to Bondo; at about 100 metres he saw a vehicle with full lights. That he was on the left side of the road. The vehicle was on the left side of the road. He decided to move to the right side of the road. That while passing it, the vehicle moved towards them and hit them. That the vehicle did not have hazards on and it was stationary. It was KBX 771K driven by Owino Kowi. That he was in m/v KAW 092Q which was driven by Morris Omondi Oyaro. That he blamed Owino Kowi for careless driving and stopping on their lane. That he also blamed Morris Omondi Oyaro because he should have stopped to allow them see what was happening to the driver of KBX 771K. That had he not have been in the vehicle, he would not have been involved in the accident. That after he did a search, KBX 771K was also registered in the name of Euro collection Limited.

On cross examination, he stated that Omollo Kowi was the driver of KBK. That he was in KAW 092Q as a passenger at the front passenger seat. That the accident happened at 9.20pm. That both vehicles were using their headlights. That there is Chianda market and a school at the scene of the accident. That heading to Bondo, he saw the vehicle KBK had stopped on the left side of the road. That the lights of KBK blinded them and that they could not see anything because the lights blinded them. That their driver stopped and hooted at KBK 771K because that vehicle was on the lane designated for them. That the road at the scene is tarmacked and marked. That his surgery was done successfully. That exhibit 8 doesn't indicate that he is limping but he does not walk the same way he used to prior the accident.

9. The 1<sup>st</sup> Respondent's case was closed at this juncture.

### **Appellant's Case at the trial court**

10. DW1 Maurice Onyango Owich state that Euro Collection Limited was an importer of items and also used to run a motor vehicle show room. That on 28/1/2014 there was a sale agreement with Peter Ngugi, where upon the vehicle was sold at ksh 800,000/=. That Peter Ngugi took possession of the vehicle plus the transfer documents. That they were not in possession of the vehicle at the time of accident. That he produced several documents as exhibits namely, motor vehicle sale agreement – (Exhibit 1), Logbook (D exhibit 2), demand letter dated 5/11/2018 (D exhibit 3), demand letter dated 26/11/2018 (D exhibit 4).

On cross examination, he stated that the vehicle had not been transferred at the time of the accident and that the selling price was Kshs 1,650,000/= as at paragraph 2 of the sale agreement. That there was a balance of Kshs 43,000/= . That paragraph 7 of the agreement says that vendor shall retain ownership of the vehicle until completion of payment. That he didn't have evidence to show whether the balance was cleared. That he's not aware whether the sale agreement was registered with the registrar of documents.

On cross examination by the 3<sup>rd</sup> party/4<sup>th</sup> Respondent, he stated that he did not have evidence to show that Peter Ngugi was in control of the vehicle at the time of the accident.

On reexamination, he stated that at the time of the accident they had sold KBX 771K to Peter Maina Ngugi.

### **2<sup>nd</sup> Respondents case at the trial court**

11. DW1 Charles Omollo Kowi stated that he recorded a statement about the accident of 11/8/2017 which he adopted as his evidence in chief. That he tried to sue Maurice Oyaro who had initially tried to solve the issue out of court but he refused.

On cross examination, he stated that he was driving KBX 771K at the time of the accident. That it was at 6.00pm and was not yet dark and that he had a clear vision of the surroundings. That his vehicle



was outside the road parked and stationary. The road was Ndori-Luanda Kotieno road. That he was from Ndori headed to Luanda Kotieno. That he parked at the right side of the road at the parking bay. That he crossed from the left and went to the right to park. That the vehicle came from in front of him heading to Ndori. That he did not notice it before the collision. He didn't see it lose control. That he saw it going toward his stationary vehicle about 7 to 10 metres away. That his front left side of the vehicle was damaged. That his daughter in law was injured. That he sued vehicle KAW 092Q in court but did not bring the court documentations to show the outcome of the said case. That he did not testify in the case that he had lodged.

Upon being cross-examined by counsel for the Appellant (1<sup>st</sup> Defendant)), he stated that he does not know Peter Maina Ngugi. That it is his daughter Rachael who gave him the car to run his errands. That Rachael is married to one Mr. Chan and does not know from where she got the vehicle.

On cross-examination by counsel for the 4<sup>th</sup> Respondent (3<sup>rd</sup> Party), he stated that at the time of the accident, he was in possession of the vehicle. That he doesn't know Mr. Ngugi and that it was Rachael who had given him the car.

12. Both the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' cases were thus closed.

13. The appeal was canvassed by way of written submissions. The Appellant submitted that a logbook is only evidence of title but property in a vehicle passes to a buyer at the time when the contract is made. Reliance was placed in the Court of Appeal case of Joel Muthuri vs. Julius Gichuru Qantai [1996] eKLR. He further submitted that the 4<sup>th</sup> Respondent entered appearance and filed a replying affidavit dated 6/10/2021 and a statement dated 15/10/2021 in which he confirmed that he had purchased the motor vehicle from the Appellant and immediately gifted it to the 2<sup>nd</sup> Respondent. That the 4<sup>th</sup> Respondent confirmed that he did not transfer the m/v to his name and thus could not transfer it to the 2<sup>nd</sup> respondent. That the 4<sup>th</sup> Respondent likewise confirmed that at the time of the accident he was the beneficial owner and that the 2<sup>nd</sup> Respondent was his driver. Thus he submitted that the Appellant was the seller, the 4<sup>th</sup> Respondent the buyer, hence, the vehicle received by the 2<sup>nd</sup> Respondent could only have come from the 4<sup>th</sup> Respondent. Thus the 2<sup>nd</sup> Respondent was the 4<sup>th</sup> Respondent's driver at the time of the accident.

Ultimately, it was submitted that is the 4<sup>th</sup> Respondent that should be held vicariously liable for the actions of the 2<sup>nd</sup> Respondent and not the Appellant. He also placed reliance on the case of Anthony Kuria Wangari vs. Guardian Bank Limited [2021] eKLR.

In conclusion, he prayed that this court finds that he was not the owner of the vehicle at the time of accident and that he be awarded costs of the appeal.

14. The 1<sup>st</sup> Respondent submitted that the Appellant was the owner of the motor vehicle as he was still registered as per the details in the logbook. He relied on the case of Jared Magwaro Bundi & Another Vs. Primrosa Flowers ltd. which expounded on section 8 of the *Traffic Act*. He submitted thus that the appeal be dismissed with costs to the 1<sup>st</sup> Respondent.

15. The 2<sup>nd</sup> Respondent submitted that at the time of the accident, the vehicle had been sold to Peter Maina and physically transferred to him. That the 2<sup>nd</sup> Defendant had stated in his evidence that he did not know Peter Maina but he had gotten the vehicle from his daughter and that he however did not know where the daughter got the vehicle from. It was submitted that the Appellant was the owner of the vehicle because his name was still on the logbook and that the sale agreement had not been completed. He thus submitted that the appeal be dismissed with costs.



16. I have considered the trial court proceedings, the rival submissions and the authorities by the parties. The issues for determination are:
- i. Who was the owner of the motor vehicle at the time of the accident?
  - ii. Who should be held vicariously liable for the acts or omissions of the 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Defendant?
  - iii. Who should be awarded costs?
17. As regards the issue of ownership, section 8 of the *Traffic Act* stipulates that the person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle. In the case of *Ignatius Makau Mutisya v Reuben Musyoki Muli and Joel Muga Opinja v East Africa Sea Food Ltd* [2013] eKLR, the Court of Appeal held that:

“registration of a motor vehicle is not conclusive proof of ownership, but it can be rebutted where other compelling evidence exists to prove otherwise.”

In *Jared Magwaro Bundi & Another v Primarosa Flowers Limited* [2018] eKLR, the Court of Appeal stated thus: -

“... Section 8 of the *Traffic Act* recognizes the registration book or the Registrar’s extract of the record as prima facie evidence of title to a vehicle and the persons in whose name the vehicle is registered is presumed to be the owner thereof unless the contrary is proved. The burden is discharged if, on a balance of probabilities, it is shown that as a matter of fact the vehicle had been transferred but not yet registered, to a de facto owner, a beneficial owner or a possessory owner. Such an owner though not registered for practical purposes may be more relevant than that in whose name the vehicle is registered.”

18. From the proceedings, D exhibit 1 was the sale agreement that showed the Appellant had sold the said motor vehicle to the 4<sup>th</sup> Respondent. The 4<sup>th</sup> Respondent confirmed the same. The 4<sup>th</sup> Respondent stated that he gifted the same to the 2<sup>nd</sup> Respondent.
19. Guided by the above case law, this court is convinced that the 4<sup>th</sup> Respondent was the beneficial owner of the said motor vehicle at the time of the accident and not the Appellant. The Appellant presented evidence which thereby rebutted the deeming provisions of section 8 of the *Traffic Act*. He did provide the contrary evidence that he was not the owner and in possession of the subject vehicle as he had sold it to the 4<sup>th</sup> Respondent herein. It is instructive that the said 4<sup>th</sup> Respondent (3<sup>rd</sup> Party) did not tender evidence in the lower court but had sworn a replying affidavit wherein he had averred that indeed he had bought the vehicle from the Appellant. The issue of whether the balance of Kshs 43000/ had been cleared was not conclusively addressed by the parties as they indicated that they were not sure whether the same was cleared. If that is the position, and that there is no evidence by the Appellant that it was still pursuing for the same, it can safely be implied that the property in the said vehicle had passed to the 4<sup>th</sup> Respondent. Consequently, liability ought not to have been apportioned against the Appellant and hence the finding by the trial magistrate on liability must be interfered with.



20. On the second issue of vicarious liability, the court in the case of *Beatrice William Muthoka & Another (Both suing as legal representatives of the Estate of William Muthoka Yumbia (Deceased) v Agility Logistics Limited* [2020] eKLR stated as follows: -

“Vicarious liability imposes liability on employers for the wrongful acts of their employees and as such, an employer will be held liable for torts committed while an employee is conducting their duties. It is not in contention that the driver of the motor vehicle was in fact an employee of the respondent and evidence has been adduced to that effect. Then it stands to reason that we should interrogate the principles or elements required for this tort to hold. In the case of *Yewens Vs Noakes* {1880} 6 QBD 530 Bramwell LJ stated that: -

“...a servant is a person who is subject to the command of his master as to the manner in which he shall do his work.”

21. Further, in the case of *Joel v Morison* [1834] EWHC KB J39 it was held that: -

“The master is only liable where the servant is acting in the course of his employment. If he was going out of his way, against his master’s implied commands, when driving on his master’s business, he will make his master liable; but if he was going on a frolic of his own, without being at all on his master’s business, the master will not be liable.”

22. In paragraph 2 of the replying affidavit dated 6/10/2021 sworn by the 4<sup>th</sup> Respondent Peter Maina Ngugi (3<sup>rd</sup> Party) states that:

“Indeed, I am familiar with the subject motor vehicle KBX 771K Nissan X trail having purchased the same from the 1<sup>st</sup> Defendant via sale Agreement dated 28/01/2014 for a purchase price of Ksh1, 650,000/= but immediately thereafter I bequeathed/gifted the 2<sup>nd</sup> Defendant the said motor vehicle but unfortunately I inordinately did not transfer to my names so as to enable the 2<sup>nd</sup> defendant transfer to his names as a bonafide new owner”

23. The above caption from the words of the 4<sup>th</sup> Respondent confirms that he was the owner of the motor vehicle having purchased the same from the Appellant. He further confirms that he is the one who gave the 2<sup>nd</sup> Respondent the said motor vehicle. The question that begs now is whether the 2<sup>nd</sup> Respondent was acting under the instructions of the 4<sup>th</sup> Respondent? From the record, the 2<sup>nd</sup> Respondent denies knowing the 4<sup>th</sup> Respondent. This is quite surprising in view of the clear averments made by the 4<sup>th</sup> Respondent in his affidavit sworn on 6/10/2021. I am unable to believe the assertion of the 2<sup>nd</sup> Respondent to purport not to know the 4<sup>th</sup> Respondent. I find that the said 2<sup>nd</sup> Respondent is deemed to be the agent of the 4<sup>th</sup> Respondent for purposes of apportioning liability. Guided by the case of *Joel Vs Morison* [1834] EWHC KB J39 this court is inclined to find that the 2<sup>nd</sup> Respondent was an agent of the 4<sup>th</sup> Respondent who is the beneficial owner, thus the 4<sup>th</sup> Respondent is vicariously liable for the acts and omissions of the 2<sup>nd</sup> Respondent.

24. Finally, on the issue of liability, it emerged from the evidence that the 3<sup>rd</sup> Party (4<sup>th</sup> Respondent)’s vehicle registration KBX 771K had been parked dangerously on the road thereby endangering other road users and which led to the accident. Likewise, the owner or driver/agent or servant of motor vehicle registration number KAW 092Q even though on his lawful lane was expected to have a proper look out while being on the highway and be ready to take such measures to avoid the accident. Had the driver of the said vehicle registration number KAW 092 Q been alert, he would have avoided the accident. Hence, the apportionment of liability in the ratio of 30% is reasonable while the other



torfeasor shoulders the remainder of 70% liability. Consequently, I find the liability ratio of 70% to 30% to be quite reasonable and which must be shouldered by the 4<sup>th</sup> Respondent (3<sup>rd</sup> Party) and the 3<sup>rd</sup> Respondent.

25. In view of the foregoing observations, it is my finding that the appeal has merit. The same is hereby allowed. The judgment of the trial court is hereby set aside and substituted with the following orders:

- a. The suit against the 1<sup>st</sup> Defendant/Appellant is dismissed with costs.
- b. Judgment is hereby entered for the 1<sup>st</sup> Respondent against the 3<sup>rd</sup> party (4<sup>th</sup> Respondent) and the 3<sup>rd</sup> Defendant (3<sup>rd</sup> Respondent) jointly and severally.
- c. Liability is apportioned between the 3<sup>rd</sup> party (4<sup>th</sup> Respondent and the 3<sup>rd</sup> Defendant (3<sup>rd</sup> Respondent) in the ratio of 70%:30% respectively.
- d. The Appellant is awarded the costs of the appeal which shall be borne jointly by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.

Orders accordingly.

**DATED S AND DELIVERED AT SIAYA THIS 7<sup>TH</sup> DAY OF FEBRUARY, 2025**

**D. KEMEI**

**JUDGE**

In the presence of:

M/s Otieno.....for Appellant

M/s Kibet.....for 1<sup>st</sup> Respondent

M/s Barasa.....for 2<sup>nd</sup> Respondent

N/A.....for 3<sup>rd</sup> Respondent

N/A.....for 4<sup>th</sup> Respondent

Ogendo.....Court Assistant

