



REPUBLIC OF KENYA



**Ooga v Kimani & another (Civil Appeal E268 of 2023)
[2025] KEHC 2283 (KLR) (Civ) (14 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2283 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E268 OF 2023

RC RUTTO, J

FEBRUARY 14, 2025

BETWEEN

OLIVER KEMUNTO OOGA APPELLANT

AND

TERESIA NJAMBI KIMANI 1ST RESPONDENT

MOGO AUTO LIMITED 2ND RESPONDENT

JUDGMENT

1. This is an appeal against the Judgment and decree of the Small Claims Court Commercial No. E4373 of 2023 delivered in Nairobi. In that Claim, the Appellant (Claimant) sued the Respondents for breach of agreement for the sale and purchase of Motor Vehicle Registration Number KCW 453J between herself and the 1st Respondent.
2. The genesis of the dispute as stated in the Statement of Claim was that on 11th May 2023, the 1st Respondent agreed to sell the subject Motor Vehicle to the Appellant for a purchase price of Kshs 560,000/=. The Appellant contends that she paid the full purchase price, after which the ownership of the vehicle was transferred to her and a logbook was subsequently issued in her name. However, on 31st May 2023, the 2nd respondents' agents accosted the Appellant's husband, who was driving the vehicle and carted away the motor vehicle claiming ownership. The Appellant avers that the Respondents have consistently frustrated her efforts to reclaim the motor vehicle which she considers a breach of contract.
3. In response to the statement of claim, the 1st Respondent averred that on 30th April 2023, she purchased the subject motor vehicle for kshs 420,000/= from Charles Moturi, who held the original log book in his name. She further stated that upon full payment, she took possession of the vehicle, and the logbook was transferred to her name. After repairing and repainting the motor vehicle, she subsequently sold it to the Appellant, whom she asserts is the rightful owner of the vehicle.



4. The 2nd respondent in its response, averred that, pursuant to a security agreement dated 9th June 2022 with Mr. Jared Miyongo, it agreed to finance the purchase of the subject motor vehicle. Under the agreement, Mr. Jared was advanced Kshs 390,000/=, to be repaid over a period of 36 months until 11th June 2025, at an interest rate of 2.4% on a flat-rate basis. As security for the loan, the motor vehicle Registration Number KCW 453J was jointly registered with the borrower at the National Transport and Safety Authority (NTSA), making the 2nd Respondent a co-owner of the vehicle.
5. The 2nd Respondent further contended that a few months into the agreement, the borrower defaulted on the loan repayments, prompting it to engage a recovery team to repossess the motor vehicle. It was at this point that the 2nd Respondent discovered that the vehicle had been sold to a third party, the Appellant, without its knowledge or consent. Further, that as of 26th June 2023, the amount owed to it was Kshs 723,899, which continued to accrue interest.
6. The 2nd Respondent asserted that, based on the logbooks presented, its interest was first in time compared to the others and, therefore, it rightfully claims ownership of the motor vehicle. Consequently, the 2nd Respondent filed a counterclaim against Jared Miyongo Onyono, the borrower, for breach of contract and prayed for a declaration to be made that the 2nd and Jared Miyongo Onyono (3rd respondents) are the legal registered owners of the suit motor vehicle, an order for release of the suit motor vehicle to the 2nd respondent in lieu of payment by the 3rd respondent of the sum of kshs 723,899 owed to the 2nd respondent in unpaid loan amounts.
7. The adjudicator delivered her judgment on 29th September 2023 in favour of the Appellant against Jared Miyongo Onyono in the sum of Kshs 560, 000/= plus interest at court rates from the date of filing the claim until payment in full. The third respondent, Jared Miyongo Onyono was directed to pay the costs of the claim.
8. The Appellant aggrieved with the entire judgment, lodged this appeal on 13th October 2023 setting out the following grounds of appeal: that the Learned Magistrate erred in both law and in fact; in finding that the Appellant had not proved her case against the Respondent for restoration of Motor Vehicle KCW 453J Toyota Passo back to the claimant; making a finding for payment of Kshs 560, 000/= as against the third party who had no contractual and or civil dispute with the Appellant; by issuing a judgment that is contrary to the established case law and precedent which had been cited before her; disregarding the Appellant's evidence, the 1st Respondent's evidence, submissions and authorities relied upon thus arriving at an erroneous conclusion; and delivering a judgment inconsistent with the proceedings and material before her.
9. The Appellant prayed that the judgment delivered be set aside and that judgment be entered against the Respondents for:-
 - a. A declaration that the Appellant was a bonafide purchaser for value without notice and that she is the rightful owner of motor vehicle Registration Number KCW 453 J Toyota Passo;
 - b. A permanent injunction does issue restraining the Respondents against interfering with the Appellant's quiet possession, use and ownership of motor vehicle KCW 453 J Toyota Passo.
 - c. In the unlikely event that the 2nd Respondent's has disposed off, damaged, wasted and or dismantled the subject motor vehicle, judgment be entered against the 2nd Respondent in the sum of Kshs 560, 000/= and interest at court rates from the date of institution of the proceedings herein till payment in full and;
 - d. Costs of this appeal and the lower court be provided for.



10. The Appeal was canvassed by way of written submissions. The Appellant's submissions are dated 20th May 2024, the 1st Respondent's submissions are dated 8th October 2024 and the 2nd Respondent's submissions are dated 20th July 2024.

Appellant's Submissions

11. The Appellant submitted that there was overwhelming evidence proving her entitlement to ownership of the subject motor vehicle. She contended that she purchased the vehicle from the 1st Respondent and was issued with a logbook until the vehicle was repossessed. The Appellant further submitted that the 1st Respondent admitted ownership of the vehicle and explained that she had acquired it from Charles Moturi Maosa through an auction, which she claimed was sufficient evidence to support her bona fide purchase. Additionally, the Appellant asserted that having conducted a search and verified the ownership of the vehicle in the 1st Respondent's name, she had no legal obligation nor was it reasonably feasible to investigate the 1st, 2nd, 3rd or 4th previous owners of the vehicle. In support of her position, the Appellant relied on the cases of Jackson Kipng'etich Komen v K-Rep Bank Limited & 2 Others [2018] eKLR and Katana Kalume & Another v Municipal Council of Mombasa & Another [2019] eKLR, asserting that a bona fide purchaser for value without notice acquires a good title.
12. Moreover, the Appellant pointed out a glaring discrepancy in the amount claimed by the 2nd Respondent, questioning how an alleged balance of Kshs 93,898 could inflate to Kshs 723,899. She argued that the 2nd Respondent's actions lacked legal justification and could not be supported in law. The Appellant submitted that she was not a party to the agreements and understandings between the 2nd Respondent and Jared Miyogo hence the agreements could not confer any rights or impose any obligations on her. The Appellant relied on the case of Agricultural Finance Corporation v Lengetia Limited & Jack Mwangi [1985] eKLR.
13. On whether the trial court erred by issuing a judgment that is contrary to established case law and precedent and delivering a judgment inconsistent with the proceedings and material before her, the Appellant submitted that the trial court failed to protect bona fide purchaser, mis-applied the law, failed to consider evidence and provided an inadequate relief. He prayed that the appeal be allowed with costs.

1st Respondent's submissions

14. The 1st Respondent in support of the appeal submitted that the subject motor vehicle was sold pursuant to a court-issued decree and warrants of attachment, and that the resulting auction sale has not been set aside or stayed by any court in Kenya. She further contended that at the time of the alleged illegal detention by the 2nd Respondent, the vehicle lawfully belonged to the Appellant. In support of her position, the 1st Respondent relied on the case of Jacob Ochieng' Muganda v Housing Finance Company of Kenya Limited [2002] eKLR, to state that any remedy available to the 2nd Respondent lies against the third party or the auctioneers, rather than the Appellant. Additionally, the 1st Respondent argued that the 2nd Respondent failed to file any application to set aside the auction sale and, in its counterclaim, did not seek a declaration that the auction and subsequent transfers were illegal. As such, she maintained that the appeal should be allowed as prayed.

2nd Respondent's submissions

15. The 2nd Respondent submitted on one main issue; whether the Appellant is the rightful owner of the motor vehicle and, consequently, entitled to the reliefs sought. The 2nd Respondent argued that it was not a party to the contract through which the Appellant purchased the subject motor vehicle and that,



at the time of the alleged purchase, the vehicle had been registered as security under an asset financing agreement dated 9th June 2022 between the 2nd Respondent and Jared Miyongo Onyono, who was joined as a third respondent in the lower court proceedings.

16. The 2nd Respondent contended that because its security interest had been duly registered, it took priority over-all third-party claims to the motor vehicle. It therefore submitted that the auction was illegal and relied on the case of *Tahmed Coach Limited v Maburuki Mwanguta & Luvuno Chimera Mwachidudu* (suing as legal representatives of the estate of Mwanakombbo Omari, Deceased) & 5 others (Civil Appeal E089 of 2021) [2023] KEHC 21857 (KLR) (23 August 2023) (Judgment) and *Reuben Mong'are Kaba v M M N* (a minor suing through her mother and next friend R M) & Another [2018] eKLR, to support the argument that the Appellant could not acquire a legal or equitable interest in the motor vehicle without the consent of the co-owner.
17. Additionally, the 2nd Respondent submitted that from the logbooks tendered as evidence, the one registered under the third party was on 13th June 2022 and was first in time compared to the other two, thereby establishing priority. It relied on the case of *Kenneth Nyaga Mwige v Austin Kigua & 2 others* [2015] eKLR to support this position.
18. On whether a permanent injunction should be granted, the 2nd Respondent relied on the case of *Kenya Power & Lighting Company v Sheriff Molana Habibi* [2018] eKLR, submitting that the motor vehicle remains encumbered and that it retains enforcement rights under the [Movable Property Security Rights Act](#). Consequently, it submitted that the order for a permanent injunction was misplaced.
19. The 2nd Respondent concluded by submitting that the appeal lacked merit and it be dismissed with costs.

Analysis & Determination

20. This court has considered the grounds of appeal, the proceedings of the lower court, and the submissions filed by the parties. To begin with, the duty of this Court as an appellate court exercising jurisdiction under the Small Claims Court squarely falls under Section 38 of the [Small Claims Court Act](#). This section limits the jurisdiction of the High Court on appeals from the Small Claims Court to matters of law only.
21. What constitutes, points of law, has been settled in the case of *Peter Gichuki King'ara Vs Iebc & 2 Others*, Nyeri Civil Appeal No. 31 Of 2013, (Court of Appeal) (*Visram, Koome & Odek, JJA*) Of 13.02.2014, where the Court of Appeal stated as follows: -

“ [I]t is trite law that the exercise of judicial discretion is a point of law and that the trial court in denying a prayer of scrutiny is exercising judicial discretion. The Court concluded that it would not be feasible for the Court of Appeal to order for a recount and scrutiny as this would involve matters of fact that were within the jurisdiction of the trial court. The court further held that the question of whether the trial judge properly considered and evaluated the evidence and arrived at a correct determination that is supported by law and evidence – with the caveat that the appeal court did not see the witness demeanor – is an issue of law.”
22. Having gone through the Memorandum of Appeal and the grounds set out there under, I note that the Appellant raises issues of both law and fact. All the ground of appeal are premised on the allegations that the learned adjudicator erred in both the law and fact. The submissions also have been crafted to support both the issues of fact and law. Thus, based on the above authority, and on the definition, of what constitutes issues of law, this court will restrain from delving into the issues of facts and address



the only issue of law arising which is; whether the appellant proved her case on a balance of probability and whether she is entitled to the relief sought.

23. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya provides that: Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist. It is not in contention that the Appellant proved that he was a bona fide purchaser of value of the subject motor vehicle from the 1st Respondent. Notably, the 1st Respondent confirmed the successful sale and transfer of the motor vehicle to the Appellant. On the other end the 2nd Respondent position is that as at the time the Appellant purchased the motor vehicle, the same was attached as security to an asset financing agreement between them and Jared Miyogo Onyono who was joined as a third Respondent in the Small Claims Court proceedings. They assert that they are strangers to the transfer of the motor vehicle to either the Appellant or the 1st Respondent.
24. An examination of the logbooks submitted by all parties confirms that the first registered logbook was in the name of the 2nd Respondent and Jared Miyogo Onyono (the borrower). Since the borrower failed to present any evidence challenging the validity of this registration, the log book remained legally valid and enforceable.
25. It is a well established legal principle that when there are two competing claims to ownership, the one recorded first in time takes precedence. This position was emphasized in the case of *Wreck Motors Enterprises vs. The Commissioner of Lands and Others Civil Appeal Civil Appeal No. 71 of 1997*, where the court held that:

“Where there are two competing titles, the one registered earlier is the one that takes priority”
26. The same position was also held in the case of *Gitwany Investment ltd vs. Tajmal Ltd & 3 Others (2006) eKLR* where the Court held that:-

“...the first in time prevails, so that in the event such as this one whereby a mistake that is admitted, the Commissioner of Lands issues two title in respect of the same parcel of land, then if both are apparently and on the face of them issued regularly and procedurally, without fraud save for the mistake then the first in time must prevail”
27. Flowing from the above jurisprudence, it follows that, where priority in registration determines ownership rights, the logbook that was first in time will prevail. Consequently, I find that the 2nd Respondent’s title (jointly with one, Jared Miyogo Onyono, the borrower) was the first in time and should prevail the evidence called by the Appellant and the 1st Respondent having been cognate and not displaced. Noting that the 2nd Respondent had an interest in the Motor vehicle which was secured by the Security Agreement and noting the default of the borrower in the said agreement, it is therefore proper that the Motor Vehicle be repossessed by the 2nd Respondent and the Appellant be reimbursed his purchase price paid.
28. Having found that the motor vehicle was rightfully repossessed by the 2nd respondent, this court notes that the adjudicator proceeded to enter judgment in favour of the claimant against the third respondent herein (Jared Miyogo Onyono) in the sum of kshs 560,000/- which was the alleged purchase price. In doing so, the adjudicator did not set out the basis of this finding despite noting that the claim against the third party was undefended.
29. This Court notes that in the claim, the Appellant sought that the in the alternative, judgment be entered against the 1st Respondent in the sum of kshs 560,000/- and interest at the court rates from the date of filing till payment in full. The basis of this prayer as deduced from the pleadings is that a contract



of sale existed between the Appellant and the 1st Respondent who, based on the sale agreement, bought the subject motor vehicle from the 1st Respondent a fact not disputed by the parties. Therefore, the contractual obligations were solely between the Appellant and the 1st Respondent and not between the appellant and the third Respondent.

30. Simply put, the Appellant bought the motor vehicle, for value without notice, from the 1st Respondent. That vehicle was ‘repossessed’ by the 2nd Respondent. To that extend, the Appellant rightfully lodged a claim against the 1st and 2nd Respondents as the parties that had first taken his money and repossessed the motor vehicle respectively. These two facts were not denied. However, as we have already found the 2nd Respondent filed a counterclaim justifying why it repossessed the motor vehicle and sought joinder of the party it believed infringed on its right to ownership of the motor vehicle. Notably, the adjudicator, and also this court, found that indeed the 2nd Respondent had an overriding registered title and to that end, the Appellant’s claim over the 2nd Respondent was rebutted.
32. The remaining issue is the Appellant’s claim against the 1st Respondent. Did the 1st Respondent discharge her liability? I do not think so. She did not dispute selling the motor vehicle to the Appellant after purchasing it for value from one, Charles Moturi. Interestingly, she did not seek to join, Charles Moturi, in those proceedings despite that, prima facie, he would have been the person to absolve her from liability towards the Appellant. Needless to say, the facts in this case clearly reveal a chain of events instigated by the wrongful acts of Jared Miyongo. While Jared Miyongo should not be let to benefit from his unlawful action of causing the selling of the vehicle without settling his outstanding debt with the 2nd Respondent, the subsequent transactions cannot be legitimized.
33. However, as this appeal is only limited to the claim by the Appellant, this Court finds that there was no established relationship between the third respondent (Jared Miyongo) and the Appellant to warrant judgment against the third party in favour of the Appellant. Nonetheless, having established that a valid contract for sale of a motor vehicle between the Appellant and the 1st Respondent existed, the appellant is entitled for compensation by the 1st Respondent, whom she sued.
34. The upshot is that I find and hold that the learned adjudicator erred in law in determining the claim as she did. The finding that the third party was liable to pay the Appellant Kshs 560,000 was not proper given that he was not a party to the contract between the Appellant and the 1st Respondent. Thus, this appeal succeeds in the following terms;
 - a. The judgment of the adjudicator is set aside to the extent that it entered judgment against the third party herein Jared Miyogo Onyono in the sum of kshs 560,000/= plus interest at court rates from the date of filing the claim until payment in full.
 - b. Judgment is entered in favour of the Appellant against the 1st Respondent in the sum of kshs 560,000/= plus interest at court rates from the date of filing the claim until payment in full
 - c. Each party to bear their own costs of the appeal.

Orders accordingly

DELIVERED, DATED AND SIGNED THIS 14TH DAY OF FEBRUARY 2025

RHODA RUTTO

JUDGE

For Appellant:

For 1st Respondent:



For 2Nd Respondent

Court Assistant:

