



**St Patrick’s Hill School Limited v Gemcourt Co. Ltd & 2 others (Civil Appeal E053 of 2024)
[2025] KEHC 1897 (KLR) (Commercial and Tax) (3 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1897 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPEAL E053 OF 2024
CJ KENDAGOR, J
FEBRUARY 3, 2025**

BETWEEN

ST PATRICK’S HILL SCHOOL LIMITED APPELLANT

AND

GEMCOURT CO. LTD 1ST RESPONDENT

JULIUS MAINA 2ND RESPONDENT

JACKSON KAMAU KIRAGU 3RD RESPONDENT

(Being an appeal from the Judgment of Hon. Wendy Micheni delivered on the 28th February, 2024 in Chief Magistrates Commercial Court Milimani Civil Suit No. 9546 of 2019)

JUDGMENT

Introduction

1. The 1st Respondent’s motor vehicle KAJ 697J got involved in a road accident on 28th December, 2016 as a result of which it was damaged. The 1st Respondent blamed the Appellant and the 2nd and 3rd Respondents for the accident and sued them for special damages of Kshs.187,559/=. It claimed that the motor vehicle which caused the accident (KAJ 817Q) belonged to the Appellant and the 2nd Respondent, and that the vehicle was at the time of the accident controlled by the 3rd Respondent. It brought the claim under the doctrine of subrogation on behalf of its insurer, Metropolitan Cannon Assurance Company Limited.
2. The Appellant filed a defense in which it denied being the beneficial/or the registered owner of the motor vehicle no. KAJ 817Q. It claimed to be a stranger to all the parties and maintained it had been erroneously and wrongly sued. Neither of the parties testified on record, opting to canvass the suit



by way of submissions, and their respective documents be produced as exhibits without calling their makers.

3. The Court delivered the judgment in favor of the 1st Respondent on 28th February 2024. It attributed liability at 100% in favor of the 1st Respondent. It also found that there was sufficient evidence to show the suit vehicle (KAJ 817Q) was owned by the Appellant and the 2nd Respondent. It accordingly awarded the 1st Respondent the special damages at Kshs.187,559/= and interests.
4. The Appellant was dissatisfied with the judgment and appealed to this Court vide a Memorandum of Appeal dated 7th March 2024. It listed the following Grounds of Appeal;
 1. That the learned Chief Magistrate erred in Law and in Fact in ignoring the overwhelming evidence presented by the Appellant by way of the sworn evidence of its director to wit that;
 - a. The Appellant was never and has never been the owner of the accident vehicle.
 - b. The Appellant's servants were never and have never been involved in the subject accident.
 - c. The Appellant is St. Patrick's Hill School and has never been Nkoroi Co. Ltd as erroneously stated in the impugned judgment.
 - d. The persons named by the so-called 'investigator' were and are total strangers to the Appellant.
 - e. The so-called 'investigator' never ever met any of the Appellant servants at any time or any time at all and that the entire 'investigation report' is a tissue of untruths, half-truths, misrepresentations, exaggerations, concoctions etc without any care of transparency and accountability and is wholly inadmissible under the Evidence Act, Cap 80, Laws of Kenya.
 - f. Any conclusion on the culpability of the Appellant based on the false evidence of the so called 'investigator's report' who is not even a witness known to the Evidence Act constitutes a fundamental misdirection and erosion of justice and fairness.
 2. That the learned Chief Magistrate erred in law and in fact in misapplying the hallowed principle of the law that 'he who alleges must prove' by placing the burden of proof upon the Appellant thereby occasioning a serious miscarriage of justice upon the Appellant.
 3. That the learned Chief Magistrate erred in law and in fact in its over-reliance on the tenuous and highly suspect hearsay evidence of the so called 'investigator' who used concocted and fictitious evidence in the impugned report thereby occasioning a fundamental miscarriage of justice.
 4. That the learned Chief Magistrate erred in law and in fact in ascribing ownership of the accident vehicle to the Appellant in the face of glaring evidence to the contrary thereby occasioning a very serious instance of miscarriage of justice.
 5. That the learned Chief Magistrate erred in law and in fact in ignoring the overwhelming sworn evidence presented by the Appellant and relying solely and wholly on the tenuous and grossly weak and concocted and inadmissible evidence of the Respondent thereby occasioning a miscarriage of justice.



6. That the learned Chief Magistrate erred in law and in fact in misapplying the law against the Appellant despite overwhelming principles of the law to the contrary thereby occasioning miscarriage of justice.
7. That the learned Chief Magistrate erred in law and in fact in exhibiting obvious bias against the Appellant by relying wholly on the tenuous and inadmissible evidence of the Respondent vide the so called ‘investigators report’ thereby occasioning a miscarriage of justice against the Appellant.
8. That the learned Chief Magistrate erred in law and in fact in introducing extraneous matters in its purported analysis of evidence thereby occasioning a serious miscarriage of justice.
9. That the learned Chief Magistrate erred in law and in fact in failing to recognize that she was dealing with a re-trial of the matter and failed to address the gravity of the substantial allegations of the improprieties of the Respondents highlighted by the Appellant in its sworn evidence during the re-trial.
10. That the learned Chief Magistrate erred in law and in fact in the flippant and casual manner in treating the Appellant’s submissions and relying wholly on the impugned evidence of the Respondent involving a vehicle unknown and un owned by the Appellant and the alleged accident thereof which is totally foreign to the Appellant.
11. That the learned Chief Magistrate erred in law and in fact in introducing its analysis of the evidence a stranger to the proceedings to wit, the insurance company which had not and did not participate in any manner or form in the impugned proceedings thereby occasioning a miscarriage of justice upon the Appellant.
12. That the learned Chief Magistrate erred in law and in fact erroneously holding in its judgment that the Appellant namely St. Patrick’s Hill School Ltd was registered as Nkoroi Co. Ltd at the Registrar of Companies a situation which has never existed and will never exist. This constitutes a fundamental mis-direction in law and in fact.
13. That the learned Chief Magistrate totally misdirected herself in law and in fact by wrongly invoking the principle of subrogation in the suit which had no relevance to the adjudication of the matter at hand thereby occasioning grave miscarriage of justice.
14. That the learned Chief Magistrate erred in law and in fact in occasioning grave confusion in its conclusion by purporting to rule only against the Appellant when there are three Defendants in the subject suit thereby demonstrating actual bias enough to occasion substantial injustice against the Appellant.
15. That the learned Chief Magistrate misdirected herself in law and in fact when she failed to consider that the Respondent did not have the authority of its Board of Directors to institute the suit contrary to the provisions of the [Civil Procedure Act](#), 2010.
16. That the learned Chief Magistrate erred in law and in fact in failing to observe that the suit does not raise a cause of Action thereby occasioning a serious miscarriage of justice.
17. That the learned Chief Magistrate erred in law and in fact in the bizzare conduct of the trial contrary to the provisions of Articles, 10, 25, 27, 47, 50(1) & 50 (2) (c) of [the Constitution](#) thereby denying the Appellants a fair hearing.



5. The Appellant asked the Court to allow the Appeal and set aside the orders of the Chief Magistrate Court. It also asked this Court to set aside orders granted against the Appellant.
6. The Appeal was canvassed by way of written submissions.

Appellant's Written Submissions

7. The Appellant argued that the trial magistrate was wrong to conclude that the Appellant is or was the owner of motor vehicle registration No. KAJ 817Q. It argued that this conclusion was contrary to the records of the Registrar of Motor Vehicles available as at the time of the accident. It submitted that the available records show that Nkoroi Company is the registered owner of the vehicle. It argued that there was no proof that the Appellant is or has ever been registered as Nkoroi Company Ltd. It also argued that there was no proof that the 3rd Respondent was an employee or an agent of the Appellant. Based on this, it urged this Court to find that there was absolutely no privity or any connection whatsoever between the Appellant and all parties mentioned in the Plaintiff.

Respondent's Written Submissions

8. The Respondent urged this Court to uphold the lower Court's judgment. It argued that the matter was decided on right principles and the judgment was based on the evidence tendered before Court. It argued that the lower Court properly considered the copy of records which indicated the owner of motor vehicle registration No KAJ 817Q as Nkoroi Co. Ltd as well as the investigation report by Mirox insurance investigators. It submitted that the lower Court was justified to find the way it did because the Appellant did not table any evidence to challenge the Respondent's evidence before Court. It thus argued that the Respondent's exhibits, especially the Investigation report were uncontroverted.

Issues for Determination

9. I have considered the grounds of appeal and submissions by both counsels for the parties and I am of the view that the issue for determination is;

a. Whether the Appellant and the 2nd Respondent are the owners of the Suit vehicle No KAJ 817Q

10. It is trite law that the duty of the first appellate Court is to re-evaluate the evidence in the subordinate Court both on points of law and facts and come up with its findings and conclusions. As the Court is re-evaluating the evidence, it is required to bear in mind that it had neither seen nor heard the witnesses. This principle was set out in *Selle and another v Associated Motor Boat Company Ltd and others* [1968] 1 EA 123:

“...this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence ...”

Whether the Appellant and the 2nd Respondent are the owners of the Suit vehicle No KAJ 817Q

11. The main issue for determination is whether the trial Court was correct in finding that the Appellant and the 2nd Respondent are the owners of the suit vehicle. The Appellant maintains that this finding was erroneous because it was contrary to the records of the Registrar of Motor Vehicles available as at



the time of the accident. I have relooked at the exhibits produced by the parties and the relevant law with a view to determining whether there was sufficient evidence to support the lower Court's finding.

12. It is now a well-recognized principle of law that a Court can, where there are other compelling evidence, make a finding of ownership that is different from that contained in the logbook. This principle has been affirmed in *Nancy Ayemba Ngana vs Abdi Ali* (2010) and *Bernard Muia Kilovoo vs Kenya Fresh Produce Exporters* [2020] eKLR.
13. The trial Court's decision was majorly based on the report by Mirax Insurance Investigators dated 12th September 2021. I have seen the said report. The parties agreed to admit the 1st Respondent's documents into evidence without calling their makers. The report indicated that, at the time of the accident, the 2nd Respondent had insured the suit vehicle with Directline Insurance Co. Ltd. In addition, the report indicated that the Appellant was registered as Nkoroi Co. Ltd. with the Registrar of Companies, but no longer used the name.
14. The Appellant submitted that it was unsafe for the trial Court to rely on the Investigator's Report. It argued that the contents of the report were hearsay and amounted to unsworn evidence. The Appellant relied on a decision cited as Civil Suit E044 of 2022 [2024], where he contended that the Court addressed the issue of the unsworn evidence of an investigator. However, the extract included in the submission is not found in the authority available online, and counsel did not provide the authority even after being directed to do so.
15. I have seen the Investigator's Report. It shows it was done by Mirox Insurance Investigators and signed by company's Principal Officer, one Michael Musee. At page 3 of the Report, it reads as follows; "We travelled to St. Patrick's Hill School in Kiserian whereby we talked to the school driver and the transport manager who informed us that the school was registered as Nkoroi Co. Ltd with the Registrar of Companies but they no longer use the name."
16. In my view, the investigators revealed the source of their data with reasonable clarity. The Appellant knew the weight of the allegations contained in the report, and their possible impact on the determination of the claim. This knowledge notwithstanding, it chose not to cross-examine the author of the investigation report. Instead, the Appellant agreed to have the report admitted into evidence without calling its maker. I thus cannot fault the lower Court for holding that the Investigator's Report remained uncontroverted. I thus uphold the lower Court's finding on this issue.
17. I have also carefully considered the other numerous issues raised by the Appellants both in the Memorandum of Appeal and in the submissions. I however find that the lower Court's decision was based on the available evidence and the applicable law. I therefore find no reason to disturb the determination of the lower Court.

Disposition

18. The Appeal is hereby dismissed with costs to the 1st Respondent.
It is so ordered.

**DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS
ONLINE PLATFORM ON THIS 3RD DAY OF FEBRUARY, 2025.**

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C. KENDAGOR

JUDGE



In the presence of:

Court Assistant: Berly

Ms. Obwori ,Advocate for Respondent

Mr. Nuthu, Advocate for Appellant

