



**Musyoki v Mercedes Center Limited & 2 others (Civil Appeal
E1192 of 2024) [2025] KEHC 5682 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5682 (KLR)

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

CIVIL APPEAL E1192 OF 2024

AC MRIMA, J

MAY 8, 2025

BETWEEN

JOSEPH WAMBUA MUSYOKI APPELLANT

AND

MERCEDES CENTER LIMITED 1ST RESPONDENT

JOHN JASON MAINA MACHARIA 2ND RESPONDENT

NATIONAL TRANSPORT & SAFETY AUTHORITY 3RD RESPONDENT

*(Being an appeal from the Judgment and Decree of Hon. Rawlings
Liluma Musiega (Senior Resident Magistrate) delivered on 11th
October 2024 in Nairobi [Milimani] MCCOMSU No. E051 of 2023)*

JUDGMENT

1. The dispute subject of this judgment pits three main parties over the ownership of a motor vehicle registration number KCW 900L make Mercedes Benz [hereinafter referred to as ‘the car’]. The parties are the Appellant [the allegedly purchaser of the car], the 1st Respondent [the allegedly seller of the car to the Appellant] and the 2nd Respondent [the alleged registered owner of the car].
2. The brief background of this appeal is that the Appellant visited the 1st Respondent’s car show room and was interested in purchasing the car which was then on display and sale. Upon negotiations and subsequent agreement, the Appellant and the 1st Respondent executed a sale agreement dated 2nd July 2022 and the Appellant paid the entire purchase price. The car was delivered to the Appellant who enjoyed possession awaiting the formal documentary transfer of ownership to himself. That was until the 13th December 2022 when the car was allegedly repossessed from the Appellant by Auctioneers under the instructions of the 2nd Respondent. There being no consensus towards the release of the car to the Appellant, the Appellant instituted Nairobi [Milimani] MCCOMSU No. E051 of 2023



[hereinafter referred to as 'the suit'] against the Respondents in this appeal. The Plaintiff was dated 23rd January 2023.

3. In the suit, the Appellant also filed an application by way of a Notice of Motion which was evenly dated wherein he sought injunctive and restorative orders. The application was decided vide a ruling delivered on 28th July 2023 in which the application was allowed. The suit was then heard by way of reliance on the documents and witness statements filed on record together with the parties' written submissions. The judgment, which is the subject of this appeal, was rendered on 11th October 2024 where the suit was dismissed with costs to the 2nd Respondent and the car restored to the 2nd Respondent.
4. Aggrieved by the judgment, the Appellant filed a Memorandum of Appeal dated 17th October 2024 and raised the following 9 grounds of appeal: -
 1. THAT the learned Trial Magistrate erred in law and in fact by granting orders that the motor vehicle be restored back to the custody of the 2nd defendant, together with costs to the 2nd defendant, despite the same Court acknowledged the existence of a valid sale agreement between the appellant and the 1st respondent.
 2. That the learned Trial Magistrate failed to take note that there existed a principal Agency relationship whereby the 2nd respondent authorised the 1st respondent to sell the said motor vehicle KCW 900L and the same was attached in the Annexures.
 3. That despite the learned Magistrate admitting the existence of a valid contract between the plaintiff now the Appellant and the 1st defendant now 1st respondent in his ruling dated 28th July 2023 that the Appellant had a case with a probable success, and even gave interlocutory orders for the motor vehicle to be in possession of the Appellant. The learned Magistrate in his judgment has overturned events, leaving the plaintiff exposed to a loss of Ksh. 2,450,000/= being the purchase price. And no orders whatsoever as to the refund of the purchase price.
 4. That the learned Magistrate erred in law and in fact by failing to take note that the Appellant had bought the said motor vehicle with a substantial amount of money which is Ksh. 2,450,000/=, and the Appellant was a bonafide purchaser who had to be protected, however in contrary, the Hon. Magistrate issued orders that would automatically let the Appellant loose his purchase price together with the motor vehicle hence double jeopardy.
 5. That the learned Magistrate in his ruling of the application dated 28th July 2023 expressly stated that and I quote "... it is admitted that the plaintiff had made full payment of the vehicle and therefore it is my considered view that the wars between the 1st and 2nd defendant should not affect the plaintiff who is genuinely waiting for the transfer of the logbook having done all ought to have been done in respect to the purchase of the motor vehicle.....". From the onset of this case, the learned Magistrate failed to take note of his own statement and giving a contrary judgment exposing the Appellant to a whopping loss of Ksh. 2,450,000/=.
 6. That the learned Magistrate erred in law and fact by failing to be consistent in his ruling in the interlocutory application dated 23rd January 2023, where the same Court initially made a ruling in favour of the applicant herein, and made orders that a temporary injunction restraining the defendants from selling the motor vehicle registration number KCW 900L pending the hearing and determination of the of the application. The Court further ordered that the said motor vehicle be released to the Appellant herein. Notably, the question that was left to be determined in his Judgment of the maid suit was as to how and when legal registered ownership would be transferred to the Appellant, however this turned totally opposite.



7. That the learned Trial Magistrate erred in law and fact by disregarding the Appellant's submissions noting that if the motor vehicle is restored back to the 2nd defendant and the Appeal is successful, the Appellant, will not be able to recover the depreciated value of the motor vehicle in comparison with the actual purchase price of Ksh. 2,450,000/= that he still on the verge of losing going by that Judgment of the trial Court.
 8. That the learned Trial Magistrate erred in law and fact by the very Judgment the Appellant will lose both his purchase price and the motor vehicle, noting that the Court has declined in its Judgment to order a refund of the purchase price to the Plaintiff.
 9. That the learned Trial Magistrate's Judgment was arrived at in a cursory and perfunctory manner without properly analysing evidence presented in the suit and submissions.
5. Contemporaneously with the filing of the appeal, the Appellant filed an application by way of a Notice of Motion dated 15th October 2024 seeking a stay of execution of the judgment. Interim orders were granted pending the inter partes hearing of the application. On the directions of this Court, the application was subsumed in the main appeal and both were heard together by way of written submissions. Parties filed comprehensive submissions and referred to several decisions in support of their rival positions. The contents of the submissions will be ingrained in the latter part of this judgment. Further, since the application was an interlocutory one, it will stand overtaken by events once the main appeal is determined. As such, this Court will deal with the main appeal.
6. The High Court, as the first appellate Court, is enjoined to revisit the evidence on record, evaluate it and reach its own conclusion in the matter. (See the case of *Selle & Ano. vs. Associated Motor Boat Co. Ltd* (1968) EA 123). This Court, nevertheless, appreciates the settled principle that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. This was the holding in *Mwanasokoni vs. Kenya Bus Service Ltd* (1982-88) 1 KAR 278 and *Kiruga vs. Kiruga & Another* (1988) KLR 348).
7. Having carefully perused the record, the written submissions and the decisions referred to, two main issues arise for determination. They are whether there was an agency relationship between the 1st and 2nd Respondents and if so, whether the suit was proved.
8. The first issue was dealt with by the trial Court in the ruling delivered on 28th July 2023. That ruling was not appealed against by any of the Respondents. Having reviewed the evidence and the manner in which the trial Court expressed itself on the issue, this Court is satisfied that the analysis of the evidence and the law was proper and that there was indeed ample evidence to the effect that there existed a principal-agent relationship between the 1st and 2nd Respondents otherwise one wonders how the 2nd Respondent's car found its way to the 1st Respondent's vehicle yard without the 2nd Respondent claiming foul play.
9. Therefore, having not appealed the finding of the trial Court in the ruling that there existed an agency relationship between the 1st and 2nd Respondents, the 2nd Respondent was estopped under Section 120 of the *Evidence Act*, Cap. 80 of the Laws of Kenya from regurgitating the same issue on appeal and attempting to deny the agency. The agency was on the basis that the 2nd Respondent delivered the car with the 1st Respondent on an understanding that the 1st Respondent would scout for a buyer and to forthwith proceed to sale the car and thereafter transmit the agreed proceeds therefrom to the 2nd Respondent.



10. Having found that there existed an agency relationship aforesaid, this Court now deals with the second issue. There is no doubt the Appellant and the 1st Respondent entered into a sale agreement on the car and the Appellant paid the entire consideration. The Appellant then had the car and used it for about 5 months before the 2nd Respondent seized it.
11. The 2nd Respondent vehemently contended that he was not a party to the sale agreement between the Appellant and the 1st Respondent and that the two colluded to defraud him of his car. This Court does not see that contention as a serious one since it was taken care of by the finding that the 1st Respondent acted as an agent of the 2nd Respondent. In the event the 2nd Respondent did not receive the agreed funds from the 1st Respondent over the sale of the car, or had any issue over the car, then his recourse was firmly against the 1st Respondent and not the Appellant. From the record, the 2nd Respondent did not proffer any legal justification for seizing the car.
12. On the basis of the above, the trial Court's subsequent finding in the judgment that the 2nd Respondent who was the registered owner of the car did not authorize the 1st Respondent to sell the car ran contra the very Court's finding in the ruling that there was an agency relationship. In other words, one wonders what then was the agency relationship all about. Although the 1st Respondent was not the registered owner of the car, the agency relationship in situ vested, at least, the possessory ownership of the car on the 1st Respondent thereby enabling the 1st Respondent to enter into a valid sale agreement with the Appellant.
13. From the reading of the impugned judgment, it is apparent that the trial Court did not consider the various legal aspects of ownership of a vehicle. This Court believes that had that been undertaken, the Court would have arrived at a different finding. Courts have over time discussed the ownership of motor vehicles and the import of Section 8 of the *Traffic Act*. For instance, the Court in *Nancy Ayemba Ngaira vs. Abdi Ali* [2010] eKLR, correctly so, expressed itself as follows: -

.... There is no doubt that the registration certificate obtained from the Registrar of motor vehicles will show the name of the registered owner of a motor vehicle. But the indication thus shown on the certificate is not final proof that the sole owner is the person whose name is shown. Section 8 of the *Traffic Act* is fully cognizant of the fact that a different person, or different other persons, may be the de facto owners of the motor vehicle – and so the Act has an opening for any evidence in proof of such differing ownership to be given. And in judicial practice, concepts have arisen to describe such alternative forms of ownership: actual ownership; beneficial ownership; possessory ownership. A person who enjoys any of such other categories of ownership, may for practical purposes, be much more relevant than the person whose name appears in the certificate of registration; and in the instant case at the trial level, it had been pleaded that there was such alternative kind of ownership. Indeed, the evidence adduced in the form of the Police Abstract, showed on a balance of probabilities, that 1st defendant was one of the owners of the matatu in question. [emphasis added].
14. The above legal position was affirmed in *David Ogol Alwar vs. Mary Atieno Adwera & Another* [2021] eKLR among others.
15. Respectfully, therefore, the Learned trial Magistrate erred in finding that it was only the 2nd Respondent [the registered owner of the car] who was legally competent to enter into a valid sale of the car with the Appellant. That finding, therefore, contradicted the Court's ruling on the agency relationship thereby exposing the Court to approbating and reprobating, acts which are legally impermissible.



16. A keen review of the evidence and the law leads to the undoubted finding that the suit was proved. The further finding that the Appellant did not seek to declare the sale legal falls by the wayside since the sale was legal by operation of the law. The absence of such a declaration does not, therefore, reap off the legality of the sale.
17. As the suit is sustainable, the Appellant was further entitled to damages as prayed for in the Plaint as against the 2nd Respondent more so on account of the 2nd Respondent's unilateral conduct in repossessing the car. The 2nd Respondent ought to have known that he entered into an agency relationship with the 1st Respondent over the car thereby enabling the 1st Respondent to enter into valid and legal agreements with third parties. The 2nd Respondent's unilateral act of seizing the car in total disregard of the rights of any likely third parties rendered the 2nd Respondent liable in damages. However, since no such submissions were tendered by the Appellant, this Court will not make any award.
18. It is, hence, this Court's finding and holding that the suit was wrongly dismissed and hereby makes the following final orders: -
- (a) The appeal succeeds and the finding of the trial Court dismissing the suit, Nairobi [Milimani] Chief Magistrates Commercial Court Civil Suit MCCOMMSU No. E051 of 2023, be and is hereby set-aside and quashed.
 - (b) The suit is hereby allowed and the ownership of the Motor vehicle registration number KCW 900L is hereby vested in the Appellant. In the event the car is in the possession of the 2nd Respondent, it shall be forthwith delivered to the Appellant.
 - (c) In order to give effect to this judgment, the 2nd Respondent shall execute all necessary documents to enable the 3rd Respondent register the car in the name of the Appellant. In the event the 2nd Respondent so declines, the 3rd Respondent herein, The National Transport & Safety Authority, shall nevertheless proceed to register the Appellant as the owner of the car notwithstanding the 2nd Respondent's non-compliance.
 - (d) The 2nd Respondent shall bear the costs of the suit as well as the costs of the appeal.
- Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 8TH DAY OF MAY, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Miss Kimani, Learned Counsel for the Appellant.

Mr. Limbari, Learned Counsel for the 2nd Respondent.

Mr. Kinyanjui, Learned Counsel for the 1st Respondent.

Amina – Court Assistant.

