Ojwang & another v Kagunya (Civil Appeal 287 of 2023)
[2025] KEHC 6153 (KLR) (15 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6153 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CIVIL APPEAL 287 OF 2023

TW OUYA, J

MAY 15, 2025

BETWEEN

JOHN OJWANG ..... 1ST APPELLANT

AUMA ACHIENG BENTER ..... 2ND APPELLANT

AND

EDWARD MBUGUA KAGUNYA ..... RESPONDENT

(Being an appeal from the judgement of Hon. O.J Muthoni delivered on the 25th of August, 2023, at the Small Claims Court in Thika, Civil Case no. E205 of 2023)

JUDGMENT

1. This appeal emanates from the judgement and decree of the lower court, in which the trial court found the appellants 100% liable for the accident that involved their motor vehicle registration no. KAW 181M and the respondent's motor vehicle registration no. KDH 161H and proceeded to award the respondent a total sum of Kshs. 346,000 as special damages together with costs of the suit plus interest.

2. The accident in question allegedly occurred on the 27th of November, 2022, at Theta River along Thika-Nairobi Highway, when the appellants driver, servant and/or agent allegedly parked their motor vehicle registration no. KAW 181M dangerously and negligently in the middle of the road, during fast moving traffic, causing the respondent's vehicle to ram into it, thereby occasioning it extensive material damage.

3. The appellants were dissatisfied with the trial court's decision, and they proffered the instant appeal to this court vide a memorandum of appeal dated the 12th of September, 2023. The appellants primarily complained that the learned trial magistrate failed to evaluate the evidence on record properly, and thereby ended up with an erroneous conclusion that was prejudicial to them; that the learned trial magistrate failed to appreciate that the 1st appellant was not the owner of motor vehicle KAW 181M,

as such he had no nexus with the alleged accident; that the learned trial magistrate concluded that they were 100% liable for the accident, without appreciating that Motor Vehicle KAW 181M was actually hit from behind, which could only mean that the driver of KDH 161X failed to control the Motor Vehicle.

4. The appellant also faulted the learned trial magistrate for failing to appreciate that the claimant did not prove that Motor Vehicle registration no. KDH 161X belonged to him and that he concealed any communication between him and the insurer of the Motor Vehicle hence it is not clear if he had been compensated or not.

5. They further faulted the learned trial magistrate for failing to make a finding against the claimant who allowed an incompetent driver to drive Motor Vehicle KDH 161X without the necessary statutory documents, like a PSV driving license; and for failing to realise that the driver of motor vehicle KDH 161X failed to observe road safety and was not careful or keen on the road, and therefore contributed to the occurrence of the accident.

6. The appeal was canvassed by way of written submissions. The appellants submissions dated the 6th of September, 2024, was filed on their behalf by their learned counsel Odera Were Advocates; whereas the respondent's submissions dated the 11th of November, 2024, was filed on his behalf by his learned counsel Komu & Kamenju Advocates.

7. In their written submissions, the appellants alleged that there was an apparent error on the judgement of the trial court, considering that the learned adjudicator in her judgement indicated that the respondent was 100% liable for the accident yet proceeded to enter judgement against the appellants.

8. On the issue of liability, the appellant contended that they were prejudiced by the trial court's findings on liability, considering that the learned adjudicator disregarded the evidence that had been adduced before her and only relied on the police abstract to find them liable for the occurrence of the accident; as such, the said judgement should be set aside.

9. The appellants further contended that the trial court was wrong in finding the 1st Appellant culpable, considering that he had denied that he was the owner of Motor Vehicle KAW 181M; and there was also nothing to associate him with the alleged accident or ownership of the said vehicle, hence the doctrine of vicarious liability was not applicable.

10. The appellants submitted that the decision of the trial court in relation to the 1st appellant should be set aside on grounds of ownership, considering that no search was conducted to know the owner of motor vehicle registration KAW 181M and no proof was placed before the said court to associate the 1st appellant with the said vehicle; as such, the decision of the trial court was erroneous and wrong, considering also that the 2nd appellant had admitted that the vehicle belonged to her.

11. The appellant contended that the trial court ought to have apportioned liability considering that there was evidence on record to prove that the respondent's driver and/or agent was negligent and not keen on the road; and considering also that he could not prove that he is qualified to drive a PSV vehicle.

12. They further contended that the respondent's driver and/or agent did not state any duty of care or caution that he exercised in order to avoid the accident as was required of him as a driver on the road, as such, the trial court should have apportioned liability. The appellant urged this court to allow their appeal and set aside the judgement of the lower court.

13. The respondent in his submissions challenged the jurisdiction of this court to handle the present appeal. The respondent submitted that as per section 38 of the *Small Claims Court Act*, this court can only deal with issues of law and not facts; and given that the appellants, through their appeal are

inviting this court to retry this matter and substitute the trial court's findings with its own findings, this court lacks the jurisdiction to do so.

14. The respondent contended that if this court had the jurisdiction to re-open the facts, then this court would need to establish that the lower court's findings were so perverse as to warrant interference by this court; which is not the case in this matter.

15. It was the respondent's submission that the learned adjudicator based the finding on liability on undisputed facts in the form of a police abstract; and regarding the ownership of the motor vehicle, he submitted that there was an express admission by the 2nd appellant during cross examination that she was the owner of the said vehicle, as such, the need of proof of ownership became moot.

16. The respondent also submitted that the error made by the learned trial magistrate in her judgement, wherein she found the respondent 100% liable for the accident and proceeded to enter judgement against the appellants, was a typographical mistake that can be cured by a simple application of review and not an appeal; and considering that the learned adjudicator in her judgement referred to the specific motor vehicle at fault, there cannot be any doubt that would warrant setting aside the said judgement.

17. The respondent submitted that their evidence as to how the accident occurred and who was to blame for the said accident was not challenged, as such, the trial court was not wrong in blaming the appellants for the said accident.

18. Having carefully considered the grounds of appeal and the parties rival written submissions together with all the authorities cited, I find that the issues arising for my determination are as follows;

    i. Whether this court has the jurisdiction to entertain the present appeal;

    ii. Whether the trial court was wrong in finding the 1st appellant culpable for the accident;

    iii. Whether the trial court erred in finding the appellants 100% liable.

19. Before delving into the main issues for determination in this appeal, I would first like to address the issue pointed out by the appellants in their submissions, that there was an error apparent in the judgement by the learned trial magistrate, seeing that in the said judgement she found the claimant, who is the respondent in this appeal, 100% liable for the accident but proceeded to enter judgement against the respondents, who are the appellants herein.

20. I have read through the judgement of the trial court, and on liability the learned trial magistrate stated as follows: "It is indisputable that the accident herein occurred on 27th November, 2022. The police abstract dated 29th November 2022, blames motor vehicle registration number KAW 181M for the accident and I proceed to hold the claimant 100% liable for the accident."

21. At the end of the said judgement, the learned trial magistrate proceeded to enter judgement in favour of the claimant, who is the respondent herein, against the respondents, who are the appellants in this appeal.

22. From the said judgement, it is evident that there was an accidental slip by the learned trial magistrate, since the vehicle she was referring to allegedly belongs to the appellants and not the respondent herein. Reading through the whole of the judgement by the learned trial magistrate, it is clear that her intention was to find the respondents at the lower court 100% liable for the accident and not the claimant.

23. Section 99 of the *Civil Procedure Act* empowers the court to correct errors in judgements, decrees or orders either suo moto or on application by a party to a suit. The said provision of law stipulates as follows: "Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein

from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties."

24. Having found that there was an error in the judgement of the trial court, I am of the considered view that this is an error that can be corrected by the trial court under Section 99 of the *Civil Procedure Act* since the said error was not fatal as it did not change the substance of the judgement.

25. Turning now to the first issue, the respondent had alleged that most of the issues raised by the appellants in their appeal were matters of facts and not matters of law, as such, this court does not have the jurisdiction to entertain the appeal. Section 38 (1) of the *Small Claims Court Act* which makes provision for appeals from the small claims court to the high court stipulates as follows: ""A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law." From the above provision of law, it is clear that this court can only entertain an appeal from the Small Claims Court, if the said appeal is on matters of law only. This therefore means that the duty of the High Court in dealing with appeals from the Small Claims Court is akin to that of the Court of Appeal in its capacity as a second appellate court.

26. This duty was reiterated by the Court of Appeal, in the case of Kenya Breweries Ltd versus Godfrey Odoyo [2010] eKLR; where the court expressed itself as follows: "This Court, on second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse."

27. Additionally, the Court of Appeal in the case of Charles Kipkoech Leting versus Express (K) Ltd & another [2018] eKLR; stated thus: "This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by the Court. See Maina versus Mugiria [1983] KLR 78, Kenya Breweries Ltd versus Godfrey Odongo, Civil Appeal No. 127 of 2007, and Stanley N. Muriithi & Another versus Bernard Munene Ithiga [2016] eKLR, for the holdings inter alia that, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the Courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. See also the English case of Martin versus Glywed Distributors Ltd (t/a MBS Fastenings) 1983 ICR 511 where in, it was held inter alia that, where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law."

28. From the above cited authorities, it is clear that this court, in dealing with appeals from the Small Claims Court can only consider matters of law, unless it is shown that the Small Claims Court considered matters that it should not have considered or failed to consider matters it should have considered, or looking at the entire decision, it is perverse. Furthermore, it is trite that issues of whether the trial court properly considered and evaluated the evidence and arrived at a correct determination is an issue of law.

29. This position was restated in the Court of Appeal case of Peter Gichuki King'ara versus IEBC & 2 Others, Nyeri Civil Appeal No. 31 Of 2013; the Court of Appeal expressed itself as follows: "...the whole 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."

30. Applying the above principle to the present case, it is clear that this court has the jurisdiction to entertain the present appeal. I say so because, other than the appellant faulting the learned trial

magistrate for failing to properly evaluate the evidence on record; the appellants are also alleging that the learned trial magistrate failed to consider matters they should have considered and also considered matters they should have considered. I am therefore of the considered view that the present appeal is properly before this court.

31. Regarding the second issue, the appellants had alleged that the learned trial magistrate was wrong in holding the 1st appellant vicariously liable for the accident, considering that he is not the owner of motor vehicle registration KAW 181M and neither was he driving the said vehicle at the time that the accident occurred. As such, he had no nexus with the alleged accident. On my part, I have perused the records of the trial court, and it is evident that the claimant sued the 1st appellant in his capacity as an alleged beneficial owner of motor vehicle registration no. KAW 181M. This was because in the police abstract dated the 29th of November, 2022, the 1st appellant had been indicated as the owner of the said vehicle, and his mobile phone number was also provided.

32. As per the evidence of the respondent before the trial court, it was the appellants driver, Rheinhard Fabisch Owuor, who had stated that the 1st appellant was the owner of motor vehicle registration KAW 181M. However, the appellants driver denied during his cross examination at the trial court, that he gave out the 1st appellant's number.

33. The 1st appellant in his witness statement dated the 6th of April, 2023, which he adopted as his evidence in chief denied that he owned the said vehicle. When the 1st appellant was being cross-examined at the trial court, he repeated his assertions that he was not the owner of Motor vehicle registration no. KAW 181M, and he also stated that he had never owned a motor vehicle in his life. The 1st appellant however stated in cross examination that he knew the person who was driving the said vehicle.

34. The 2nd appellant upon being cross-examined at the trial court, admitted that she was the owner of the said motor vehicle. She also denied knowing the 1st appellant. From the above, it is evident that the only document linking the 1st appellant to the case is the police abstract which indicated that he was the owner of Motor vehicle KAW 181M.

35. As to how the 1st appellant's name ended up on the said abstract, the same is not clear as the investigating officer was not called as a witness before this court to explain how the 1st appellant ended up being mentioned as the owner of the said vehicle.

36. However, there is a possibility that the appellants driver, RW3, is the one who indicated to the police that the 1st appellant was the owner of the said vehicle, seeing that the 1st appellant himself admitted during cross examination that he knew the person who was driving the said vehicle at the time that the accident occurred. There is therefore a possibility that it was the appellants driver that gave out the 1st appellant's details as the owner of the said vehicle since the police who filled in the details in the abstract could not have gotten the name and number of the 1st appellant out of nowhere.

37. Being that as it may, I have noted that neither the appellants or the claimant produced any other document, such as a motor vehicle search or logbook, to prove that the 1st appellant was not the owner of the said vehicle. However, considering that the 2nd appellant, has claimed that she is the owner of the said vehicle and considering also that she has disowned knowing the 1st appellant. There is nothing linking the 1st appellant to the alleged accident, and he cannot therefore be held vicariously liable for the occurrence of the said accident.

38. I have perused the judgement of the learned trial magistrate and it is evident that she did not address herself on the 1st appellant's claim that he had been wrongly sued by the claimant, as he was neither the driver of motor vehicle registration KAW 181M, nor was he the one driving the said vehicle at the time

that the alleged accident occurred. This was clearly an error on the learned trial magistrate's part, as the 1st appellant ended up being held culpable for a matter that in my view did not in any way concern him.

39. Based on the above, I am of the considered view that the 1st appellant cannot be held vicariously liable for the accident that occurred on the 27th of November, 2022, as there is no nexus between him and the accident that occurred on the said date.

40. Turning now on the final issue, the appellants had in their written submissions faulted the learned trial magistrate for basing her decision on liability solely on the contents of the police abstract, which indicated that KAW 181M was to blame for the occurrence of the accident, while ignoring all the other evidence that had been adduced before her.

41. My perusal of the judgement of the trial court reveals that the learned adjudicator based her decision on liability solely on the fact that the police abstract dated the 29th of November, 2022, indicated that motor vehicle KAW 181M was to blame for the accident. This notwithstanding the fact that the investigating officer was not called to explain or expound on the contents of the said abstract. It was also not clear whether the investigating officer who prepared the abstract was the one who visited the scene of the accident or another officer was sent. Aside from that there is no indication that the driver of the said vehicle was ever charged with a traffic offence, if indeed he was to blame for the occurrence of the said accident.

42. Furthermore, the fact that the investigating officer who filled in the details in the said abstract, indicated that the 1st appellant was the owner of Motor vehicle KAW 181M, without carrying out due diligence or verifying the information he was given regarding the ownership of the said vehicle is a clear indication that the investigation as to how the accident occurred was not properly carried out, and the same cannot therefore be relied upon. That aside, it is trite law that a police abstract is not proof of an occurrence of an accident, but of the fact that the accident was reported following its occurrence.

43. This position was reiterated by the Court in the case of Peter Kanithi Kimunyu versus Aden Guyo Haro [2014] eKLR; as follows:

> " In the case of Thuranira Karauri – Vs – Agnes Ncheche, CA 192/96, the Court of Appeal had this to say concerning police abstracts: "A police abstract report cannot be accepted as a document which proves ownership of a motor vehicle. The memorandum contained on the reverse side of the abstract originates from the police clearly indicate that such abstracts give only the salient facts of the occurrence of an accident without purporting to be an active copy of a police report and the memorandum further states that the police cannot accept responsibility of the accuracy of the same …." Although the issue in the above case involved proof of ownership of a motor vehicle, in my view, the same principles apply to proving occurrence of an accident particularly when there is no evidence that the police upon receipt of the report of an accident ever visited the scene of accident to confirm the occurrence or report."

44. Additionally, the court in Wangongu v Kithinji & 2 others (Civil Appeal 293 of 2023) [2024] KEHC 6272 (KLR); stated as follows regarding this issue:

> " It therefore follows that the appellant ought to prove negligence as against the 1st respondent independently of what the police abstract may have indicated for the reason that proof of negligence and the police abstract are not dependent on each other. In the absence of the appellant proving negligence as against the 1st respondent, the police abstract could not be said to determine that the 1st respondent was to blame for the causation of the accident just

because it indicated so. As such, it is my considered view that the appellant failed to discharge the required burden of proof."

45. As stated in the aforementioned persuasive authorities, a police abstract cannot be used to determine that a party is to blame for the occurrence of an accident just because it indicates as much; as such, it was an error on the learned trial magistrate's part to find that the appellants were liable for the accident, simply because the police abstract indicated so. The learned trial magistrate was therefore required to interrogate the evidence on record to determine who was liable for the occurrence of the accident.

46. Having stated that, the records of the trial court show that the respondent called a total of two witnesses to testify on his behalf whereas the appellants called three witnesses. From the evidence on record, it is not disputed that an accident occurred on the 27th November, 2022, at Theta River along Thika-Nairobi Highway. It is also clear from the evidence on record that only two witnesses gave material evidence on the issue of liability; as the other witnesses called did not witness the occurrence of the said accident. These two witnesses are, Mr. Kelvin Muchouri Mukuhi, who testified as CW1 and who was the driver of Motor vehicle registration KDH 161X belonging to the respondent and Mr. Rheinhard Fabisch Owuor who testified as RW3 at the trial court and was the driver of motor vehicle registration no. KAW 181M belonging to the 2nd appellant.

47. CW1 in his written statement, which he adopted as his evidence in chief indicated that he was a driver by profession with 4 years' experience. He testified that on the material day. he was driving along the Thika Highway going towards Nairobi. He stated that he was going downhill at the middle lane, at the slope near the theta hotel, when he suddenly saw Motor Vehicle registration KAW 181M which had stalled in the middle of the road. However, he was unable to brake because it was raining and visibility was poor and he could also not swerve because there was traffic on all lanes, as such he ended up hitting motor vehicle KAW 181M.

48. It was his testimony that after he hit the appellants car, he alighted quickly from his car and knocked on the front window of motor vehicle KAW 181M and that when RW3 opened the window he appeared either drunk or sleepy. He also stated that when he asked him why he had parked in the middle of the road RW3 informed him that he had run out of fuel. On cross examination, CW1 stated that he hit the appellants vehicle because he was not able to brake. He also stated that after he hit the appellants car, he stopped his car and put on road saver as such, no one hit him from behind because the other cars were keen.

49. RW3, who had also adopted his witness statement as his evidence in chief testified that on the material day, he was driving motor vehicle registration KAW 181M along Thika-Nairobi highway when the respondent's vehicle hit him from behind. He testified that as he was driving along the road, he realised that the vehicle had developed a fuel pump problem and due to the said issue, the vehicle was moving slowly and this forced him to put hazard lights on as he tried to see if he could get out of the road, considering that the said road was busy. He testified that before he could get off the road, he heard a loud bang, and on getting out of the car, he found that the respondent's vehicle had hit him from behind. On cross examination, he stated that he was not drank and that he was going slow. He stated that the accident happened in the middle of the road at the Thika Highway, as he was driving on the middle lane.

50. The respondent, Edward Mbugua Kagunya, who testified as CW2 at the trial court, indicated in his witness statement, which he adopted as his evidence in chief that on the material day, his driver CW1 called him and informed him that his vehicle KDH 161X was involved in an accident. He stated that he went to the scene of the accident and decided to call the police. It was his testimony that when the police arrived at the scene of the accident, they blamed RW3 for the accident as he had allegedly parked

his vehicle on a busy highway and had failed to place warning signs at least few meters from the stalled vehicle.

51. As stated herein above, only two witnesses of the five that testified for both sides at the trial court were the ones who witnessed the occurrence of the said accident. As such, the evidence on record on the issue of liability came down to the word of CW1 against that of RW3 and therefore, the trial courts determination on the issue of liability largely depended on its finding regarding the credibility of either of the witnesses.

52. The difficulty in determining liability was well captured in the case of Michael Hubert Kloss & another V David Seroney & 5 others (2009) eKLR where the court stated as follows: "…. The determination of liability in a road traffic case is not a scientific affair. Lord Reid put it more graphically in Stapley v Gypsum Mines Ltd (2) (1953) A.C. 663 at p. 681 as follows: "To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it... The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally."

53. In this case, RW3, the driver of motor vehicle KAW 181M had indicated that he was driving the vehicle slowly due to the fact that the said vehicle had developed an issue with the fuel pump. He also claimed that he had put on hazard lights as he tried to see if he could get out of the road as the said road was busy. CW1, the driver of motor vehicle KDH 161X on the other hand claimed that RW3 had parked the appellants vehicle in the middle of the road and when he hit the car, he had to knock on the window of the said car for RW3 to come out of the vehicle. He also stated that when he saw that the appellants vehicle had stalled in the middle of the road he was unable to brake because it was raining and the visibility was poor. He further stated that he could not swerve either to the left or right as there was traffic on all lanes.

54. I have however noted that CW1 did not dispute the fact that RW3 had put on hazard lights to warn the other drivers on the road that the said vehicle had developed an issue or had a mechanical problem. In fact, during his cross examination CW1, the respondent's driver indicated that no one hit him from behind as they had put on road saver. CW2, the respondent himself also stated that they had put on the hazard.

55. The respondent's driver on the other hand indicated that he could not brake because it was raining and there was poor visibility. He did not however elaborate how the rain stopped him from hitting the brakes of the car so as to avoid hitting motor vehicle KAW 181M. He also did not explain how the poor visibility stopped him from braking, seeing that the poor visibility did not stop him from seeing that motor vehicle KAW 181M had stalled in the middle of the road. Unless of course at the time that the accident occurred, he was driving at a high speed and his brakes were not functioning well.

56. Furthermore, in instances where there is poor visibility, a keen driver who has the interest of other road users at heart would drive his vehicle at a slower speed to avoid causing an accident.

    The fact that CW1 had seen motor vehicle KAW 181M stalled on the road, means that he could have exercised proper skill and caution and stopped to avoid hitting the said vehicle; considering that there

was sufficient time for him to brake as he claims to have seen the vehicle as he was going down the slope. He however did not apply his brakes and no proper explanation has been given for this.

57. That being said, there is also conflicting evidence on the state of motor vehicle KAW 181M at the time that the accident occurred. Whereas RW3, the driver of the said vehicle indicates that the vehicle was moving slowly; CW1, the respondent's driver claims that the said vehicle was stationery. This court therefore has no way of finding out whether RW3 was inside the vehicle and had negligently failed to put warning signs on the road a few meters from his car so as to warn the other drivers, or he was driving slowly looking for an opportune time to stop the said vehicle and put the warning signs on the road. Based on the above, this court is not able to tell with certainty who was to blame for the occurrence of the said accident.

58. It is a well settled principle in law that in situations where a court is not able to decide on the evidence of the witnesses who testified for both sides, as to who was to blame for the accident; then both drivers should be held liable.

59. This position was reiterated in the court of appeal case of Hussein Omar Farah versus Lento Agencies, (2006) eKLR; as follows: "In our view, it is not reasonably possible to decide on the evidence of the witnesses who testified on both sides as to who is to blame for the accident. In this state of affairs, the question arises whether both drivers should be held to blame. It has been held in our jurisdiction and also other jurisdictions that if there is no concrete evidence to determine who is to blame between two drivers, both should be held equally to blame."

60. Based on the above, I am of the considered view that both the drivers of Motor Vehicles KAW 181M and KDH 161X are to blame for the occurrence of the said accident. I therefore set aside the trial court's findings on liability and apportion liability between the 2nd appellant and the respondent at the ration of 50:50.

61. Flowing from the foregoing, this appeal partially succeeds to the extent that the 1st appellant is not found vicariously liable for the accident that occurred on the 27th of November 2022, as there is no nexus between him and the occurrence of the accident. The court finds it necessary to set aside the trial court's findings that the appellants are 100% liable for the accident. This court also finds that the 2nd appellant and the respondent are equally to blame for the occurrence of the accident. Regarding costs, given that the appellants appeal has partially succeeded, each party shall bear their own costs.

62. In effect, the trial court's findings that the appellants are 100% liable for the accident is hereby set aside. The 2nd appellant and the respondent are equally to blame for the occurrence of the accident. Each party shall bear their own costs.

Determination

i. This appeal partially succeeds. The finding of 100% liability against the appellants is hereby set aside and substituted with equal liability for both parties.

ii. Each party to bear their liability

iii. Stay of Execution orders granted for 30 days.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 15TH DAY OF MAY, 2025.

HON. T. W. OUYA

JUDGE