



REPUBLIC OF KENYA



**Suera Flowers Limited v Inchwara & 2 others (Civil Appeal
E358 of 2023) [2025] KEHC 6394 (KLR) (12 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6394 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E358 OF 2023**

JM NANG'EA, J

MAY 12, 2025

BETWEEN

SUERA FLOWERS LIMITED APPELLANT

AND

JOSECH MOTARI INCHWARA 1ST RESPONDENT

JOHN NDIRANGU 2ND RESPONDENT

SIMON WANYEKI NDUNG'U 3RD RESPONDENT

*(Being an appeal from Judgement and Decree of Hon. D. Mosee (SRM)/
delivered on 14th November, 2023 in Molo CMCC No. 184 of 2018)*

JUDGMENT

1. The background to this appeal is that the 1st Respondent instituted the above stated Molo CMCC No. 184 of 2018 against the Appellant and the 2nd Respondent vide Complaint dated 18th January, 2022 seeking general damages, special damages of Kshs. 29,366/=, the costs of the suit and interest as a result of a road traffic accident that occurred on 22nd December, 2015 allegedly involving the Appellant's motor vehicle registration number KAA 085 V, driven at the time by the 2nd Respondent, and the 1st Respondent's motor vehicle registration number KAZ 884 U. The Appellant's vehicle is said to have lost control owing to negligent or careless driving and hit the 1st Respondent's vehicle thereby causing bodily injuries to the latter.
2. In its Statement of Defence dated 28th September 2020 and amended on 7th October 2021, the Appellant denied liability for the accident contending inter alia that at the material time it was not the actual and/or beneficial owner of motor vehicle registration number KAA 085 V having sold the same to the 3rd Respondent. It further denied any agency relationship between them and the 2nd Respondent as well as the claim of negligence attributed to them.



3. The Appellant enjoined the 3rd Respondent herein in the proceedings as third party. The 3rd Respondent's defence in the third party claim is that he never bought the vehicle in question, asserting that one Allan Kiguru was the vehicle buyer and is the one who ought to have been brought in as third party.
4. The matter proceeded to hearing at conclusion of which the trial court found that the Appellant was the registered owner of the vehicle registration number KAA 085 V at the material time and there was no evidence of sale of the vehicle to a third party. The 1st Respondent was also found to have contributed to occurrence of the accident for failing to prove how the accident occurred. The lower court apportioned liability between the Appellant on one hand, and the respondents jointly and severally on the other, equally. Regarding the claim for damages, the court awarded the 1st Respondent Kshs. 250,000/= in general damages; Kshs. 4,550/= being proven special damages and the costs of the suit.
5. Being dissatisfied by the decision, the Appellant preferred this appeal vide a Memorandum of Appeal dated 13th December, 2023 centered on twenty four (24) grounds that may be summarized into three (3) as follows;
 - a. That the Learned Trial Magistrate erred in law and fact in finding that the Appellant was the owner of motor vehicle registration number KAA 085 V at the time material to the case.
 - b. That the Learned Trial Magistrate erred in law and fact in apportioning liability against them against contrary to the weight of evidence adduced.
And
 - c. That the Learned Trial Magistrate erred in law and in fact by granting the 1st Respondent an astronomically high sum of damages in disregard of guiding legal principles.
6. The Appellant prays that:-
 - a. The Appeal be allowed;
 - b. In the result the judgment of the Learned trial magistrate be set aside and the suit be dismissed.
 - c. The costs of the Appeal and in the Subordinate Court be granted to the Appellant.
7. The Appeal was heard by way of written submissions.

Appellants' Submissions

8. The Appellant's advocates submit that the motor vehicle in question had at the material time already changed ownership from their client and to corroborate the fact, the police abstract the 1st Respondent tendered before the trial court is said not to show the Appellant as the owner. To buttress this argument reference is made inter alia to the judicial decisions in Securicor Kenya Limited vs Kyumba Holdings Limited [2005] eKLR and Gichira Peter vs Lucy Wambura Ngaku and Another [2021] eKLR where it was held that the registered owner of a motor vehicle/motorcycle was only a paper owner in the circumstances.
9. The appellant further contends that by dint of Section 8 of the Traffic Act and the judicial pronouncements in Car General Trading Limited vs Owino & Another [2023] KEHC (KLR) and Abson Motors Limited vs Tabitha Syombua Mutua & Another [2019] eKLR inter alia it cannot also be held liable for the reason that it sold the vehicle as per the 3rd Respondent's acknowledgement on a copy of the log book produced as well as by his oral evidence proving the fact. Besides, it is pointed



out as averred hereinabove that the police abstract dated 9th June 2016 exhibited by the 1st Respondent does not indicate the Appellant as the vehicle owner. The Appellant therefore holds the position that the police abstract report of an accident showing the owner of the vehicle is prima facie evidence of the fact unless evidence is offered in rebuttal and none is tendered, (see case law in Wellington Nganga Muthiora vs Akamba Public Road & Another [2010] eKLR among other judicial determinations relied upon by Counsel).

10. The Appellant continues to submit it was the 3rd Respondent who presented himself as the vehicle buyer without disclosing any principal for whom he was acting. Reference is made to the work of Learned Author (K.I Laibuta in Principles of Commercial Law, 2016, 3rd Edition Law Africa Publishing Page 425 where it is stated;

“The general rule as enunciated by Sir Ralph Windham CJ is that when a person acting on behalf of an undisclosed principal contracts with a third party, he contracts with that party as an apparent principal and renders himself primarily liable to the third party as principal”.

11. Learned Counsel for the Appellant therefore submit that the 1st Respondent did not discharge its legal onus of proof of their client’s liability on a balance of probability as laid down in sections 107, 108 and 109 of the *Evidence Act*.

1st Respondent’s submissions.

12. The 1st Respondent’s advocates maintain that as the Appellant is shown as the registered owner of the subject motor vehicle registration number KAA 085 V as at the 6th December 2021, based on records of ownership obtained from the National Transport & Safety Authority (NTSA), it is liable for the claim, the accident having occurred earlier on 21/12/2015.
13. The 1st Respondent further insists the accident in issue did occur involving the two vehicles in question as per the police abstract he tendered and which was admitted in evidence. Making reference to case law in Peter Kanithi Kimunya vs Aden Guyo Haro (2014) KEHC 1547 (KLR), Counsel contend that there is no evidence rebutting the information in the police abstract on the question of occurrence of the accident. The 1st Respondent tells the court that the lower court’s decision is not to be faulted in this regard.
14. The 1st Respondent therefore submits that he satisfied the onus of proof of his case on a balance of probability as required under Sections 107, 109 and 112 of the *Evidence Act*.
15. The 2nd and 3rd Respondents do not seem to have responded to this appeal.

Analysis and determination

16. I will consider the identified Grounds of Appeal together. An appellate court is generally tasked with re-considering and re-evaluating the evidence adduced in the Trial Court and draw its own independent conclusion on both issues of fact and law.. This was the principle settled in *Selle and Another vs Associated Motor Boat Company Limited and others* [1968] EA 123 and *Williamson Diamonds Ltd. vs Brown* [1970] E.A.L.R. The Court of Appeal for East Africa in *Peters vs Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:

“i. i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;



- ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”
17. The general rule as to ownership of motor vehicles/motorcycles is provided for under Section 8 of the [Traffic Act](#) (Cap 403 of the Laws of Kenya) which is in the following terms;
- “The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”
18. The Court in *Bernard Muia Kilovo vs Kenya Fresh Produce Exporters* [2020] eKLR cited the Court of Appeal decision in *Thuranira Karauri vs Agnes Mocheche* [1997] eKLR wherein it was stated that:
- i. The presumption that the person registered as the owner of the motor vehicle in the logbook is the actual owner is rebuttable.
 - ii. Where there exists other compelling evidence to prove otherwise then the court can make a finding of ownership that is different from that contained in the logbook.
 - iii. Each case must however be considered in its own peculiar facts”
19. The Appellant has submitted extensively that the motor vehicle was only still registered in its name at the time of filing suit because the 3rd Respondent as the vehicle purchaser had not caused registration of the same in his name.
20. Indeed it is not uncommon to find vehicle registration particulars bearing the name of someone while in actual sense it is a different person who is in possession and /or actual ownership. There is no shortage of authorities which have held that a certificate of registration of a vehicle is not final or absolute proof that the owner thereof is the person whose name is shown {(See *Nancy Ayembe Ngaira vs Abdi Ali* [2010] eKLR and *Samuel Mukunya Kamunge v John Mwangi Kamuru* [2005] eKLR which are among many judicial precedents on the matter.)}
21. The 1st Respondent having pleaded that the subject motor vehicle belonged to the Appellant at the material time, he shoulders the burden of proof of the fact on a balance of probability. To discharge the onus, he produced records from the NTSA which indicate the Appellant as the registered owner of the motor vehicle. This is prima facie evidence of ownership.
22. As the Appellant denied ownership, the burden in law shifted to it to disprove ownership and rebut the 1st Respondent’s evidence. In *Mungalo vs Telkom (K) Ltd* (Kisumu HCCC NO. 166 of 2021 this court posited that where the defendant denies ownership of a vehicle in circumstances as obtain herein, evidence to the contrary should be adduced. The Appellant is challenged for failing to produce evidence of sale of the vehicle to the third party. The 3rd Respondent has, however, corroborated the Appellant’s evidence as to sale of the vehicle but denies being the buyer. He explained that the actual purchaser was the said Allan Kiguru and he was only a broker in the transaction. He added that the 2nd Respondent was the said Allan Kiguru’s driver.



23. My brother Kimaru, J in *William Kabogo Gitau vs George Thuo & 2 Others* [2010] 1 KLE 526 stated thus:

“...In ordinary civil cases a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred...”

24. In this case therefore what is to be determined is whether the Appellant has shown that despite being indicated as the owner of the subject vehicle in the records thereof exhibited in the lower court, ownership had in fact passed to a third party and so it cannot be held liable directly or vicariously. The 3rd Respondent has confirmed by sworn evidence that the Appellant indeed sold the vehicle and his evidence has not been discredited. It is also common ground that the police abstract does not indicate the Appellant as the vehicle owner.

25. In *Mbasu & another vs Onyapindi & Cheseny* (Suing as the Legal Representatives of Bernard Simiyu Wamalwa - Deceased) [2024] KEHC 11716 (KLR) the Court stated:

“...When assessing the probability, the court will have in mind as factors, to whatever extent is appropriate in the particular case, that the more serious allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability...”

Determination.

26. Having considered the record including Counsel submissions and the applicable law, I must agree with the Appellant’s evidence that ownership and therefore control of the vehicle in question had passed to a third party as at the time of the accident subject of the suit before the lower court occurred. The evidence of the 3rd Respondent and the information on the police abstract corroborate the Appellant’s evidence. A written sale agreement is not a mandatory legal requirement evidencing sale of a vehicle. It is sufficient to otherwise show as done in this matter the Appellant had ownership or control of the vehicle in question at the time the cause of action arose. It is unnecessary to show actual transfer once the new owner has taken possession.

27. As ownership of the motor vehicle passed to a third party, vicarious liability cannot also in law attach to the Appellant there being no proof of agency relationship between them. Besides, the 3rd Respondent has given unchallenged evidence that the 2nd Respondent was the said Allan Kiguru’s driver. The grounds of appeal thus succeed.

28. Consequently, the appeal has merit and is allowed. The judgement of the lower court is set aside and substituted with an order dismissing the suit as against the Appellant. The Appellant shall have costs of the suit and this Appeal.

It is so ordered.

J.M NANG’EA,
JUDGE.



JUDGEMENT DELIVERED VIRTUALLY THIS 12TH DAY OF MAY, 2025 IN THE PRESENCE OF;

The Appellant's Advocate, Mr Ndung'u for Mr Kabiru

The 1st Respondent's Advocate, Mr Mamwacha

The 2nd Respondent, Absent

The 3rd Respondent's Advocate, Mr Kamanga

The Court Assistant (Jeniffer)

J.M NANG'EA,

JUDGE.

