



**Mwiki PSV Sacco Limited v Muhari & 2 others (Civil Appeal
E1139 of 2023) [2025] KEHC 8704 (KLR) (Civ) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8704 (KLR)

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

CIVIL

CIVIL APPEAL E1139 OF 2023

TW OUYA, J

JUNE 19, 2025

BETWEEN

MWIKI PSV SACCO LIMITED APPELLANT

AND

NAHASHON AMOS MUHARI 1ST RESPONDENT

DANIEL MWANGI MUHARI 2ND RESPONDENT

SIMON MBIRUA KARANGU 3RD RESPONDENT

*(Being an appeal from the judgement of Hon. A N Makau (PM) in Milimani Commercial
Chief Magistrate's Court case no. 4520 of 2017 delivered on 20th December 2022)*

JUDGMENT

1. The present appeal, emanates from the judgement and decree of the lower court in which the 1st and 2nd respondents, Nahashon Amos Muhari and Daniel Mwangi Muhari, were awarded special damages to the tune of Kshs. 810,020 together with costs of the suit plus interest.
2. The above damages were awarded in a suit instituted by the 1st and 2nd respondent against the appellant, Mwiki PSV Sacco and 3rd respondent, Simon Mbirua Karangu, following a road traffic accident that occurred on the 15th of July, 2018, when Motor Vehicle registration no. KBS 3X8Y (the suit vehicle), allegedly owned by the appellant and driven by the appellant's driver, collided with motor vehicles KBJ 2X4L and KBG 8X5K belonging to the 1st and 2nd respondents respectively. It was the 1st and 2nd respondents' case, that as a result of the said accident, their respective vehicles sustained extensive damages leading them to suffer loss and damage.



3. After considering the evidence adduced before it, the trial court found that the suit vehicle belonged to the appellant. The trial court then proceeded to enter judgement against the appellant and found it 100% liable for causing the road traffic accident. Subsequently the learned trial magistrate assessed the damages payable to the 1st and 2nd respondent.
4. The appellant was dissatisfied with the trial court's findings on the ownership of the suit vehicle, and it proffered an appeal to this court vide a Memorandum of Appeal dated 26th October, 2023 advancing therein a total of six (6) grounds of appeal in which it faulted the learned trial magistrate for finding that the appellant was the owner of motor vehicle registration no. KBS 3X8Y; for relying on a provisional debit note from the suit vehicle's insurance as comprehensive proof of ownership of the Motor vehicle instead of the motor vehicle search records; for failing to acknowledge that the 3rd respondent was listed as the registered owner of the suit vehicle in the motor vehicle search records.
5. The appellant also faulted the learned trial magistrate for admitting a hand written note affixed on the motor vehicle search records in the absence of the maker of the document to verify its authenticity; for admitting a hand written note affixed in the motor vehicle search records in the place of the electronic records of the same, which are readily available at NTSA; and for finding that the 3rd respondent purchased the suit vehicle in 2016, without any evidence to that effect.
6. On the above grounds, the appellant urged this court to allow his appeal and set aside the judgement by the lower court and all other consequential orders.
7. The appeal was canvassed by way of written submissions, following the directions issued by the court on 8th May, 2024. In its written submissions, the appellant contended that the motor vehicle search adduced by the 3rd respondent was distorted by the hand-written entry on the said motor vehicle search, considering that one could not tell with certainty that the entry was made by a public servant; as such, the impugned entry was inadmissible and did not negate the presumption of ownership of the suit vehicle.
8. The appellant further contended that the provisional debit note adduced by the 3rd respondent to prove ownership of the suit vehicle was devoid of authenticity and the same cannot therefore be relied on. The appellant submitted that whereas the 3rd respondent had alleged that he purchased the vehicle in June 2016, he did not adduce any contract or any proof that he had purchased the said vehicle at the time.
9. The appellant further submitted that the 3rd respondent failed to adduce any evidence negating the presumption of ownership of the suit vehicle, as such this court should set aside the judgement entered against it by the trial court.
10. The 1st and 2nd respondent on the other hand, submitted that the 3rd respondent adduced sufficient evidence before the trial court to prove that the appellant was the owner of the suit vehicle at the time that the accident occurred, as such, the appellant's appeal should be dismissed with costs.
11. The 3rd respondent in his submissions concurred with the learned trial magistrate's findings on the ownership of the suit vehicle, and submitted that he adduced sufficient evidence to prove that the appellant was the owner of the suit vehicle at the time of the accident, which evidence was not rebutted by the appellant.
12. The 3rd respondent further submitted that the notion by the appellant that the only proof that would have shown that he was not the owner of the suit vehicle at the time the accident occurred was a sale agreement, was misplaced and does not take into consideration the actual position of the law.



13. This being a first appeal, it is an appeal on both law and facts, as such, this court has a duty to re-evaluate, re-assess and re-analyse the evidence on record and to come to its own independent conclusion on whether or not the findings reached by the trial court should stand; all the while bearing in mind that unlike the trial court, this court neither saw nor heard the witnesses, and to make due allowance in that respect.
14. This duty was reiterated by the court of appeal, in the case of *Abok James Odera T/A A.J Odera & Associates versus John Patrick Machira T/A Machira & Co. Advocates* (2013) eKLR; as follows: “This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and re-analyse the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way. See the case of *Kenya Ports Authority versus Kuston (Kenya) Limited* (2009) 2EA 212 wherein the Court of Appeal held inter alia that: “On a first appeal from the High Court, the Court of Appeal should 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 that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence.”
15. On my part, I have carefully considered the grounds of appeal and the rival written submissions filed by the parties together with the authorities cited therein; having done so, I find that the main issue for determination in this appeal is whether the findings of the trial court on the ownership of Motor vehicle registration KBS 3X8Y (the suit vehicle) should be upheld.
16. In this case, the appellant has challenged the evidence adduced by the 3rd respondent to prove the ownership of the suit vehicle at the time that the accident occurred, on ground that same was not admissible given that the hand-written entry on the Motor Vehicle search distorted the said public document and the 3rd respondent therefore needed to bring the person who made the said entry to testify in court before the document could be admissible in court.
17. The appellant further stated that the insurance provisional debit note adduced by the 3rd respondent as proof of ownership of the suit vehicle could not be relied on as evidence considering that the authenticity of the said documents could not be verified. The appellant submitted that the only way the 3rd respondent would have proved ownership of the suit vehicle, is if he produced a sale agreement showing when he purchased the said vehicle; considering that all the motor vehicle search done on the suit vehicle identifies him as the owner of the said vehicle and not the appellant.
18. The 3rd respondent on the other hand submitted that it adduced sufficient evidence to prove that it was not he owner of the suit vehicle at the time that the accident occurred; and that the appellant’s notion that ownership of a vehicle can only be proved by way of a sale agreement was not in accordance to the law.
19. It is trite that under Section 8 of the *Traffic Act*, a person in whose name a vehicle is registered shall be deemed the owner of the said vehicle unless the contrary is proved. The said provision of law stipulates as follows: “The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”
20. The Court of Appeal in *Anil versus Ashur Ahmed Transporters Ltd* [2023] KECA 1149 (KLR); stated as follows regarding Section 8 of the *Traffic Act*: “Under Section 8 of the *Traffic Act*, the person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle. Our understanding of this provision is that the registration of the vehicle is not conclusive proof of ownership but only prima facie evidence of title to a motor vehicle. The person in whose



name the vehicle is registered is therefore presumed to be the owner thereof unless proved otherwise. Our understanding aligns with the views expressed by this Court in *Securicor Kenya Ltd vs. Kyumba Holdings Ltd* [2005] eKLR as follows: “We think that the appellant had, by the evidence it led, proved on a balance of probability, that it was not the owner of KWJ 816 at the time the accident occurred since it had sold it. Our holding finds support in the decision in *Osapil Vs. Kaddy* [2000] 1 EALA 187 in which it was held by the Court of Appeal of Uganda that a registration card or logbook was only prima facie evidence of title to a motor vehicle and the person whose name the vehicle was registered was presumed to be the owner thereof unless proved otherwise. The appellant had, indeed, proved otherwise.” Our position rhymes with the cited decision so that where there exists other compelling evidence to prove ownership, then the court can find that the owner of the vehicle is a person other than the one whose name appears in the logbook. Therefore, the presumption that the person registered as owner of a motor vehicle in the logbook is the actual owner is rebuttable.”

21. In this case, it is not in dispute that the accident in question occurred on 15th July, 2014, it is also not in dispute that the suit at the lower court was filed on 23rd June, 2017, which is a period of about 2 years and 11 months after the said accident occurred. At the time that the 1st and 2nd respondent conducted a search to ascertain the owner of the suit vehicle, the same had been registered in the name of the 3rd respondent.
22. The 3rd respondent however disputed that he was the owner of the suit vehicle at the time that the said vehicle was involved in a road traffic accident on the 15th of July, 2014. According to him, the appellant was the owner of the said vehicle at that time, given that he purchased the vehicle in the year 2016.
23. I have noted that the appellant has disputed the Motor Vehicle search adduced by the 3rd respondent, to prove ownership of the suit vehicle on grounds that the document was not admissible as the handwritten note on the said Motor Vehicle search distorts the said document.
24. However, other than the motor vehicle search, the 3rd respondent also adduced a provisional debit note showing that the period between 27th August 2013 to 26th August, 2014, the owner of the suit vehicle was Mwiki PSV Sacco. The insurance policy number of the suit vehicle at the time of the accident was 020/0804/1/010219/2013/08. This is the same insurance policy number that has been captured in the police abstract issued to the 1st and 2nd respondent in regards to the suit vehicle at the time of the accident.
25. The appellant did not produce any evidence to rebut the evidence adduced by the 3rd respondent that it was the owner of the suit vehicle during the period when the said vehicle was involved in an accident. As such, I am of the considered view that the 3rd respondent has proved on a balance of probabilities that the appellant was the owner of the suit vehicle at the time that the accident occurred.
26. Whereas the motor vehicle search conducted on the suit vehicle at the time of filing the suit at the trial court showed that the 3rd respondent was the current owner of the vehicle; the 3rd respondent was able to adduce evidence, which evidence was not rebutted by the appellant to prove that it was the appellant who was the owner of the suit vehicle at the time that the accident occurred.
27. I have also noted that the appellant alleged that during the time the accident occurred he was a financier of the suit vehicle and not the owner. The appellant however did not adduce any evidence to prove that he was a financier and not the owner, as such this court has no way of ascertaining its averments.
28. Based on the foregoing, I am of the considered view that the 3rd respondent was able to prove on a balance of probabilities that the appellant was the owner of the suit vehicle at the time that the accident occurred, and the learned trial magistrate cannot therefore be faulted for her findings on the ownership



of the suit vehicle. As such, I am of the view that the present appeal lacks in merit and should be dismissed with costs to the respondents.

29. For the above reasons this appeal is dismissed with costs to the respondents. The judgement in Milimani Commercial Chief Magistrate's Court case no. 4520 of 2017 delivered on 20th December 2022 is hereby upheld.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH JUNE 2025

HON. T. W. OUYA

JUDGE

For Appellant...No Appearance

For Respondent.....Nekoye HB for Mr Ochieng for 2nd Respondent

Court Assistant.....brian

