



**Maina (Suing through His Father and Mother Being His Next Friends Alex Mwangi Kinyua and Caroline Nyakio Wachira) v Stecol Corporation China/Kenya (Civil Appeal E023 of 2024) [2025] KEHC 7838 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7838 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E023 OF 2024  
JK NG'ARNG'AR, J  
JUNE 5, 2025**

**BETWEEN**

**VINCENT MWANGI MAINA ..... APPELLANT  
SUING THROUGH HIS FATHER AND MOTHER BEING HIS NEXT FRIENDS  
ALEX MWANGI KINYUA AND CAROLINE NYAKIO WACHIRA**

**AND**

**STECOL CORPORATION CHINA/KENYA ..... RESPONDENT**

*(Being an Appeal from the Judgment of Principal Magistrate, Nyaga S. M at the Magistrate's Court at Baricho, Civil Suit Number E168 of 2022)*

**JUDGMENT**

1. The Appellant (then Plaintiff) sued the Respondent (then Defendant) for general and special damages that arose when the Appellant was involved in a road traffic accident with the Respondent's motor vehicle registration number KCB xxxT.
2. The trial court conducted a hearing where the Appellant called four witnesses in support of his case and the Appellant called one witness in aid of his defence.
3. In its Judgement delivered on 13<sup>th</sup> March 2024, the trial court dismissed the Appellant's suit
4. Being aggrieved with the Judgment of the trial court, the Appellant filed his Memorandum of Appeal dated 26<sup>th</sup> March 2024 appealing against the whole Judgement.
5. My work as the 1st appellate court is to re-evaluate and re-examine the evidence of the trial court and come to my own findings and conclusions, but in doing so, to have in mind that I neither heard nor saw the witnesses testify.



6. I now proceed to summarise the case in the trial court and the parties' respective submissions in the present Appeal.

#### **The Appellant's/ Plaintiff's case.**

7. Through his Complaint dated 4<sup>th</sup> November 2022, the Appellant stated that on 18<sup>th</sup> February 2021, he was hit by motor vehicle registration number KCB xxxT while standing at the stage off Kibirigwi-Sagana road. It was his case that the Respondent was the registered owner of the said motor vehicle.
8. It was the Appellant's case that the Respondent's driver was negligent in the accident. The particulars of the negligence were stated in paragraph 4 of the Complaint. That as a result of the accident, the Appellant suffered injuries.
9. The Appellant prayed for special and general damages against the Respondent.
10. Through his submissions dated 22<sup>nd</sup> March 2025, the Appellant submitted that he proved that the Respondent owned the subject motor vehicle by producing a copy of motor vehicle records. That PW3 produced the Appellant's documents but the court failed to record the production. The Appellant submitted that it was a misdirection by the trial court when it found that the Appellant had not proved ownership of the subject motor vehicle.
11. It was the Appellant's submission that the Respondent's driver (DW1) was vicariously liable for causing the accident despite not being sued in person.

#### **The Respondent's/Defendant's Case.**

12. Through its statement of defence dated 17<sup>th</sup> January 2023, the Respondent denied the occurrence of the accident on 18<sup>th</sup> February 2021. The Respondent also denied being the registered owner of motor vehicle registration number KCB xxxT.
13. It was the Respondent's case that if the accident occurred then it was caused by the Appellant's and his parents' negligence. The particulars of negligence were contained in paragraph 6 of the Defence.
14. Through its written submissions dated 9<sup>th</sup> April 2025, the Respondent submitted that the particulars of negligence were not proved and that the trial court did not err when it dismissed the Appellant's suit. It relied on *Fourways Travel Services (A) Ltd vs Drumcon (1972) Ltd* (2015) eKLR. The Respondent further submitted that the Appellant failed to provide any link or causation between the Appellant and the Respondent and it relied on *Statpack industries vs James Mbithi Munyao* (2005) eKLR.
15. It was the Respondent's case that the Appellant failed to prove his case on a balance of probabilities and the Appeal should consequently be dismissed.
16. I have gone through and carefully considered the Record of Appeal, the Appellant's written submissions dated 22<sup>nd</sup> March 2025 and the Respondent's written submissions dated 9<sup>th</sup> April 2025. The sole issue for my determination was whether the trial court erred in dismissing the Appellant's suit.
17. I have read and considered the Judgement dated 13<sup>th</sup> March 2024 and I have noted that the trial court dismissed the Appellant's suit because the Appellant failed to prove that the subject motor vehicle belonged to the Respondent. In his grounds of Appeal, the Appellant stated he proved the identity of the subject motor vehicle by producing a copy of the motor vehicle records.
18. I have gone through the trial court record and I have noted that the Appellant filed the documents he wished to rely on 9<sup>th</sup> November 2022 alongside his witness statements and the Complaint. When the matter commenced hearing, Patrick Mwangi (PW1) produced Summons, a Medical Report and a receipt as



P. Exh 3a, 3b and 3c respectively. No. 105928 PC Incia Kirui (PW2) produced the Police File and Summons as P. Exh 1a and 1b respectively. Lucy Wangu Karimi (PW3) and Alex Mwangi Kinyua (PW4) did not produce any exhibits.

19. In his submissions, the Appellant submitted that he produced the entire list of documents as evidence and that the trial court did not record. To this I state that the court is guided by the trial court record and not speculation. As evidenced above, none of the Prosecution witnesses produced the copy of motor vehicle records as alleged by the Appellant and therefore the Appellant's assertion of having produced evidence of ownership through the copy of motor vehicle records was untrue.
20. From the exhibits produced by the Appellant, he was able to prove that an accident occurred between the Appellant and motor vehicle registration number KCB xxxT and that the Appellant suffered injuries. To my mind, the identity of the ownership of the said motor vehicle was key as it would inform whom the Appellant would sue for damages. Positive identification of the owner of the motor vehicle would create a link between the Respondent's alleged negligence and the injuries suffered by the Appellant.
21. It is trite that the burden of proof lay with the Appellant. The Appellant having alleged that the Respondent was the registered owner of the subject motor vehicle ought to have proved the allegation so as to sustain the suit against the Respondent. Unfortunately, the Appellant failed to do so. The Appellant submitted that the driver of the subject motor vehicle (DW1) was vicariously liable for causing the accident. In the present case, I disagree with the Respondent's submission because the driver, Edwin Ngari Gatere (DW1) was not a party in the original suit.
22. The Appellant would have been saved if the Police Abstract produced as P. Exh 1 had indicated the owner of the subject motor vehicle. I agree with sentiments of Warsame J (as he was then) in the case of *Jotham Mugalo vs Telkom (K) Ltd* (UR) where he stated: -

“Whereas it is true that it is the responsibility of the plaintiff to prove that the certificate of search is a valid way of showing the ownership, it is not the only way to show that a particular individual is the owner of the motor vehicle as this can be proved by a police abstract. Since a police abstract is a public document, it is incumbent upon the person disputing its contents to produce such evidence since in a civil dispute the standard of proof requires only balance of probabilities. Where the defendant alleges that the motor vehicle which caused the accident did not belong to him, it is up to them to substantiate that serious allegation by bringing evidence contradicting the documentary evidence produced by the plaintiff as required by section 106 and 107 of the *Evidence Act*. The particulars of denial contained in the defence cannot be a basis to reject a claim simply because a party has denied the existence of a fact as a fact denied becomes disputed and the dispute can only be resolved on the quality or availability of evidence.”

23. In the case of *Wellington Nganga Muthiora vs. Akamba Public Road Services Ltd & Another* (2010) eKLR the Court of Appeal held as follows: -

“Where a police abstract was produced and there was no evidence adduced by a defendant to rebut it and not even cross-examination challenged it, the police abstract being prima facie evidence not rebutted could be relied on as proof of ownership in the absence of anything else as proof in civil cases was within the standards of probability and not beyond reasonable doubt as is in criminal cases. However, where it was challenged by evidence or in cross-examination, the plaintiff would need to produce certificate from the Registrar or any other



proof such as an agreement for sale of the motor vehicle which would only be conclusive evidence in the absence of proof to the contrary”

24. I have gone through the Police Abstract and it did not indicate that the Respondent was the registered owner of motor vehicle registration number KCB xxxT.
25. Needless to say, that parties are bound by the pleadings and by virtue of section 107 of the Evidence Act; he who pleads must prove. Flowing from the above, it is my finding that the Appellant did not prove that the Respondent was the registered owner of motor vehicle registration number KCB xxxT and thus could not sustain the suit against the Respondent. In essence, the Appellant failed to discharge its burden of proof.
26. In the final analysis, I do not find fault with the trial court’s findings of dismissing the Appellant’s suit.
27. In the end, the Appeal dated 26<sup>th</sup> March 2024 has no merit and is dismissed with costs to the Respondent. The costs in the original suit shall remain as awarded by the trial court.

**JUDGEMENT DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 5TH DAY OF JUNE, 2025 IN THE PRESENCE OF:**

Mbuthia for the Appellant

N/A for the Respondent

Siele/Mark (Court Assistants)

.....

**J.K. NG’ARNG’AR**

**JUDGE**

