



**Mogo Auto Limited v Kariuki & another (Civil Appeal E1343 of 2024)
[2025] KEHC 7982 (KLR) (Civ) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 7982 (KLR)

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

CIVIL

CIVIL APPEAL E1343 OF 2024

AC MRIMA, J

JUNE 5, 2025

BETWEEN

MOGO AUTO LIMITED APPELLANT

AND

GEORGE NYAMU KARIUKI 1ST RESPONDENT

EDWARD CHOME MUSAA 2ND RESPONDENT

(Being an appeal from the judgment and decree of Hon. J. W. Nasimiyu (Resident Magistrate/ Adjudicator) delivered on 28th October, 2024 in Nairobi SCCC No. E2760 of 2024)

JUDGMENT

1. George Nyamu Kariuki, the 1st Respondent herein, who was the owner and driver of Motor vehicle registration number KCK 680F [hereinafter referred to as ‘the motor vehicle’] sued Mogo Auto Limited, the Appellant herein, under the doctrine of subrogation, for Kshs.115,188/= at the Nairobi [Milimani] Small Claims Court Case No. E2760 of 2024 [hereinafter referred to as ‘the suit’]. In the suit, the 1st Respondent was the Claimant and the Appellant was the Respondent while Edward Chome Musaa was enjoined as a Third Party.
2. Through a Statement of Claim dated 30th May 2024, the 1st Respondent averred that the Appellant, who was the registered owner of the Motorcycle registration number KMFE 865B [hereinafter referred to as ‘the motor cycle’] solely caused the accident that occurred on/or about 2nd June 2021 along Rabai Road where its agent and/or driver negligently rode the motor cycle that it hit the motor vehicle at the rear thereby occasioning damage.
3. In its Statement of Defence, the Appellant denied liability and took out third party proceedings against the 2nd Respondent on the basis that it was only a financier of the motor cycle and nothing more and



that it had its name in the registration documents just to secure the loan it advanced to 2nd Respondent and thereby holding the Motor cycle as a collateral for the loan. The 2nd Respondent, on the other hand, admitted that an accident occurred as alleged, but denied liability. He contended that the 1st Respondent was solely to blame for abruptly stopping on the road thereby causing the motor cycle to hit the Motor vehicle him from the rear.

4. The suit was heard by way of viva voce evidence where the 1st Respondent testified and called two witnesses whereas the Appellant called a witness and the 2nd Respondent also testified, but did not call any witness. Parties filed respective submissions and the trial Court rendered its judgment on 28th October 2024 in favour of the 1st Respondent in the following terms: -
 - i. Liability - 100% as against the Appellant.
 - ii. Special damages - Kshs.115,188.00/=
 - iii. Costs of the claim - Kshs.11,000/=
 - iv. The 2nd Respondent (then the Third Party) shall wholly indemnify the Appellant in respect of the judgment.
5. Aggrieved by the judgment, the Appellant filed the instant appeal through a Memorandum of appeal dated 21st November 2024 and preferred the following grounds: -
 1. That the trial court erred in law and in fact by finding the appellant vicariously liable for the accident.
 2. That the trial court erred in fact by failing to consider that the appellant was only a mere financier to aid in the purchase of the subject motorcycle.
 3. That the trial court erred in law and in fact by failing to consider the evidence on record therefore arriving at an erroneous judgment.
 4. That the trial court erred law and in fact by failing to consider the appellant's submissions and authorities therefore arriving at an erroneous judgment.
6. The Appellant then prayed that the appeal be allowed, the judgment of the trial Court be discharged and set aside, the Claimant's (1st Respondent's) claim against the Appellant be dismissed and the Appellant be awarded costs of the appeal.
7. This Court gave directions on hearing of the appeal by way of written submissions. The Appellant's submissions were dated 25th February 2025 while the 1st Respondent's submissions were dated 27th March,2025. The 2nd Respondent did not participate in the appeal. The gist of the submissions will be ingrained in the latter part of this judgment.
8. As this is an appeal from a decision of the Small Claims Court, the jurisdiction of the High Court as the first and final appellate Court is provided for in Section 38 of the *Small Claims Court Act* where this Court only determines matters of law. As the appeal herein is on the legal liability of a financier of a vehicle which is involved in an accident, then such an issue transcends the borders of matters of fact into the realm of matters of law. Therefore, this Court is properly seized of jurisdiction over this appeal.
9. In determining the pertinent issue in this appeal, this Court recalls that it recently dealt with the very issue in Nairobi [Milimani] High Court Civil Appeal No. E1300 of 2024 Watu Nominees Company Limited vs. Josephine Nyambeki Ombaso & 3 Others [unreported]. Since, the Court's position has not changed, I hereby reiterate what I stated in the said decision, thus: -



12. There has, as well, been several Court determinations on the liability of a financier arising from the above setting. For instance, the Court's in *Abson Motors Limited vs. Tabitha Syombua Mutua & Another* [2019] eKLR, *Diamond Trust Bank Limited vs. Richard Mwangi Kamotho & 2 Others* [2017] eKLR and *Swaleh Abdalla & 4 Others vs. Pollman tours & Safaris Limited* took the correct position that a financier of a motor vehicle, without more, does not render it liable out of an accident involving the vehicle which is in the possession of the borrower. In other words, apart from the financier being registered as the owner or co-owner of the vehicle, a party seeking to hold the financier liable is under a legal obligation to demonstrate that there was a further relationship between the financier and the borrower other than the mere financing of the purchase. In the case at hand, none of the Respondents have rendered such further evidence.
10. As the 1st Respondent has not tendered any evidence connoting any further dealing between the Appellant and the 2nd Respondent than the fact that the Appellant was a mere financier of the Motor cycle without more, then the Learned Adjudicator, with tremendous respect, erred in finding the Appellant liability.
11. Having found as such, there is evidence on record on how the accident occurred. Since the motor cycle hit the motor vehicle on the rear, then 2nd Respondent was wholly to blame having failed to maintain a safe distance. That must have been the rationale behind the Learned Arbitrator holding that the 2nd Respondent was to indemnify the Appellant of the entire judgment sum. Given that the Appellant has now been absolved of any liability, then the 2nd Respondent shall shoulder that liability in full.
12. To that end, the appeal is successful and the following final orders do hereby issue: -
 - (a) The appeal is merited and hereby succeeds.
 - (b) The judgment of the trial Court in SCCC No. E2760 of 2024 dated 28th October 2024 finding the Appellant wholly liable is hereby set aside and substituted with an order finding the 2nd Respondent herein, Edward Chome Musaa, wholly liable for the accident.
 - (c) The 2nd Respondent shall, therefore, satisfy the judgment in the suit.
 - (d) The costs of this appeal shall be borne by the 2nd Respondent.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 5TH DAY OF JUNE, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Odhiambo, Learned Counsel for the Appellant.

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

No appearance for the 2nd Respondent.

Amina/Abdirazak – Court Assistants.

