



**Car House Limited v Ithau & another (Civil Appeal E946 of 2024)
[2025] KEHC 12865 (KLR) (Civ) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12865 (KLR)

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

CIVIL

CIVIL APPEAL E946 OF 2024

AC MRIMA, J

SEPTEMBER 18, 2025

BETWEEN

CAR HOUSE LIMITED APPELLANT

AND

VICTOR MULEI ITHAU 1ST RESPONDENT

DANIEL MOI OBIERO 2ND RESPONDENT

*(Being an appeal from the judgment and decree of Hon. S.N Muchungi Nairobi
Milimani Commercial Court Civil Suit No. 8601 of 2021 delivered on 26th July 2024)*

JUDGMENT

Background:

1. Victor Mulei Ithau, the 1st Respondent herein, sued Car House Limited and Daniel Moi Obiero, the Appellant and 2nd Respondent herein respectively at the trial Court in Nairobi Milimani Commercial Chief Magistrates Court Civil Suit No. 8601 of 2021 [hereinafter referred to as ‘the suit’]. He sought compensation for injuries he sustained as a result of a road traffic accident he claimed was caused by the reckless driving of Daniel ObieroMoi while driving motor vehicle registration number KCX 889V (hereinafter referred to as ‘the motor vehicle’).
2. In its defence, the Appellant pleaded that at the time of the accident, it had sold the motor vehicle to the 2nd Respondent through a hire purchase agreement. As such, it was neither in possession thereof nor liable for any resultant accident.
3. The suit was heard and judgment was rendered where the trial Magistrate observed that the Appellant did not sufficiently establish that it had sold the motor vehicle to the 2nd Respondent. It, hence, found that since the Appellant was the registered owner and the insured, it was liable for the accident.



4. It was that decision that resulted to the instant appeal.

The Appeal:

5. Through a Memorandum of Appeal dated 15th August 2024, the Appellant urged that the entire judgment be set aside, varied or quashed on somewhat repetitive 18 grounds attacking both the liability and quantum.

6. In its written submissions dated 11th March 2025, the Appellant submitted that as per the provisions of Section 8 of the *Traffic Act*, there are other forms of ownership of a motor vehicle other than registration. To that end, it cited various decisions among them, the one *Securicor Kenya Ltd. -vs- Kyumba Holdings Ltd. (2005) eKLR* and the one in *Nancy Ayemba Nagira -vs- Abdi Ali (2010) eKLR* where it was observed that actual possession can pass to a third party other than the registered owner who may be much more relevant than the person whose name appears in the certificate of registration.

7. On the issue as to who is responsible for the accident, the Appellant submitted that by dint of paragraph 7 of the hire purchase agreement and the affidavit in support thereof, there was a contractual obligation upon the 2nd Respondent to indemnify it in the event of an accident. To bolster its position on indemnity, the decision in *Gichira Peter -vs- Lucy Wambura Ngaku & Anor (2021) eKLR* was relied upon. The Appellant submitted that having sold the motor vehicle to the 2nd Respondent it owed no duty of care to the 1st Respondent. It drew support from the decision in *Elizabeth Gathoni Thuku (suing as legal representative of the estate of Charles Gitonga Wathuta -vs- Peter Kamau Maina & Another* where it was observed: -

... In civil claim liability trickles down to the question of who actually cause the accident....

8. In conclusion, the Appellant submitted that the only reason it was joined to the suit was because it was entitled to the balance of the purchase price. It asserted that no employer-employee or agency relationship existed between it and the 2nd Respondent on the day of the accident. The Appellant prayed that the appeal be allowed as prayed.

The Respondents' cases:

9. The 1st Respondent, Victor Mulei Ithau, challenged the appeal through written submissions dated 16th May 2025. On the issue of liability, he stated that the trial Court did not err since the evidence established no connection between the Appellant and the third party, Darson Trading Limited, and as such it was right in holding the Appellant and the 2nd Respondent liable for the accident. It was his case that the Appellant did not tender any evidence to establish any link between it and the third party who entered into an agreement with the 2nd Respondent.

10. As regards general damages, the 1st Respondent submitted that the injuries he sustained were proved through the medical report and the trial Court based on various comparable injuries correctly awarded Kshs. 350,000/-. The 1st Respondent urged this Court to dismiss the appeal with costs.

11. The 2nd Respondent did not participate in the appeal.

Analysis:

12. Having appreciated the parties' respective cases, the submissions and the decisions referred to, the issues that emerge for determination are as follows: -

i. Whether the trial court properly directed itself on liability.



- ii. Depending on (i) above the propriety of the damages awarded.
13. The bounds of this Court as a first appellate Court are well defined. It is to re-evaluate and reassess the evidence and come up with its independent findings as so stated in Abok James Odera T/A A.J Odera & Associates -vs- John Patrick Machira T/A Machira & Co. Advocates [2013] KECA 208 (KLR) by the Court of Appeal,
 14. With the foregoing prescription, this Court now turns to reassess and re-evaluate the evidence.

Liability:

15. This issue rests on, firstly, the various modes through which a motor vehicle can be owned and secondly, whether vicarious liability applies to the case at hand. The 1st Respondent produced as P. Exhibit 4 which are the registration details of the motor vehicle sourced from the National Transport and Safety Authority. It indicates that the motor vehicle KCX 889V is registered to the Appellant. The Appellant on the other hand stated that when the accident happened, it had sold the vehicle to the 2nd Respondent and as such, liability could not attach. To substantiate its claim, it produced as D. Exhibit 1, which was the hire purchase agreement.
16. This Court has keenly interrogated the hire purchase agreement. It was made on 20th February 2020 between Darson Trading Company, which described itself as the ‘dealer/owner’ and the 2nd Respondent, who was described as the ‘hirer’. The price of the vehicle was Kshs. 1,470,000/-. A deposit of Kshs. 420,000/- was to be made and effective 1st April 2020 a monthly instalment of Kshs. 52,500/ was to be made for a period of 20 months.
17. The terms of the hire purchase agreement are as hereunder;
 1. ...
 2. The hirer shall take all reasonable and proper care of the said motor vehicle and keep it in good and substantial repair and to have the same insured under the name of the owner.
 3.
 4.
 5.
 6.
 7. In the event of any liability, claim arising during the subsistence of the agreement in respect of the said vehicle, the hirer shall be 100% accountable and do hereby guarantee the owner that this condition shall faithfully comply with this condition in the event of any eventuality. This covenant shall be pleaded as a defence to any claim the owners may be requires to answer.
 8. ...
18. Alongside the hire purchase agreement is the document titled ‘Affidavit of motor vehicle sale and responsibility’. It was produced as D. Exhibit 2. It confirmed that the 2nd Respondent had bought the motor vehicle. It bestowed upon him responsibility in the event of accidents, theft, among other eventualities. Further to the foregoing is the Letter of Authority dated 20th February 2020, produced as D. Exhibit 5 which authorized Darson Trading Ltd to sell and receive funds on the Appellant’s behalf.
19. When Nicholas Ngoli Inyangala, the Appellant’s Sales and Operations Manager was cross-examined, he stated that he knew the parties to the agreement since he was present when the agreement was made.



He stated that he worked under Darson Limited and the Appellant. He agreed that he did not sign the agreement but the Director, one Mr. Ali of the Appellant did so and his name is on the agreement on behalf of the Company. He conceded that payment was made in cash but no receipt was issued. He explained that the company does not issue receipts since payment is indicated in the agreement. He agreed that the motor vehicle's possession was to pass immediately payment was finalized. He indicated that Darson Company Limited is a sister company. Speaking to the nature of the transaction, he stated that they transfer documents to client after completion of the payment.

20. Having reviewed the evidence adduced before the trial Court, a dichotomy in ownership of the motor vehicle brings itself to the fore. On the one part is the legal ownership and on the other is beneficial/actual ownership. Going by both the Hire purchase agreement and the Official Search of the registration status of the motor vehicle at the NTSA, there is no contest that the Appellant is the legal registered owner. However, the fact that a person is the registered legal owner of a motor vehicle does not automatically confer upon such person civil liability. The Court of Appeal in *Securicor Kenya Limited -vs- Kyumba Holdings Limited* [2005] 1KLR 748 discussed forms of ownership that may be relevant for attaching civil liability. It observed as follows: -

... It was apparent, therefore, that though the appellant remained the registered owner of the motor vehicle its actual possession had passed to a third party. In view of this finding, the trial judge cannot be right under section 8 of the *Traffic Act* when she states that the true owner of the motor vehicle was the appellant...

21. The Supreme Court of India decision in *Naveen Kumar -vs- Vijay Kumar & Others* offers more insight on the various modes of ownership. It interpreted the meaning of the term 'owner' pursuant to Section 2(30) of the Motor Vehicles Act 1988 by observing thus: -

... Section 2(30) of the Act stated that is it the person in whose name the motor vehicle stands registered would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in whose possession of the vehicle under that agreement is treated as the owner.

22. The foregoing interpretation of section 2(30) of the Indian Motor Vehicles Act applies mutatis mutandis with section 8 of the *Traffic Act*. Therefore, with tremendous respect, the trial Court firstly fell into error by failing to appreciate the other means through which ownership of motor vehicles can accrue and subsequently by making the finding that the Appellant had not substantiated the claim that the Appellant had not sold the vehicle to the 2nd Respondent despite the overwhelming documentary evidence. The Court erred further by finding that the Appellant was not affiliated with Darson Trading Company when in fact there was uncontroverted evidence showing that the Appellant had granted the said company authority to sell and receive monies on its behalf in respect of the subject motor vehicle. No evidence was adduced as to suggest that 2nd Respondent was using the motor vehicle on behalf and/or for the benefit of the Appellant, as its servant, agent or employee as to make it vicariously liable. The hire purchase agreement, therefore, was undisturbed.

23. This Court's attention is further drawn to the Court of Appeal decision in *Kenya Bus Services Ltd -vs- Dina Kawira Humphrey* [2003] KECA 179 (KLR) where the Court approvingly referred to the decision in *Karisa v Solanki* [1969] EA 318 the where the following was observed: -

... Where it is proved that a car has caused damage by negligence, then in the absence of evidence to the contrary, a presumption arises that it was driven by a person for whose negligence the owner is responsible (see *Bernard v Sully* (1931) 47 TLR 557). This



presumption is made stronger or weaker by the surrounding circumstances and it is not necessarily disturbed by the evidence that the car was lent to the driver by the owner as the mere fact of lending does not of itself dispel the possibility that it was still being driven for the joint benefit of the owner and the driver.

24. Flowing from the foregoing, it is this Court's finding and holding that the Appellant was erroneously found to be liable for the accident. It was not, but the 2nd Respondent, Daniel Moi Obiero. For clarity, there was no cogent evidence that rebutted the presumption that the motor vehicle was being driven by the 2nd Respondent whose negligence cannot be attributed to the Appellant. The 1st Respondent's claim is squarely at the doorstep of the 2nd Respondent and not the Appellant.
25. Having found as such, the appeal succeeds on the aspect of liability. As such, the liability attaches on the 2nd Respondent who should satisfy the judgment and the decree in the suit.
26. Given the above finding, a consideration of the second issue becomes academic and is hereby dispensed with. The discussion on this appeal comes to an end.

Disposition:

27. Finally, this Court finds merit in the appeal and the following orders hereby issue: -
 - (a) The judgment of the trial Court delivered on 26th July 2024 in the suit finding the Appellant liable is hereby set aside in its entirety.
 - (b) Judgment is hereby entered for the 1st Respondent herein as against the 2nd Respondent as follows: -
 - (i) Liability - 100%
 - (ii) Damages as awarded in the suit.
 - (c) The security deposited in Court by the Appellant, if any, be refunded accordingly.
 - (d) Costs of the appeal to be borne by the 2nd Respondent.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF SEPTEMBER, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Ms Cherop, Learned Counsel for the Appellant.

Michael/Amina – Court Assistants.

