



REPUBLIC OF KENYA



**Muiruri v Mugoya Vegetable Shop Limited (Civil Appeal E912 of 2022)
[2024] KEHC 2499 (KLR) (Appeals) (12 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2499 (KLR)

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

APPEALS

CIVIL APPEAL E912 OF 2022

DAS MAJANJA, J

MARCH 12, 2024

BETWEEN

DAVID NGUNG’U MUIRURI APPELLANT

AND

MUGOYA VEGETABLE SHOP LIMITED RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. S. Muchungi, SRM dated 30th September 2022 at the Nairobi Magistrates Court, Milimani in Civil Case No. 7100 of 2018)

JUDGMENT

1. The Appellant appeals against the judgment of the Subordinate Court dismissing its claim against the Respondent. According to the plaint dated 18.07.2018, the Appellant claimed that he was walking along the Olusoi/Likoni Road when the Respondent’s authorised driver negligently controlled motor vehicle registration number KAN XXXY causing it to veer off the road and injure the Appellant.
2. After hearing the testimony of the Appellant (PW 1) and the Respondent’s director (DW 1), the trial magistrate concluded that the Appellant failed to prove that the motor vehicle belonged to the Respondent at the material time. It therefore dismissed the suit thus precipitating this suit. The thrust of the memorandum of appeal dated 03.11.2022 is that the trial magistrate failed to appreciate that the Respondent was the registered owner of the motor vehicle and that she ignored the evidence and submissions made by him. The parties filed written submissions in support of their written submissions which I have considered and will refer to in my analysis.
3. Whether the Respondent owns the motor vehicle is a question of fact. In resolving this issue, the court is guided by the principle that the first appellate court must reconsider the evidence, evaluate it and draw its own findings keeping in mind that the trial court interacted first hand with the parties thus had



the advantage of observing their demeanor and general conduct during the trial (see *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123).

4. The Appellant's case as pleaded in its plaint was the Respondent was the, "registered owner, beneficial owner, insured owner and or owner in possession of the motor vehicle registration number KAN 892Y." According to the copy of records issued by the National Transport and Safety Authority (NTSA) the Respondent was the owner of the motor vehicle as at 10.01.2018. In its defence dated 20.04.2021, the Respondent denied that it was the owner of the motor vehicle and stated that it was not liable as it had sold and transferred ownership and possession of the subject motor vehicle.
5. Under section 8 of the [Traffic Act](#) (Chapter 403 of the Laws of Kenya), "The person whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle." This statutory presumption may be rebutted by contrary evidence. In [Robert Njoka & Alice Wambura Njagi & 3 Others](#) [2013]eKLR amongst other cases, the Court of Appeal held that registration of a person as the owner of the motor vehicle is only *prima facie* evidence of title to the motor vehicle and the person named therein is presumed to be the owner unless proved otherwise (see also [Securicor Kenya Limited v Kyumba Holdings](#) [2005]eKLR and [Ignatius Makau Mutisya v Reuben Musyoki Muli](#) [2015]eKLR).
6. Did the Respondent discharge the burden of showing that it was not the owner? DW 1 stated that the Respondent had sold the motor vehicle to TTM with effect from 15.10.2011 and in that regard addressed a letter dated 17.10.2011 to the Registrar of Motor Vehicles. He produced a sale agreement dated 14.10.2011 where the Respondent sold the motor vehicle for Kshs. 200,000.00 to the said TTM and in the agreement the purchaser acknowledged that he had received, inter alia, the original logbook and duly signed transfer form.
7. The trial magistrate noted the Certificate of Records issued by the NTSA was endorsed with the Respondent's name by hand and was not typewritten or printed as the other particulars set out in the certificate. The trial magistrate questioned why this was so and held that the document was not authenticated. I agree with this position as it is not clear why the Certificate of Records contained the handwritten endorsement of the Respondent's name. This position is aggravated by the fact that the police abstract shows that although the driver was unknown as he had escaped and the name of the owner is not shown yet the motor vehicle was insured. The totality of the evidence leaves the issue of ownership suspect.
8. Assuming that the Certificate of Records was valid, I do not see any reason to doubt that the Respondent sold the vehicle to a third party and parted with possession. For all intents and purposes, the property in the vehicle has passed and the obligation to transfer the motor vehicle rested with the purchaser. This evidence was not rebutted in any material particulars. I find that the Respondent had discharged the burden of proving that it was not the owner of the motor vehicle.
9. In the final analysis, I dismiss the appeal. The Appellant shall bear the cost of the appeal assessed at Kshs. 30,000.00.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MARCH 2024.

D. S. MAJANJA

JUDGE

