



**Adelcus Agencies (K) Ltd v Kokoi & another (Civil Appeal
E166 of 2023) [2024] KEHC 8282 (KLR) (12 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8282 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL APPEAL E166 OF 2023**

**M THANDE, J
JULY 12, 2024**

BETWEEN

ADELCUS AGENCIES (K) LTD APPELLANT

AND

NYUNDO MWANDEGWA KOKOI 1ST RESPONDENT

ISABELLA WANJIRA THONDU 2ND RESPONDENT

*(An Appeal from the Judgment of Hon. R. M. Amwayi, Principal
Magistrate delivered on 25.10.23 in Kaloleni Civil Suit No. 60 of 2020)*

JUDGMENT

1. The Appeal herein arises from the judgment of Hon. R. M. Amwayi, Principal Magistrate delivered on 25.10.23 in Kaloleni Civil Suit No. 60 of 2020. By a plaint dated 24.2.2020, the 1st Respondent instituted a suit in the trial court against the Appellant and the 2nd Respondent, seeking both general and special damages arising from a road traffic accident which occurred on 2.11.19. In his plaint, the 1st Respondent averred that he was a lawful pedestrian along the Nairobi-Mombasa Highway at Mariakani town centre when the Respondent's authorized driver, servant or agent carelessly, negligently and recklessly drove motor vehicle registration number KBL 275A/ ZE 0886 and caused it to veer off its lane and knocked him down. As a result, he sustained severe bodily injuries and incurred loss and damage.
2. In its statement of defence dated 16.6.2020, the Appellant denied ownership, possession or control of the motor vehicle and stated that the same was registered in the name of the 2nd Respondent. It denied any knowledge of the accident. Additionally, the Appellant asserted that it cannot be held vicariously liable for any negligence attributable to the 2nd Respondent or her driver or agent as they were never in its employment. It further averred that it had been incorrectly joined in the proceedings.



3. The 2nd Respondent did not enter appearance or file a defence.
4. Following a hearing, the trial Magistrate found the Appellant and 2nd Respondent 100% liable and awarded damages as follows:
General damages Kshs. 180,000/=
Special damages Kshs. 4,800/=
Total Kshs. 184,800/=
5. The Appellant is aggrieved by the finding on liability and faults the trial Magistrate for failing to appreciate that it had proved that the motor vehicle did not belong to it but to the 2nd Respondent.
6. The single issue for determination is whether the trial Magistrate erred in finding the Appellant liable for the injuries sustained by the 1st Respondent.
7. The Appellant submitted that the trial Magistrate erred in relying on the police abstract and without corroborating evidence, to determine ownership of the motor vehicle yet the certificate from the Registrar of Motor Vehicles indicated that the same was owned by the 2nd Respondent.
8. For the 1st Respondent, it was submitted that alternative forms of ownership include actual, beneficial and possessory ownership. Further that in his plaint, he averred that the Appellant and the 2nd Respondent were at the material time the registered, beneficial and/or insured owner of the motor vehicle. To buttress this submission, the case of Nancy Ayemba Ngaira v Abdi Ali [2010] eKLR was cited. Additionally, the 1st Respondent asserted that the finding of the trial Magistrate on ownership of the motor vehicle was correct and guided by law, having found that the Appellant did not cross examine the police officer on the particulars in the police abstract.
9. In her judgment, the trial Court citing Section 8 of the [Traffic Act](#) had this to say on the ownership of the motor vehicle:

In the instant case, the motor vehicle copy of records shows that the registered owner of the suit motor vehicle at the time of the accident was the 2nd Defendant. Therefore, pursuant to Section 8 of the [Traffic Act](#), the 2nd Defendant would be deemed to be the owner of the suit motor vehicle unless the contrary was proved.
10. Relying on the cases of Nancy Ayemba Ngaira (supra) and Joel Joel Muga Opija v East African Sea Food Limited [2013] eKLR, the trial Magistrate went on to state:

Taking note that there exist alternative forms of ownership, the evidential burden lay on the 1st Defendant to prove that the Police Officer erred in indicating it as the owner of the suit motor vehicle in the police Abstract. However, the 1st Defendant did not cross-examine the Police Officer to prove the alleged error. Furthermore, no evidence was led to challenge the existence of its particulars in the Police Abstract. In the premises, I find the contents of the Police Abstract unchallenged. Accordingly, this Court finds that the 1st Defendant was one of the owners of the suit motor vehicle at the time of the accident together with the 2nd Defendant herein.
11. Section 8 of the [Traffic Act](#) provides:

The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.



12. The law is that a record from the Registrar of Motor Vehicles showing the registered owner of a motor vehicle shall be deemed to be evidence of such ownership. This evidence is however not conclusive and may be rebutted by other evidence showing the contrary.
13. The record shows that the 1st Respondent relied on the police abstract which indicated that the motor vehicle was owned by the Appellant and was insured by APA Insurance Ltd under Policy No. 15/807/009789 commencing on 15.10.19 to 13.11.19. The Appellant on the other hand relied on motor vehicle search which indicated that the registered owner of the motor vehicle was Equity Bank (Kenya) Limited and the 2nd Respondent. The Appellant also relied on an email dated 22.9.22 from APA Insurance Limited informing the Appellant's advocate that the Appellant was a stranger to them. It further relied on a new business policy schedule from APA Insurance Limited indicating that the 2nd Respondent was the policy holder of the said insurance policy no. 15/807/0009789 in respect of the motor vehicle. The period of insurance being 14.10.19 to 13.10.19.
14. In the case of Nancy Ayemba Ngaira V Abdi Ali [2010] eKLR, Ojwang, J. (as he then was stated:

There is no doubt that the registration certificate obtained from the Registrar of motor vehicles will show the name of the registered owner of a motor vehicle. But the indication thus shown on the certificate is not final proof that the sole owner is the person whose name is shown. Section 8 of the Traffic Act is fully cognizant of the fact that a different person, or different other persons, may be the de facto owners of the motor vehicle – and so the Act has an opening for any evidence in proof of such differing ownership to be given. And in judicial practice, concepts have arisen to describe such alternative forms of ownership: actual ownership; beneficial ownership; possessory ownership. A person who enjoys any of such other categories of ownership, may for practical purposes, be much more relevant than the person whose name appears in the certificate of registration; and in the instant case at the trial level, it had been pleaded that there was such alternative kind of ownership. Indeed, the evidence adduced in the form of the Police Abstract, showed on a balance of probabilities, that 1st defendant was one of the owners of the matatu in question.
15. Flowing from the cited decision, it can be seen that the official record from the Registrar of Motor Vehicles is not conclusive proof of ownership of a vehicle. The learned Judge gave examples of categories of ownership as have arisen in judicial practice including actual ownership, beneficial and possessory ownership. Indeed, Section 8 of the Act recognizes that a different person other than the registered owner could be the owner of a motor vehicle. To this end, the words unless the contrary is proved, are instructive. Evidence can be led to prove that the person indicated as the owner of a motor vehicle in the records is not actually the owner thereof.
16. In the Joel Muga Opija case (supra), the Court of Appeal stated:

In any case in our view an exhibit is evidence and in this case, the appellant's evidence that the Police recorded the respondent as the owner of the vehicle and Ouma's evidence that he saw the vehicle with words to the effect that the owner was East African Sea Food were not seriously rebutted by the respondent who in the end never offered any evidence to challenge or even to counter that evidence. We think, with respect, that the learned Judge in failing to consider in depth the legal position in respect of what is required to prove ownership, erred on point of law on that aspect. We agree that the best way to prove ownership would be to produce to the court a document from the Registrar of Motor vehicles showing who



the registered owner is, but when the abstract is not challenged and is produced in court without any objection, its contents cannot be later denied.

17. What I understand the Court of Appeal to be saying in the cited case is that whereas the best proof of ownership of a motor vehicle is a document from the Registrar of Motor Vehicles, where a police abstract and its production is not challenged, its contents cannot later be denied. The respondent in that case did not rebut the appellant's evidence regarding the contents of the police abstract. The respondent did not also produce any evidence to challenge or even to counter that evidence.
18. The circumstances herein are distinctly different in that while the police abstract indicated that the Appellant was the owner of the motor vehicle, the Appellant did in its statement of defence deny ownership of the motor vehicle. Further the Appellant produced records from the Registrar of Motor Vehicles indicating that the 2nd Respondent is the registered owner together with Equity Bank (Kenya) Ltd. There is also on record, evidence that APA Insurance Ltd disowned the Appellant and the new business policy schedule exhibited indicates that the 2nd Respondent was its insured.
19. It is noted that the learned Magistrate stated in her judgment that the Appellant did not cross-examine the police officer to prove the alleged error in the police abstract, leading her to conclude that the police abstract was unchallenged. A careful look of the record will however, show that while PW1 Cpl. Harrison Oseko produced the police abstract, he did not say anything on the ownership of the motor vehicle. In cross examination, he stated that he was not the investigating officer and did not have the police file with him. Had PW1 been diligent in the discharge of his duties, he would have come to court with the police file. He would perhaps have shed light on whether the investigating officer was able to establish how insurance policy no. 15/807/0009789 was issued by APA Insurance Ltd to 2 different persons for the same motor vehicle and for different periods. Regrettably, his testimony was not very helpful with regard to ownership of the motor vehicle. In light of this, the fact that the Appellant did not cross examine PW1 of the police abstract is in my view inconsequential.
20. I have taken all these factors into consideration and the inescapable conclusion that can be drawn is that the police abstract was indeed challenged by the production of the ownership and insurance documents as well as the email from the insurance company by the Appellant, showing that it was not the owner of the motor vehicle. I accordingly find that the trial Magistrate misdirected herself by finding the "contents of the Police Abstract unchallenged".
21. Having found as I have, it follows that the judgment against the Appellant cannot stand. In the premises, the Appeal herein succeeds. The judgment of the trial court in so far as it relates to the Appellant is hereby set aside. For the avoidance of doubt, the judgment against the 2nd Respondent is upheld. The Appellant shall have costs of this Appeal.

DATED SIGNED AND DELIVERED IN MALINDI THIS 12TH DAY OF JULY 2024

M. THANDE

JUDGE

