



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mate v Wangombe (Civil Appeal 292 of 2023)  
[2024] KEHC 10190 (KLR) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 10190 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL 292 OF 2023**

**TW OUYA, J  
JULY 5, 2024**

**BETWEEN**

**MAUREEN NJOKI MATE ..... APPELLANT**

**AND**

**DANIEL KIMUTHU WANGOMBE ..... RESPONDENT**

**JUDGMENT**

1. This appeal arises from the Judgement of the Lower court in Thika SCCC Number E416 of 2022 delivered on 29<sup>th</sup> November 2022 by Hon. V.A Ogotu. The Judgement arose from a statement of claim dated 30<sup>th</sup> September, 2022 by Daniel Kimuhu Wangombe herein after referred to as the Respondent against Maureen Njoki Mate hereinafter referred as the Appellant. The Respondent sort for damages of Kshs.397,320 plus costs of the suit and interests.
2. The Appellant has filed a Memorandum of Appeal dated 9<sup>th</sup> December, 2022, supported by a Record of Appeal dated 3<sup>rd</sup> July, 2023 which details the pleadings, defense and judgement of the trial court. In their grounds of appeal, the Appellant has raised two pertinent issues:
  - a. Whether the Appellant was the registered owner of the Motor Vehicle KBT461X at the time of the accident.
  - b. Whether the Appellant was vicariously liableThe Appellant prays for orders that:
  - i. The Appeal be allowed
  - ii. The Judgement and order in claim no. E416 of 2022 be set aside and substituted with an order dismissing the Respondent's claim
  - iii. The Appellant be awarded costs of the original case and this Appeal with interest.



3. The respondent opposes the Appeal and prays that the Appeal be dismissed with costs to the Respondent. At the trial the Respondent brought the suit forward under subrogation and proved special damages by providing documentation and receipts proving the total sum of Kshs. 397,320 for which judgement was entered in his favor.
4. The Appellant argues that she was not the registered owner of the motor vehicle at the time of the accident, neither was she the driver or her assigns. That she therefore did not owe the Respondent any duty of care and cannot therefore be held vicariously liable. She relies on the Police abstract report which cites Boniface Wanjohi Gichuki as the driver of the motor vehicle at the time of the accident and the current registered owner. The Appellant does not however dispute the causation of injury and damages to the Respondent. She concedes that the Respondent suffered injuries and damages as a result of the of the actions of the driver of the vehicle but asserts that the blame cannot be attributed to her as she was not the owner.
5. The Respondent on his part filed a Replying Affidavit opposing the appeal. He relies on the Tracing Report by NTSA, Insurance details and the testimonies of two witnesses namely CW2 and one Joy Muthoka, of NTSA and UAP Insurance respectively, all contained in the Record of Appeal. CW2 produced a tracing report from NTSA and testified that their investigations left no doubt that the Appellant was the registered owner of the Motor Vehicle KBT 461X at the time of the accident and that the NTSA search had a tick against the name of the Appellant. That this testimony remained unshaken during cross examination. The respondent place further reliance on insurance details adduced by CW2 that confirmed that the Appellant was the Insured owner of the subject Motor Vehicle at the material time of the accident.
6. This being the first Appellate court, this court is obliged as laid out in the case of *Selle & Another V Motor Boat Co. Ltd & others* 1968EA123 to subject the entire evidence to fresh and exhaustive scrutiny taking into account that it did not see nor hear the witnesses and make its own findings. However, the court is not bound by the trial courts findings of facts or conclusions.
7. I have therefore considered the memorandum of appeal filed before this court, the written submissions in support and against the Appeal and the evidence adduced before the court. The issues for determination are:
  - a. Whether the Appellant was the registered owner of the Motor Vehicle KBT461X at the time of the accident.
  - b. Whether the Appellant can be held vicariously or otherwise liable for the injury and damages occasioned to the Respondent as a result of the accident
8. The Appellant in written submissions argues that the Adjudicator erred in law by placing heavy reliance on the Respondent's set of exhibits despite the Appellants compelling evidence which showed that the vehicle belonged to someone else and was not driven by her at the time of the accident. She also argued that the adjudicator failed to find that real question to determine was who was liable for the accident.
9. She maintained that she did not owe the duty of care to the Respondent as the vehicle did not belong to her since she had sold it to someone else and that Boniface Wanjohi Gichuki was the driver and owner of the vehicle at the material time.
10. The Respondent in his submissions argued that the Appellant indicated in her Notice of Motion that she had sold the vehicle but conspicuously omitted to state when she did so and that her testimony dated 22.11.2022 did not seek to clarify issues. The Respondent argues further that upon cross-



examination by the Respondent's Advocate the Appellant confirmed that she once owned the vehicle; she did not file a copy of the agreement showing that she had sold the vehicle; and that she had not filed a Third-Party Notice against the one to whom she had sold the vehicle.

11. The evidence of Joy Muthoki, an officer from UAP on Insurance testifying as CW4 and that of CW2 is that the search done at NTSA indicted "as at 6.10.2019" and had a tick and a stamp against the Appellant's name confirming that the Appellant was the owner of the motor vehicle as at the date of the accident. To this the Respondent simply stated that she did not know why the NTSA motor vehicle search is ticked against her name. She did not provide any evidence to rebut the above report. A policy Search was also conducted revealing the Appellant as the insured of the subject motor vehicle at the material time.
12. The respondent does not contest that Boniface Wanjohi Gichuki was indicated as the current registered owner of the vehicle at the time of the search ie 3.10.2022 but contends that the Appellant was the registered owner and insured at the time of the accident to wit, Sanlam General Insurance Ltd P/ No.010/070/1/270528/2018/1 expiring on 18.10.2019.
13. This court holds that determining liability in this matter goes hand in hand with ownership of the motor vehicle at the time of the accident. It is not contested that the accident in question happened on 6<sup>th</sup> October, 2019 along Kamiti Road between vehicle registration number KBT 461X driven by one Boniface Wanjohi Gichuki and KCK 686Z driven by Daniel Kimuhu Wang'ombe, Respondent herein. It is also not in disputed that Boniface Wanjohi Gichuki driver of KBT 461X was held to blame as indeed captured by police abstract. What is in issue is the ownership of the vehicle motor on the material date 6<sup>th</sup> October, 2019.

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14. The evidence before court first is that of the NTSA tracing report which indicates that on 6<sup>th</sup> October, 2019 the registered owner of the motor vehicle KBT 461X was Maureen Njoki Mate, the Appellant herein. Further evidence is that of the Insurance details that confirm that the Appellant had a running insurance cover on the said vehicle at the time of the accident. The above evidence leaves no doubt that the Respondent discharged his burden of proof.
15. The burden of proof then shifted to the Appellant to disprove the above allegations. The appellant's argument that she had sold the vehicle to another party is not supported in any way. It is an allegation that hangs in the face of glaring evidence of the NTSA tracing report and the Running Insurance cover by Sanlam Insurance Ltd all confirming that she was the Registered owner of the subject motor vehicle at the time of the accident. Her allegation of having sold the vehicle to someone else is not supported by any evidence. She did not produce a sale agreement or any evidence of the date of sale and to whom. The Appellant's reliance on the NTSA tracing report that the current owner is indicated as Boniface Wanjohi Gichuki cannot hold in that the issue at hand is not the current owner at the time of the search namely 3<sup>rd</sup> October, 2022 but the owner at the time of the accident. It would have helped the Appellant's case to provide evidence on the date of the sale.
16. Under the Provisions of section 8 of the *Traffic Act* Cap 403 of the Laws of Kenya, the owner of a vehicle as:

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



17. Indeed, the classic case on the question of motor vehicle ownership is *Bernard Muia Kilovo Vs Kenya Fresh Produce Exporters (2020) eKLR* where the court of appeal stated that:

“The Court of Appeal in these binding decisions is clearly stating: -

- i. The presumption that the person registered as the owner of the motor vehicle in the logbook is the actual owner is rebuttable.
- ii. Where there exists other compelling evidence to prove otherwise then the court can make a finding of ownership that is different from that contained in the logbook.
- iii. Each case must however be considered in its own peculiar facts”

18. It has been demonstrated above that the Appellant has failed to adduce evidence of sale or date thereof so as to rebut the Respondent’ case that she was the registered owner of the vehicle as at 6.10.2019 when the accident occurred. The totality of the evidence is that the Appellant was the registered and the insured owner of the motor vehicle at the material time.

19. In her submissions, the Appellant states that she had sold the vehicle to one Moses Wanyaga Kahure who then sold it to Boniface Wanjohi Gichuki which is not supported by evidence. However, if the Appellant genuinely believed that ownership had passed from her to another party by virtue of sale, and that she ought not to bare liability for an accident caused by a third party, the legal recourse available to her was to file Third-Party Notice against the person she had sold the vehicle to. Having failed to file Third Party Notice the Appellant leaves herself exposed to bare liability leaving this court with no option but to hold her liable for the damages arising from the accident.

20. Vicarious liability, this court cites the case of *John Nderi Wamugi v Rubesh Okumu Watiangala & 2 Others CA no. 24 Of 2015* (KISUMU) where the court in dismissing the Appeal made the following finding at paragraph 13:

“With due respect to learned counsel for the respondent, the principle of passage of property rights had nothing to do with this matter. Passage of property is a contracted principle and its relevance with respect to the *sale of Goods Act* is to determine the point at which a seller ceases to be the owner of the property and the buyer assumes ownership of the said property.”

“On the other hand, vicarious liability is a doctrine in the law of torts that assigns liability for an injury to a person who did not personally cause the injury but who has a particular legal relationship to the person who acted negligently. Such liability is not pegged on ownership, but on the legal relationship, for example between an employer and an employee.”

It is the Appellant’s case that the Boniface Wanjohi Gichuki who was the driver and was to blame for the accident was not known to her, and was neither her agent, assign or employee. This is not disputed by the Respondent. By dint of this fact, the issue of vicarious liability does not arise.

21. Having ascertained that ownership of the subject motor vehicle was still vested in the Appellant at the time of the accident, the onus of proof is upon the Appellant to demonstrate that ownership had indeed passed from her to a third party in y form, constructive or otherwise.

22. Going by the holding in *Bernard Muia Kilovo Vs Kenya Fresh Produce Exporters (2020) eKLR*, this court finds that no compelling evidence has been adduced rebut the Respondents case for the court to make a different finding from that of the trial court. The Respondent’s allegation of sale remains



unverified and the failure to enjoin the third party deals a blow to this appeal. Liability on the Appellant therefore lies based on registered ownership.

23. For the Above reasons, I find and hold that the Appellant has failed to prove the appeal against the Respondent to the required standard of proof, upon a balance of probabilities. The Appeal lacks merit and is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5<sup>TH</sup> DAY OF JULY, 2024**

**ROA 14 days.**

**HON. T. W. Ouya**

**JUDGE**

**FOR APPELLANT.....**

**FOR RESPONDENT.....**

**COURT ASSISTANT.....**

