



**Laneeb Plastics Limited v Mbugua & another (Civil Appeal
158 of 2019) [2023] KEHC 2337 (KLR) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 158 OF 2019
JM CHIGITI, J
MARCH 3, 2023**

BETWEEN

LANEEB PLASTICS LIMITED APPELLANT

AND

RAHAB WANGUI MBUGUA 1ST RESPONDENT

SAMUEL KURIA KAMAU 2ND RESPONDENT

JUDGMENT

Brief Background

1. On or about March 26, 2013 the 1st respondent was involved in an accident while travelling as a passenger in motor vehicle registration number KAK 255V. She sustained injuries particulars of which were given in the plaint.
2. The 1st respondent instituted a suit by a plaint on March 4, 2014 against the appellant and the 2nd respondent for general damages, special damages of Kshs202,500.00, lost earning capacity, future medical expenses, costs and interest.
3. In the plaint she pleaded that the 2nd respondent was the beneficial owner and driver of motor vehicle KAK 255V, a lorry, while the appellant was the registered owner thereof.
4. In its statement of defence dated March 31, 2014 the appellant denied liability and pleaded that it had sold the said motor vehicle to one Simon Murari Wanjohi on July 11, 2006 and was not the owner of the vehicle at the time the accident occurred.
5. The case proceeded to full trial and the trial court delivered its judgment on January 11, 2018 wherein the court found the 2nd respondent 100% to blame for the accident.



6. The court then held that the appellant was vicariously liable for the negligence of the 2nd respondent and proceeded to award the sum of Kshs450,000.00 as general damages, Kshs 504, 806.00 for loss of earning capacity, Kshs 216,063.00 for special damages, costs of the suit and interest.
7. Dissatisfied with the judgment, the appellant appealed to this court raising 25 grounds of in the memorandum of appeal.

Analysis and determination:

8. This being the first appeal, this court, is obligated to re-evaluate the evidence on record as guided by principles in the case of *Selle & another v. Associated Motor Boat Co. Limited & others* (1986) EA 123 in the following terms:

I accept counsel for the respondent’s proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

9. The jurisdiction of this court is derived from article 165(3) (e) of the *Constitution, 2010* and section 65(1) (b) of the *Civil Procedure Act, 2010*.
10. The appellant compressed his grounds of appeal into the following:
 - a. Whether the appellant was the owner of the motor vehicle at the material time of the accident;
 - b. Whether the appellant was liable for the negligence of the 2nd respondent and thus damages recoverable from it;
 - c. Whether the trial court ought to have used minimum wage 2017 in calculating damages for loss of earnings;
 - d. Costs of the appeal and the suit.
11. I have reviewed the proceedings, the judgment and the documents as filed and produced as evidence during the trial. The appellant produced in evidence the sale agreement together with particulars of the buyer including copy of Nation Identity Card and KRA pin for the buyer in support of its defense.
12. During the chief examination, the 1st Respondent narrated how the accident took place. She testified that on the day of the accident she was traveling as a passenger in motor vehicle KAK 255V from Nakuru to Nairobi when the vehicle lost control at Maai Mahiu.
13. She testified that at the time of the accident, the motor vehicle was being driven by the 2nd respondent. During the chief examination she produced a police abstract to confirm that the accident took place as exhibit P1. She also produced the copy of the records as exhibit number seven (a) and the receipt is exhibit number 7(b).
14. The appellant testified and indicated that the vehicle had been sold on July 11, 2006 way before the accident took place. He produced the sale agreement dated July 11, 2006 as D.Exh.1 as proof of the sale.



15. He further testified that the company had already handed over the possession of the car to the purchaser. It was his evidence that the accident took place after the sale and that the appellant should not be held liable.
16. I have had the occasion to look at the sale agreement from where I have established that that was indeed a sale transaction between the Appellant and Simon Mwangi on July 11, 2006 for the vehicle registration number KAK 255V for a consideration of Kenya shillings 430,000 Kenya.
17. I have further noted that one of the conditions for the sale is that no claim would be accepted from the day of the delivery. It was further stipulated that the original logbook would be delivered 4 to 6 weeks' time with the original transfer form.
18. It is not in doubt that this is the same car that was then involved in the accident that formed the cause of action herein which fact is supported by the police abstract.
19. The defense witness cannot tell whether the company had taken any steps to notify the registrar of vehicles that the car had been sold.
20. I have perused the copy of the records of the vehicle at the registrar's office, which show that the vehicle KAK 255V was registered in the name of the Appellant as of the October 2, 2013.
21. During the cross examination, the witness testified that Samuel Kuria was from the company, and that he had a letter from the appellant and that the insured was the appellant. The letter and the insurance records were not produced.
22. The finding of the trial magistrate on the issue of the ownership of the motor vehicle at the date of the accident is the first issue for determination in this appeal.
23. In her judgment, the trial magistrate poked holes on their sale agreement in the following items.
 - a. It fails to capture details that are commonly captured in a sale agreement such as; mode of payment, whether the payment is to be made in full or by instalment, whether the possession has been handed over to the buyer.
 - b. That the parties decided to go to great lengths to indicate who shall be liable for any Traffic violations.
 - c. She went ahead to say that this creates the impression that the agreement was tailor made with reference to a court case.
24. The trial magistrate seems to have arrived at the wrong finding that the ownership of the vehicle had not moved to the purchaser as of the date of the accident.
25. It is instructive to note that no allegations of fraud have been raised, not pleaded by any of the parties to the suit. However, the magistrate decided to pose questions on the validity of the sale agreement without giving the litigant an opportunity to express their positions. For instance, she questions the lack of witnesses, questions the fact that there's no mode of payment set out in the sale agreement, she went ahead to say that the agreement is rather strange, of which she decided the Appellant had not proven that the ownership of the vehicle had moved to the purchaser.
26. The trial magistrate also pointed out that their agreement was questionable because it did not speak to the question of possession. Yet the agreement clearly provided for the conditions of sale. The possession had moved to the purchaser from the buyer and the seller.



27. The law that governs sale of vehicles is the *sale of goods act*. Section 19(1) and (2) of the *Sale of Goods Act* provides,

- 1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
- 2) For the purposes of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

28. The trial magistrate in her judgment observed as follows:

DW1 testified that the appellant had sold the vehicle to someone else and he produced the sale agreement as well as the ID card and KRA Pin Certificate of the buyer. I have perused the documents produced. I noted that the alleged agreement was not witnessed by any one.

29. Further the agreement is rather strange and does not capture details that are commonly captured in sale agreements of such a nature such as mode of payment, whether payment has been made in full or is to be made by installments and whether the possession has been handed over to the buyer.

30. Another thing I found strange about the agreement is that the parties decided to go to great lengths to indicate who shall be liable for any traffic violations. This creates the impression that the agreement was tailor made with reference to a court case.

31. I find the agreement produced as defense exhibit 1 rather suspect and falls short as proof that the appellant is no longer the owner of the accident vehicle.

32. The copy of records shows and the appellant admits that the records with the registrar of motor vehicles indicate that the appellant is the registered owner of the vehicle. Under the provisions of section 9(1) and (2) of the *Traffic Act* is provided as follows:-

Change of ownership;

1. No motor vehicle or trailer the ownership of which has been transferred by the registered owner shall be used on a road for more than fourteen days after the date of such transfer unless the new owner is registered as the owner thereof.
2. Upon the transfer of ownership of a motor vehicle or trailer, the registered owner thereof shall, within seven days from the date of the transfer, inform the Registrar in the prescribed form of the sale or disposition, name, postal and email address and telephone number of the new owner, the mileage recorded on the mileage recorder (if any), of the motor vehicle, and such other particulars as may be prescribed, and shall deliver the registration book in respect of such vehicle to the Registrar together with the transfer fee, whereupon the vehicle shall be registered in the name of the new owner.

33. From the above provision it is clear that the responsibility to effect the change of ownership was that of the appellant who did not bother to notify the registrar of motor vehicles about the sale of the vehicle to a third party. The appellant did not register the alleged transfer to the buyer and as such, so far as third parties are concerned, the vehicle still belongs to the appellant.

34. The *sale of Goods Act*, Cap 36 Laws of Kenya is the governing legislation in sale of goods. The Act contains certain implied terms in every contract of sale. According to Section 19(1) and (2) of the *Sale of Goods Act*:



- 1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
 - 2) For the purposes of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
35. The moment when the property in goods passes from the seller to the buyer is significant for the following reasons:
- a. Ownership: The moment the property in goods passes, the seller ceases to be their owner and the buyer acquires the ownership. The buyer can exercise the proprietary rights over the goods. For example, the buyer may sue the seller for non-delivery of the goods or when the seller has resold the goods, etc.
 - b. Risk follows ownership: The general rule is that the risk follows the ownership, irrespective of whether the delivery has been made or not.
36. The two essential requirements for transfer of property in the goods are:
1. Goods must be ascertained: Unless the goods are ascertained, they (or the property therein) cannot pass from the seller to the buyer. Thus, where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained
 2. Intention to pass property in goods must be there: In a sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
36. Section 6(1) of the [Sale of Goods Act](#) provides that:
6.
 - (1) A contract for the sale of any good of the value of two hundred shillings or upwards shall not be enforceable by action unless the buyer accepts part of the goods so sold, and actually receives them, or gives something in earnest to bind the contract or in part payment, or unless some note or memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf.” (Emphasis supplied).
37. It is therefore not necessary, as contended by the respondents, that in all transactions involving sale of goods there must be a written contract. Part payment with the understanding of further and final payment is sufficient.
38. Section 10 for the [Sale of Goods Act](#) provides with regard to ascertainment of the price as follows:
10.
 - (1) the price in a contract of sale may be fixed by the contract, or may be left to be fixed in a manner thereby agreed, or may be determined by the course of dealing between the parties.
39. In [Securicor Kenya v Kyumba Holding Ltd](#) (2005) eKLR the Court held that:
- “In the case before us, it was proved that at the time of the accident the appellant was no longer the owner of KWJ816. It had sold it to G.M Thangwa to whom possession had



been transferred. It appears that Mr. Karume had not been put into possession of it by the appellant. Moreover, KWJ816 was not being driven by the appellant's driver or its employee on an occasion in which the appellant had any interest, matatu business not being its concern. There was no relationship whatsoever between the appellant and the 2nd defendant. Indeed, there was no agency relationship. It is difficult therefore to see how the trial judge could import into the case the doctrine of vicarious liability. It was simply not applicable.

“ Moreover, if, which we do not consider to be the position, the appellant was still the owner by way of the logbook being in its name, such ownership was not sufficient to create vicarious liability for the negligence of everyone who happened to drive it.”

40. The Court of Appeal in *Osumo Apima Nyaundi v Charlwes Isaboke Onyancha Kibondori & others* [1996] eKLR further stated that:

“ The Traffic Act is an Act of Parliament to consolidate the law relating to traffic on the roads. It is not an Act which decides the de facto or de jure ownership of vehicles.”

41. This court in *General Motors East Africa Limited v Eunice Alila Ndeswa & another* [2015] eKLR stated that;

“ Although I agree with the trial magistrate that the appellant was among the registered ‘owners’ of the said motor vehicle, I hold the view that ownership by registration is not conclusive evidence of ownership at the time of accident and neither is that registration per se sufficient to create liability for negligence on the part of the appellant herein.”

42. In *Charles Nyambuto Mageto & Another v Peter Njuguna Njathi* [2013] eKLR this court stated that;

“ From the interpretation of section 8 of the Traffic Act as elucidated above, a person claiming or asserting ownership need not necessarily produce a log book or a certificate of registration. The courts recognize that there are forms of ownership, that is to say, actual, possessory and beneficial, all of which may be proved in other ways, including by oral or documentary evidence such as the Police Abstract Report even, as held in the Thuranira and Mageto cases (Supra) that the Police Abstract Report is not, on its own, proof ownership of a motor vehicle. If, however there is other evidence to corroborate the contents of the Police Abstract as to the ownership then, the evidence in totality may lead the court to conclude on the balance of probability that ownership.”

43. Section 20 of the Sales of Goods Act states:

“ Unless a different intention appears, the following rules apply for ascertaining the intentions of the parties as to the time at which the property in the goods is to pass to the buyer:

- (a) where there is an unconditional contract for sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment or the time of delivery or both be postponed.”



44. In *Ignatius Makau Mutisya v Reuben Musyoki Muli* [2015] eKLR the court emphasized on the transfer of ownership of the motor vehicle as follows:

“Without saying much about that statement, we note that in the ordinary state of things, a seller of a motor vehicle hands over the motor vehicle to the buyer together with the duly executed transfer forms, and leaves it to the buyer to follow up the matter with the Registrar of Motor Vehicles. No adverse inference therefore should be made against the appellant for the sole reason that he did not follow up the respondent to ensure that the transfer had been effected. Although no sale agreement was exhibited in court, the fact that the appellant had sold the lorry to the respondent, and that the lorry had been in the respondent’s possession for several years prior to the accident is not disputed.....

Having considered this evidence, we are satisfied that the appellant proved before the trial court that he had already sold the lorry to the respondent long before the said accident. He, in our view rebutted the presumption that he was still the owner of the lorry, and not the respondent.”

45. The trial court failed to appreciate that the sale agreement had been drafted by the parties without the benefit of advocates. The sale agreement has a consideration is dated, is signed by the parties, and they have identified what they are selling. They have said their own terms and conditions that suit that need.
46. There is no sound justification why the trial magistrate decided that the sale agreement locks the veracity of an agreement that would transfer ownership, and or complete a sealed transaction within framework of the *sale of goods Act*.
47. The intention of the parties is very clearly articulated in the agreement. The failure on the part of the appellant to register the Transaction must not be allowed undermine the intentions of the parties. The *Traffic Act* has generated penalties for failure to register transactions involving the selling or transfer of a motor vehicle.
48. This must have been one of the intentions of the provisions in the act, which say that a logbook is a prima facie evidence of ownership. That it is a rebuttable presumption that the person whose name appears in the records can be challenged with sufficient evidence of that section 8 of the *traffic act* created.
49. The Court of Appeal in *Osumo Apima Nyaundi v Charles Isaboke Onyancha Kibondori & 3 others* [1996] eKLR further stated that:

“The *Traffic Act* is an Act of Parliament to consolidate the law relating to traffic on the roads. It is not an Act which decides the de facto or de jure ownership of vehicles. Ownership of a vehicle passes by sale and delivery. The registration book of the vehicle is only evidence of title. Section 8 of the said Act reads:

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

This section signifies that a registered owner will be deemed prima facie, the owner. It is open for the real owner (should he be not the registered owner) to prove to the contrary.”

50. Accordingly, it is this court’s finding that the learned trial magistrate erred when she held the defendant vicariously liable for the accident that involved a motor vehicle whose ownership had moved to a third party in the year 2006.



51. Having so found, I find no value in evaluating the other grounds of the appeal.

Orders

1. The appeal is allowed.
2. The trial court's finding on liability is hereby set aside to be substituted with an order that the trial court's suit be and is hereby dismissed.
3. Costs of the appeal and the costs of the suit are hereby awarded to the appellant.

Dated and delivered at Kiambu this 3RD day of March, 2023.

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JOHN CHIGITI (SC)

JUDGE

