



**Uhuru v Rentworks East Africa Limited & another (Civil Appeal
E016 of 2022) [2023] KEHC 22294 (KLR) (19 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E016 OF 2022
GMA DULU, J
SEPTEMBER 19, 2023**

BETWEEN

FREDRICK MWAKUNDIA UHURU APPELLANT

AND

RENTWORKS EAST AFRICA LIMITED 1ST RESPONDENT

THE HON. ATTORNEY GENERAL 2ND RESPONDENT

*(From the judgment delivered by Hon. A. M. Obura (Mrs.)
(CM) on 17th March 2022 in Voi CMCC No. E025 of 2021)*

JUDGMENT

1. In a judgment delivered on March 17, 2022, the trial Magistrate concluded as follows:-

- “69. Taking into account the authorities, the nature of injuries, the passage of time and the inflationary trends, I find that a sum of Kshs. 250,000/= is fair and reasonable on account of general damages. I award general damages of Kshs. 250,000/= (Two hundred and fifty thousand only).
70. On special damages, the plaintiff prayed for Kshs. 2,550/= in the plaint. I find that the plaintiff strictly proved entitlement to Kshs. 2,000/= for the medical report (Pext2) and Kshs. 550/= for copy of record (PEXT9). I award the sum of Kshs. 2,550/= here. Reasons wherefore, I hereby enter judgment for the plaintiff as against the 2nd defendant in those terms. The suit against the 1st defendant is dismissed with costs to be borne by the 2nd defendant. The plaintiff is also awarded costs of this suit and interest thereon.”



2. Dissatisfied with the judgment of the trial court, the appellant who was the plaintiff at the trial has filed the present appeal through counsel Njoroge Mwangi & Company Advocates, on the following grounds: –
 1. The learned trial Magistrate erred in law and fact in dismissing the plaintiff/appellants suit against the 1st defendant/respondent in the absence of any evidence instead of holding the 1st and 2nd respondent jointly and severally liable and or vicariously liable.
 2. The learned Magistrate misapprehended the evidence on record thereby dismissed the plaintiff's/appellant's suit against the 1st defendant/respondent without any basis.
 3. The learned Magistrate misapprehended the principle of vicarious liability and applied in the suit (sic) in dismissing the appellant's suit against the 1st respondent without justification.
 4. The learned trial Magistrate failed to consider the special relationship between the 1st and 2nd respondent thereby dismissed the appellant's suit against the 1st respondent instead of finding the 1st and 2nd respondent jointly and severally liable and or vicariously liable for the accident.
 5. The trial Magistrate failed to appreciate that the motor vehicle registration GKB 281T was insured in the name of the 1st defendant and was owned by the 1st defendant.
3. Based on the above grounds of appeal, the appellant seeks that the appeal be allowed with costs, judgment dismissing the suit against the 1st respondent be set aside and replaced with an order holding the 1st and 2nd respondents jointly and severally liable and or the 1st defendant to be found to be vicariously liable for the accident.
4. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Njoroge Mwangi & Company Advocates for the appellant, the submissions filed by S. M. Righa & Company Advocates for the 1st respondent, as well as the reply to the 1st respondent's submissions filed by Njoroge Mwangi & Company Advocates for the appellant. The 2nd respondent did not file submissions.
5. This being a first appeal, I am reminded that I have a duty to analyse and re-assess the evidence on record and reach my own conclusions in the matter – see *Selle v Associates Motor Boat Company Ltd* (1968) EA 123.
6. It is also trite that as an appellate court, I can only be justified in differing with a trial court's findings of fact, if the said findings are based on no evidence, or I am shown demonstrably that the trial court acted on wrong principles in reaching the findings it did – see the case of *Ephantus Mwangi v Duncan Mwangi Wambugu* (1982 – 1988) 1 KAR 278.
7. In this appeal, the main issue is the finding by the trial court that the 1st respondent Rentworks East Africa Ltd was not liable or vicariously liable for the accident herein. The appellant's counsel argued that the 1st respondent, who was 1st defendant at the trial, being the registered owner and insured of the accident motor vehicle GKB 281T, was liable or vicariously liable for the actions of the driver, and relied on inter alia the case of *Kenya Bus Services v Dina Kawira Humphrey* (2003) eKLR wherein it was held that unless there was evidence to the contrary, a presumption arises that the vehicle was driven by a person whose negligence the owner is responsible.
8. Counsel for the 1st respondent on the other hand, submitted that the appellant merely pleaded in paragraph 4 of the plaint that the vehicle a Toyota Land Cruiser was owned by the 1st respondent who



permitted its use by the National Police Service at Voi Police Station. I also note that the Attorney General was sued on behalf of the National Police Service.

9. Counsel for the 1st respondent further argued that the 1st defendant/respondent did not, and had no capacity to authorize the driver who caused the accident to drive the vehicle, and relied on the case of *Kirugi & another v Kibiya & 3 others* (1987) eKLR in which the court stated that the burden was on the plaintiff (appellant) to prove his case on the balance of probabilities, even if the trial was by way of formal proof.
10. In my view, though indeed there is a presumption of authority to drive from the owner to the driver of a motor vehicle, that presumption is rebuttable, either through the pleadings or through the evidence from both sides.
11. In the present case the presumption of the 1st respondent authorizing the driver of the subject vehicle was displaced firstly by the contents of the plaint itself. This was because the driver of the motor vehicle who was presumably authorized by the registered owner of the vehicle (1st respondent) was not joined as a party. No was there any pleading in the plaint from paragraph 1 to paragraph 11, alleging that the 1st respondent authorized the said driver. Instead the pleading or plaint relates to the relationship between the 1st respondent and the National Police Service, both of which are institutions and not the driver who caused the accident.
12. In my view therefore, the appellant having failed to allege any form of authorization of the accident driver by the 1st respondent, and the appellant being bound by his own pleadings, cannot raise a presumption of authorization which was not pleaded, either through evidence or submissions.
13. Secondly, the presumption of authority was also clearly rebutted by the evidence on record. In this regard, the appellant himself stated in cross-examination as follows:-

“I was on board the GK vehicle. I confirm I sat behind. I agree I could not see the front as the driver was driving. It was being driven by a female officer. I confirm she was a police officer. I did not see her. It is true police officers are under the National Police Service. I agree police officers get instructions from the National Police Service.”
14. In my view therefore, from the above evidence of the appellant, the presumption that the registered owner of the vehicle (1st respondent) authorized the driver to drive the subject motor vehicle that day, was displaced by the evidence of the appellant himself, since the evidence of the appellant is clear that only the National Police Service could give instructions to the said police driver to drive that vehicle at that time, and not the registered owner.
15. I thus find that this appeal has no merits and is for dismissal.
16. Consequently, I dismiss the appeal and award the costs of the appeal to the 1st respondent payable by the appellant.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF SEPTEMBER 2023 AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Nusura – court assistant



Mr. Kazungu for appellant

Mr. Kivinga for 1st respondent

Mr. Wanga for 2nd respondent

