



REPUBLIC OF KENYA



**Muema v Mutesi & another (Civil Appeal 218 of 2020)  
[2023] KEHC 27418 (KLR) (Civ) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 27418 (KLR)

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

**CIVIL**

**CIVIL APPEAL 218 OF 2020**

**AA VISRAM, J**

**OCTOBER 19, 2023**

**BETWEEN**

**BRIAN MUEMA ..... APPELLANT**

**AND**

**JUSTIN MUTESI ..... 1<sup>ST</sup> RESPONDENT**

**PAMELA OSIRI ..... 2<sup>ND</sup> RESPONDENT**

*((Being an Appeal from the Judgment delivered on 16th August, 2019 by Hon.  
D. M. Kivuti (Mr.) Senior Resident Magistrate in CMCC No. 6150 of 2016))*

**JUDGMENT**

1. The suit arose from a road traffic accident involving Mr. Muema (“the Appellant”) and Mr. Mutesi and Ms. Osiri (“the Respondents”). The Appellant filed the suit in the lower court vide a plaint dated 2<sup>nd</sup> September, 2016. He alleged that on or about 7<sup>th</sup> February, 2016, the 1<sup>st</sup> Respondent while driving motor vehicle registration No. KBS 938H along Outer Ring Road, collided with his motor vehicle registration No. KBZ 113K, occasioning loss and damage. The Appellant sought special damages in the sum of Kshs. 97,900.00/= together with costs of the suit and interest.
2. The Respondents opposed the suit in the lower court vide their Statement of Defence dated 5<sup>th</sup> October, 2016, in which they denied that the Appellant was the registered owner of the said motor vehicle, and that an accident had occurred as alleged in the Plaint.
3. On 16<sup>th</sup> August, 2019, the lower court dismissed the suit on the basis that the Appellant had failed to establish his case on a balance of probability.
4. Aggrieved by the above judgment, the Appellant filed this appeal dated 16<sup>th</sup> August, 2019 on the following grounds:-



- a. The Learned Magistrate erred in fact and law in holding that the Plaintiff did not prove his claim against the Defendants.
  - b. The Learned Magistrate erred in fact and law in holding that the uncontroverted documentary evidence, adduced by way of an agreement for sale, did not prove that the Appellant was the owner of Motor Vehicle Registration No.KBZ 113K.
  - c. The Learned magistrate erred in both law and facts in considering whether the seller of motor vehicle Reg.No.KBZ 113K, to the Appellant had capacity or legal interest in the motor vehicle, which was not an issue before the court.
  - d. That the Learned Magistrate erred in law in his failure to consider that the Respondents' defence remained mere denials because there was no evidence adduced in support thereof.
  - e. Having established that an accident occurred involving the motor vehicles and that the defendants were liable in negligence; the learned magistrate was in grave error in his failure to award special damages which had been proved by the Appellant.
  - f. The Learned Magistrate erred in law and fact by failing to adequately consider the evidence placed before him in support of the Appellant's case.
  - g. The learned magistrate erred in fact and law in his failure to consider relevant facts and evidence and in considering irrelevant and extraneous matters.
  - h. The Learned Magistrate erred in law in failing to apply the required standards of proof in civil matters.
5. The parties agreed that this appeal be disposed of by way of written submissions. The Appellant filed his submissions dated 14<sup>th</sup> April, 2023, and the Respondents filed their respective submissions dated 30<sup>th</sup> May, 2023.

### **Appellant's submissions**

6. The Appellant submitted that the trial court erred by basing its decision on the fact that he was not the registered owner of the vehicle in question. He contended that the court reached this decision based on an official search, and log book, that he had not produced in court. He submitted that the log book which indicated that the owner of the vehicle was Mr. Jeremiah Waiguru should not have factored into the court's decision making because the same had not been produced in evidence.
7. The Appellant contended that he had only produced the documents listed in the Plaintiff's List of Documents, which included the Police Abstract, copies of records, photographs, demands letters, receipts, and an additional List of Documents that included an Agreement for Sale and a duly signed transfer form. No logbook had been produced by him.
8. He submitted that by referring to, and relying on a document that was not presented as evidence, the court had erred. He relied on the decision of the Court of Appeal in *Kenneth Nyaga Mwige v Austin Kiguta & 2 Others (2015)* eKLR, where the court stated as follows:-

“Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted



into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.”

9. Further, that even if the court had been correct to rely on the logbook or search, it had erred by ignoring evidence of his ownership as shown by the sale agreement for the vehicle. He stated that the vehicle had been imported by A-plus Motors, but was registered in the name of Jeremiah Waiguru. He submitted that the evidence showed that there was a transfer form, a copy of Waiguru's national identity card, and Waiguru's KRA PIN available in the record.
10. The Appellant cited Section 8 of the *Traffic Act* which provides that, ” The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.
11. The Appellant further relied on decisions of the Court of Appeal case of *Ignatius Makau Mutisya v Reuben Musyoki Muli 2015* eKLR.

“It is trite law that the ownership of a motor-vehicle is to be proved by the registration of a person as the owner of the motor-vehicle, unless proved otherwise. Section 8 of the *Traffic Act* provides that;

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.” (emphasis supplied).

This section has been interpreted to mean that the registration of the motor-vehicle is not conclusive proof of ownership. In the case of *Osapil vs Kaddy [2000] 1 EALA 187* the Court of Appeal of Uganda held that a registration card or logbook was only prima-facie evidence of title to a motor vehicle. The person in whose name the vehicle was registered was presumed to be the owner thereof unless proved otherwise.”

12. Finally, he submitted that the vehicle had been assessed by a motor vehicle assessor, who had testified and supplied an assessment report showing that he had occasioned loss. He submitted that he had various receipts in respect of costs for repairs in the sum of Kshs.92,900/=, which he urged the court to accept as special damages for his loss.

### **Respondent's submissions**

13. The Respondent submitted that during cross-examination, the Appellant had admitted that the vehicle was registered in Jeremiah Machiu Waiguru's name. Further, the identity card, and pin certificate attached to the transfer form, was also in the same name. The Appellant had failed to prove he was the owner of the vehicle and hence he had no locus standi to bring a suit for recovery of expenses incurred.
14. The Respondents contended that the Appellant had been cross-examined on the contents of the logbook, and therefore, the court was able to rely on the same.
15. They contended that no connection had been established by way of documentary evidence to show that the Appellant was the owner, and not Mr. Jeremiah Machiu Waiguru.
16. Finally, that no sufficient explanation had been offered as to why he had allegedly purchased the car in 2014, but failed to transfer the same at the time of suit.
17. The Respondent cited Section 9 of *Traffic Act* which states as follows: -



- 9.(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.
18. They further relied on Section 9(2) of the *Traffic Act*, which states the need for the registered owner to inform the Registrar about the transfer within 7 days after sale.
19. Finally, they contended that the sale agreement presented by the Appellant was invalid and could not demonstrate his ownership of the vehicle.

### **Analysis and Determination**

20. I have read the record in its entirety and considered the grounds of appeal raised by each of the parties arising out of the consolidated appeal. The issue is whether the Appellant was the owner of the motor vehicle KBZ 113K.
21. As this is a first appeal, I have a duty to re-evaluate the evidence before me. This principle as set out in the Court of Appeal decision of *Selle and Another Versus Associated Motor Boat Company Ltd & Others* [1968] EA 123, where the court stated that:-

“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 conclusion. 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 Judges findings of fact if it appears either that he has clearly failed in some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence on the case generally.”

22. Section 8 of the *Traffic Act* (Cap 403 of the Laws of Kenya) provides that:-

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.” The section provides the general rule with regard to ownership of the motor vehicle but there may be circumstances where this may vary. Registration of a person is prima facie evidence of ownership but the contrary may be proved.

23. Looking at the record, the Appellant’s version of events contend that he was the sole owner of the subject motor vehicle KBZ 113K as at the time of the accident. He stated that he had bought the same from M/s A-Plus Motors Limited, a car dealer, and that the sale agreement dated 11<sup>th</sup> June, 2014, was evidence of the same.
24. However, he goes on to directly contradict the above during re-examination where he states that “the vehicle was imported by A-Plus Motors but registered in the name of Jeremiah Wachiu”. Having admitted that he is not the registered owner of the vehicle, I do not think that he may wish away his admission, and claim that the court ought to have relied on the sale agreement as evidence of his ownership.
25. Further, I note from the proceedings that no further explanation relating to this contradiction has been offered by the Appellant. There is simply the fact that he is not the registered owner, by his own admission, and the fact that the sale agreement was made in his name. The contradiction is further



fueled by the fact that the transfer form in the Appellant’s Record of Appeal at page 46 appears to transfer the vehicle to Mr. Waiguru rather than to the Appellant. There is no evidence of subsequent transfer to the Appellant in the said record.

26. The law is clear that registration must take place within a specific time period after the sale and purchase of a vehicle. Section 9 of the *Traffic Act* explicitly states that: -

9.(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.

27. In the event that the Appellant is indeed the owner of the vehicle, he ought to have carried out the transfer of the same within the appropriate time. There is no evidence before the lower court that this was done either in time, or at all.

28. Based on the evidence in the record, I am satisfied that on a balance of probability, the lower court reached a reasonable conclusion when it stated as follows:-

“The sale agreement produced as evidence of purchase the named seller is different from the registered owner...this discrepancy was not resolved at trial ....the ultimate finding is that the Plaintiff did not establish ownership of motor vehicle KBZ 113K”

29. Based on the reasons above, I decline to interfere with the finding of the lower court. I find that this appeal lacks merit and the same is dismissed with costs to the Respondents.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 19<sup>TH</sup> DAY OF OCTOBER 2023**

**ALEEM VISRAM, FCIArb**

**JUDGE**

**In the presence of;**

..... for the Appellant

..... for the Respondent

