



**Muiruri v Ogola (Civil Appeal E672 of 2022)  
[2024] KEHC 13889 (KLR) (Civ) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13889 (KLR)

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

**CIVIL  
CIVIL APPEAL E672 OF 2022**

**TW OUYA, J  
NOVEMBER 7, 2024**

**BETWEEN**

**KEZIAH KANINI MUIRURI ..... APPELLANT**

**AND**

**WALTER OCHIENG OGOLA ..... RESPONDENT**

*(Being an Appeal from the Judgment Hon.V.M Mochache at Milimani Small Claims Court Civil No. E428 of 2021 Walter Ochieng Ogola Vs Keziah Kanina Muiruri)*

**JUDGMENT**

**Background**

1. This matter arose out of a road traffic accident which occurred on or about 22<sup>nd</sup> August 2018 along Outer Ring Road as a result whereof the claimant's motor vehicle registration number KBY 103B insured under UAP Insurance was rammed into by a vehicle registration number KPB 123D from the rear causing extensive damage. The vehicle driven by Stephen Kimani at the material time allegedly belonging to the Respondent/ Appellant.
2. The matter went for full trial at the Small Claims Court vide SCCC No. 428 of 2021 and the court and the Court found in favor of the Claimant/Respondent awarding him Kshs. 208,479 in damages.
3. The Appellant herein being dissatisfied, preferred an appeal against the said Judgement and filed her memorandum of appeal dated 19<sup>th</sup> August 2022.
4. Grounds of Appeal



- a. The Learned Trial Magistrate erred both in law and in fact y finding the Appellant was the registered owner of the registered owner of Motor vehicle registration number KBP 123D at the time the accident is claimed to have occurred.
  - b. The Learned Trail Magistrate erred in law and fact in finding the Appellant was 100% liable for the accident.
  - c. The Learned Trial Magistrate erred in fact and law in failing to attach due weight to the Appellant’s evidence, submissions and authorities attached to.
  - d. The Learned Trail Magistrate erred in fact and in law by heavily relying on the findings of the tracing report.
  - e. The Learned Trail Magistrate erred in fact and in finding that Respondent had proved his case against the Appellant and granted judgement in favour of the Respondent.
  - f. The Learned Trial magistrate erred in law in purporting to write and deliver a judgment in a matter she neither presided over nor heard.
5. In light of the afore-captioned itemized grounds of appeal, the Appellants seeks before this Court orders to the effect that the Appeal be allowed with costs and such orders as the court may deem fit.

### Submissions

The matter was canvassed by way of written submissions by both parties.

- a. The Appellant
  6. The Appellant denies liability for this accident on the basis that she was not the owner of the motor vehicle at the time of the accident. His position is that the accident happened on or about 22<sup>nd</sup> August 2018 during which the vehicle KBP 123D was not registered in her name. That she acquired the vehicle in August 2019 from one Nyaga Murimi Cyrus. She relies on section 8 of the [Traffic Act](#) which provides that the person in whose name the vehicle is registered shall unless the contrary is proved, be deemed to be the owner of the vehicle. She relies on the authorities of: Janet Magwaro Bundi Another v Primarosa Flowers Limited (2018) eKLR and Ignatius Makau Mutisya v Reuben Musyoki Muli (2015) 2020eKLR all which emphasize the presumption of ownership of a motor vehicle based on the log book but that it is rebuttable where there exists evidence to prove otherwise. The Appellant faults the Trial court for relying heavily on tracing report which was biased thereby overlooking her evidence. She relies on the authority of Pravin Singh Dhalay v Republic (1997) eKLR which guided that the opinion of experts though binding to the courts, must be considered along with all other available evidence and if there is cogent basis for rejecting the expert opinion a court is entitled to do so.
- b. The Respondent
  7. The Respondent submits that the Appellant was the registered and the insured owner of the motor vehicle KBP 123D at the time of the accident based on the tracing report and NTSA records. He relies on the evidence of his key witness CW3 which he believes was not shaken at cross examination. He contends that the appellant failed to adduce any documentary evidence or otherwise to prove the she was not the owner of the vehicle at the material time. The Respondent relies on the authorities of [Jotham Mugalo v Telkom \(K\) Ltd, Kisumu High Court No.166 of 2001](#)(unreported) and Mitchell Cotts (K)Ltd v Musa Freighters (2001) eKLR that civil cases are decided on a balance of probabilities and that the parties to the suit must adduce evidence which tilts the case to their side. He urges the court to find that he (Respondent) discharged his burden of proof at the trial and that the Appellant



should be held vicariously liable for the accident due to her driver's negligent driving. He contends that the circumstances surrounding the accident are not controverted that the appellant failed to call any witness to dispute the blameworthiness of the driver. The Respondent prays that this court upholds the trial court quantum award of kshs.208,479.00.

### **Analysis And Determination**

8. This court has taken the liberty to entertain this matter on the basis that the Appellant raises a legal issue of misjoinder of parties in that she was wrongly sued as she denies ownership of the subject motor vehicle. The issue before this court is therefore to ascertain whether the Respondent proved beyond a balance of probabilities that the subject motor vehicle belonged to the Appellant. To this extent this court has considered the Record of Appeal as well as both parties' submissions. Having addressed myself on the above, it is trite that the duty of this Court as a first appellate Court is to re-evaluate the evidence adduced before the trial Court and to draw its own conclusions, but always bearing in mind that it did not have an opportunity to see or hear the witnesses testify. See *Selle and Anor. v Associated Motor Boat Co. Ltd and Others* (1968) EA 123 and *Ephantus Mwangi and Another v Duncan Mwangi Wambugu* (1982) – 88) 1 KAR 278.
9. This court takes note that the circumstances surrounding the accident which is the subject matter herein is not controverted by either of the parties and is therefore not an issue in this appeal. The court takes further notice that whereas the trial court awarded the claimant/Respondent Kshs. 208,479 in damages, the same is not disputed by the parties and is therefore not an issue in this appeal. Upon review of the memorandum of appeal and submissions by the respective parties, it is apparent that the appeal rides fundamentally on a single issue; Whether the Appellant was the registered owner of motor vehicle number KBP 123D at the material time (22.08.2018).
10. The Claimant/Respondent brought a claim under the doctrine of subrogation against the Respondent/Appellant based his statement of claim that at all material time, he was the registered owner of KBY 103B insured by UAP Insurance, while KBP 123D was jointly registered in the names of 1st and Respondents and previously owned by the 3<sup>rd</sup> Defendant. That on the material day, the Claimant was lawfully driving his motor vehicle along Outer Ring Road when the Respondent's driver carelessly and negligently drove the Respondent/ Appellant's motor vehicle ramming into the claimant's vehicle at the rear causing extensive damage at the car boot, rear bumper lights and others all assessed and costing Kshs. 208,479.00. That despite demand and notice to sue, the Respondent/ Appellant had failed to make good the Claimant's claim. At the trial, the Claimant relied on his own evidence and two other witnesses, a claims officer from UAP Insurance and an Assessor. The documents relied upon were: Sunrays General Services Limited tracing report, Vehicle re-inspection report, Assessment report and correspondences, Motor accident claim form and police Abstract among others.
11. The Respondent/Appellant filed a Response to the Statement of Claim dated 13th October 2021 and later, a Witness Statement dated 9<sup>th</sup> December 2021 stating that she was not the registered owner of the motor vehicle registration KPB 123D at the time of the accident neither was the insurance policy in her name and that the accident took place before she acquired the subject motor vehicle. She admits that she owned the motor vehicle at one time but with effect from August 2019 after buying it from Cyrus Murimi Nyaga, the 2<sup>nd</sup> Respondent then, and later sold it to one Joseph Gitu. Her defence therefore is that she has wrongly been sued. During the trial, she was the sole witness in her case and relied on her witness statement, log book and motor vehicle copy of records as at July 2019. The log book is dated 28<sup>th</sup> March 11(read 2011) registered in the name Kezia Kanina Muiruri, the Appellant. The motor vehicle Copy of records as at 17<sup>th</sup> July 2019 shows that the subject motor vehicle was in the name of



Cyrus Nyagah Murimi. The email referred to in the trial does not make reference to any particular vehicle or insurance company but reflects an insurance policy number 094157/2018/8 and the name Stephen Kigotho. The only reference made to this copy of email is that it was sent to her by Invesco indicating who policy holder was from the period 3/8/2018 to 3/8/2019. This evidence is not useful to the Appellant's case because it is not verified in terms of its source and particulars.

12. From the foregoing, the issue for determination is the ownership of the subject motor vehicle KBP123D on 22<sup>nd</sup> August 2018. The applicable law as to the burden of proof is found in Section 107, 108 and 109 of the *Evidence Act*. Whereas, it is well trodden that the same is on a balance of probabilities meaning that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. See Court of Appeal decision in *Mumbi M'Nabea v David M. Wachira* [2016] eKLR. Hence, the duty of proving the averments contained in the plaint lay squarely on the Appellant and vice versa with respect to the averments contained in the Respondent's statement of defence. The same principle is restated by Court of Appeal in *Karugi & Another v Kabiya & 3 Others* (1987) KLR 347.
13. The claimant produced a tracing Report dated 28th June 2021 with particulars of the Appellant as the policy holder of the subject motor vehicle from 3/8/2018 to 3/9/2019. The accident occurred on 22/08 2018. Attached to the tracing report is motor vehicle Copy of Records as at 26<sup>th</sup> May 2021 indicating Cyrus Murimi Nyagah, Kezia Kanina Muiruri, Mogo Auto Ltd and Joseph Gitu as previous owners. From the tracing Report, Cyrus Murimi Nyaga sold the motor vehicle to one Ezekiel Josiah whose name does not feature in any of the logbooks produced. Upon interview, Josiah states that he sold the vehicle to Keziah Kanina (Appellant herein).
14. Upon interview, the Appellant indicated that she was aware about the accident which occurred On 22<sup>nd</sup> August 2018 while the vehicle was being driven by Stephen Kimani and that she repaired the motor vehicle and sold it. When Stephen Kimani was interviewed, he confirmed that he was the driver of the subject motor vehicle at the time of the accident having been authorized by the Appellant. The above evidence was produced by CW3 who also confirmed that the tracing report indicates the Appellant as the policy holder as at the time of the accident.
15. None of the parties filed a copy of records as at the material date to prove who was the owner. The Appellant, who now bore the duty to rebut the above evidence, produced a copy of logbook with her name as the registered owner. The logbook was first registered on 28<sup>th</sup> March 2011 with no previous owners indicated. The Appellant therefore failed to rebut the Respondent's evidence that she was the owner of the subject motor vehicle at the material time and should bear liability.

### **Disposition**

16. Having considered the above, I have no doubt in my mind that the Respondent had proved beyond a balance of probabilities that the Appellant was the rightful and registered owner of the subject motor vehicle. The trial court therefore arrived at the right finding that the Appellant was vicariously liable for the accident herein and should bear liability thereof.
17. For the above reasons this court dismisses the appeal and upholds the trial court finding.

### **Orders:**

- a. Appeal is hereby dismissed
- b. Judgement and decree of the small Claims Court Civil Suit No. 248 Of 2021 dated 25<sup>th</sup> March 2022 is hereby upheld.



c. Costs to the Respondent

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2024**

**HON. T. W. OUYA**

**JUDGE**

For Appellant Maina holding brief for Mbeche for the Appellant.

For Respondent Manyara

Court Assistant Martin

