



**Ruo v Kitavi (Civil Appeal E793 of 2023)  
[2024] KEHC 15259 (KLR) (Civ) (4 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15259 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
CIVIL  
CIVIL APPEAL E793 OF 2023  
LP KASSAN, J  
DECEMBER 4, 2024**

**BETWEEN**

**JOHN MAINA RUO ..... APPELLANT**

**AND**

**ALLAN KIOKO KITAVI ..... RESPONDENT**

*(Appeal against an order of Senior Resident Magistrate E M  
Nyakundi at Milimani Commercial Courts dated 29th June 2023)*

**JUDGMENT**

1. This is an Appeal from the decision of Hon. Nyakundi (SRM) dated 29th June 2023 which I shall analyze below in a view to determining this Appeal. The Appellant raised a total of 27 reasons of Appeal in his Memorandum of Appeal which I shall condense as follows;

1. Ownership of Motor Vehicle Registration number KAZ 652B.

PW1 is as a private investigator who was instructed to trace Motor Vehicle Registration number KAZ 652B. He visited the Police station and verified the Registration number of the Motor Vehicle as KAZ 652B after perusing the occurrence book OB number 932018. As per the abstract, the driver of the said Motor vehicle was one Peter Njuguna. According to him, the second Defendant was the policy owner of the Motor Vehicle. PW1 clarified that there was a typo error in his report which reads the said Motor Vehicle as KAZ 625B. The tracing instructions issued on the 2<sup>nd</sup> day of September 2019 clearly refers to Motor Vehicle registration number KAZ 652B. The police abstract clearly indicate the Motor vehicle as KAZ 652B and name of its driver as Peter Njuguna. PW1 admitted that there is a paragraph in his report which indicated the Motor vehicle as KAZ 625B instead of KAZ 652B. This, to me is an honest error first because the abstract and the instructions letter refer to KAZ 652B and not KAZ 625B. A



cursory look at these two number plates will clearly show that all similar words and numbers are found in each number plate- the only difference is positions of numbers 2 and 5. This therefore means that the interchange of numbers was a typo error and besides, how can a client investigate a motor vehicle which is not part of instructions and get paid? Lastly are their typo errors in everyday life? - the answer is yes. The conclusion therefore is that the Motor vehicle in question was KAZ 652B and not KAZ 625B. The Defendant testified that he owned the motor vehicle.

## 2. Liability

PW2 is a Police officer who testified that the Motor vehicles Registration number KAZ 652B and KBP 516K were heading towards the same direction when KAZ changed lanes without due care and as a result it was hit in the rear by KBP. He blamed KAZ for causing the accident. He added that KBP was damaged on the front left headlamp and that the driver of KAZ was one Peter Njuguna. He however clarified that the Policy number indicated in the Investigation report was different from the one in the Police abstract although the Motor vehicle was the same (KAZ 652B). The Plaintiff testified in his Examination in chief that that the driver of KAZ who was driving with him in the same direction suddenly joined the road without giving way. He tried to break but it was too late to eschew a collision. In his cross examination he said;

“ We were all coming to the roundabout. he did not yield and banged me from behind and the side. It was joining the main road”.

Taking into account what he said in examination in chief, it is clear that the Motor Vehicle he refers in cross examination above is KAZ. This is supported further in his cross examination where he agrees that he hit the Motor vehicle (KBP) from behind. To this extent therefore I do not find any contradiction in the Plaintiff's testimony.

The fact that the Plaintiff could not give the full registration number of the Vehicle is not sufficient to water down his evidence given the period involved (when the accident occurred) because after all details are in his evidence in chief which was adopted as evidence.

DW1 denied occurrence of the accident. He added that the accident was not recorded in the OB nor was his insurance notified of any accident. In fact, DW1 added that at the time of the alleged accident, he had his vehicle at his workplace. The issues raised by Defence are very serious and point out to possibility of fraud. The abstract produced by the Police officer was not opposed and so it forms part of evidence on record. Naturally, and being a contested document, one would expect the defence to object to its production and to demand investigations of fraud. Now the document is an exhibit of the court, how should this court treat it? Secondly, the Police officer testified that he relied on an Occurrence book which records daily reports in Police Stations. The records are progressive and not in reverse and so it was expected that the Appellant could have called for this book for further investigations and by failing to do so, the contents of it as disclosed by the Police officer are admitted. No investigation on fraud was launched by the Appellant nor was there such report.

## 3. Difference of Insurance Policy.

It is admitted that the Policy numbers in the abstract are different from the ones in the investigation. The owners of motor vehicles are the ones to explain these differences and not third parties who have nothing to do with insurance of cars they don't own. Perhaps the Appellant could have investigated why his vehicle had two different policies.



4. Damages On this limb, there was no challenge because the main appeal is hinged on ownership of KAZ. Evidence in terms of receipts and payments were produced in court.
2. The onset of the above is that the trial Magistrate's decision was correct and well-reasoned. Consequently, the Appeal is dismissed with costs

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 4<sup>TH</sup> DAY OF DECEMBER 2024.**

**HON. L. KASSAN**

**JUDGE**

In the presence of;

No appearance for the Appellant

Sigei for the Respondent

Carol – Court Assistant

