



**Kirima v Njoka (Civil Appeal E948 of 2022)
[2025] KEHC 13381 (KLR) (Civ) (25 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13381 (KLR)

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

CIVIL

CIVIL APPEAL E948 OF 2022

AM MUTETI, J

SEPTEMBER 25, 2025

BETWEEN

ZACHARY MUTHOMI KIRIMA APPELLANT

AND

PETER GICHURU NJOKA RESPONDENT

*(Being an appeal from the judgment of the Small Claims Court
at Nairobi (Honourable Judith Omolo) dated 12th October 2022)*

JUDGMENT

Introduction

1. The appeal herein arises out of the judgment of the Learned Honourable Magistrate/Adjudicator in the Small Claims Court at Nairobi No.589 of 2021 in which the appellant was held 100% liable for the damages arising out of an accident that occurred on 22/2/2017 involving motor vehicles KBY 801A and motor vehicle KBU 820J along Olenguruone road.
2. The appellant was determined to be the owner of the motor vehicle KBY 801 A which was blamed for the accident by the respondent and the police. He was found 100% liable for the accident.
3. As a result of that finding he filed a memorandum of appeal in which he set out the following grounds :-
 - I. The Learned Trial Magistrate misdirected herself in failing to appreciate that the Appellant in not named in the primary document which is the Police abstract and therefore he should not be made solely responsible.
 - II. The Learned Trial Magistrate erred in fact and in law by failing to appreciate the evidence tendered with regard to repairs which was not complete and no evidence was called to prove it.



- III. The Learned Trial Magistrate misdirected herself in totally disregarding the evidence by the appellant to the effect that the investigations done was for the insurance to pay not the appellant.
4. The issues that arises for determination in this are:-
- i. Whether the failure to name the appellant in the police abstract could in any way affect the finding on liability against the appellant.
 - ii. Whether the respondent had proved his case against the appellant to the required standard.
 - iii. Whether the appellant was responsible to pay the damages assessed on his insurance.

Analysis

5. The duty of this Court as a first appellate Court is to analyze and re-evaluate the evidence on record and draw its own independent conclusions taking into consideration that unlike the adjudicator this Court has not had the advantage of hearing the witnesses – *Selle Vs Associated Motor Boat Company Ltd & Another* followed.
6. The claimant (Respondent) in the Lower Court testified and adopted his witness statement as his evidence in chief.
7. According to his statement he was the driver of motor vehicle KBU 820J at the time when the accident occurred. He testified that motor vehicle KBY 801A crushed on to his side mirror and damaged it.
8. He went further to state that at the time the motor vehicle KBY 801A was being driven on the wrong side of the road and as a result of the impact on his motor vehicle the vehicle was extensively damaged.
9. The respondent went further to state that the police blamed the driver of the motor vehicle KBY 801A for the accident.
10. He further gave evidence of the amount spent in the repair of the motor vehicle and the assessment of damage costs.
11. The respondent was awarded a cumulative figure of Kshs.295,274 being the total sum specifically pleaded.
12. In support of his case, he submitted documents that were all admitted in evidence and relied on by the Court.
13. The appellant in his part filed a statement as well dated the 9th September 2022 in which he stated that the driver of his motor vehicle did not inform him of the accident and that he got to learn about it from investigators who went to him purporting to be undertaking investigation for the insurance which according to him was to deal with the issue without involving him.
14. He however admitted in the statement that the driver informed him that the accident was minor when he inquired from him.
15. It was also his further evidence as per the statement that the driver assured him he had dealt with the issue of the accident and nothing would arise out of it.
16. The appellant maintained that he should not have been sued in person since he was not the driver therefore he denied liability.



17. In the course of the testimony of the respondent the driver was identified as one Kennedy Salifu but he was not named as a party in the suit.
18. The appellant adopted his statement wholly when he was called to testify.
19. The respondent also called a legal officer at ICEA June Vitalis Masinde who had also recorded a statement which he adopted as well and all the documents filed by the respondent.
20. The evidence available to the Court and which the adjudicator relied can be summarized as above.
21. Turning on to issue number one on liability, I have analyzed the totality of the evidence and I have no doubt that the driver of KBU 820J was solely to blame for the accident. The adjudicator was not presented with any evidence to contradict the version of events as stated by the respondent in his statement.
22. The respondent was cross examined but did not falter in his evidence. The appellant's contention that the failure to name the driver as a party in the suit excluded him from liability cannot hold.
23. The appellant did not deny the ownership of the subject he actually admitted that his driver informed him that the accident occurred and he had sorted out the matter.
24. If indeed the appellant sought to avoid liability and shift the same to the driver he should have joined him as a third party.
25. As correctly submitted by counsel for the respondent the non-joinder of the driver cannot defeat the suit as per order 1 Rule 9 of the Civil Procedure Rules.
26. The Court could adequately deal with the claim before it since the parties were proper parties and there was a nexus of each one of them to the suit.
27. The appellant was at liberty to issue a third- party notice to the driver under Order 1 Rule 15 if he was of the firm position that the driver was responsible for the accident or he was entitled to contribution or indemnity from him.
28. The appellant did not utilize that procedure and instead chose to defend the suit.
29. The registration certificate from National Transport Authority appearing at page 7 of the record of appeal indicated that the appellant was the registered owner of motor vehicle KBV 820J thus the appellant was properly sued in his capacity as the registered owner. He did not deny ownership of the vehicle throughout the proceedings.
30. The appellant could thus be sued under the doctrine of vicarious liability in his personal capacity. The registration certificate of a motor vehicle is sufficient prove of ownership of the motor vehicle. It is indeed the best evidence See Joel Muga Opija Vs. East African Sea Food Ltd Civil Appeal No.309 of 2010.
31. The appellant having failed to lead evidence to dislodge the contents of the Registration Certificate, he remained the lawful owner of the motor vehicle thus liable.
32. In answer to the second issue whether the respondent proved his case against the appellant, it is my finding that from the evidence tendered, the case against the appellant was adequately proved on a balance of probabilities.



33. Lastly, answering the question who was to meet the damages the answer to this question is simple. The only defendant in Court was the appellant. He was found to be 100% liable for the accident. It therefore follows like day follows night that he would be solely responsible to compensate the respondent.
34. If at all he desired that the driver bears that responsibility or his insurer nothing would have been easier than for him to issue third party notices. Having failed to do so, he must bear the consequences of the judgment alone.
35. I have considered his submissions on the matter and I find no merit in them.

Determination

36. In the end I find that the appeal by the appellant is not merited and it is hereby dismissed with costs to the respondent.
37. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF SEPTEMBER 2025.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Habiba

Kiboi & Co. Advocates absent for Appellant

Nyambura for the Respondent

