

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CIVIL APPEAL NO. E054 OF 2023

ERI KENYA LIMITED.....
APPELLANT

=VERSUS=

FREDRICK FRANCIS MUTETI MULUKU.....1ST
RESPONDENT

MULTIPLE HAULIERS LIMITED.....2ND
RESPONDENT

**(Being an appeal from the Judgment of Hon. A. M. Obura (CM)
in Voi CMCC No. E160 of 2016 delivered on 28th August 2023)**

JUDGMENT

1. The 1st Respondent in this appeal, **FREDRICK FRANCIS MUTETI** was the Plaintiff in Voi CMCC No. 160 of 2016 where he sued the Appellant **ERI KENYA LIMITED** and the 2nd Respondent **MULTIPLE HAULIERS LIMITED** seeking general damages for pain and suffering, special damages of Kshs. 3,800/= together with costs and interest for injuries sustained on 14th May 2016.
2. The cause of action arose out of an accident that occurred on 14th May 2016 involving the Appellant's motor vehicle registration No.

UAP 547U-UAL 362X and the 2nd Respondent's motor vehicle registration No. KAW 640L-ZC 3463 from the rear.

3. The 1st Respondent was travelling in the Appellant's motor vehicle registration No. UAP 547U-UAL 362X when the accident occurred.
4. The 1st Respondent said upon reaching Mghalani area along Mombasa Road, the said motor vehicle hit motor vehicle registration No. KAW 640L-ZC 3463 from the back and as a result, the 1st Respondent sustained serious injuries.
5. The Appellant and 2nd Respondent filed statements of defence dated 9th August 2016 and 30th September 2016 respectively denying the 1st Respondent's claim.
6. The 1st Respondent's evidence was that the driver of the Appellant's motor vehicle lost control and hit the 2nd Respondent's motor vehicle from the rear. He was a turn boy in the Appellant's motor vehicle and they were travelling to Rwanda when the accident occurred.

7. The trial court found that the Appellant's motor vehicle was entirely to blame for the accident and held him 100% liable and assessed damages as follows:-

(i) General damages for pain and suffering	Kshs.
120,000/=	
(ii) Special damages	<u>Kshs.</u>
<u>3,800/=</u>	
Total	<u>Kshs.</u>
<u>123,800/=</u>	

8. The Appellant has appealed against the said judgment on the following grounds:-

- (i) That the learned Magistrate erred in law and in fact in awarding general damage in the sum of Kshs. 120,000.00 which is manifestly excessive and inordinately high in the circumstances and not commensurate with the injuries sustained by the 1st Respondent.**
- (ii) That the learned Magistrate erred in fact and in law by failing to consider all the evidence on record.**
- (iii) That the learned Magistrate erred in fact and in law by failing to consider the Appellant's submissions.**

- (iv) That the learned trial Magistrate misdirected herself on the applicable principles of law by disregarding the ownership of the subject motor vehicles.**
- (v) That the learned trial Magistrate misdirected herself on the applicable principles of law by finding the Appellant vicariously liable for the accident.**
- (vi) That the learned trial Magistrate misdirected herself on the applicable principles of law by holding the Appellant solely responsible for the accident.**
- (vii) That the learned trial Magistrate misdirected herself on the applicable principles of law by failing to take into consideration and appreciate the authorities submitted to the court by the Appellant.**

9. The parties filed written submissions as follows:-

10. The Appellant, ERI KENYA LIMITED, submitted that they seek to overturn the judgment of the trial court (Voi SPMCC No. 160 of 2018) on two primary fronts: liability and quantum.

11. The core of the Appellant's argument on liability is that the trial magistrate erred in finding it vicariously liable for the accident involving motor vehicle UAP547U and trailer UAL 362X.

12. The Appellant contends that the 1st Respondent, Fredrick Francis Muteti Muluku, failed to meet the legal burden of proving that the Appellant was the owner of the vehicle or that any master-servant relationship existed.

13. While the police abstract initially implicated the Appellant, the Appellant presented compelling rebuttal evidence in the form of logbooks and insurance policies that identified the registered owners as Tekle Haimanot Teame and Kiflum Truck Ltd.

14. The Appellant argues that the magistrate wrongly disregarded this concrete evidence and relied solely on the police abstract, which is insufficient proof of ownership when contradicted.

15. Consequently, with no established ownership or agency relationship, the doctrine of vicarious liability cannot attach to the Appellant.

16. On the issue of quantum, the Appellant argues that the award of Kshs. 120,000 in general damages was manifestly excessive for the 1st Respondent's injuries, described as multiple lacerations on both legs. However, the principal submission is

that since liability was not proved, the 1st Respondent is not entitled to any damages at all.

17. In conclusion, the Appellant urges the Court to allow the appeal, set aside the judgment of the trial court, and to dismiss the 1st Respondent's suit with costs awarded to the Appellant.

18. The 2nd Respondent submitted that the trial magistrate was correct in dismissing the suit against the 2nd Respondent and that the appeal should be dismissed with costs.

19. The 2nd Respondent contends that the central and undisputed fact of the case is that Motor Vehicle UAP 547U/UAL 362X hit the 2nd Respondent's vehicle, KAW 640L ZC 3463, from behind.

20. It is argued that the issue of the legal ownership of the offending vehicle is immaterial, as the Appellant was its beneficial owner or had a significant interest in it, a point supported by the Police Abstract which listed the Appellant as an owner.

21. The Appellant's failure to institute third-party proceedings against any other alleged owner and its failure to call its driver as a witness at trial to challenge the evidence on how the accident occurred are presented as critical omissions.
22. The submissions rely on established legal principles that a vehicle hitting another from the rear is presumed to be at fault.
23. The evidence from both the 1st Respondent (the injured turnboy) and the 2nd Respondent's driver, which remained uncontroverted, established that the Appellant's driver was speeding and lost control, causing the collision.
24. Consequently, the 2nd Respondent maintains it was not liable for the accident in any way and invites the Court to uphold the trial court's finding, dismiss the appeal, and award costs to the 2nd Respondent.
25. The duty of a first appellate court, as established in Kenyan jurisprudence, is to re-evaluate the evidence adduced in the trial court and subject it to a fresh and exhaustive scrutiny, re-assessing it and drawing its own conclusions while bearing in

mind that it did not have the opportunity to see or hear the witnesses testify.

26. This principle was aptly articulated in the case of **Selle & Another v Associated Motor Boat Co. Ltd & Others [1968] EA 123**, where it was held that an appellate court must reconsider the evidence, make its own findings and conclusions, but make allowance for the fact that it has not seen the witnesses. This court is not, however, bound to follow the trial court's findings of fact if it appears that the trial court failed to consider particular circumstances or probabilities.

27. **Upon a careful re-evaluation of the record, the issues falling for determination in this appeal are twofold;**

- (i) Whether the Appellant was vicariously liable for the accident, and;**
- (ii) Whether the general damages awarded were manifestly excessive.**

28. On the first issue of liability, the Appellant's core contention is that the trial magistrate erred in finding it vicariously liable, arguing that the 1st Respondent failed to prove ownership of the motor vehicle registration No. UAP 547U/UAL 362X.

29. That the Appellant presented logbooks and insurance documents to demonstrate that the registered owners were third parties, Tekle Haimanot Teame and Kiflum Truck Ltd.

30. However, the evidence on record, particularly the Police Abstract, which is a statutory document prepared under the Traffic Act, listed the Appellant as an owner.

31. The legal position is that while a logbook is prima facie proof of ownership, it is not conclusive, and beneficial ownership or the right of control can establish liability.

32. The registered owner is presumed to be the beneficial owner unless the contrary is proved.

33. In this instance, the Appellant, despite producing documents, did not offer any explanation for its name appearing in the Police Abstract or its relationship with the registered owners.

34. Furthermore, the Appellant did not call its driver to testify on how the accident occurred, a failure which entitles the court to draw an adverse inference that his evidence would not have been favourable.

35. The evidence of the 1st Respondent, who was a passenger in the Appellant's vehicle, and that of the 2nd Respondent's driver, which remained uncontroverted, was that the Appellant's driver, who was speeding, lost control and hit the 2nd Respondent's vehicle from the rear.

36. The driver of the vehicle that hits another from behind is prima facie to blame for the accident. The trial magistrate's finding on liability was therefore well-founded on the evidence and the law.

37. On the second issue of quantum, the Appellant contends that the award of Kshs. 120,000/= for general damages for multiple lacerations on both legs was manifestly excessive.

38. The principles upon which an appellate court will interfere with an award of damages are settled. It will do so only where the trial court acted on a wrong principle of law, or misapprehended the facts, or where the award is so inordinately high or low as to represent an entirely erroneous estimate.

39. This was the holding in **Butt v Khan [1981] KLR 349**. Having perused the medical report by Dr. M. M. Kivuti which documented the injuries as multiple soft tissue lacerations on both legs, this

court finds that the award by the trial magistrate was not so inordinately high as to amount to an erroneous estimate.

40. In the final analysis, the appeal is devoid of merit. The judgment of the trial court delivered on 28th August 2023 in Voi CMCC No. 160 of 2016 is hereby upheld.

41. The appeal is dismissed with costs to the 1st and 2nd Respondents.

42. It is so ordered.

Dated, signed and delivered this 15th day of October 2025 in open court at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/Mabishi

.....**for the Appellant**

.....**for the Respondents**