



**Momentum Credit Limited v Kamande (Civil Appeal E483 of 2024)
[2025] KEHC 14625 (KLR) (Civ) (15 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14625 (KLR)

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

CIVIL

CIVIL APPEAL E483 OF 2024

WM MUSYOKA, J

OCTOBER 15, 2025

BETWEEN

MOMENTUM CREDIT LIMITED APPELLANT

AND

ELIUD KIMANI KAMANDE RESPONDENT

*(Appeal from the judgement and decree, of Hon. HA Akello, Principal
Magistrate (PM), of 15th March 2024, in Nairobi CMCCC No. E235 of 2020)*

JUDGMENT

1. The primary suit, at the trial court, had been initiated by the respondent against the appellant. The respondent sought to recover a sum of Kshs. 420,000.00, from the appellant, in respect of purchase of a motor vehicle, and general damages.
2. The appellant resisted the claim, denying everything pleaded in the plaint, alleging that liability lay elsewhere, with a third party, and it craved leave to join the third party to the proceedings. The appellant filed an incomplete record of appeal, which has no copy of the typed proceedings. The handwritten notes of the trial court in the original court record indicates that third party proceedings were initiated, vide an application dated 19th August 2022, and joinder was allowed, by an order dated 30th September 2022. There is no evidence as to whether the order of 30th September 2022 was ever served on the third party, and I have seen no record indicating that the party targeted, as third party, ever entered appearance or filed a defence.
3. An oral hearing was conducted. The respondent testified, but the appellant did not. Judgement was delivered, on 15th March 2024, in favour of the respondent.



4. That judgement aggrieved the appellant, hence the instant appeal. The grounds are that the appellant should have been found to have had a good title; the appellant should not have been found to have breached section 14 of the *Sale of Goods Act*, Cap 31, Laws of Kenya; the respondent should have been held to have not proved that the motor vehicle had been impounded by the police; the court found that the case had been proved on a balance of probability; the trial court misdirected itself on the “as is where is basis”; the court misdirected itself in finding that the engine of the subject motor vehicle had been tampered with; the trial court misdirected itself in finding that the appellant was liable to refund the purchase price; the trial court misdirected itself on the matter of loss of user, to the tune of Kshs. 288,000.00; the trial court failed to appreciate that parties are bound by their pleadings; and the submissions by the appellant were not considered.
5. The matter was not placed before a Judge, for directions on disposal, but I see an email communication, dated 10th March 2025, inviting the Advocates, for both sides, to file written submissions. In the end, only the Advocates for the appellant filed written submissions.
6. The appellant argues 2 points. That the trial court took into account irrelevancies, and left out relevant facts. On the first point, it argues that the trial court made the fact of the appellant not calling a witness a primary factor for allowing the claim, overlooking the fact that the respondent was still bound to prove his case. It is submitted that the trial court failed to consider the issue the appellant had raised in its defence. On the second point, the appellant argues that the trial court did not consider whether the appellant had a good title, which it could pass to the respondent. It argues that the respondent did not prove that the appellant did not have a good title.
7. The case, that the respondent placed before the trial court, by his plaint, was that he had bought motor vehicle registration mark and number KBJ 174Y, from the appellant, at an auction, and the same was transferred to his name. It was subsequently impounded by the police, on grounds that the engine and chassis number of the vehicle had been tampered with, hence it was suspected to be stolen property. The respondent argued that, by the appellant selling to him a motor vehicle whose credentials had been tampered with or altered, it did not pass a good title, hence he was entitled to recover the money he had paid as purchase price, and that he was also entitled to general damages for breach of contract.
8. The appellant presented a case, in its defence, filed at trial, that it had sold to the respondent a vehicle at an auction on the basis of “as is where is,” and, therefore, he passed a good title to the respondent. It also pleaded that the vehicle was in the hands of others, prior to being sold to the respondent, and those others could have tampered with the engine and chassis credentials. It got an order to join one of the persons registered as owner of the vehicle, prior to the sale, but it would appear that it did not serve him with the papers.
9. The issue, then, is whether the respondent had presented a case, at trial, which supported the pleadings that he had filed, to warrant favourable orders.
10. The sale transaction of the vehicle between the 2 parties was not disputed. There was a sale. The issue was whether the vehicle being sold had its original credentials. The respondent claimed that there had been interference with the credentials, hence the police had impounded it. The appellant argued that it had nothing to do with that, if at all that was the case. The respondent argued that the alteration of the credentials meant that what was sold to him was defective, ostensibly as the engine/chassis credentials of the car, KBJ 974Y, did not match those of the car sold to him.
11. The identity of a motor vehicle lies with the serial numbers or details of its engine and chassis. The registration and identification number allocated to the vehicle, by the State, is founded on those engine/chassis numbers. Anyone searching for the registration details of a certain vehicle, at the



- National Transport and Safety Authority, or at the registry of motor vehicles, should find those numbers in the motor registration file of the said vehicle. If the 2 sets of numbers do not match, then there would be a problem. A sale of a motor vehicle with such a mismatch would be problematic, for the title would be defective. A person selling such a vehicle would have no good title to pass to the buyer.
12. So, what was the situation here? The respondent alleged that he was sold such a vehicle, with a mismatch, between the chassis/engine numbers on the vehicle and the details held by the National Transport and Safety Authority, for vehicle KBJ 974Y. He claimed that it was for that reason that the police impounded the vehicle, on suspicion that it was stolen, on account of that mismatch. At the oral hearing, the respondent did not call witnesses from the police authorities, to testify on the fact of the impoundment, and the reason for it, nor from the National Transport and Safety Authority, to testify on the real credentials of the vehicle that it had registered as KBJ 974Y.
 13. The respondent, instead, relied on the documents that he had filed together with his plaint. Among the documents was a certificate of registration, from the registry of motor vehicles, at the National Transport and Safety Authority, showing the registration details of KBJ 974Y, dated 29th October 2009. There was also a certificate of sale, from Nairobi Channels Auctioneers, dated 8th January 2020, certifying sale of KBJ 974Y, to the respondent, at an auction. Then there was a form from the National Police Service/Directorate of Criminal Investigations, dated 4th February 2020, showing that the original chassis and engine numbers, on KBJ 974Y, had not been altered or interfered with, and okaying transfer of the vehicle. The credentials for KBJ 974Y were in tandem, with the details in the registration file.
 14. The argument, by the respondent, was that the case at the trial was provoked by the police, where, on 4th February 2020, it impounded the vehicle KBJ 974Y, on grounds that the credentials had been interfered with. Yet, the document that the respondent lodged with his plaint, and which was the foundation for his case, did not align to what he had pleaded in his plaint. That document was generated on 4th February 2020, the same day the vehicle was allegedly impounded. That document stated that the said credentials were intact, there had been no interference. The contents of that document pulled the rug from under the feet of the case by the respondent, and left it without a foundation. The contents of the document did not confirm or conform with the pleadings in the plaint. They undermined and contradicted it, instead. Without the support of that document, there could be no proof of what the respondent was alleging. I doubt whether the trial court properly interrogated the contents of that document.
 15. For avoidance of doubt, the said police document, dated 4th February 2020, reads as follows, at the relevant portion:

“Report And Reasons(s) For Verification

The chassis/engine numbers are in their original form and have not been interfered with ...”
 16. In view of the above, the respondent could not possibly prove his case, when his principal evidentiary document stated otherwise. The fact that the appellant did not adduce evidence, by calling a witness or witnesses, and did not get the third party on board, could not take away from the fact that the foundation for the case, by the respondent, collapsed upon his reliance on the police document, dated 4th February, 2020.
 17. There is merit in the appeal herein. I hereby allow it. The consequence shall be that the orders in the judgement of the trial court, in Nairobi CMCCC No. E235 of 2020, dated 15th March 2024, for refund of Kshs. 420,000.00, general damages of Kshs. 50,000.00, and costs and interests, are hereby set aside,



and substituted with an order dismissing the said suit in its entirety, with costs. The appellant shall have the costs of the appeal.

DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA ON THIS 15TH DAY OF OCTOBER 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Carolyne Oyuse, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Mutegi, instructed by Marenga Advocates LLP, Advocates for the appellant.

Ms. Mwiiri, instructed by Kinyua Mwaniki & Wainaina, Advocates for the respondent.

