



**Mark Holdings Limited v Simiyu & another (Civil Appeal
E1478 of 2024) [2025] KEHC 14191 (KLR) (9 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 14191 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E1478 OF 2024
AC MRIMA, J
OCTOBER 9, 2025**

BETWEEN

MARK HOLDINGS LIMITED APPELLANT

AND

ISAAC SIMIYU 1ST RESPONDENT

ELIUD MOGIRE SIRONI 2ND RESPONDENT

(Being an appeal from the judgment and decree of Hon. S. Muchungi (Senior Resident Magistrate) delivered on 15th November, 2024 in Nairobi CMCCC No. E4322 of 2022)

JUDGMENT

1. The 1st Respondent herein, Isaac Simiyu, sued the Appellant herein, Mark Holdings Limited, in Nairobi [Milimani] Chief Magistrates Civil Suit No. E4322 of 2022 [hereinafter referred as ‘the suit’] for general damages, special damages, costs and interests resulting from an accident that occurred on or about 6th September 2021 when, while the 1st Respondent was riding a motorcycle registration number KMFR 566V [hereinafter referred to as ‘the motor cycle’] the Appellant hit and knocked him down thereby causing him bodily injuries.
2. In its Statement of Defence dated 9th January 2023, the Appellant denied being the owner/beneficial owner, insurer, in possession, in custody and/or in control of the said motor cycle. It pleaded that on 5th July 2021, it sold the motor cycle to one Eliud Mogire Sironi, the 2nd Respondent herein and that it had even handed over the motor cycle’s registration book [logbook] to one Mogo Auto Ltd, who was the 2nd Respondent’s financier. The Appellant further claimed that the 2nd Respondent, was neither a party to the suit nor an employee of the Appellant. For these reasons, they urged the trial Court to dismiss the suit with costs. On application of the Appellant, the 2nd Respondent was joined as a third party but failed to enter appearance.



3. The suit was proceeded by way of viva voce evidence and at the close of parties' respective cases, the trial Court rendered its judgment on 15th November 2024 in favour of the 1st Respondent in the following terms: -
 - (i) Liability -100% against the Appellant;
 - (ii) General damages-Kshs.180,000/=;
 - (iii) Special damages-Kshs.3,550/=; and
 - (iv) Costs and interest at court rates.
4. Aggrieved by the decision, the Appellant filed the instant appeal vide the Memorandum of Appeal dated 13th December 2024 and preferred the following grounds: -
 1. That the Learned Magistrate erred in law and fact by failing to consider and/or appreciate the totality of the evidence before her and the submissions made on behalf of the Appellant.
 2. That the Learned Magistrate erred in law and fact by failing to consider, appreciate and/or take into account the principles of determining third party claims.
 3. That the Learned Magistrate erred in law and fact by failing to dismiss the suit against the Appellant when the 1st Respondent failed to establish a case against it.
 4. That the Learned Magistrate erred in law and fact by failing to consider, appreciate and to take into account the evidence adduced to demonstrate transfer of ownership of the suit motorcycle or registration number KMFR 566v.
 5. That the Learned Magistrate erred in law and fact by failing to appreciate that the Appellant was not the registered, beneficial and/or insured owner of the suit motorcycle of registration number KMFR 566V for purposes of establishing liability.
 6. That the Learned Magistrate erred in law and fact by failing to consider that possession of the subject motorcycle or registration number KMFR 566V passed on 5th July 2021, the date of the sale agreement, and therefore liability could not attach to the Appellant herein for an accident that occurred on 5th September 2021.
 7. That the Learned Magistrate erred in law and fact by failing to consider that proof of payment is not a criterion in determining transfer of ownership as provided under section 20 of the [Sale of goods Act](#), Cap 31, Laws of Kenya.
 8. That the Learned Magistrate erred in law and fact by failing to consider that the delivery note of the logbook over the motorcycle was signed a representative of the financier confirming receipt of the logbooks for purposes of concluding the process of transfer.
 9. That the Learned Magistrate erred in law and fact by failing to appreciate that the registration certificate (logbook) is not final proof of ownership.
 10. That the Learned Magistrate erred in law and fact by failing to appreciate that no rider was joined to the suit for purposes of determining vicarious liability as against the Appellant which is a legal person.
 11. That the Learned Magistrate erred in law and fact by failing to consider that the police officer investigating the accident testified to confirm that there was an accident that occurred between



the 1st Respondent and the rider of the subject motorcycle of registration number KMFR 566V and not between the 1st Respondent and the Appellant.

12. That the Learned Magistrate erred in law and fact by failing to consider and/or appreciate that the Appellant joined to the suit the 2nd Respondent who was the beneficial and/or insured owner of the suit motorcycle on 6th September 2021, the date of the accident.
13. That in all circumstances of the case, the findings of the learned Magistrate are insupportable in substance, law, court records and/or on the basis of the evidence adduced.
5. Upon these grounds, the Appellant urged this Court to set aside the judgment and that it be granted costs of both the suit and the instant appeal.
6. The 1st Respondent opposed the appeal whereas the 2nd Respondent [the third party in the suit] did not participate. Parties filed written submissions on the appeal. The Appellant's submissions were dated 3rd May, 2025 wherein several decisions were referred to in urging this Court to find that the trial Court erred. It firmly reiterated that it was neither the beneficial owner nor insurer of the motorcycle as it had sold it to the 2nd Respondent long before the accident in issue. The 1st Respondent's written submissions were dated 10th June 2025 where he submitted that the trial Court's holding was justified and which should be upheld.
7. As the first appellate Court, this Court's duty is to revisit the evidence on the record, evaluate it and arrive at its own conclusion. The locus classicus case of *Selle and Another vs Associated Motor Boat Co. Ltd* (1968) EA 123 need not be belaboured on this issue. Additionally, this Court further appreciates the settled principle in *Mwanasokoni vs Kenya Bus Service Ltd* (1982-88) 1KAR 78 and *Kiruga vs Kiruga and Another* that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the court is shown demonstrably to have acted on wrong principles. In reaching the findings.
8. The main issue in this appeal is whether the Appellant, in view of the circumstances at hand, was liable for the accident in issue. This Court has had the liberty to carefully peruse the record. It is a fact that the Appellant took out third party proceedings against the 2nd Respondent. The trial Court then confirmed that the Third-Party Notice was duly served against the 2nd Respondent as the third party. The Court then proceeded to deal with the issue of liability in the judgment as follows: -

.....Unfortunately, the said third party did not enter appearance. Be that as it may, this Court is of the considered view that the defendant failed to prove to the required standard that it indeed sold the motorcycle to the third party as claimed.

9. This Court has carefully considered the evidence of the alleged sale of the motor cycle between the Appellant and the 2nd Respondent. The evidence comprises of two documents. There is a Sale Agreement for the motor cycle dated 5th July 2012 and the Appellant's letter forwarding the motor cycle's logbook together with other such documents to one Mogo Auto Ltd who allegedly financed the purchase of the motor cycle and had a lien over the same. The sale agreement has details of the Appellant and the 2nd Respondent as the parties thereto. It also has details of the subject motor cycle which is confirmed in evidence to be the one which was involved in the accident in issue. The agreement also has the consideration [the purchase price] and an ETR Receipt No. 209525. It is a term of the agreement that on execution, the 2nd Respondent took full possession and control of the motor cycle and the Appellant had no interest on it since it had received its purchase price.



10. The trial Court was, however, not satisfied that the sale was complete. The Appellant's evidence on the sale was not contested, but rather affirmed by a witness called by the Appellant who witnessed as DW1. The witness was the Appellant's Administration and Finance Manager. Although DW1's was cross-examined, there was no sound infractions to the sale. The fact that the Appellant sold the motor cycle to the 2nd Respondent was proved on a balance of probabilities as required in law. Therefore, the Appellant having discharged its evidential burden of proof, the said burden then shifted to the 1st Respondent to prove otherwise. The 1st Respondent failed to do so and as such, the Appellant's testimony cannot be impugned. It is, therefore, this Court's finding and holding that there was credible evidence to prove that the motor cycle was sold to the 2nd Respondent way before the accident occurred although the Appellant's name still appeared as the registered owner.
11. The next consideration is whether the Appellant could still be held liable for the accident in the unique circumstances of this matter. Such is an issue of evidence. In this case, the Appellant had no any other interest in the motor cycle after the sale. Whereas it remained as the registered owner, the 2nd Respondent was the one in actual possession, control and use of the motor cycle to the total exclusion of the Appellant. No other evidence was tendered connecting the Appellant to the motor cycle except for the registration.
12. Having reviewed the evidence adduced before the trial Court, a dichotomy in ownership of motor cycle brings itself to the fore. On the one part is the legal ownership and on the other is beneficial/ actual ownership. Going by the registration status of the motor cycle at the NTSA, there is no contest that the Appellant is the legal registered owner. However, the fact that a person is the registered legal owner of a motor vehicle does not automatically confer upon such person civil liability. The Court of Appeal in *Securicor Kenya Limited -vs- Kyumba Holdings Limited* [2005] 1KLR 748 discussed forms of ownership that may be relevant for attaching civil liability. It observed as follows: -

... It was apparent, therefore, that though the appellant remained the registered owner of the motor vehicle its actual possession had passed to a third party. In view of this finding, the trial judge cannot be right under section 8 of the [Traffic Act](#) when she states that the true owner of the motor vehicle was the appellant...
13. The Supreme Court of India decision in *Naveen Kumar -vs- Vijay Kumar & Others* offers more insight on the various modes of ownership. It interpreted the meaning of the term 'owner' pursuant to Section 2(30) of the Motor Vehicles Act 1988 by observing thus: -

.... Section 2(30) of the Act stated that is it the person in whose name the motor vehicle stands registered would be treated as the 'owner'. However, where a person is a minor, the guardian of the minor would be treated as the owner. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in whose possession of the vehicle under that agreement is treated as the owner.
14. The foregoing interpretation of section 2(30) of the Indian Motor Vehicles Act applies mutatis mutandis with section 8 of the [Traffic Act](#). Therefore, with tremendous respect, the trial Court firstly fell into error by failing to appreciate the other means through which ownership of the motor cycle could accrue and subsequently by making the finding that the Appellant had not substantiated the claim that it had sold the vehicle to the 2nd Respondent despite the overwhelming documentary evidence. Further, there was no evidence to suggest that 2nd Respondent was using the motor cycle on behalf and/or for the benefit of the Appellant, as its servant, agent or employee as to make it vicariously liable. The sale agreement was, hence, undisturbed.



15. This Court's attention is further drawn to the Court of Appeal decision in Kenya Bus Services Ltd - vs- Dina Kawira Humphrey [2003] KECA 179 (KLR) where the Court approvingly referred to the decision in Karisa v Solanki [1969] EA 318 the where the following was observed: -

.... Where it is proved that a car has caused damage by negligence, then in the absence of evidence to the contrary, a presumption arises that it was driven by a person for whose negligence the owner is responsible (see Bernard v Sully (1931) 47 TLR 557). This presumption is made stronger or weaker by the surrounding circumstances and it is not necessarily disturbed by the evidence that the car was lent to the driver by the owner as the mere fact of lending does not of itself dispel the possibility that it was still being driven for the joint benefit of the owner and the driver.

16. Flowing from the foregoing, it is this Court's finding and holding that the Appellant was erroneously found to be liable for the accident. It was not, but the 2nd Respondent, Eliud Mogire Sironi. For clarity, there was no cogent evidence that rebutted the presumption that the motor cycle in the control and possession of the 2nd Respondent whose negligence cannot be attributed to the Appellant. The 1st Respondent's claim is squarely at the doorstep of the 2nd Respondent and not the Appellant.

17. Having found as such, the appeal succeeds on the aspect of liability. As such, the liability attaches on the 2nd Respondent who should satisfy the judgment and the decree in the suit.

18. Given the above finding, a consideration of any other issue becomes academic and is hereby dispensed with. The discussion on this appeal comes to an end.

Disposition:

19. Finally, this Court finds merit in the appeal and the following orders hereby issue: -

- (a) The judgment of the trial Court delivered on 15th November 2024 in the suit finding the Appellant wholly liable is hereby set aside in its entirety.
- (b) Judgment is hereby entered for the 1st Respondent herein as against the 2nd Respondent as follows: -
 - (i) Liability - 100%
 - (ii) Damages, costs and interest as awarded in the suit.
- (c) The security deposited in Court by the Appellant, if any, be refunded accordingly.
- (d) Costs of the appeal to be borne by the 2nd Respondent.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF OCTOBER, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of: -

Miss. Wairimu, Learned Counsel for the Appellant.

Mr. Kiptanui, Learned Counsel for the 1st Respondent.

No appearance for the 2nd Respondent.



Michael/Amina – Court Assistants.

