



**Nakuru Equipment Supplies Limited v Ougo & 2 others (Civil Appeal E056 of 2024) [2025] KEHC 13704 (KLR) (3 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13704 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CIVIL APPEAL E056 OF 2024  
DK KEMEL, J  
OCTOBER 3, 2025**

**BETWEEN**

**NAKURU EQUIPMENT SUPPLIES LIMITED ..... APPELLANT**

**AND**

**YONAH OCHIENG OUGO ..... 1<sup>ST</sup> RESPONDENT**

**MARTIN ODUOR OMBWEWA ..... 2<sup>ND</sup> RESPONDENT**

**SAMSON OUMA NYANDIMU ..... 3<sup>RD</sup> RESPONDENT**

*(An appeal from the Ruling and Order of Hon. J.P. Mkala (Adjudicator) delivered on 9th October 2024 in Siaya Small Claims Court Case No. E041of 2024)*

**JUDGMENT**

1. The first Respondent herein, Yonah Ochieng Ougo, was the claimant in Siaya SCCC No. E041 of 2024 and who had sued the Appellant for a sum of Kshs 135, 000/= costs and interest thereto. The bone of contention was that the Claimant sought compensation for the damage caused to his motor vehicle registration number KDB 001L, a BMW X1, owing to the negligence of the second Respondent, who was in control of a motorcycle registration number KMEU 097J, make Bajaj, causing it to hit the Claimant's motor vehicle vide an accident which took place on 4/1/2023 along Bondo-Kisumu road around Ndori area and that the said 2<sup>nd</sup> Respondent sought to enjoin the 3<sup>rd</sup> Respondent as a third party for indemnity and or contribution. The learned Adjudicator later ruled in favor of the 1<sup>st</sup> Respondent who was the claimant as against the Respondents jointly and severally.
2. Aggrieved by the said decision, the Appellant vide a memorandum of appeal dated 5<sup>th</sup> November 2024 has appealed against the judgment on the following grounds of appeal:
  - i. That the trial adjudicator erred in law and fact by making a finding that the Appellant herein, a mere dealer in the sale of motor cycles, was vicariously liable for the subject accident that



occurred on 4<sup>th</sup> January 2023 despite the evidence tendered by the Appellant that it had sold and delivered the motorcycle Reg. No. KMEU 907J to the 3<sup>rd</sup> Respondent herein on 5<sup>th</sup> April 2021, who was the beneficial owner and 3<sup>rd</sup> party in the claim, about years years prior to the occurrence of the accident.

- ii. That the trial adjudicator erred in law and fact by failing to make a distinction between de facto and de jure ownership of the subject motor cycle, which had already been sold and delivered to the 3<sup>rd</sup> Respondent at the time of the accident and evidence thereof adduced, thus rebutting and discharging the presumption under section 8 of the [Traffic Act](#).
  - iii. That the trial adjudicator erred in law and fact by finding the Appellant vicariously liable for the accident that occurred on 4<sup>th</sup> January 2023, without evidence of a special relationship or instructions between the Appellant and the 2<sup>nd</sup> Respondent herein as the primary tortfeasor who was also the rider of the subject motorcycle Reg. No. KMEU 097J on the date the accident is said to have occurred.
  - iv. That the trial adjudicator erred in law and fact by finding that the 3<sup>rd</sup> Party was a creation, the Appellant despite proper joinder and service of pleadings upon the 3<sup>rd</sup> Party who is the 3<sup>rd</sup> Respondent herein.
  - v. That the trial adjudicator erred in law and fact by ignoring the written submissions of the Appellant herein which had been filed on time as directed by the court.
3. Being a first appeal, this court a duty to evaluate the entire evidence subjecting it to a fresh exhaustive scrutiny and arrive at its own independent conclusion. It also has to keep in mind that it did not have the opportunity to hear or see the witnesses and must therefore give an allowance for that. (See *Selle & Another v Associated Motor Boat Company Ltd & others* [1968] 1EA 123; *Peters v. Sunday Post Ltd* (1958) EA 424; Mary [Wanjiku Gachigi v Ruth Muthoni Kamau](#) (Civil Appeal No. 172 of 2000. (Tunoi, Bosire & Owuor JJA); [Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another](#) Civil Appeal No. 345 of 2000.(Okubasi, Githinji & Waki JJA).
  4. The parties agreed to canvass the claim by way of written submissions.
  5. The claimant submitted that police abstract produced at pages 13-14 of the Claimant's bundle of documents, show that the owner of the motorcycle Reg. No. KMEU 097J was liable for the accident which damaged the suit motor vehicle, a BMW X1. Further, a damage assessment report produced at pages 15-18 of the Claimant's bundle of documents, gives the details of the quantum of the material damage and loss suffered by the Claimant. Further, at page 19-20 of the said bundle of documents are invoices produced evidencing the sums incurred by the Claimant in repairing his motor vehicle Reg. No. KDB 001 L.
  6. The 1<sup>st</sup> Respondent in the trial was the Appellant herein. It submitted based on the contents of the replying affidavit dated 27<sup>th</sup> August 2024. It submitted that the Appellant herein cannot be held liable for the accident that allegedly occurred on 4<sup>th</sup> January 2023 as it had already sold the suit motorcycle to the third party on 5<sup>th</sup> April 2019. That the act of the 2<sup>nd</sup> respondent in hitting the claimant's motor Reg. No. KDB 001L falls on the said 2<sup>nd</sup> Respondent or the third party. The Appellant further submitted before the trial court that it is trite law under section 8 of the [Traffic Act](#) that the name appearing on the registration records is only a prima facie evidence of ownership, which leaves room for the presumed owner to rebut such presumption of ownership with evidence which the Appellant had done. The Appellant also submitted before the Adjudicator that it is not liable, vicariously or otherwise as no fault had been proved against it, neither any employer-employee or principal-agent relationship had been



proved to exist between itself, 2<sup>nd</sup> Respondent and/or the third party at the time of the accident or any other time after the sale of the motorcycle. Thus, the Appellant submitted that no case had been made against it and that the claim ought to be dismissed.

7. The appeal was canvassed by way of written submissions. It is only the Appellant who complied.
8. The Appellant submitted that the 1<sup>st</sup> Respondent who was the claimant at the trial court failed to prove vicarious liability on the part of the Appellant. It was likewise the submissions of the Appellant that prior to the occurrence of the alleged accident on 4<sup>th</sup> January 2023, the Appellant had long sold off the motorcycle to one Samson Ouma Nyandimu, the 3<sup>rd</sup> Respondent herein, on 5<sup>th</sup> April 2019 and delivered possession to him. Copies of motorcycle sale agreement –cum-delivery note dated 5<sup>th</sup> April 2019 and a receipt evidencing the sale were at page 45 & 46 of the Record of Appeal. It submitted that no evidence was adduced to rebut or dispute the said sale and delivery. On this, it placed reliance on the case of *Car & General (trading) limited v. Wairire & Another* (Civil Appeal No. 78 of 2019) [2024] KEHC 502 (KLR) where Majanja J stated as follows:

“However, the motorcycle sales agreement and the receipt issued by A.M. Tailor sufficiently demonstrates, on a balance of probability that the motorcycle had already been sold to the latter at least by 11/01/2013. It was therefore an error for the lower court to and that the Appellant had not discharged its burden of proving that it was no longer the beneficial or possessory owner of the motorcycle.”

9. The Appellant submitted that it was not liable for the negligent acts of the driver. He pivoted his argument on the case of *Investment and Mortgages Bank limited v Nancy Thumari & 3 Others*[2015]eKLR, in which the court, with approval the case of *Morgans v Lauchbuy* (1972)ALL ER 606 stated as follows:

“In order to fix liability on the owner of a car for the negligence of a driver, it is necessary to “establish agency relationship, it is necessary to show that the driver was using the car at the owner’s request express or implied or on its instruction and was doing so in the performance of the task or duty thereby delegated to him by the driver.”

10. The Appellant submitted that the appeal has merit and that the same should be allowed with costs to the Appellant.
11. On the other hand, the Respondents’ submissions were not on record by the time of writing this judgment.
12. I have considered the record of appeal plus the submissions and authorities. I find the issue of determination is whether the appeal has merit.
13. The 1<sup>st</sup> Respondent’s claim as the claimant was that the Appellant was liable as the registered owner of the motorcycle that caused the accident and which damaged his motor vehicle Reg. No. KDB 001L BMW X1.
14. On the other hand, the Appellant contended that even though the record shows that it is the registered owner, it produced receipts and sale agreements showing that it sold the suit motorcycle Reg. No. KMEU 097J to the 3<sup>rd</sup> Respondent who was the 3<sup>rd</sup> party at the trial, on 5<sup>th</sup> April 2019, well before the accident took place on 4<sup>th</sup> January 2023.



15. It is well settled law that the standard of proof in civil cases is on a balance of probabilities where all the court needs to establish that, based on the evidence before it, it is of the view that it is more probable than not that the facts said to exist indeed exist.
16. Section 8 of the *Traffic Act* contemplates other aspects of ownership of a motor vehicle which is independent of registration. Since it predicates a rebuttable presumption as to ownership of a motor vehicle, the record obtained from the Registrar of Motor Vehicles is not conclusive proof of ownership as the law is open to a party to disprove such ownership via other evidence controverting the position. In the premises, whereas the copy of the records is prima facie proof of ownership, the court will not rely on the records where other evidence to the contrary is produced by another party.
17. Pursuant to Section 116 of the *Evidence Act*, the burden of proving that the ownership of the subject motorcycle had passed to a third party at the time of the accident rested upon the Appellant.
18. The Section provides as follows: -

“When the question is whether any person is the owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who asserts that he is not the owner.”
19. Majanja J in the case of *Car & General (trading) limited v. Wairire & Another* (Civil Appeal No. 78 of 2019) [2024] KEHC 502 (KLR) captured it so well that an agent-principal relationship must be established in order to hold the registered owner of the motorcycle vicariously liable for the negligence of the driver.
20. In the case of *Muhambi Koja - v- Said Mbwana Abdi* [2015] eKLR, the Court of Appeal held as follows: -

“In a nutshell, a police abstract report or any other form of evidence will be proof of ownership of a vehicle and will displace the registration (log) book if it is demonstrated that the person named in the registration (log) book has since transferred and divested himself of ownership to the person named in that other form of evidence.”
21. Guided by the above authorities, the Appellant produced a sale agreement and delivery note at page 45 and 46 of the Record of Appeal demonstrating that he had sold the suit motor cycle to the third Respondent in accordance to the provisions of section 116 of the *Evidence Act*.
22. Further, I do not find it anywhere on record that the 1<sup>st</sup> Respondent who was the Claimant in the lower court, has shown and proved that the rider of the motorcycle was acting under the instruction of the Appellant. In absence of such an agent–principal relationship proved by the 1<sup>st</sup> Respondent, i find that the trial court indeed erred in holding the Appellant herein vicariously liable for the negligence of the rider of the motorcycle (2<sup>nd</sup> Respondent).
23. In view of the foregoing observations, it is my finding that the Appellant’s appeal has merit. The same is hereby allowed. The judgement of the trial court dated 9/10/2024 as against the Appellant is hereby set aside and substituted with an order dismissing the Claimant’s (1<sup>st</sup> Respondent)’s claim against the Appellant with costs. The Appellant is awarded the costs of the appeal to be borne by the 1<sup>st</sup> Respondent.

Orders accordingly.

**DATED AND DELIVERED AT SIAYA THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**



**D. KEMEI**

**JUDGE**

In the presence of:

Wambua.....for Appellant

Okumu for Karaya.....for 1<sup>st</sup> Respondent

N/A.....2<sup>nd</sup> Respondent

N/A.....3<sup>rd</sup> Respondent

Okumu.....Court Assistant

