



**Turner Barker Hatfield 1968 Limited & another v Mutuka (Civil Appeal E010 of 2024) [2025] KEHC 13896 (KLR) (6 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 13896 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CIVIL APPEAL E010 OF 2024**

**RK LIMO, J**

**OCTOBER 6, 2025**

**BETWEEN**

**TURNER BARKER HATFIELD 1968 LIMITED ..... 1<sup>ST</sup> APPELLANT**

**BARNABA MUGUBI KURGAT ..... 2<sup>ND</sup> APPELLANT**

**AND**

**GEOFFREY AREYA MUTUKA ..... RESPONDENT**

*(Appeal arose from the judgment of Honourable T.O. Omono delivered on 26/2/24 vide Kitale CMCC No.393 of 2019.)*

**JUDGMENT**

1. This is an appeal that arose from the judgment of honourable T.O. Omono delivered on 26/2/24 vide Kitale CMCC No.393 of 2019.
2. In that case the appellants were sued by the respondent on account of Road Traffic Accident reported to have occurred on 10/4/2019 at around 9am within Kitale Town near Suam Hardware along Kenyatta Street.
3. The respondent blamed the driver of motor vehicle KAX 166S, the 2<sup>nd</sup> respondent herein for negligence and the 1<sup>st</sup> appellant was sued on account of vicarious liability for tort of negligence attributed to the 2<sup>nd</sup> appellant.
4. The appellants on the other hand denied occurrence of the accident and pleaded that the respondent was the author of his own misfortune.
5. The trial court evaluated the evidence tendered and found that the accident occurred holding that the police records supported that view. The trial court further held that the appellants were 100% to blame and awarded the respondent general damages of Kshs.500,000/- plus special damages of Kshs.6,600/-.



6. The appellants felt aggrieved and filed this appeal raising the following grounds namely;
  - i. That the trial magistrate erred by finding that there was an accident that occurred on 10/4/2019.
  - ii. That the trial magistrate erred by finding that motor vehicle KAX 166S was involved in an accident.
  - iii. That the trial magistrate erred by failing to appreciate the appellants' evidence.
  - iv. That the trial magistrate erred by relying on Police Abstract that had no merit.
  - v. That the trial court erred by overlooking discrepancies in the case.
  - vi. That the trial court erred by failing to recognize that the appellants were not charged for failing to report an accident.
  - vii. That the learned magistrate erred to award damages where there was no cause of action.
  - viii. That the judgment was fatally defective, irregular and erroneous.
  - ix. That the appellants' submissions on evidence and fact were completely disregarded by the trial court.
7. In their written submission dated 5/6/25 done through learned counsel M/S Kidiavai & Co Advocates, the appellant submits that the Police Abstract report did not blame them for the accident adding that Police Abstract in itself is not sufficient to prove negligence. They submit that a Police Abstract cannot impute negligence.
8. They submit that the evidence of the police officer (PW3) called to testify was hearsay evidence with no probative value. They rely on the holding in Richard Osundwa Olunga –vs- Dorothy Jeruto & Jane Komen (Suing as legal representative of the estate of the late Allan Tumwet Cherop) (2025)eKLR.
9. They point that they were shocked to learn that an accident had occurred when police officers visited their premises 7 days later. They insist that they were never charged for a traffic offence.
10. They submit that the respondent failed to prove his case against them to the required standard.
11. On quantum, the appellants fault the trial court for giving an excessive award. They submit that the medical documents relied upon by the respondent were full of inconsistencies.
12. The respondent has opposed this appeal through written submissions dated 23/5/25. The respondent insists the accident occurred involving the appellants' motor vehicle and blames the driver for knocking him from behind.
13. He contends that CPL Beatrice Odenyo (PW3) confirmed the authenticity of the Police Abstract (Pexhibit 4) adding that the appellants did not raise any objection to the production of the Police Abstract in evidence. He relies on the case of Harit Seth T/A Seth Advocate v-s- Shawas Charani (2014)eKLR in contending that it was incumbent upon the appellant to tender evidence if they disputed the contents of Police Abstract which is a public document. He also relies on Boniface Waiti and Another v-s- Michael Kariuki Kamau (2007)eKLR.
14. He supports the finding of the trial magistrate in regard to liability contending that the Court of Appeal has on numerous occasions stressed the importance of Police Abstract.
15. This court has laid out both the appellants' case and the respondents' opposition.



16. The main issue in this appeal is whether the trial court made an error in holding that the appellants were 100% liable for the accident.
17. It is well settled that the burden of proof is always on whoever alleges. Section 106 and 107 of the Evidence Act placed this burden on the respondent to prove that the contested accident actually occurred on 10/4/2019.
18. This court has evaluated the evidence tendered with a view to reaching its own conclusion as demanded by the mandate of this court exercising appellate jurisdiction.
19. It is evident that the respondent's case at the trial with respect to liability majorly hinged on the contents of the Police Abstract tendered as Pexhibit 4. The Police Abstract was tendered by CPL Beatrice Odenyo (PW3) who testified that the matter was under investigation and that she did not know the contents of the Abstract. She also stated "I do not know the contents of the OB relating to this case". She did not visit the scene of the accident. She did not have the police file and could not tell much about the accident where it occurred or how it occurred.
20. There was no eye witness called by the respondent. What the trial court was left with was basically his word against that of the appellants who denied in equal measure that the accident occurred. The lingering question that the respondent did not explain is why it took him 7 days to report. In fact going by the P3 Form (Pexhibit 2), the report about the accident was made on 26/7/2019. The P3 Form has no OB Number.
21. The above discrepancy in my view should not have been disregarded by the trial court.
22. Secondly the Police Abstract tendered in evidence did not specify that any charges were preferred against the appellants for any traffic offence. The police officer could not tell why the appellants were not charged for failing to report an accident or why they were not charged for careless driving. She simply came and tendered an Abstract whose probative value in terms of liability was nil. This court agrees with the appellants' contention that production of a Police Abstract per se does not impute negligence. The respondent needed to tender evidence demonstrating to the required standard that the respondents were liable for negligence. But in this instance, he simply relied on the evidence of PW3 who stated that she could not vouch for the contents of the OB or police file regarding the circumstances of the accident. She also stated that she neither visited the scene nor got any briefing from any investigating officer if at all there was such an officer.
23. This court finds that the trial court fell into error by concluding that there was an occurrence of an accident on 10/4/2019 despite the discrepancies pointed out. The trial court erred in finding that the evidential burden had shifted to the appellants to lead evidence to disprove negligence on their part. The burden of proof lay on the respondent and in my re-assessment of evidence tendered, he simply failed because the evidence placed before the trial court fell way below the standard of proof in civil matters. The trial court erred to find that it was convinced that the accident occurred. While it is true that a Police Abstract is a public document, the same should be cogent and clear. In this instance, there was no police file or OB number to support the contents of the Police Abstract. The police officer who tendered it did not attribute any negligence on the appellants. She also did not explain when the accident was reported. The appellants testified that the police visited their premises in August 2019 which was 4 months after the alleged accident.
24. The respondent on his part conceded in his evidence that he reported on 26/7/2019. So what took him that long? There was no medical document to show that he was admitted in hospital and therefore incapacitated to report the accident immediately or even the second day.



25. This court finds that in the absence of any explanation as to why the accident was reported late and in the absence of any evidence attributing negligence on the part of the appellants, there was no basis to find that the respondent's case had been proved on a balance of probability. The trial court fell into error on liability and I so find.

In the premises this court finds merit in this appeal on liability. There is therefore no need to go into the issue of quantum. For the aforesaid reason the judgment dated 26/2/25 is set aside and in its place an order dismissing the respondent's suit with costs is made. The appellants will also get costs in this appeal.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 6<sup>TH</sup> DAY OF OCTOBER , 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Judgment delivered in open court

In the presence of

Kisaka holding brief for Masinde for the Respondent

No appearance for the Appellant

Court assistants – Duke/Chemosop

