



REPUBLIC OF KENYA



KENYA LAW
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**Kaloki v Mbondo (Civil Appeal E076 of 2022)
[2025] KEHC 15782 (KLR) (5 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 15782 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E076 OF 2022
KW KIARIE, J
NOVEMBER 5, 2025**

BETWEEN

NICHOLAS MUSILI KALOKI ALIAS NICHOLAS KALOKI APPELLANT

AND

APPENDINEGO MUNYAO MBONDO RESPONDENT

(Being an appeal from the judgment and decree in the Tawa Principal Magistrate's Court, PMCC No.55 of 2020 by Hon. M.K. Mutegi (Principal Magistrate))

JUDGMENT

1. Nicholas Musili Kaloki, also known as Nicholas Kaloki, the appellant, was the claimant in Tawa Principal Magistrate's PMCC No. 55 of 2020. He lodged a claim for general and special damages following a road traffic accident involving a motor vehicle with registration number KCC 774Q and another with registration number KBQ 049A. As a result of the collision, the appellant sustained injuries. The learned trial magistrate made a finding that the respondent was not the owner of the offending motor vehicle and dismissed the claim.
2. The appellant was dissatisfied with the decision and filed this appeal through J.A. Makau & Company Advocates. He raised the following grounds for appeal:
 - a. The learned magistrate erred in law and in fact when he erroneously stated that the defendant had already sold the suit motor vehicle; therefore, he was not liable for the accident or claim in the lower court case that was appealed from.
 - b. The learned magistrate erred in law and in fact in failing to consider the documents produced by the plaintiff in the lower court, wherein the plaintiff showed that he was the registered owner of the suit vehicle.



- c. The learned magistrate erred in law and in fact in failing to appreciate the evidence given in court by the plaintiff and also the police officer, merely relying on the defendant, who did not even call a witness despite pointing out he had a witness.
 - d. The learned magistrate erred in law and in fact in failing to consider that the defendant had no proof of having passed ownership of the suit vehicle to the deceased, yet the police abstract and the motor vehicle search record from the government agency NTSA proved that the defendant was the registered owner of the suit vehicle.
 - e. The learned magistrate erred in law and in fact by shifting the onus from the defendant to the plaintiff and, in so doing, failed to consider the evidence of the plaintiff and his witness but wholly relied on and laid the basis of his judgment on the defendant's evidence, which did not hold any water
3. The respondent opposed the appeals through B.M. Mung'ata & Company Advocates. He argued that the appeal lacked merit.
 4. This Court is the first appellate court. I recognize my duty to assess all the evidence on record, considering that I did not have the advantage of observing the witnesses testify and noting their demeanour. I will be guided by the decision in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, in which it was held that the first appellate court must reconsider and evaluate the evidence presented before the trial court, assess it, and draw its conclusions in the matter.
 5. The appellant argued that the learned magistrate made an error in concluding that the respondent had proved that ownership of the motor vehicle registration number KCC 774Q had passed to a third party. In paragraph 8 of the statement of defence, the respondent indicated that he had sold the motor vehicle to Isaac Kaloki Munyao on 5th February 2019. He produced copies of the sale agreement and the final payment made on July 12, 2019.
 6. The appellant, on his part, relied on the copy of records provided by NTSA, which indicates that as of the 13th day of February 2020, the motor vehicle registration number KCC774Q was in the name of Appendinecco Munyao Mbondo. He conceded during the trial that the policyholder for the motor vehicle's insurance policy was Isaac Munyao. This therefore confirmed the respondent's claim that he had sold the motor vehicle to Isaac Kaloki Munyao.
 7. Section 8 of the *Traffic Act* states:

The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.
 8. The learned trial magistrate was alive to the fact that registration of ownership was rebuttable. In the case of *Samwel Mukunya Kamunge vs John Mwangi Kamuru Civil Application No.34 of 2002 H. M. Okwengu, J*, as she then was, stated:

It is true that a certificate of search from the Registrar of motor-vehicle would have shown who was the registered owner of the motor-vehicle according to the records held by the Registrar of motor vehicle. That however is not conclusive proof of actual ownership of the motor vehicle as section 8 of the *Traffic Act* provides that the contrary can be proved. This is in recognition of the fact that often time's vehicles change hands but the records are not amended.

I find that the trial magistrate was wrong in holding that only a certificate of search from the Registrar of motor vehicle could prove ownership of the motor-vehicle. I find a police



abstract report having been produced showing the Respondent as the owner of motor vehicle KAH 264A, and evidence having been adduced that letters of demand sent to the Respondent elicited no response from him denying ownership of the motor vehicle, and the Respondent having offered no evidence to contradict the information on the police abstract report, the appellant had established on a balance of probability that motor vehicle KAH 264A was owned by the Respondent.

9. In the instant case, the learned trial magistrate correctly applied the law. The appeal is dismissed with costs.

DELIVERED AND SIGNED AT MAKUENI, THIS 5TH DAY OF NOVEMBER 2025.

KIARIE WAWERU KIARIE

JUDGE

