



**Platinum Credit Limited v Chirchir (Legal Representative of the
Estate of Matayo Kiprono Chirchir (Deceased & another (Civil Appeal
E093 of 2022) [2025] KEHC 16144 (KLR) (3 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 16144 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E093 OF 2022
JM NANG'EA, J
NOVEMBER 3, 2025**

BETWEEN

PLATINUM CREDIT LIMITED APPELLANT

AND

**ESTHER CHEPKOECH CHIRCHIR (LEGAL REPRESENTATIVE OF THE
ESTATE OF MATAYO KIPRONO CHIRCHIR (DECEASED)) 1ST RESPONDENT**

**WILLIAM KIBOWEN TOWET T/A GREENVALLEY MOTORS 2ND
RESPONDENT**

*(Being an appeal from Judgement and Decree of Hon. B. Mararo (PM)
delivered on 10th March 2021 in Nakuru CMCC No. 92 of 2022)*

JUDGMENT

1. Matayo Kiprono Chirchir (deceased) instituted the above stated lower court suit against the 2nd Respondent and the Appellant herein for reliefs as hereunder;-
 - a. An order of permanent injunction restraining the Defendants, its servants, agents, employees and/or representatives from any adverse dealing, disposing off, repossessing, attaching, further charging, alienating and or in any other way interfering with motor vehicle Registration No. KCE 058Z.
 - b. A mandatory order of injunction compelling the Defendants, its servants, agents, employees and/or representatives to release the original log book of motor vehicle Registration No. KCE 058Z together with the transfer instruments duly executed by the Defendant's recognized officials.
 - c. Costs of this suit.



- d. Any other or further relief that this Honourable Court may deem for and just to grant.
2. The deceased averred in the suit that he had purchased the subject motor vehicle registration number KCE 958Z from the 2nd Respondent vide a Sale Agreement dated 19th January 2016, and paid the full purchase price of Kshs. 1,110,000/=. The last instalment was purportedly paid on 15th August 2016. He thereafter took possession of the vehicle. The 2nd Respondent, however, failed to surrender the vehicle's log book, prompting the deceased to conduct a search to establish the registration status of the vehicle. The inquiry showed that the vehicle was registered in the joint names of the Appellant and the 2nd Respondent.
 3. The Appellant's defence in the suit was that the vehicle was collateral for a loan of Kshs. 520,000/= it advanced to the 2nd Respondent. At the time of the transaction, the Appellant established that the vehicle was registered in the name of a firm called Kingsley Company Limited and not the deceased. It therefore claims interest in the vehicle as a lender.
 4. The trial court found in favour of the deceased and provoked the Appeal.
 5. The Grounds of Appeal as per Memorandum of Appeal dated 15th July 2022 may be condensed into three as follows;
 - a. That the Learned Trial Magistrate erred in law and fact in finding that ownership of the subject vehicle passed to the deceased.
 - b. That the Learned Trial Magistrate erred in law and fact in failing to find that the deceased's cause of action lay against the 2nd Respondent and not the Appellant.And
 - c. That the Learned Trial Magistrate generally erred in law and fact in finding that the deceased proved his claim on a balance of probability, against the weight of evidence.
 6. The Appellant prays thus;
 - a. That this appeal be allowed with costs.
 - b. That the decision of Honourable B. Mararo, P.M. vide the Judgement delivered on 10/03/2021 in Nakuru Chief Magistrate's Court Civil Suit Number 688 of 2017 – Matayo Kiprono Chirchir versus William Kibowen Towett T/A Greenvalley Motors & Platinum Credit Ltd. be quashed and/or set aside and in its place, Judgement be entered dismissing the said suit with costs to the Appellant.
 7. In allowing the claim, the lower court found that the deceased was the actual owner of the vehicle pursuant to the provisions of Section 8 of the Traffic Act having purchased it from the 2nd Respondent. The court faulted the Appellant for purporting to have conducted valuation of the vehicle for the purpose of advancement of the loan, when the vehicle was already in possession of the deceased. It was further noted that the Valuer who ostensibly carried out the exercise did not testify but their report was tendered by a different witness. Even the Appellant's employee who was said to have fitted a tracking device to the vehicle did not himself testify to explain how he did that, when the vehicle was supposedly in control of the deceased who claimed to have purchased it and was only waiting for execution of the necessary transfer document.
 8. For the state reasons inter alia, the lower court entered Judgement for the deceased.



9. I will consider the identified Grounds of Appeal together. An appellate court is generally tasked with re-considering and re-evaluating the evidence adduced in the Trial Court and draw its own independent conclusion on both issues of fact and law. This was the principle settled in *Selle and Another vs Associated Motor Boat Company Limited and others* [1968] EA 123 and *Williamson Diamonds Ltd. vs Brown* [1970] E.A.L.R. The Court of Appeal for East Africa in *Peters vs Sunday Post Limited* [1958] EA 424 underscored the same principles delivering itself thus:
- “i. First, on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
 - ii. In reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before her; and
 - iii. It is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.”
10. The general rule as to ownership of motor vehicles/ motorcycles is provided for under Section 8 of the *Traffic Act* (Cap 403 of the Laws of Kenya) which is in the following terms;
- “The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”
11. The Court in *Bernard Muia Kilovo vs Kenya Fresh Produce Exporters* [2020] eKLR cited the Court of Appeal decision in *Thuranira Karauri -vs- Agnes Mocheche* [1997] eKLR wherein it was stated that:
- “i. The presumption that the person registered as the owner of the motor vehicle in the logbook is the actual owner is rebuttable.
 - ii. Where there exists other compelling evidence to prove otherwise then the court can make a finding of ownership that is different from that contained in the logbook.
 - iii. Each case must however be considered in its own peculiar facts”
12. When is the balance of probability as the standard of proof in civil cases said to have been met? My brother Kimaru, J in *William Kabogo Gitau vs George Thuo & 2 Others* [2010] 1 KLE 526 stated thus:
- “...In ordinary civil cases a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred...”
13. In *Mbasu & another vs Onyapindi & Cheseny* (Suing as the Legal Representatives of Bernard Simiyu Wamalwa - Deceased [2024] KEHC 11716 (KLR) the Court stated:
- “...When assessing the probability, the court will have in mind as factors, to whatever extent is appropriate in the particular case, that the more serious allegation the less likely it is that the



event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability...”

14. The Appellant continues to contend in its submissions that no wrong doing on its part was pleaded and proven before the lower court. The 1st Respondent is said to have blamed only the 2nd Respondent. In support of the Appellant’s arguments, Counsel inter alia make reference to the Court of Appeal’s determination in Independent Electoral and Boundaries Commission & Another vs Stephen Mutinda Mule & 3 Others (2014) eKLR for the proposition that parties are bound by their pleadings in a case.
15. The 1st Respondent also filed submissions underscoring the contentions in the lower court. She insists that she had demonstrated the Appellant’s tortious acts in the suit; it is further contended that the elements of a valid contract between the deceased and the 2nd Respondent have been shown to be present. The 1st Respondent impugns the Appellant’s purported Chattels Mortgage over the subject motor vehicle arguing that there is no proper registration thereof.
16. Having considered the submissions against the Appeal and the lower court’s record, the issue for determination is Whether the 1st Respondent proved purchase of the subject vehicle on a balance of probability so as to be entitled to the vehicle’s log book as craved. I don’t think so. The 1st Respondent seems to accuse the Appellant of fraud particulars of which were not pleaded. The deceased admitted that he did not carry out due diligence which would have shown that the vehicle was at the material time registered in the name of Kingsley Company Limited and not the 2nd Respondent and/or the entity called GreenValley Motors from whom the deceased ostensibly bought the vehicle.
17. The Appellant’s un rebutted evidence further shows that the Chattels Mortgage over the vehicle was executed on 17/3/2016 and registered on 5/6/2016, within the period prescribed by the Law.
18. The court however, rejects the Appellant’s claim that the vehicle’s full purchase price was not paid as the 2nd Respondent has not testified to rebut the claim.
19. In my view, the 1st Respondent’s remedy lies against the 2nd Respondent who appears to have fraudulently dealt with both the deceased and the Appellant.
20. The upshot is that the Appeal is allowed, and the lower court’s Judgement dated 10th March 2021 is set aside and substituted with this court’s Judgement dismissing the suit as against the Appellant only.
21. Regarding costs, they generally follow the event by dint of the provisions of Section 26 of the Civil Procedure Act, unless the court directs otherwise for reason(s) to be given. Since the 2nd Respondent is to blame for the costs incurred, he shall bear the costs of the Appeal as well as in the lower court.
22. Judgement accordingly.

J. M. NANG’EA

JUDGE.

JUDGEMENT DELIVERED VIRTUALLY THIS 3RD DAY OF NOVEMBER, 2025.

In the presence of;

The Appellant’s Advocate, Mr Gatonye

The 1ST Respondent’s Advocate, Mr Mburu

The 2nd Respondent, Absent

The Court Assistant, Jeniffer



J. M. NANG'EA
JUDGE.

