



**Aberdare Expeditions v Gacheri & another (Civil Appeal E024 of 2024)
[2025] KEHC 17307 (KLR) (Civ) (24 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17307 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL
CIVIL APPEAL E024 OF 2024
SC CHIRCHIR, J
NOVEMBER 24, 2025**

BETWEEN

ABERDARE EXPEDITIONS APPELLANT

AND

MARIA GACHERI 1ST RESPONDENT

KEVIN THUO GAITHO 2ND RESPONDENT

JUDGMENT

1. The 1st Respondent herein had filed suit seeking for damages for injuries and incidental loss suffered as result of a road accident which occurred on 6th October 2021 along Isiolo Marsabit Road. The Appellant was sued as the owner of the vehicle while the 2nd respondent was described as the then driver and or Agent of the Appellant.
2. In response to the suit, the Appellant filed a Notice of Motion dated 8th December 2022, seeking to have its name struck off from the suit on grounds that it neither owned nor operated the subject motor vehicle, registration number KDC 319G, which allegedly caused the accident.
3. The trial court heard the Application and dismissed it

Memorandum of Appeal

4. Aggrieved by the outcome, the Appellant proffered this Appeal, and pleaded as follows:-
 1. That the Learned Magistrate erred in law and in fact by arriving at a ruling that is erroneous regarding the prayers sought in the Application dated 8th December, 2022 and the Appellant's further affidavit dated 27th March 2023



2. That the Learned Magistrate erred in law and in fact by proceeding on wrong principles and failing to totally consider the relevant factors provided under the enabling statute when dismissing the said application
3. That the Learned Magistrate erred in law and in fact by arriving at an erroneous finding that the 1st Defendant Applicant had not tendered any evidence to prove that it is not the registered owner of the motor vehicle registration number KDC 319G
4. That the Learned Magistrate erred in law and in fact by failing to appreciate that the Appellant conducted a search on the register of motor vehicles concerning motor vehicle registration number KDC 319G which confirmed Mr. Patrick Ngara Nganga as the owner of the subject motor vehicle at the time of the accident.
5. That the Learned Magistrate erred in law by disregarding Section 8 of the *akn ke act 1953 39 Traffic Act* which 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’
6. That the Learned Magistrate erred in law and in fact by failing to take into account that both Plaintiff Respondent and the 1st Defendant Applicant produced similar copies of motor vehicle search indicating Mr. Patrick Ngara Nganga as the owner of the motor vehicle.
7. That the Learned Magistrate erred in law and in fact by arriving at an erroneous finding that the 1st Defendant Applicant had not proved that he is a partner of Aberdare Expeditions the Appellant herein.
8. That the Learned Magistrate erred in law and in fact by failing to appreciate that the Applicant had a certificate of registration which certifies Mr. Stephen Mwangi Gichuki as partner in the 1st Defendant Applicant business.
9. That the Learned Magistrate erred in law and in fact by drawing an erroneous inference of satisfaction or contentment with the Plaintiff Respondent’s reliance on police abstract to prove ownership of the subject motor vehicle.
10. That the Learned Magistrate erred in law and in fact by failing to appreciate that the provisions of section 8 of the *akn ke act 1953 39 Traffic Act* are interpreted to mean there is a presumption of ownership based on registration which can only be rebutted by compelling evidence.
11. That the Learned Magistrate erred in law and in fact by failing to appreciate that the police abstract is not compelling evidence to rebut the presumption of ownership based on registration.
12. That the Learned Magistrate erred in law and in fact by disregarding the 2nd Defendant Respondent’s sworn affidavit confirming that he was the driver of the subject motor vehicle at the time of the accident and that his employer as at that time was one Mr. Patrick Ngara Nganga who was also the owner of the subject motor vehicle
13. That the Learned Magistrate erred in law and in fact by failing to find that the 1st Defendant Applicant’s name was wrongly and improperly enjoined in the suit as it has no interests in any claim or reliefs sought by the plaintiff respondent
14. That the Learned Magistrate erred in law and in fact by failing to grant the prayers sought in the applicant’s application dated 8th December 2022 and the supporting affidavit thereof dated 9th December 2022.



5. The appeal proceeded by way of written submissions.

The Appellant's Submissions

6. It is the Appellant's submissions that he presented sufficient evidence to demonstrate that he was neither the registered or beneficial owner of motor vehicle KDC 319G. That the 1st Respondent's own annexures, including a motor vehicle search certificate, clearly showed that the registered owner of the subject vehicle was one Mr. Patrick Ngara Nganga, not the Appellant. He has relied on Section 8 of the *akn ke act 1953 39 Traffic Act* (Cap 403) which provides that "The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle."
7. The Appellant has faulted the trial court for relying solely on the Police Abstract as sufficient evidence of ownership. It is argued that the copy of records from the Registrar of Motor Vehicles successfully challenged the content of the police abstract. While relying on the case of *Interpel Investments Limited v Mokaya* (suing as the legal representative of the late Reagan Onyancha) (2024) eKLR, the Appellant asserts that where a police abstract is challenged, the plaintiff must produce a certificate from the Registrar or other proof.
8. It is the Appellant's further submission that once the issue of ownership was conclusively addressed, it logically followed that the Appellant could not be held vicariously liable for the actions of the 2nd Respondent. The Appellant pointed out that the 2nd Respondent, who is the alleged driver of the subject vehicle has deposed in an affidavit dated 8th December, 2022 in which he testified that that he was employed by one Patrick Ngara Nganga, the registered owner of motor vehicle.
9. The Appellant contends that since the 1st Respondent failed to adduce any evidence suggesting that the Appellant had control over the vehicle, or that it was being used on its behalf, the claim for vicarious liability against him is misplaced.
10. It is the Appellant's final submission that the 1st Respondent's pleadings failed to establish any valid or justifiable cause of action against the Appellant. That the case as presented, is legally untenable, fundamentally weak and incapable of being salvaged through further pleadings or evidence.

1st Respondent's Submissions

11. The 1st Respondent has submitted that the Appellant failed to show that, at the time of the accident, the said vehicle was owned by a different person, other than himself.
12. The Respondent further contends that the Appellant was a necessary party, for the effectual and complete adjudication of the dispute, a position the trial court adopted in dismissing the application

Analysis & Determination

13. This Court, sitting as the first appellate court, has a duty to re-evaluate the evidence presented before the trial court and draw its own conclusions.
14. The Appellant's case is that it was not the owner of motor vehicle registration number KDC 319G; that the 2nd respondent was not its Agent, and consequently he
15. shall, unless the could not be held vicariously liable for the acts of the 2nd respondent. It is on the above stated ground that he sought to have his name struck off from the proceedings.
16. Section 8 of the *akn ke act 1953 39 Traffic Act* (Cap 403), (The Act) provides that "The person in whose name a vehicle is registered contrary is proved, be deemed to be the owner of the vehicle". Thus as per



the above section of the *Motor Vehicle Act 1953 39 traffic Act*, the registration particulars of a vehicle, as held by the relevant department of Government, constitute proof, unless the presumption of ownership is effectively rebutted. In other words, the presumption of ownership set out under section 8 of the Act is a rebuttable one.

17. The scenario in the present case is as follows: A copy of records from the National transport and safety Authority (NTSA) indicated that the owner of the vehicle as at 21st April 2022 was one Patrick Ngara Nganga; the police abstract in respect of the accident state the owner as Aberdare expeditions, the Appellant herein. The Applicant has also submitted in evidence its own search certificate done on 21st February 2023, which showed the owner as the said Patrick. The Appellant also obtained an Affidavit sworn by the 2nd respondent the then driver of the subject vehicle stating that he was employed by one Patrick Ng'ang'a, at the material time.
18. Thus the onus remained on the respondent herein to rebut the presumption of ownership as contained in the NTSA records. That is to say she needs to explain to the court why the defendant in the suit ought to be the Appellant herein, and not Patrick Nganga as per the registration records.
19. In response to the Application, the respondent states that the ownership particulars of the subject vehicle as per the copy of records she has produced, show the current status on ownership but not at the time of the accident; that the police abstract is a valid proof; and that what the 2nd respondent has deposed in his affidavit are triable issues.
20. I have considered the competing submissions by the parties.
Firstly, I agree with the respondent that the 2nd respondent's affidavit need to be subjected to test by way of cross – examination. Secondly the accident herein occurred on 6th October 2021. None of the copy of records produced by either party indicate the ownership status as at 6th February 2021. The copies of records attached to the further affidavit of Stephen Gichuki the Appellant's director and identified as SG2(a) and SG2(b) gives the particulars of registration as at 21st April 2022 while SG3 indicate particulars of ownership as at 21 February 2023. Thus none of the copy of records tell us who was the owner as at 06.02. 2021, when the accident occurred.
21. It helps to remember, and as it was correctly pointed out by the trial court, the burden of proof at this point is on the defendant Appellant. The Appellant's case is that it was not the owner of the subject motor vehicle at the time of the accident. The burden was on him to prove that assertion. As pointed out above none of the copy of records support his assertion as they do not provide the status of ownership as at the date of the accident. Further I agree with the respondent that the issues raised by the 2nd respondent, who is the tortfeasor in respect of the subject accident, and has curiously, yet to file his defence, are triable issues. Further his word, which has not been corroborated by any documentary evidence, cannot form a conclusive finding on the question of ownership.
22. Nevertheless, I entirely agree with the trial court that the Appellant failed to prove his case. Submitting search certificates, whose particulars bore no relevance to the date of the accident did nothing to back up his claims.
23. The Appeal has no merit. It is hereby dismissed with costs to the 1st respondent.

DATED , SIGNED AND DELIVERED AT NAIROBI, VIRTUALLY, THIS 24TH DAY OF NOVEMBER , 2025.

S. CHIRCHIR

JUDGE.



In the presence of :

Roba Katelo- court Assistant.

Mr. Muthange for the Appellant

