

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

CIVIL APPEAL NO. E014 OF 2024

(CORAM: HON. CHARLES KARIUKI – J)

*(Being an appeal against the judgment of HON. P. L. Shinyada (P.M.) delivered on 23rd May
2024 in Narok, Case No. MCCC E213 OF 2022)*

AYAN AUTOMOBILES LIMITED..... APPELLANT

VERSUS

BEATRICE WANJIKU MURIIHI.....1ST RESPONDENT

ALICE WAIRIMU MUNGAI2ND RESPONDENT

JUDGMENT

INTRODUCTION

- 1) This appeal arises from the judgment of the Narok Magistrates’ Court (Civil Case No. E213 of 2022) in which the 1st Respondent, Beatrice Wanjiku Muriithi, successfully sued the Appellant, Ayan Automobiles Limited, for damages arising from a road traffic accident that occurred on 17th April 2022 along the Mai Mahiu–Narok road. At the trial court, the plaintiff claimed general damages, special damages of Kshs. 257,400/-, interest, costs, and any other relief deemed fit.
- 2) The trial court found that the plaintiff, while traveling as a fare-paying passenger in motor vehicle registration KCV 471Y (Toyota Matatu), sustained grievous injuries when the said motor vehicle, allegedly driven recklessly, collided with another motor vehicle and thereafter with a roadside fence. Evidence from the plaintiff, supported by a police abstract

and medical records, was held to establish that the accident occurred due to the negligence of the driver of the vehicle.

- 3) The defendant (Appellant) denied liability, contending that the motor vehicle had been sold to a third party, one Alice Wairimu Mungai, and therefore the liability, if any, rested with her. The trial court, after considering the hire-purchase agreement produced by the Appellant and relevant law on proof of ownership and third-party liability, held that the Appellant remained the registered owner and was liable for the accident.
- 4) The issues considered by the trial court included liability, general and special damages, and costs of the suit. The trial court awarded the plaintiff general damages of Kshs. 800,000/-, future medical expenses of Kshs. 250,000/-, special damages of Kshs. 7,400/-, together with costs of the suit and interest at court rates.
- 5) Aggrieved by that decision, the Appellant lodged the present appeal vide Memorandum of Appeal dated 10th June, 2024, on the following grounds;

- 1. The Learned Magistrate erred in law and in fact in finding the Appellant to be the owner of the accident motor vehicle on the ground that the Appellant was the registered owner of the same, without considering the compelling evidence that possessory ownership and beneficial ownership had passed to a third party.**
- 2. The Learned Magistrate erred in law and in fact in disregarding the proof that the subject motor vehicle had been sold to the third party, and that the Appellant was no longer in ownership and control of the same as at the time of the accident in question.**
- 3. The Learned Magistrate erred in law and in fact in disregarding the compelling evidence that the said third party was to indemnify the Appellant**

in case of any liability or claim with respect to Motor Vehicle Registration Number KCV 471Y whilst the same was in the third party's possession.

- 4. The Learned Magistrate erred in law and in fact in failing to consider that it is trite law that, despite a person being the registered owner of a motor vehicle, there may exist beneficial and possessory ownership of the same which may be more relevant than the registration thereof.**
- 5. The Learned Magistrate erred in law and in fact in failing to consider that it was the third party who was the insured of the subject motor vehicle as at the time of the accident in question.**
- 6. The Learned Magistrate erred in law and in fact in failing to consider that, other than the Motor Vehicle Copy of Search, a Police Abstract can, by dint of Section 8 of the Traffic Act, provide sufficient proof of ownership of the accident motor vehicle.**
- 7. The Learned magistrate erred in law and in fact in failing to consider that the Defendant had filed a third-party notice before judgment was delivered.**
- 8. The Learned Magistrate erred in law and in fact in failing to consider that the Respondent had the burden of establishing an employer-employee kind of relationship between the Appellant and the driver of the accident motor vehicle, of which the Respondent failed to discharge.**
- 9. The Learned Magistrate erred in law and in fact in holding the Appellant 100% liable for an accident wherein it had sold the accident motor vehicle to a third party.**
- 10. The Learned Magistrate erred in law and in fact in failing to consider that the main concern of the court is to do justice to the parties.**

11. **The Learned Magistrate erred in law and in fact in disregarding the evidence that, in civil matters, liability trickles down to who actually caused an accident.**
12. **The Learned Magistrate erred in law and in fact in disregarding the proof that nothing impeded that Court's right to exercise its discretion in this matter.**
13. **The Learned magistrate erred in law and in fact by disregarding all the evidence presented by the Appellant in support of its position that it had sold the subject motor vehicle as at the time of the accident in question.**
14. **The Learned Magistrate erred in law and in fact in making a Judgment that is unfair, biased, unjust, and an absurdity to the norms of equity and justice.**

Directions of the court

- 6) The appeal was canvassed by way of written submissions.

The Appellant's Submissions

- 7) The Appellant contends that at the time of the accident on 17 April 2022 involving motor vehicle KCV 471Y, it was not the owner, whether in fact or in law, and therefore bears no liability to the 1st Respondent. It submits that on 13 August 2019, it sold the vehicle to the 2nd Respondent, Alice Wairimu Mungai, under a Hire Purchase Agreement and Motor Vehicle Sale Agreement, executed through its authorised agent, Azan Motors Limited. The 2nd Respondent paid a deposit of Kshs. 800,000 and took immediate possession, with the balance payable in monthly instalments. As security for the unpaid balance, the Appellant retained the logbook, which it maintains did not constitute ownership in the factual or beneficial sense.

- 8) The Appellant submits that Section 8 of the Traffic Act recognises registration as prima facie evidence of ownership, which may be rebutted by proof of actual, beneficial, or possessory ownership. It relies on *Securicor Kenya Ltd v Kyumba Holdings Ltd* [2005] eKLR, *Osapil v Kaddy* [2000] 1 EALA 187, *Jared Magwaro Bundi & another v Primarosa Flowers Ltd* [2018] eKLR, and *Nancy Ayemba Ngaira v Abdi Ali* (2010) eKLR, to argue that beneficial ownership prevails over mere registered status, and that courts increasingly emphasise substance over form in determining true ownership. The Appellant asserts that the 2nd Respondent was the beneficial and actual owner, having full possession, control, and insurance of the vehicle, as confirmed by the Hire Purchase Agreement and the Police Abstract, which did not mention the Appellant.
- 9) It is further submitted that under Clause 7 of the Hire Purchase Agreement, the 2nd Respondent undertook to indemnify the Appellant against all claims arising while the vehicle was in her possession. The Appellant relies on *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* [2017] eKLR and *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd* [2001] KLR 112 to assert that courts cannot rewrite contracts, and that the 2nd Respondent must be held to her express indemnity obligations.
- 10) The Appellant argues that no evidence was presented at trial establishing any agency, employment, or vicarious liability between it and the driver of the accident vehicle. It cites *Gichira Peter v Lucy Wambura Ngaku & another* [2021] eKLR to support the proposition that even registered ownership does not of itself create vicarious liability absent proof of a servant-agent relationship. The burden of proving such a relationship lay on the 1st Respondent, pursuant to *Karugi & another v Kabiya & 3 others* [1983] eKLR and *Kenya Power & Lighting Co. Ltd v Nathan Karanja Gachoka* [2016] eKLR, which confirm that

even uncontroverted evidence in civil claims must demonstrate fault and liability on a balance of probabilities.

- 11) Finally, relying on *Elizabeth Gathoni Thuku v Peter Kamau Maina & another* [2021] eKLR, the Appellant submits that liability in negligence is founded upon identifying the actual tortfeasor. It maintains that it neither controlled the vehicle nor employed the driver, and therefore cannot be held liable for an accident involving a vehicle it had already sold and over which it had no operational control.
- 12) The Appellant therefore prays that the appeal be allowed, that liability against it be set aside, and that any liability be borne by the proper party—namely, the 2nd Respondent as beneficial and actual owner.

Respondents' submissions.

- 13) The Respondent opposes the appeal and relies on her Grounds of Opposition and Replying Affidavit dated 22 May 2025. She maintains that she sustained injuries on 17 April 2022 while travelling as a fare-paying passenger in motor vehicle KCV 471Y, which she avers was owned by the Appellant. Her suit against the Appellant in Narok CMCC No. 213 of 2022 proceeded to a full hearing, and judgment was delivered on 23 May 2024, the trial court having found the Appellant liable.
- 14) The Respondent notes that the key complaint in the Memorandum of Appeal concerns ownership of the vehicle and the trial court's finding of liability against the Appellant. She submits that the Appellant's attempt to shift liability to an alleged purchaser was raised far too late in the proceedings. Although the Appellant claimed that the vehicle had been sold under a hire-purchase arrangement, the Respondent states that the Appellant did not file any proper third-party proceedings within the timelines prescribed by law. She emphasises

that the Appellant's own witness admitted during cross-examination that no third-party application had been filed, despite the fact that the trial had concluded and the matter was pending judgment.

15) The Respondent further submits that the alleged hire-purchase agreement relied upon by the Appellant was not executed by the Appellant, but by a separate entity, Azan Motors, which was neither joined as a party nor demonstrated to be a disclosed or legally recognised agent. She argues that the trial court correctly observed that the purported purchaser, Alice Wairimu Mungai, and Azan Motors, described by the Appellant as a "sister company," were complete strangers to the proceedings. The Respondent maintains that she was not privy to any of the alleged agreements and could not be bound by undisclosed or unproven arrangements between the Appellant and third parties.

16) She relies on the trial court's reasoning at paragraph 22 of the judgment, where the Magistrate found that the Appellant had failed to satisfy the evidentiary burden of proving a transfer of ownership or demonstrating that the vehicle was legally in the possession of another person. The Respondent supports the trial court's application of the principle that parties are bound by their pleadings, and submits that the Appellant cannot introduce, at the appellate stage, matters which were not properly pleaded, pursued, or proved before the trial court.

17) The Respondent therefore submits that the Appellant remained the registered and legal owner of the subject motor vehicle, that the trial court's findings were properly grounded in the pleadings and evidence, and that no error of fact or law has been demonstrated to warrant appellate interference. She prays that the appeal be dismissed with costs.

ANALYSIS AND DETERMINATION.

18) I have carefully considered the Record of Appeal, the impugned judgment, the grounds of appeal, the rival submissions, and the applicable law. Being a first appellate court, I am guided by the duty articulated in *Selle v Associated Motor Boat Co. [1968] EA 123*, namely, to re-evaluate, re-consider, and re-analyse the evidence on record and draw my own independent conclusions, while bearing in mind that I neither saw nor heard the witnesses testify.

19) From the pleadings and submissions, the following issues arise for determination:

- a) *Whether the trial court erred in finding that the Appellant was the owner of motor vehicle KCV 471Y at the time of the accident.*
- b) *Whether the Appellant established that ownership—beneficial, possessory, or legal—had passed to the 2nd Respondent.*
- c) *Whether the Respondent failed to prove vicarious liability against the Appellant.*
- d) *Whether the late filing of the alleged third-party notice had any legal effect.*
- e) *Whether the trial court’s findings on liability warrant appellate interference.*

1. Ownership of the Motor Vehicle

20) The Appellant’s primary ground is that the trial magistrate erred in finding it to be the owner of motor vehicle KCV 471Y, arguing that beneficial and possessory ownership had passed to the 2nd Respondent.

21) The starting point is Section 8 of the Traffic Act, 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.” Thus, registration is prima facie but rebuttable evidence of ownership.

22) Courts have on several occasions recognised that Section 8 allows proof of beneficial or actual ownership. Authorities relied upon by the Appellant—including *Securicor Kenya*

Ltd v Kyumba Holdings Ltd [2005] eKLR, Osapil v Kaddy (2000) 1 EALA 187, Nancy Ayemba Ngaira v Abdi Ali (2010) eKLR, and Jared Magwaro Bundi v Primarosa Flowers Ltd [2018] eKLR—support this principle.

23) However, to rebut the presumption, the party asserting non-ownership must provide credible, admissible, and consistent documentary and oral evidence showing that ownership had validly passed to another.

24) In the present case, the Appellant relied on: A Hire Purchase Agreement; A Motor Vehicle Sale Agreement; Its assertion that Azan Motors Ltd acted as its "agent"; and A police abstract allegedly indicating alternative ownership.

25) On re-evaluating the evidence, I find several fatal defects:

a. The Hire Purchase Agreement was not executed by the Appellant.

26) It was executed by Azan Motors Ltd, a company that was never joined to the proceedings, and no documentary nexus establishing agency or corporate relationship was tendered. A mere assertion of being a “sister company” is legally insufficient. Agency must be proved through demonstrated authority—see *Brookside Dairy Ltd v Erastus Karanja & Another [2020] eKLR*.

b. There was no logbook transfer.

27) The Appellant admitted it remained the registered owner. No Form C, NTSA acknowledgment, or transfer documents were produced.

c. The police abstract is not conclusive evidence of ownership.

28) While courts accept police abstracts as prima facie evidence (*Thuranira Karauri v Agnes Ncheche [1997] eKLR*), they cannot override an official NTSA search, especially where no corroboration exists.

d. The Appellant's own witness confirmed that no third-party proceedings had been filed during trial.

29) This directly undermines the credibility of the ownership defence.

30) The trial court, therefore, correctly held that the Appellant failed to discharge its burden of rebutting the Section 8 presumption. I find no reason to depart from that finding.

2. Whether Beneficial Ownership Passed to the 2nd Respondent

31) Even if the court were to consider the hire-purchase documents, beneficial ownership in a hire-purchase context ordinarily remains with the vendor until the agreement is completed—see *Diamond Trust Bank v Jaswinder Singh Enterprises [2020] eKLR.*

32) Retention of the logbook as security was expressly admitted by the Appellant. That alone negates the assertion that ownership had fully passed to the 2nd Respondent.

33) Furthermore, the person alleged to be the beneficial owner—the 2nd Respondent—did not testify and was not called as a witness. The alleged transaction, therefore, remained uncorroborated hearsay.

34) In the absence of cogent evidence, the trial court was right to dismiss the Appellant's argument on beneficial ownership.

3. Whether Vicarious Liability Was Established

35) The Appellant argued that no employer–employee or principal–agent relationship was proved between it and the driver.

36) However, vicarious liability in road traffic claims follows the principle that the registered owner is presumed to have control or authority over the vehicle unless rebutted—*Anyanzwa v Gasperis [1981] KLR 10.*

37) The Appellant produced no evidence whatsoever identifying the actual employer, hirer, or controller of the driver. Courts have consistently held that failure to identify the real

tortfeasor sustains liability against the person legally deemed to own or control the vehicle
—*Elizabeth Gathoni Thuku v Peter Kamau Maina [2021] eKLR.*

38) As noted in *Karugi & Another v Kabiya [1983] eKLR.* the burden of proof always lies on the one who asserts. The Appellant failed to discharge the evidentiary burden of disproving vicarious liability.

4. The Alleged Third-Party Notice

39) The record shows that the Appellant attempted to file a third-party notice after the close of evidence, at the stage where the matter awaited judgment.

40) Order 1 Rule 15 of the Civil Procedure Rules requires a defendant to issue a third-party notice “as soon as reasonably practicable and before the close of pleadings.”

41) A notice filed after trial has no legal effect unless leave is sought and granted. No such leave was ever sought. The trial court correctly dismissed that attempt as irregular.

42) An appellate court will not cure procedural lapses that go to the core of pleadings and fair trial principles—see *IEBC v Mutinda Mule & Another [2014] eKLR.*

5. Whether the Trial Court’s Findings Warrant Interference

43) Appellate interference is permitted only where findings are based on no evidence, on misapprehension of evidence, on application of wrong principles, or where the decision is plainly wrong—*Peters v Sunday Post [1958] EA 424.*

44) Upon re-evaluating the evidence, I find that:

- i. The trial court correctly applied Section 8 of the Traffic Act.
- ii. The Appellant’s evidence on ownership was inconsistent, uncorroborated, and insufficient.
- iii. No proof of a lawful transfer of ownership was provided.
- iv. No vicarious liability defence was established.

- v. The trial court’s reasoning was sound, factual, and legally grounded.
- vi. The Appellant has therefore not demonstrated any error in law or fact to justify disturbing the lower court’s decision.

CONCLUSION

45) For the foregoing reasons, I find that the appeal is devoid of merit. The trial magistrate properly evaluated the evidence and applied the correct legal principles in holding the Appellant liable as the owner of motor vehicle KCV 471Y.

- i. The appeal is hereby dismissed in its entirety.**
- ii. The judgment and decree of the Narok Chief Magistrate’s Court dated 23rd May 2024 in CMCC No. E213 of 2022 is upheld.**
- iii. Costs of this appeal shall be borne by the Appellant.**

46) Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH THE TEAMS APPLICATION, THIS 28TH DAY OF NOVEMBER, 2025.

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CHARLES KARIUKI
JUDGE