



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ndolo v Osaka Motors Limited & 2 others (Civil Appeal E058 of 2023)  
[2025] KEHC 17704 (KLR) (28 November 2025) (Judgment)**

Neutral citation: [2025] KEHC 17704 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL APPEAL E058 OF 2023**

**KW KIARIE, J  
NOVEMBER 28, 2025**

**BETWEEN**

**SHADRACK MULINGE NDOLO ..... APPELLANT**

**AND**

**OSAKA MOTORS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**LUCAS KIOKO NGUMA ..... 2<sup>ND</sup> RESPONDENT**

**CAREN SABINA MUTUA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of the Kilungu Principal Magistrate's Court, PMCC No. E028 of 2021, by Hon. F. Makoyo (Principal Magistrate))*

**JUDGMENT**

1. Shadrack Mulinge Ndolo, the appellant, was the defendant in Kilungu Principal Magistrate's SPMCC No. E154 of 2022. He had sued for a claim of general and special damages following a road traffic accident involving motor vehicles, with registration numbers KCK 459X and KCW 113C, in which the appellant was a passenger. As a result of the accident, the appellant sustained injuries. The learned trial magistrate dismissed his claim.
2. The appellant was dissatisfied with the judgment and submitted this appeal through TMJ Advocates LLP. He raised the following grounds for appeal:
  - a. The learned trial magistrate erred in law and fact by dismissing the appellant's suit against the evidence placed before the honourable magistrate.
  - b. The learned magistrate erred in law and fact by holding that the appellant had failed to discharge the burden of proof against the evidence and submissions presented in court.



- c. The learned magistrate erred in law and fact by reaching a conclusion that is contrary to the evidence before him, the relevant facts of the case and the appellant’s submissions.
  - d. In all circumstances of the case, the findings of the learned magistrate were characterized by misapplication of the law, misapprehension of facts of the case, consideration of irrelevant matters and wrong exercise of discretion.
3. The respondents opposed the appeals through Muturi, Gakuo & Kibara Associate Advocates. they 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. CPL. Josephine Githaiga (PW3) testified that the accident was caused by the driver of the motor vehicle with registration number KCK 459X. The driver left his lane and collided with the motor vehicle registration number KCW 113C.
  6. According to the appellant, the offending motor vehicle is owned by the first respondent. The first respondent was clear in their statement of defence and provided evidence that they had sold the vehicle. Mohammed Farooq Ali, a director of the first respondent, identified Erick Mutua Mwenze as the person to whom they sold the motor vehicle in 2017. During the hearing, he produced a copy of the sale agreement.
  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. When the first respondent disclosed in his defence and the filed evidence affidavit, the appellant had a duty to amend his pleadings accordingly. He failed to do so at his peril.
10. The appeal is dismissed with costs.

**DELIVERED AND SIGNED AT MAKUENI, THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025**

**KIARIE WAWERU KIARIE**

**JUDGE**

