

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ISIOLO
CIVIL APPEAL NO. E005 OF 2024

NYERI MOTOR SERVICE LIMITED.....
APPELLANT

VERSUS

ABDULAHI ADAN DIMA.....
.....1ST RESPONDENT

OMAR ADAN IBRAHIM.....2ND
RESPONDENT

GAIA DIRIA ADOW.....
.....3RD RESPONDENT

(An appeal from the judgment and decree of Hon.L.K.Mutai (CM) delivered on 25/7/2023 in Isiolo CMCC No. E006 OF 2020)

JUDGMENT

1. The 1st respondent herein filed suit against the Appellant and the 2nd and 3rd respondents herein seeking damages for injuries sustained as a result of a road accident which took place on 16th February 2019 along Isiolo-Marsabit Road. The accident involved motor vehicle registration number KBZ 767F, driven by the 2nd respondent and motor vehicle KAH 107A, in which the 1st Respondent was a passenger. The Appellant, the 2nd and 3rd respondents were sued as owners of motor vehicle registration number KBZ 767F .
2. The 2nd and 3rd respondents did not appear . The Appellant filed a Statement of Defence, denying liability and stated that it had sold

motor vehicle KBZ 767F to the 2nd Defendant and entered into a chattels mortgage agreement with her for purposes of securing their interest. It is stated that it was thus a mere financier.

3. The Trial Court, delivered judgment on 25th July 2023, in which it held the Defendants fully liable for the accident ,jointly and severally . The court awarded the Plaintiff **Kshs. 1,000,000/=** in general damages and **Kshs. 6,000/=** for special damages.

Memorandum of Appeal.

4. The Appellant was dissatisfied with the outcome Appeal and proffered this Appeal. The grounds of the Appeal are as follows:

1. *The learned magistrate erred in law and fact by apportioning liability to the Appellant, a mere financier.*

2. *The learned magistrate erred in law by pronouncing itself on the aspect of liability against the Appellant.*

3. *The learned magistrate ignored the evidence tendered by the Appellant.*

5. The Appellant prays that the Judgment of the trial court be set aside and the Respondents be ordered to pay costs for this appeal

6. The Appeal proceeded by way of written submissions

The Appellant's Submissions

7. The Appellant submits that while the logbook indicated joint ownership, it maintains that it was a mere financier of the 3rd Respondent for

the acquisition of Motor Vehicle Registration Number KBZ 767F.

8. The Appellant argues that the presumption of ownership under section 8 of the Traffic Act was rebutted by the evidence presented before court showing the existence of a financing or hire purchase agreement, dated 23rd May 2014; that a mere financier cannot be held vicariously liable as the motor vehicle is not ordinarily under its control. The Appellant has relied on cases of **National Industrial Credit Bank Ltd v Felister Mwende Musyimi & another (2016) eKLR** and **Securicor Kenya Ltd v Kyumba Holdings Ltd (2005)eKLR**, to buttress its submissions in this regard. The Appellant argued that it had handed over possession of the motor vehicle to the 3rd Respondent, had no control over it, and had only a financial interest to secure the loan.

1st Respondent's Submissions

9. The 1st Respondent has asserted that the Appellant was the registered owner, as proven by the Motor Vehicle Copy of Records (Exhibit 8), and that the Appellant failed to adduce evidence to the contrary.
10. The Respondent further submits that there was no evidence presented to court showing that the vehicle had been sold to the 2nd and 3rd respondents.
11. The respondent finally submits that if the Appeal succeeds then the judgment against the 2nd and 3rd respondents should be left to stand.

Analysis & Determination

12. This being a first appeal, this Court is obligated to reconsider, re-evaluate the evidence on record, and draw its own conclusions, while bearing in mind that the trial court had the advantage of seeing and hearing the witnesses testify. (see: ***Kiruga -versus- Kiruga & Another (1988) KLR 348***).

13. On the basis of the memorandum of Appeal, the lower court record and the submissions of the parties are of the view that the only issue for determination is whether the Appellant sufficiently rebutted the presumption contemplated under section 8 of the traffic Act

14. Section 8 of the Traffic Act, provides as follows:

“The person in whose name a vehicle is registered shall unless the contrary is proved be deemed to be the owner of the vehicle”. In effect, the section allows a person to prove that one is not the owner of a vehicle despite his or her name appearing in the registration Book or Register.

15. The Evidence of such rebuttal can be in any form. In the case of **Charles Nyambuto Mageto v Peter Njuguna Ngathi (2013) eKLR**, the court did recognize that various forms of ownership exist, and proof may be by way of oral or documentary evidence. Similarly, the **Court of Appeal in Securicor Kenya Ltd v Kyumba Holdings Ltd** (supra) held that if a vehicle’s actual possession passed to a third party, the finding of registered ownership alone may be incorrect.

16. In the instant case, the Motor Vehicle Copy of Records (Exhibit 8) confirmed joint registration of Motor Vehicle KBZ 767F in the names of the Appellant and the 3rd Respondent.
17. However, the Appellant produced a chattels mortgage Agreement showing that the 3rd respondent had transferred the vehicle to the Appellant by way of mortgage for purpose of securing the repayment of the loan of ksh. 5,663,052 granted to the 3rd respondent, under the then Chattels Mortgage transfer Act (now repealed).
18. Further the plaintiff told the court, both in his written and oral statement that the owner of the vehicle was the 2nd defendant who is the the 3rd respondent herein. Nowhere in both the written and oral evidence did the 1st respondent mentioned the Appellant as the owner. This corroborated the Appellant's witness (DW1) testimony to the effect that the Appellant had no control of the vehicle or was in its possession at the time, and that the vehicle was registered jointly for purposes of securing the interest of the Appellant as the financier.
19. In arriving at the finding that there was no proof of exemption from liability of the Appellant in the chattels mortgage , the trial court failed to appreciate the purpose of the chattels transfer agreements and the implied conditions provided under section 7 of the third schedule to the Act.
20. vicarious liability in the law of tort is not pegged on legal ownership but on an employer/employee or agent/principal

relationship. Emphasis is on who employed and controlled the tortfeasor.

21. Further there are several past decisions of the superior courts that affirm that where Financier's name appears on the registration to secure a loan or hire purchase agreement, and they have relinquished possession and control, they are generally not held vicariously liable.
22. In **National Industrial Credit Bank Ltd v Felister Mwende Musyimi & another** (supra), the Court held that where evidence shows a financing or hire purchase agreement, the fact of actual and beneficial ownership by the financier is effectively rebutted, and failure to strike out the financier from the suit is an error. This position was upheld in **Diamond Trust Bank Kenya Limited v Richard Mwangi Kamotho & 2 others** (supra) eKLR, where the court noted that a financier who hands over possession and has no interest in the business of the borrower, cannot be vicariously liable
23. In **Watu Nominees Company Limited v Ombaso & 3 others (2025) eKLR**, the Court explicitly stated that a party seeking to hold the financier liable is under a legal obligation to demonstrate that there was a further relationship between the financier and the borrower other than the mere financing of the purchase.
24. In the case of **National Industrial Credit Bank Ltd, Diamond Trust Bank (Supra)**, and **Watu Nominees Company Limited v Ombaso & 3 others (supra)**, the court found that the fact that the financier had no actual

possession, control, or beneficial interest in the business operation of the motor vehicle at the time of the accident is sufficient to rebut the presumption of ownership for liability purposes.

25. Am satisfied that the Appellant presented sufficient proof it had no control or management of the subject motor vehicle at the time of the accident. It could not therefore be held liable for the vicarious acts of the 2nd respondent.

26. The Appeal is merited, and the court hereby proceeds to make orders as follows:

a). Judgment of the lower court on liability, assessed at 100% against the defendants jointly and severally, is hereby set aside, and is substituted with a finding that judgment is entered for the 1st respondent wholly, as against the 2nd and 3rd Respondents, jointly and severally.

b). The costs of this Appeal and in the lower court are awarded to to the Appellant, as against the 1st respondent.

Dated, signed and delivered at Isiolo, this 3rd day of December 2025.

S.Chirchir

Judge.

In the presence of :

Roba Katelo- court Assistant

Mr. Andolo for the Appellant

Mr. Anampiu for the 1st Respondent

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