

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CIVIL APPEAL NO. E058 OF 2025

ARBAB TRADING CO. LTD.....
APPELLANT

=VERSUS=

JAELE IKALA MWAMBU.....1ST
RESPONDENT

JOHN PATRICK MAPEAH.....2ND
RESPONDENT

**(Being an appeal from the Judgment of Hon. C. K. Kithinji
(PM) in Voi CMCC No. E049 of 2021 delivered on 14th
December 2022)**

JUDGMENT

1. The 1st Respondent, **JAELE IKALA MWAMBU** was the Plaintiff in Voi CMCC No. E049 of 2021 where he sued the Appellant, **ARBAB TRADING CO. LTD** and the 2nd Respondent **JOHN PATRICK MAPEAH** seeking general damages for pain and suffering together with special damages of Kshs. 161,380/= for injuries the 1st Respondent

sustained on 23rd November 2020 when the 1st Respondent was travelling on motor cycle Registration No. KMEP 523Z as a pillion passenger when the said motor cycle was hit by motor vehicle registration No. KCW 156U.

2. The Appellant who was the 1st Defendant filed a statement of defence dated 8th of June 2021 denying the claim and stating that it had sold the MV to one REHEMA BAKARI ALI at all material times of the suit.
3. The 2nd Respondent **JOHN PATRICK MAPEAH** did not enter appearance or file a defence.
4. The 1st Respondent's case was that motor vehicle registration No. KCW 156U was overtaking at a high speed when it hit the motor cycle registration No. KMEP 523Z.
5. The 1st Respondent sustained the following injuries:-
 - (i) Fracture of the right tibia.**
 - (ii) Fracture of the right femur.**
 - (iii) Deep cut wound medial aspect right leg.**
6. The trial court found that the copy of records from NTSA showed that the Appellant was the owner of motor vehicle registration No. KCW 156U. The trial court held the Appellant 100% liable and assessed damages as follows:-

(i) General damages for pain and suffering Kshs.

600,000/=

(ii) Special damages Kshs.

161,380/=

Total Kshs.

761,380/=

7. The Appellant has appealed against the judgment on the following grounds:-

(i) THAT the learned trial Magistrate erred in law and fact by issuing a mandatory order compelling the Appellants jointly and severally TO PAY a decretal sum of Kshs. 829,904. to the Respondent in Voi Magistrate's Court Case No. 049 of 2021 JAEL IKALA MWAMBINGU -Versus- JOHN PATRICK MAPEAH AND ARBAB TRADING CO. LIMITED.

(ii) THAT the learned Magistrate erred in law and fact in failing to properly consider and evaluate the pleadings as placed on record by the parties thereby arriving at a wrong decision.

(iii) THAT the learned Magistrate erred in law and fact in failing to properly consider and evaluate the evidence as placed on record by the parties thereby arriving at a wrong decision.

(iv) THAT the trial learned Magistrate erred law and fact in failing to correctly apply the law on the required standard of proof, thereby arriving at a wrong decision.

(v) THAT the learned trial Magistrate erred in law and in fact failing to consider the submissions on record on behalf of the parties thereby arriving at a wrong decision.

(vi) THAT the learned Magistrate misapprehended the evidence and took into account extraneous issues and so arrived at a decision that was erroneous and not sustainable in law.

8. The parties filed written submissions as follows; The Appellant, Arbab Trading Company Limited, in its submissions stated that it has appealed against the judgment of the Principal Magistrate delivered on 14 December 2022.

9. The main contention in the appeal is that the trial court erred fundamentally in finding the Appellant jointly and severally liable for the Respondent's injuries.
10. The judgment was premised on an incorrect finding that the Appellant was the owner of motor vehicle KCW 156U and that the driver was its authorized agent, thereby attracting vicarious liability.
11. The Appellant submits that the trial magistrate misdirected himself on the law and evidence concerning ownership.
12. While Section 8 of the Traffic Act creates a rebuttable presumption of ownership based on registration, it is not conclusive.
13. The Appellant expressly rebutted this presumption through its pleadings and evidence, demonstrating that the vehicle had been sold to Rehema Bakari Ali under a Sale Agreement dated 1 November 2019.
14. The retention of registration was merely a financial security measure, a common practice in its trade, and did not equate to retained beneficial ownership or control.

15. The court failed to properly evaluate this uncontroverted documentary evidence and instead treated the NTSA records as definitive proof, a clear error in law.
16. Furthermore, the finding of vicarious liability was unsustainable. There was a complete absence of evidence to establish that the driver, John Patrick Mapeah, was an employee, servant, or agent of the Appellant acting within the course of his duties at the time of the accident.
17. The settled legal principle is that vicarious liability requires proof of such a relationship and that the tort was committed in the scope of employment.
18. The Appellant had divested all possession and control of the vehicle to the purchaser, and the Respondent adduced no evidence to connect the driver's actions to the Appellant's business. Imposing liability without this fundamental link was a legal error.
19. Additionally, the Appellant argues that the trial court erred by effectively penalizing it for the procedural oversight of its counsel.
20. The defence, together with supporting documents, was properly filed.

21. The court's dismissal of this defence merely because counsel did not lead oral testimony elevated form over substance, contrary to the overriding objective of the law and Article 159(2)(d) of the Constitution, which mandates that justice be administered without undue regard to procedural technicalities.
22. A litigant should not suffer for the inadvertent mistakes of its advocate where, as here, the substantive defence and evidence were already on record.
23. In conclusion, the trial judgment was founded on a misapprehension of the evidence and a misapplication of legal principles governing ownership and vicarious liability.
24. The Appellant prays that this Court, in exercising its appellate jurisdiction to re-evaluate the evidence, allows the appeal, sets aside the judgment, and substitutes it with an order dismissing the suit against the Appellant with costs both here and in the court below.
25. The Respondents did not file any submissions in the appeal.

26. The issues for determination in this appeal are as follows;

- (i) Whether the learned trial magistrate erred in law and fact in finding that the Appellant was the**

legal owner of motor vehicle registration number KCW 156U for the purposes of attracting liability under the law, despite the Appellant's claim of having sold the vehicle;

- (ii) Whether the learned trial magistrate erred in law in holding the Appellant vicariously liable for the actions of the driver, the 2nd Respondent, in the absence of evidence establishing a relationship of employer and employee or principal and agent;**
- (iii) Whether the trial court erred in its treatment of the Appellant's pleaded defence and the evidence placed before it.**

27. This court has considered the record of appeal, the grounds advanced, and the written submissions.

28. The central pillar of the trial court's decision was its reliance on the copy of records from the National Transport and Safety Authority (NTSA) which indicated the Appellant as the registered owner of motor vehicle KCW 156U.

29. While this was a prima facie valid starting point, the trial court fell into error by treating this registration as conclusive proof of ownership for liability purposes, without conducting a proper evaluation of the evidence tendered to rebut the statutory presumption.

30. The law governing this matter is clear. Section 8 of the Traffic Act (Cap 403, Laws of Kenya) establishes a rebuttable

presumption that the person in whose name a vehicle is registered is its owner.

31. However, this presumption is not absolute and can be displaced by credible evidence showing a transfer of beneficial interest.

32. The register is not conclusive evidence of ownership where a party demonstrates a valid sale and transfer of possession.

33. In the instant case, the Appellant specifically pleaded and produced before the trial court a Sale Agreement dated 1st November 2019, showing an outright sale of the subject vehicle to one Rehema Bakari Ali.

34. This documentary evidence was uncontroverted, as the Respondents did not challenge its authenticity or adduce evidence to show the sale was a sham.

35. The trial magistrate's failure to properly analyze this evidence and to consider the legal consequence of a sale where registration is retained merely as security, as was the Appellant's explained commercial practice, constituted a misapprehension of the evidence and a misapplication of the law.

36. A vendor who has sold a vehicle and parted with possession, notwithstanding retained registration, ceases to be the beneficial owner and should not be held liable for accidents occurring thereafter, unless a compelling reason tied to the transaction itself is shown.

37. On the second issue, the finding of vicarious liability against the Appellant was equally unsustainable.

38. Vicarious liability is a doctrine that holds an employer or principal liable for the torts of an employee or agent committed in the course of employment or agency.

39. The Respondent bore the burden of proving, on a balance of probabilities, that at the time of the accident, the driver, John Patrick Mapeah, was an employee, servant, or agent of the Appellant and was acting within the scope of that engagement.

40. The record is devoid of any such evidence. There was no proof of employment, remuneration, or control by the Appellant over the driver.

41. The trial court inferred agency from ownership, but having erred on the ownership finding, that inference collapses.

42. In the absence of this foundational link, imposing vicarious liability was a clear error in law, and liability cannot attach merely from registration without proof of the driver's connection to the registered owner.
43. Regarding the Appellant's complaint that its defence was disregarded due to its counsel's failure to lead oral evidence, this court observes that while the trial court has discretion in managing proceedings, the overriding objective mandates substantive justice over technicalities.
44. Article 159(2)(d) of the Constitution and the Civil Procedure Rules obligate courts to administer justice without undue regard to procedural technicalities.
45. The defence, along with the pivotal Sale Agreement, was duly filed and formed part of the record.
46. The trial court had a duty to consider this material, even in the absence of oral amplification, especially where the opposing party did not challenge its veracity.
47. The court's effective dismissal of this documented defence elevated form over substance.
48. Consequently, upon re-evaluation of the evidence as is the duty of this first appellate court as set out in **Selle v**

Associated Motor Boat Co. Ltd [1968] EA 123, I find that the Appellant successfully rebutted the presumption of ownership under Section 8 of the Traffic Act through the uncontested Sale Agreement.

49. The beneficial ownership, possession, and control of the vehicle had passed to the purchaser prior to the accident.

50. Furthermore, no basis was laid for holding the Appellant vicariously liable for the actions of the driver.

51. The trial court's judgment was therefore founded on errors in the appraisal of both the evidence and the applicable legal principles.

52. The appeal is hereby allowed. The judgment of the Principal Magistrate in Voi CMCC No. E049 of 2021 delivered on 14th December 2022, insofar as it relates to the Appellant, ARBAB TRADING CO. LTD, is set aside and substituted with an order dismissing the suit against the Appellant.

53. However, the judgment against the 2nd Respondent still stands.

54. The Appellant shall have the costs of this appeal and the costs incurred in the court below.

**Dated, signed and delivered this 29th January 2026
virtually via Microsoft Teams at Voi.**

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Millicent/Mabishi

..... **for the Appellant**

..... **for the Respondents**

ORIGINAL