

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
[MILIMANI LAW COURTS]
THE CIVIL APPELLATE DIVISION
(Coram: A.C. Mrima, J.)
CIVIL APPEAL.NO. E198 OF 2025

-between-

SIMON MBIRUA KARANGU.....
APPELLANT

-versus-

EMMANUEL SIMIYU WETANGULA.....1st
RESPONDENT

STEPHEN MUGO MWANGI.....2nd
RESPONDENT

*(Being an appeal from the judgment of Hon. Becky Cheloti Mulemia (Principal Magistrate) delivered on
14th February 2025 in Nairobi CMCC No. 145 of 2018)*

JUDGMENT

1. *Emmanuel Simiyu Wetangula*, the 1st Respondent herein, sued *Simon Mbirua Karangu* and *Stephen Mugo Mwangi*, the Appellant and 2nd Respondent herein respectively, under the doctrine of subrogation at the Chief Magistrate’s Court in *Nairobi [Milimani] Civil Suit No.145 of 2018* (hereinafter referred to as ‘**the suit**’) for judgment in the sum of Kshs. 518,338/=, costs and interests.

2. In the Complaint dated 16th January 2018, the 1st Respondent averred that on or about 17th January 2015, while driving motor vehicle registration number KBW 650U along Kenyatta Avenue near Serena Hotel Nairobi, the Appellant’s driver recklessly drove Motor Vehicle Registration Number KBW 918K that rammmed onto his car, thereby causing an accident and resultant damage. The 1st Respondent claimed that he was entitled to recover the expenses and costs arising out of the accident and which he expended to repair his motor vehicle from the Appellant and the 2nd Respondent as compensation to Jubilee Insurance Company Limited who had compensated him as a result of the accident.

The Appellant was the insured/beneficial user and owner of Motor Vehicle KBW 918K while the 2nd Respondent was the registered owner of the said motor vehicle.

3. The claim was strenuously opposed by the Appellant who filed a Statement of Defence dated 19th April 2021 denying liability for causing the accident. The 2nd Respondent did not participate in the proceedings. The suit proceeded by way of oral evidence with the 1st Respondent calling four witnesses while the Appellant called one witness. At the close of parties' cases, the trial Court rendered its judgment on 14th February 2025 in favour of the 1st Respondent in the following terms: -

- a) *Liability - the appellant and 2nd Defendant found severally and jointly liable;*
- b) *Kshs.518,338/=;*
- c) *Interest on (b) above from the date of judgement until payment in full; and*
- d) *Costs of the suit.*

4. Aggrieved by the said decision, the Appellant filed the instant appeal *vide* a Memorandum of Appeal dated 21st February 2025 and proffered the following grounds: -

- 1) ***THAT*** *the Learned Trial Magistrate erred in law and in fact by holding the appellant jointly and severally liable alongside the 2nd Respondent herein for the accident that occurred on 17th January 2015 despite the overwhelming evidence to the contrary having been adduced at the hearing.*
- 2) ***THAT*** *the leaned trial magistrate erred in law and in fact by entering a liability finding jointly and severally against both defendants, yet it came out during the hearing that*

the appellant was never the owner of the suit vehicle at the date of the accident.

- 3) ***THAT*** *the learned Magistrate erred in law and in fact by refusing, declining and or avoiding altogether, to make a determination on the relevance of the ownership of the suit vehicle on the Appellant's part to the liability finding she reached vis-à-vis, causation.*
- 4) ***THAT*** *consequently, the Learned Trial Magistrate erred in law and in fact in making a quantum determination and finding as against the Appellant.*
- 5) ***THAT*** *learned trial Magistrate erred in law by applying the wrong principles and misapprehending the evidence and as a result arrived at an unjustifiable finding in the circumstances.*
- 6) ***THAT*** *the Learned Trial Magistrate erred in law by failing to appreciate the evidence presented by the Appellant and further, by failing to apply her mind to the weighty issues drawn vide the evidence, oral testimonies, cross-examination and submissions of all parties and thus, reached at a cursory and perfunctory finding that is entirely unfair.*

5. It was upon these grounds that the appellant urged this Court to set aside the trial Court's judgment and to dismiss the 1st Respondent's claim with costs.
6. Pursuant to the directions of this Court, the appeal was canvassed by way of written submissions. The Appellant's submissions were dated 15th September 2025 while the 1st Respondent's submissions were dated 9th October 2025. As stated elsewhere above, the 2nd Respondent did not participate in this appeal. The contents of the parties' submissions shall be ingrained in the latter part of this decision.
7. This being a first appeal, the Court's role is well cut out in law. In ***Selle and Another vs Associated Motor Boat Company Ltd & Others*** [1968] 1EA 123, the role was discussed as follows: -

...this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.

8. This Court further appreciates the settled principle in ***Mwanasokoni vs Kenya Bus Service Ltd*** (1982-88)1KAR 78 and ***Kiruga vs Kiruga and Another*** that an appellate Court will not ordinarily interfere with findings of fact by the trial Court unless they were based on no evidence at all, or on a misapprehension of it or the Court is shown demonstrably to have acted on wrong principles in reaching the findings. [See also ***Gitobu Imanyara & 2 Others vs Attorney General [2016] eKLR*** and ***Sugut v Jemutai & 3 Others*** (Civil Appeal 110 of 2018) [2023] KECA 202 (KLR) (17 February 2023) (Judgment)].
9. Having perused the record, parties' submissions and the decisions referred thereto, the main issue that stands out for determination is on the liability of the Appellant as to whether he was the owner and/ or driver of Motor Vehicle Registration No. KBW 918K at the time of the accident, hence, liable.
10. On this issue, there is no contention that the accident in issue occurred on **17th January 2015**. The Appellant argued that as at that time, he was not the owner of the subject motor vehicle Registration since he bought it on **25th February 2015** from the 2nd Respondent. He referred to the Sale Agreement dated 25th February 2015 and the payments made thereafter to confirm that the Appellant bought the motor vehicle way after the accident had occurred. *Bernard Kalei*, who was *PW4*, testified that he was an investigator and confirmed that as at 17th January 2015, the owner of the subject Motor vehicle was the 2nd Respondent since

9th September 2013. The registration details were, however, changed on 30th March 2015 to reflect the Appellant as the owner.

11. In his evidence, the Appellant emphasized that at the time he bought the motor vehicle, he did not know that it had been involved in an accident. According to the Police Abstract dated 20th January 2015, the driver of the subject Motor Vehicle was blamed for the accident. It captured the owner of the said Motor Vehicle as at that time as the 2nd Respondent. Further, the Registration Certificate dated 9th September 2013 confirmed that the 2nd Respondent and Equity Bank Limited were the joint owners of the motor vehicle and as at 4th March 2015, *Equity Bank Limited* had discharged the joint ownership in favour of the 2nd Respondent. This means that as at 4th March 2015, the 2nd Defendant was the only registered owner of the motor vehicle.
12. Having reviewed the evidence and the law, this Court is satisfied that the trial Learned Magistrate, with utmost respect, erred in finding the Appellant liable for the accident. The attendant evidence on record affirms that it was the 2nd Respondent who was the owner of the subject vehicle as at the time of the accident and that, the Appellant only bought the vehicle after the accident. There is no evidence that the Appellant was in any way involved in the affairs of the subject vehicle prior to or as at the time of the accident.
13. It is on the foregoing that this Court finds that the Appellant was wrongly found culpable. Instead, it was the 2nd Respondent who owned the vehicle and as such he ought to wholly satisfy the judgment. The upshot, therefore, is that the appeal is merited and this Court hereby makes the following final orders: -

a) The appeal be and is hereby allowed with costs and the part of the trial Court's judgment dated 14th February 2025 in Nairobi [Milimani] Civil

***Suit No.145 of 2018* finding the Appellant liable is hereby set aside.**

- b) For clarity, the 2nd Respondent, *Stephen Mugo Mwangi*, shall be solely and wholly liable to satisfy the judgment in *Nairobi [Milimani] Civil Suit No.145 of 2018*.**
- c) Costs of the appeal are hereby assessed at Kshs. 40,000/= [Forty Thousand Only] to be borne by the 2nd Respondent.**

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 29th day of January, 2026.

**A. C. MRIMA
JUDGE**

Judgment virtually delivered in the presence of:

Ms Manyara, Learned Counsel for the Appellant.

Ms Wambugu, Learned Counsel for the 1st Respondent.

Michael/Amina - Court Assistants.