

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA NAIROBI**  
**CIVIL APPELLATE DIVISION**  
**HCCA E311 OF 2024**

**KENYA BUS SERVICE MANAGEMENT .....  
APPELLANT**

**VERSUS**

**HASSAN KHALAKHE ROBA .....1<sup>ST</sup>  
RESPONDENT**

**MOSES MBURU MWANGI.....2<sup>ND</sup>  
RESPONDENT**

**SIMON MWANGI KANYI .....3<sup>RD</sup>  
RESPONDENT**

**JUDGMENT**

- 1.** This is an appeal against the decision of the lower court that found the Appellant and his fellow defendants in the lower court matter liable jointly and severally. The key and most probably the only issue in determining this appeal is whether the Appellant ought not to have been found liable jointly with others. There is already an interlocutory judgement against the 1st and 2nd defendant. This therefore requires that I look into the evidence by the Appellant in trying to absolve itself from liability.
  
- 2.** The second defendant produced a franchise agreement with the 1st Defendant to prove that the 1st defendant was only

to use the colors etc of the company and that the company would not be liable in case of an accident. This franchise agreement was signed after the accident and so it was disregarded by the lower Court. Along with this document, the Appellant produced as an exhibit an application for franchise by the 2nd respondent dated the 26th day of April 2012, a letter accepting his application dated the 30th day of April 2013 and a log book showing the motor vehicle was owned by the second respondent. The application and the acceptance letter came before the accident.

- 3.** It appears that the magistrate disregarded this evidence. Franchise agreements are standard and it is known what they entail. The MOU produced by the Appellant merely acted as a sample albeit the fact that it was signed after the accident. The trial magistrate's decision was based on the fact that the franchise agreement came after the accident but did not address the issue of who owned the vehicle and who was in control of it. The issue as to who was in actual control of the vehicle cannot be inferred by the color of the vehicle, how it has been branded, trademark, logo etc. but by the evidence of the owner himself and in this case interlocutory judgement was entered against the owner. If liability can visit the owner of a logo or brand on the body of a motor vehicles, then a Pandora's box would definitely be opened. One would then only need to paint a certain brand like "safaricom" on his vehicle in order to rope in Safaricom

into the entanglement of liability. The search record is a strong indication as to who owned the vehicle if measured against police abstract.

4. The conclusion above is that the Appellant did not own the motor vehicle nor was it in control of it at the time of the accident. The lower court judgement is set aside and replaced with my finding that the 1st and 3rd Defendants shall be liable jointly and severally. Consequently, they are both condemned to pay the costs of this appeal severally and jointly

**DATED, DELIVERED VIRTUALLY AND SIGNED ON THIS 16<sup>TH</sup>  
DAY OF FEBRUARY 2026.**

**HON L P KASSAN**

**JUDGE**

**In the presence of;**

**Njiru for Appellant**

**Njari for 1<sup>st</sup> Respondent**

**Carol - Court Assistant**