

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E1425 OF 2023

WALTER OTIENO ONYANGO.....APPELLANT

VERSUS

WILLIAM OJAH ADEDE.....1ST RESPONDENT

ERIC GEORGE MWOMORE.....2ND RESPONDENT

**(Appeal from the judgement and decree of Hon. R. Liluma,
Senior Resident Magistrate, SRM, delivered on 17th November
2023, in Nairobi MCCC NO. 2409 of 2019)**

JUDGEMENT

1. The suit, at the trial court, was by the 1st respondent against the appellant and the 2nd respondent. The 1st respondent sought to recover a motor vehicle, registration mark and number KBL 140K, from the appellant and the 2nd respondent, or, in the alternative, the monetary value of the said vehicle, plus loss of user, costs and interests. He claimed that the 2 had entered into a loan agreement, using his car as collateral, yet he did not know either of them. Then the appellant caused the vehicle to be transferred to his name, and removed from a garage.
2. The appellant and the 2nd respondent resisted the claim. The appellant claimed that he had transacted with a sister of the 1st respondent and her boyfriend, who borrowed money from him, and offered the vehicle as security. He alleged default, hence, under the contract, he became entitled to take possession of the vehicle, and transfer it to his name. In his response, he denied the averments in the plaint and counterclaimed, against the 1st respondent and her sister, and the Attorney General. He accused them of causing him to be arrested by the police, on allegations of fraud. He

sought special damages of Kshs. 112,000.00, general damages for unlawful arrest and malicious detention, exemplary and punitive damages, costs and interests.

3. A trial was conducted, the 1st respondent testified and called his sister as his witness. The 2nd respondent did not testify. His advocate purported to adopt his defence, and close the defence case. The appellant testified, and did not call a witness. Judgment was delivered, on 17th November 2023. The claim was allowed against the appellant, except for loss of user, which was dismissed.
4. The appellant was aggrieved, hence the appeal. The grounds turned on the trial erring in finding the appellant had no valid claim over the motor vehicle; that the appellant failed to prove that he paid Kshs. 270,000.00 to the garage; failing to find that the sister of the 1st respondent was a beneficial owner of the vehicle; the finding that the vehicle was illegally or unlawfully transferred to his name; failure to apply the cardinal principles of law; and problems with the evaluation of the evidence.
5. Directions were taken, on 2nd May 2025, for disposal of the appeal, by way of written submissions. I have only seen written submissions by the appellant, which I have read, and considered.
6. In my view, there are only 2 issues for determination, whether there was a valid sale of the motor vehicle by the 1st respondent to her sister, and by his sister to the appellant; and whether the transfer and registration of the vehicle, in the name of the appellant, was done properly or within the law.
7. It was not disputed that the vehicle was originally in the name of the 1st respondent, before it ended up registered in

the name of the appellant, at least going by the testimonies, for officers from the National Transport and Safety Authority (NTSA), the State agency responsible for registration of motor vehicles, did not testify on the status of the registration of the said vehicle. The transfer moved from the 1st respondent to the appellant, yet the 2 of them never transacted or dealt with each other. There was a person in between, a sister of the 1st respondent. The 1st respondent alleged that he had sold the vehicle to the sister, and it was while it was in the possession of his sister that the appellant came into the picture. The appellant did not buy the vehicle, but it got to his possession and ownership on the basis of a loan agreement that was allegedly entered into by the appellant and the 1st respondent, yet the 2 had not met or transacted. The vehicle was offered as security. It emerged that it was the sister of the 1st respondent and her husband or boyfriend, the 2nd respondent, who were privy to that loan agreement. The 1st respondent did not sign it, although his name was on it, as the principal borrower, ostensibly as he was the registered owner of the motor vehicle.

8. The original trial records were not availed, and I am relying on the record of appeal. I have no way of telling whether the same has all the material that was before the trial court, but I shall do my best to determine the appeal based on what is before me.
9. The transfer of the vehicle, to the name of the appellant, was on the basis of a contract that the 1st respondent was not privy to, although it was executed in his name. The transfer rode on an invalid contract, for lack of privity. The 1st respondent did not cede his right to his car in that contract, because he did not sign it. It was executed by others, behind his back. Transfer of the vehicle, under those circumstances, could not lead to a valid registration of the same, and the trial court was justified to conclude that that transaction was

invalid. As the 1st respondent was registered as the owner of the vehicle, no valid transfer of the vehicle could be done without involving him.

10. On the matter of the sister of the 1st respondent being a beneficial owner of the vehicle, I do note that the 1st respondent had testified that he had transacted with her, by selling the vehicle to her. She paid a deposit, leaving a balance. His sister testified was PW2. She conceded to the transaction, inclusive of the fact that she had not paid for the vehicle in full, but had possession, of the registration booklet. She conceded to borrowing money from appellant, using the vehicle as collateral. She renounced the agreement which led to the transfer of the vehicle.

11. Was she beneficial owner of the vehicle? Yes, according to the decision that the appellant has cited. She had use and control of the vehicle. She could be held liable, in negligence, for damage caused by the use of the vehicle. Could she validly sell or dispose of it, without notice to the registered or legal owner? No. Beneficial ownership only entitles the beneficial owner to use and possession, but not disposal. The right to dispose of remains with the legal or registered owner, for only that legal owner can validly transfer registration to the new owner. No evidence was produced, of a transfer executed by the respondent, in favour of either the PW2 or the appellant, which would have facilitated a legal transfer of the vehicle to the appellant.

12. Before I conclude this judgment, let me first discuss something noted in the proceedings in the trial court. The Advocate, for the 2nd respondent, purported to adopt the defence, as the evidence for the 2nd respondent. Pleadings are not evidence. They are not available for adoption as evidence. What can be adopted, in that manner, with the concurrence of all the parties in the matter, is the witness

statement. The witness statement is meant to be evidence, so long as it is adopted as such by the maker, after taking the oath at trial, or by consent of the other partes. The purported adoption of the defence was of no effect.

13. In view of what I have discussed above, it is my finding and holding that the appeal herein has no merit. It is for dismissal, and I hereby dismiss it, with costs. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN
CHAMBERS, AT BUSIA ON THIS 10TH DAY OF FEBRUARY
2026.**

**WM MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant, Busia.

Ms. Caroline, Court Assistant, Milimani, Nairobi.

Advocates

Mr. Ambala, instructed y Odindo & Company, Advocates for the appellant.

Ms. Ochieng, instructed by Mungu Kimetto & Company, Advocates by the 1st appellant.