REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT THIKA

CIVIL APPEAL NUMBER **E299** OF 2024

PETER KARERU……...……..……...……APPELLANT

-VERSUS-

JOAN WANYURU KAMUNYU WAKORI.……1ST RESPONDENT
DUNCAN KIRWA KEMBOI……..…….2ND RESPONDENT

***(Being an appeal from judgment and decree in Small Claims Court at Ruiru***

***(Hon. J.K. Tawai RM) claim number E326 of 2024 dated 16-09-2024)***

## JUDGMENT

The claim before the trial court was for Kshs 228,880.00 being special damages suffered by the 1st respondent's insurer who had incurred the said amount in restoring and repairing her motor vehicle registration number KBJ 683R. The vehicle had been damaged in an accident which occurred on 21-06-2023 involving the said motor vehicle and motor vehicle registration number KBD 599D which was said to have been registered to the 2nd respondent. It was a claim by the insurance company through the 1st respondent against the 2nd respondent pursuant the principle of subrogation.

In his response to the claim, the 2nd respondent denied knowledge of the accident and pleaded that he was not aware of the accident as he had bought motor vehicle registration number KBD 599D from the appellant on 16-01-2024 which was long after the accident. On that basis, the 1st respondent proceeded to take out third-party proceedings against the appellant. The trial court found for the 1st respondent holding that the appellant was liable as he was at the time of the accident in ownership of KBD 599D.

Being aggrieved by the judgment, the appellant has approached this court pleading that the trial court's decision be overturned on the following grounds;

1. *The learned trial Magistrate erred in law and in fact by finding the third party 100 per cent liable for the accident whereas he was not the driver, registered and/or beneficial owner of the said motor vehicle.*

2. *The learned trial Magistrate erred in law and in fact by failing to consider that neither the 1st respondent nor the 2nd respondent proved that the appellant was the registered and or beneficial owner of motor vehicle registration KBD 599D.*

3. *The learned trial Magistrate erred in law and in fact by failing to consider that the appellant was a mere agent who worked at a yard in Ruiru of the then beneficial owner and the authority to sell adduced in the appellant's bundle of documents.*

4. *The learned trial Magistrate erred in law and in fact by failing to consider the evidence adduced indicating that the proceeds realized by the third party after the sale of motor vehicle KBD 599D, were immediately channeled to the principal/instructing party, James Gikonyo Muriithi.*

5. *The learned trial Magistrate erred in law and in fact by failing to consider the evidence adduced by the police officer who testified during the hearing that the driver of the blamed motor vehicle was one Florence Elizabeth Nganga who is the wife to the then registered owner of the said motor vehicle.*

6. *The leaned trial Magistrate erred in law and in fact by entertaining the matter by allowing the doctrine of subrogation without shred of evidence demonstrating the 1st respondent consenting to filing of the suit.*

7. *The learned trial Magistrate erred in law and in fact by failing to analyze the evidence presented by the appellant in its entirety and submissions filed thereto and in essence arriving at a wrong conclusion.*

8. *The learned trial Magistrate erred in law and in fact by finding that the 1st respondent is entitled to costs.*

On 2-04-2025, the parties were ordered to file submissions and when the matter appeared before me on 11-09-2025, Mr. Gakunju for the appellant told the court that he had complied and that the respondents had also served him with their submissions and in reliance on that information, I reserved the matter for judgment. However, looking at the physical court file, the only submissions in it are by the appellant which are dated 6th August 2025 and received in court on 2-09-2025. The case tracking system does not have any submissions from any of parties including the appellant. The last document filed therein is a letter by the appellant's advocates dated 28-10-2024 and filed the same date which was asking for a mention date. Despite this, I will proceed to write my judgment based on the record of appeal and the hard copy of the appellant's submissions.

This being an appeal from the Small Claims Court, the jurisdiction of this court is limited to matters of law. Having gone through the record of appeal, I find that the majority of the issues raised by the appellant turn around matters of facts. It is trite that where the law limits appellate jurisdiction to matters of law only, the appellate court can only interfere with the decision of the trial court on matters of facts where it is shown that the trial court ignored material and clear

evidence or the decision thereof is perverse or a reasonable court of law or tribunal properly applying its mind would not reach such a decision. The Court of Appeal held in ***M'Riungu - v- Republic, [1983] KLR 455***, that;

> *"Where a right of appeal is confined to question of law, an appellate court has loyalty to accept the findings of fact of the lower court(s) and resist the temptation to treat findings of fact as holdings of fact and law and it should not interfere with the decision of the trial court or the first appellate court unless it is apparent that on evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding that the decision is bad in law".*

The Court of Appeal while addressing the same question in ***Charles Kipkoech Leting v Express (K) Ltd & another [2018] KECA 187 (KLR),*** held as follows;

> *'This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by the Court. See* ***Maina versus Mugiria [1983] KLR 78, Kenya Breweries Ltd versus Godfrey Odongo, Civil Appeal No. 127 of 2007,*** *and* ***Stanley N. Muriithi & Another versus Bernard Munene Ithiga [2016] eKLR,*** *for the holdings* inter alia *that, on a second appeal, the Court confines itself to matters of law only, unless it is shown that the Courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. See also the English case of* ***Martin versus Glywed Distributors Ltd (t/a MBS Fastenings) 1983 ICR 511*** *where in, it was held* inter alia *that, where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on*

*the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law.'*

I have gone through the judgment of the trial court and it is clear to me that she analyzed all the facts and evidence produced by the parties before she came to the conclusion that the appellant was liable for the damages. I do not see anything perverse about the judgment neither can I see any material evidence that can be said to have been ignored. The appellant has not identified any such evidence to me.

In my view, the appellant has raised only one issue which is on matter of law. This is whether there was privity of contract between him and the 2nd respondent in respect of the motor vehicle KBD 599D. Tied to this issue is the question whether the contract would make the appellant liable for the accident in issue.

There are several common grounds between the parties which are that; the accident in question occurred between the two vehicles, the 1st respondent vehicle suffered damage resulting to a loss of Kshs 228,880.00, the amount awarded in the judgment was rightly due to the appellant, motor vehicle registration number KBD 599D was liable for the damage and loss and that the 2nd respondent had bought the said motor vehicle after the accident. The main issue is whether the appellant was the party liable.

The summary of what I gather from the evidence produced before the trial court in relation to liability against the appellant is as follows. The 2nd respondent bought motor vehicle KBD 599D on 16th January 2024 as per agreement produced by both himself and the appellant. The appellant testified that he was an agent of one James Gikonyo Muriithi and not the owner of KBD 599D but the 2nd respondent insisted that this fact was never disclosed to him at the time

the agreement between him and the appellant was entered into. On his side, the appellant produced an authority to sell the motor vehicle which was shown to have been signed by the said James Gikonyo Muriithi. The purchase price was paid by the 2nd respondent to the appellant's account at the Cooperative Bank. The appellant testified further that the purchase price was transferred to James Gikonyo Muriithi on the same date of the agreement.

The appellant has submitted that he was merely an agent of James Gikonyo Muriithi but he admits that he signed the agreement between him and the 2nd respondent. The agreement clearly shows that the seller was the appellant and the buyer was the 2nd respondent. It shows in clause 3 that the seller guaranteed that he was the true and lawful owner of the vehicle. Clause 9 is clear that the payment was to be paid by transfer to a Cooperative Bank account. Although the account number or holder is not disclosed in this clause, it is safe to deduce that it referred to the appellant's because the price was paid to his account in the said bank while the authority to sell indicated an account in Family Bank.

In my view, the trial court was right to believe and hold that the 2nd respondent was not told of the alleged agency at the time of the sale. It is actually doubtful that the authority to sell was ever brought to his attention until the same was filed in court. If it were, the same would have been captured in the agreement. The 2nd respondent was not privy to the authority to sell and the only enforceable instrument between him and the appellant was the agreement for sale. All the clauses in the agreement leads one reading it to understand the appellant as the owner of the motor vehicle.

All the above factors taken together leads to the inevitable conclusion that the appellant presented himself to the 2nd respondent as the owner of the vehicle and he cannot run away from that fact. Not even the transfer of the money to James

Gikonyo Muriithi as shown to have been done by the appellant would vitiate any of the firm and binding clauses in the agreement. If there was a contract between the appellant and James Gikonyo Muriithi, then the right person to pursue James should be the appellant and not the 2nd respondent or third parties. I therefore hold that the issue for determination I have identified above is answered to the affirmative. There was an enforceable contract between the appellant and the 2nd respondent and by virtue of the same, the appellant is liable to compensate the 1st respondent's insurer under the principle of subrogation.

In view of the above discussion, I find no merits in this appeal and the same is dismissed with costs to the respondents.

Dated signed and delivered at Nairobi this **27th** day of **February** 2026.

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in absence of the parties.