

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E055 OF 2025

JOHN NJUGUNA NGUGI.....
APPELLANT

VERSUS

VERONICA MUGESHI WAWERU.....1ST
RESPONDENT

FRANCIS NDIRANGU NDEGWA.....2ND
RESPONDENT

(Being an appeal from the judgment and decree of the Small Claims Court at Thika (Hon Lemayan Robert Rotich) made on the 5th day of June 2024 in Thika Small Claims Court number SCCC/ E1464 of 2023)

JUDGEMENT

1. By a Statement of Claim dated 25th November 2023, the 1st Respondent moved the trial court seeking compensation for loss or damage to property which occurred on or about the 30th day of November 2020 valued at Kshs. 795,048.
2. It was averred that the 1st Respondent was the registered and insured owner of motor vehicle registration number KCP 036F, the appellant the beneficial owner of motor vehicle registration number KAS 132 C and the 2nd Respondent the registered owner of KAS 132C. On or about 30th November 2020, the agent of the appellant and the 2nd Respondent negligently controlled motor vehicle registration KAS 132 while driving along Kenyatta-Gatundu Road at Muram trading centre hit motor vehicle KCP 036F from the front thereby extensively damaging it.
3. The 1st Respondent's insurer incurred loss in repairing the motor vehicle KCP 036F at Ksh. 795,048. The 1st Appellant

thus demanded for the refund and compensation of the monies spent under the doctrine of subrogation.

4. The appellant denied the claim on the basis that he has never been the driver of motor vehicle KAS 132 C but was instead employed by John Mwangi as driver of motor vehicle KCF 208Y Mercedes Axor and was, on the day of the accident, on duty transporting cooking oil and soap to the Republic of Rwanda. Neither has he ever met or known the 2nd Respondent.
5. The matter proceeded by way of documentary evidence pursuant to Section 30 of the Small Claims Court Act.
6. Judgment was entered for the 1st Respondent against the appellant and the 2nd Respondent for the sum of Kshs. 682,048.00 plus interest from date of filing the suit. The court relied on **Jotham Mugalo v Telkom Ltd Kisumu HCCC No. 166 of 2001** while finding that mere denial of a fact without proof is not the basis for rejecting a claim. Therefore, the appellant had an insurable interest in the motor vehicle.
7. On liability, the trial court found that the driver of motor vehicle KAS 132C was to blame for the accident as per the police abstract. Thus, the appellant and the 2nd Respondent were found 100% liable for the accident.
8. On quantum, the trial court found that 1st Respondent had proved Kshs. 570,000 as per the assessment report and special damages pleaded and proved at Kshs. 112,048. The total award was Kshs. 682,048.
9. Aggrieved and dissatisfied with the entire judgment and decree of the trial court, the appellant lodged the instant appeal on grounds that:

- i. The learned magistrate erred in fact and in law in finding and holding that the 1st Respondent was the owner of motor vehicle registration KAS 132C while an official search indicated that the motor vehicle belonged to the 2nd Respondent.
- ii. The learned magistrate erred in law and fact in relying only on the police abstract on the issue of ownership while all other documents pointed to the contrary.
- iii. The learned magistrate erred in law and in fact in finding and holding that the 1st respondent was the driver of motor vehicle registration KAS 132C while all the documentary evidence presented in court held the contrary.
- iv. The magistrate erred in law and in fact by not acknowledging the documentary evidence in Court that showed that the 1st Respondent was not at the alleged scene of the accident or at all.
- v. The magistrate erred in law and in fact by failing to acknowledge that the appellant was at the time an employee of the 2nd respondent or at all.
- vi. The magistrate erred in law and in fact by failing to take into account that the 2nd Respondent was a total stranger to the appellant.
- vii. The magistrate erred in law and in fact by holding that the appellant and the 2nd respondent were owners of the motor vehicle while the appellant was never the owner of the subject vehicle at any time
- viii. The magistrate erred in law and in fact by stating that the appellant and the 2nd Respondent had different forms of ownership.
- ix. The learned magistrate erred in law and fact by relying on the police abstract to prove ownership while ignoring the official search.

10. Reason wherefore the appellant prayed that the appeal be allowed and the judgment of the trial court be set aside.
11. The court directed that the appeal be canvassed through written submissions.
12. The appellant submitted that a log book or official search is the prima facie proof of ownership, a police abstract is not a proof of ownership. Reliance was placed on the decision of the **Court of Appeal in Sopa Lodges Ltd v Enock Kanyoro & Another [2008] eKLR.**
13. The appellant submitted that there was no ground or basis in law upon which the trial court would find him liable for the accident when he was neither the driver of the subject motor vehicle nor in any employment relationship with the driver or agent of KAS 132 C.
14. The Respondent on the other hand submitted that the appellant was the owner of the said motor vehicle having insured it with Invesco Insurance under policy number 070/0804/1/080952/2020/07/TPO. Reliance was placed on **Benard Muia Kilovoo v Kenya Fresh Produce Exports [2020]** to urge that the police abstract is sufficient proof of ownership.
15. This being a first Appeal, the Court should with judicious alertness re-evaluate the evidence and consider arguments by parties and apply the law thereto, and, make its own determination of the issue or issues in controversy. Except however, that it should give due allowance to the fact that it neither saw nor heard the witnesses' testimonies. This was aptly stated by the Court of Appeal in the case of **Selle & Another v Associated Motor Board Company Ltd. [1968] EA 123.**

16. I have perused the Memorandum of Appeal and the entire record of the Trial Court and I am alive to the fact that my task is to re-evaluate the evidence in order to establish whether or not the Trial Court erred in its finding on ownership of the motor vehicle KAS 132C. The only issue which arises for determination is the ownership for motor-vehicle.

17. It is not in dispute that there was an accident involving motor vehicle registration number KAS 132 C and KCP 036F. The main contention is whether the 1st Respondent proved on a balance of probabilities that the appellant is the owner, beneficial or otherwise, of motor vehicle registration number KAS 132C.

18. **Section 8 of the Traffic Act, Cap 403 of the Laws of Kenya** provides that:

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle”.

19. This means that the registration of a person as a registered owner of the motor-vehicle is *n prima facie* evidence of ownership. However, this evidence can be controverted as the Act provides, unless the Contrary is proved.

20. It is trite that he who alleges the existence of a fact bears the burden to prove that fact. The 1st Respondent, having alleged that the appellant was the owner of KAS 132C, bore the burden of proving that fact. Since parties are bound by their pleadings, the 1st Respondent, having pleaded that the appellant was the beneficial owner of KAS 132C, he bore the burden of proving that the 1st Respondent was the beneficial owner of the subject motor vehicle.

21. In the instant case, although the motor vehicle was registered under the 2nd Respondent, the 1st Respondent produced police abstract to demonstrate that the Appellant was the beneficial owner of motor vehicle registration number KAS 132C. This was based on the fact that the appellant had taken out an insurance policy with Invesco insurance for the subject motor vehicle under policy number 070/0804/1/080952/2020/07/TPO.

22. The trial court relied on the persuasive decision by this court in **Jotham Mugalo v Telkom (K) Ltd, Kisumu HCCC No. 166 of 2001** where Warsame J as he then was stated that:

“.... Since a police abstract is a public document, it is incumbent upon the person disputing its contents to produce such evidence since in a civil dispute the standard of proof requires only balance of probabilities. Where the defendant alleges that the motor vehicle which caused the accident did not belong to him, it is up to them to substantiate that serious allegation by bringing evidence contradicting the documentary evidence produced by the plaintiff as required by Section 106 and 107 of the Evidence Act.”

23. Other than vehemently denying ownership of KAS 132C, the appellant did not object the production of the police abstract nor challenge the evidence therein. Upon perusing the record, there is no evidence that the appellant denied taking out a policy with Invesco insurance. His defence amounted to a mere denial as he did not offer any tangible material that would impeach the finding by the police that he was the beneficial owner of motor vehicle KAS 132C.

24. In the persuasive decision of **[2024] KEHC 16946 (KLR)**, the Court relied on **Benard Muia Kilovoo v Kenya Fresh Produce Exporters [2020] eKLR** where the court upon undertaking a comparative analysis of decisions of the Court of Appeal on Section 6 of the Traffic Act stated as follows:

“41. The Court of Appeal in these binding decisions is clearly stating: -

(i) That the presumption that the person registered as owner of the motor vehicle in the logbook is the actual owner is rebuttable.

(ii) Where there exists other compelling evidence to prove otherwise then the court can make a finding of ownership that is different from that contained in the logbook.

(iii) Each case must however be considered in its own peculiar facts.”

25. In view of the above, I find that the Appellant ought to have rebutted the allegation by the 1st Respondent that he was the beneficial owner of the subject motor vehicle. He bore the evidentiary burden of disproving that the insurance policy that the police relied on in filling the police abstract was not his. Having failed to do so, his argument that the court erred in imputing liability based on a police abstract was a mere denial. The appellant did not provide any compelling proof to rebut the allegation that he was the beneficial owner of the motor vehicle.

26. The Court of Appeal in the case of **Joel Muga Opinja v East African Seafood Limited (2013) eKLR** quoted in the case of: Ignatius Makau Mutisya -vs- Reuben Musyoki Muli stated that:

“we agree that the best way to prove ownership would be to produce to the court a document from the Registrar of Motor-vehicle to show who the registered owner is,

but when the abstract is not challenged and is produced in court without any objection the contents cannot later be denied.”

27. In the instant case, the 1st Respondent provided a search from NTSA showing the 2nd Respondent as the registered owner of the motor vehicle and a police abstract showing that the appellant was the beneficial owner of the motor vehicle. The appellant, having failed to challenge the contents of the police abstract, cannot turn around to deny its contents.

28. The Appellant did not challenge the police abstract, the police abstract indicated that the respondent was the owner of the motor vehicle KAS 132C and had insured the motor vehicle and the particulars of the Insurance are stated. This abstract contained all the relevant information including the name and address of the owner, and the name of the Insurance company.

29. This is information that must have been gathered by the police from motor the subject motor vehicle. It is proof on a balance of probabilities that the appellant had an insurable interest in KAS 132C, hence a beneficial owner.

30. I am therefore persuaded that the 1st Respondent proved that the appellant was the beneficial owner of KAS 132C at the time of the accident. I find no reason to disturb the finding of the trial court in this regard.

31. On whether the liability attached to the appellant, the doctrine of vicarious liability imposes liability on employers for the wrongful acts of their employees. As such, an employer will be held liable for torts committed while an employee is conducting their duties. The underpinning principles were addressed in the English

case of **Yewens v Noakes (1880) 6 QBD 530** wherein it was stated that:

"... a servant is a person who is subject to the command of his master as to the manner in which he shall do his work."

32. In this case, the particulars of negligence against the appellant had to be specifically pleaded and proved. The evidence did not prove that the driver of KAS 132C was the appellant's employee, servant or agent or that he was acting under instructions of the appellant. The appellant vehemently denied knowing the 2nd Respondent nor being in the country at the time of the accident. His evidence on the fact that he was out of the country at the time of the accident has not been controverted.

33. The 1st Respondent had to demonstrate that the negligent acts or omissions of the driver were permitted by the appellant. The trial court erred in holding the appellant liable for the accident as it did not interrogate whether the appellant was connected to the driver and whether vicarious liability attached. The appellant was not in use possession or control of the vehicle at the time of the accident as per the evidence on record. In the circumstances, the appellant was erroneously condemned for causing the accident.

34. The upshot of the matter is that the trial court's finding that the appellant is the beneficial owner of Motor Vehicle KAS 132C is hereby upheld. However, the finding on the appellant's liability is hereby set aside as vicarious liability was neither established nor proved.

35. The appeal partially succeeds on the following terms:

- i. The finding that the appellant is the beneficial owner of KAS 132C is hereby upheld.***
- ii. The finding that the appellant is liable for the accident is hereby set aside.***
- iii. I have no reason to disturb the trial court's finding on quantum, the same is hereby upheld.***

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 12TH DAY OF MARCH, 2026.

**HON. T. W. Ouya
JUDGE**