

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL APPEAL NO. E050 OF 2025

VERONICA MWERU

MWANGI.....APPELLANT

VERSUS

ISAAC ATHUMANI

KATUM.....RESPONDENT

JUDGMENT

1. This appeal arises from the judgment of the Chief Magistrate’s Court (Hon. Lucy Ambasi, CM) delivered on 14th November 2024 in Milimani CMCC No. E3844 of 2020, in which the learned trial magistrate entered judgment in favour of the Respondent against the Appellant for damages arising from a road traffic accident.
2. The Respondent had instituted the suit seeking general damages, damages for diminished earning capacity and special damages following injuries sustained in a road traffic accident which occurred on 25th November 2019 along Kangundo Road when motor vehicle registration number KCH 277D, allegedly owned by the Appellant, knocked the Respondent, who was riding a motorcycle.
3. In the plaint, the Respondent pleaded that the accident was occasioned by the negligence of the Appellant’s driver and particularized the injuries sustained as including fractures of

the left femur, left radius and ulna, together with head and knee injuries.

4. After hearing the parties, the learned magistrate found the Appellant 100% liable and awarded damages as follows; General damages Kshs. 1,000,000/=, Damages for diminished earning capacity Kshs. 500,000/=, Special damages Kshs. 11,550/=, Costs and interest.
5. Dissatisfied with that decision, the Appellant lodged the present appeal, vide the Memorandum of Appeal dated 7th February 2025, citing 4 grounds as follows:
 - i. The learned magistrate erred in law and fact by shifting the burden of proof to the Appellant.*
 - ii. The learned magistrate erred in law and in fact in making a finding that the Defendant was 100% liable for negligence.*
 - iii. That the learned magistrate erred in law and in fact in disregarding the provisions of section 8 of the Traffic Act.*
 - iv. That the learned magistrate erred in law and in fact by allowing the claim against the Appellant and entering judgment in favour of the Plaintiff as she did, and failing to consider the evidence procedure by the appellant.*
6. The appeal was canvassed by way of written submissions. The Appellant filed submissions dated 9th July 2025, while the Respondents' submissions are dated 2nd July 2025.

7. The Appellant submits that the trial court erred in law and fact in holding her liable, arguing that she had sold the motor vehicle to Patrick Mungai Mwangi on 18th October 2018, over a year before the accident occurred on 25th November 2019. She relies on a sale agreement and bank statement as evidence that ownership had passed to the purchaser.
8. It is further submitted that once this evidence was produced, the evidential burden shifted to the Respondent to prove that she remained the owner of the vehicle or that the driver was acting as her agent or employee. The Appellant argues that the trial court misapplied Section 107 of the Evidence Act on the burden of proof and disregarded the proviso under Section 8 of the Traffic Act, which allows the presumption of ownership to be displaced by proof to the contrary.
9. The Appellant also contends that the Respondent failed to establish vicarious liability, as no evidence was produced showing that the driver of the vehicle was her servant, agent or employee. She therefore urges the Court to allow the appeal, set aside the judgment of the trial court and dismiss the Respondent's claim with costs.
10. The Respondent supports the decision of the trial court and urges the Court to dismiss the appeal. He submits that the accident occurred on 25th November 2019 when motor vehicle KCH 277D, registered in the name of the Appellant, knocked him while he was riding a motorcycle, causing serious injuries, including fractures of the femur, radius and ulna.

11. The Respondent states that he produced documentary evidence, including a police abstract, certificate of records from the Registrar of Motor Vehicles, and medical reports, which confirmed that the Appellant was the registered owner of the motor vehicle involved in the accident.
12. He further argues that the Appellant's claim that she had sold the vehicle was not sufficiently proved since the alleged purchaser was not called as a witness and no conclusive proof of transfer of ownership was produced. Consequently, the statutory presumption of ownership under Section 8 of the Traffic Act remained unrebutted.
13. The Respondent therefore submits that the trial court properly evaluated the evidence and correctly held the Appellant liable for the accident, and urges the Court to dismiss the appeal with costs.

Analysis and determination

14. Having considered the record of appeal, the judgment of the trial court, the submissions of counsel and the authorities cited, I am of the view that the following issues arise for determination.
 - i. *Whether the trial court erred in finding the Appellant liable for the accident.*
 - ii. *Whether the trial court misapplied the law on the burden of proof.*
 - iii. *Whether the damages awarded were excessive or based on wrong principles.*

Whether the Appellant was liable for the accident

15. The Appellant contended that the learned trial magistrate erred in holding her liable for the accident on the ground that she had sold motor vehicle registration number KCH 277D to one Patrick Mungai Mwangi on 18th October 2018, more than one year before the accident occurred on 25th November 2019, and that ownership had therefore passed to the purchaser.
16. In support of that contention, the Appellant relied on a sale agreement allegedly executed between herself and the said purchaser as well as a bank statement showing payment of the purchase price. On the basis of that material, the Appellant urged the Court to find that she was no longer the owner of the motor vehicle at the time of the accident.
17. On the other hand, the Respondent produced police abstract and a certificate of records from the Registrar of Motor Vehicles, which indicated that the Appellant was the registered owner of motor vehicle KCH 277D at the time of the accident.
18. The legal position on ownership of motor vehicles is governed by **Section 8** of the **Traffic Act (Cap 403)**, which 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. The effect of this provision is that registration creates a rebuttable presumption of ownership.
20. The Court of Appeal in **Thuranira Karauri v Agnes Ncheche [1997] eKLR** held that a certificate from the Registrar of Motor Vehicles is *prima facie* evidence of

ownership but the presumption may be displaced by other credible evidence.

21. Likewise, in **Osapil v Kaddy [2000] 1 EA 187**, the Court of Appeal held that: *“The registration of a motor vehicle is only prima facie evidence of ownership and a person who is not the registered owner may still be proved to be the actual owner.”*
22. The question that therefore arises is whether the Appellant adduced sufficient evidence to displace the statutory presumption.
23. The Appellant relied solely on a sale agreement and a bank statement. However, the alleged purchaser was not called as a witness, nor was there any documentary evidence from the Registrar of Motor Vehicles confirming the transfer of ownership. The Court of Appeal addressed a similar situation in **Wellington Nganga Muthiora v Akamba Public Road Services Ltd & Another [2010] eKLR**, where it held that a party alleging transfer of ownership must demonstrate that the transfer was completed in accordance with the law.
24. In the present case, there was no evidence demonstrating that the statutory process of transfer had been completed, nor was there any official confirmation from the Registrar of Motor Vehicles that ownership had passed to the alleged purchaser prior to the accident.
25. In those circumstances, the learned trial magistrate was entitled to rely on the certificate of records produced by the Respondent, which showed that the Appellant remained the registered owner of the motor vehicle.

26. In addition, the Appellant did not tender any evidence demonstrating that the driver of the vehicle was acting without her authority or control, nor did she produce evidence showing who was in possession or control of the vehicle at the time of the accident.
27. In the absence of such evidence, the presumption of ownership and responsibility under Section 8 of the Traffic Act remained unrebutted.
28. The Court therefore finds no basis for interfering with the trial court's finding on liability.

Whether the trial court misapplied the burden of proof

29. The Appellant further contends that the learned trial magistrate improperly shifted the burden of proof to her contrary to the provisions of Section 107 of the Evidence Act (Cap 80). According to the Appellant, the Respondent bore the primary burden of proving not only the occurrence of the accident but also that the Appellant was the owner of the motor vehicle and that the driver was acting as her servant or agent.
30. The Appellant argued that once she produced evidence showing that she had sold the vehicle to Patrick Mungai Mwangi prior to the accident, the evidential burden shifted to the Respondent to demonstrate that she remained the owner or that the driver was acting under her authority.
31. The Respondent, on the other hand, maintained that he discharged the burden placed upon him by law by producing documentary evidence, including police abstract and a

certificate of records from the Registrar of Motor Vehicles, both of which indicated that the Appellant was the registered owner of the motor vehicle involved in the accident.

32. The starting point in resolving this issue is **Section 107(1)** of the **Evidence Act**, which provides that: “*Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*”
33. The legal burden therefore rests upon the party who asserts a fact. In the present case, the Respondent bore the initial burden of establishing that the accident occurred and that the motor vehicle responsible was owned by the Appellant. The record shows that the Respondent produced a certificate of official search from the Registrar of Motor Vehicles indicating that motor vehicle KCH 277D was registered in the name of the Appellant.
34. That evidence was significant in light of Section 8 of the Traffic Act, which creates a rebuttable presumption that the person in whose name a motor vehicle is registered is deemed to be its owner unless the contrary is proved.
35. The effect of the provision is that registration of the vehicle is not conclusive proof of ownership but constitutes *prima facie* evidence of title, and the presumption that the registered owner is the actual owner remains unless rebutted by credible evidence – See **Charles Nyambuto Mageto v Peter Njuguna Njathi [2013] eKLR** and **Jotham Mugalo v Telkom (K) Ltd Kisumu HCCC No. 166 Of 2001**.

36. Once the Respondent produced evidence showing that the Appellant was the registered owner of the motor vehicle, the evidential burden shifted to the Appellant to rebut the statutory presumption.
37. In the present case, the Appellant sought to rebut the presumption of ownership by producing a sale agreement and bank statement indicating that the motor vehicle had allegedly been sold prior to the accident. However, the evidentiary value of that material must be assessed against the totality of the evidence on record. Notably, the Appellant did not produce any documentation from the Registrar of Motor Vehicles confirming that the statutory process of transfer had been completed, nor was the alleged purchaser called as a witness to corroborate the Appellant's account.
38. In those circumstances, the trial court was entitled to conclude that the evidence produced by the Appellant was insufficient to displace the statutory presumption created by Section 8 of the Traffic Act. The mere existence of a private sale agreement does not, without more, establish that ownership had passed in law, particularly where the official register still reflects the Appellant as the owner.
39. Upon re-evaluating the evidence on record, this Court is satisfied that the Respondent discharged the burden placed upon him by law and that the evidential burden thereafter shifted to the Appellant. The trial court cannot therefore, be faulted for concluding that the Appellant had failed to rebut the presumption of ownership.

40. Accordingly, the Court finds that the learned trial magistrate properly applied the law relating to the burden of proof under Section 107 of the Evidence Act and the statutory presumption of ownership under Section 8 of the Traffic Act, and that no misdirection has been demonstrated on this issue.

Whether the award of damages should be disturbed

41. It is settled law that an appellate court will only interfere with an award of damages if it is demonstrated that the trial court acted on the wrong principles or that the award is so inordinately high or low as to represent an entirely erroneous (Court of Appeal in **Butt v Khan [1981] KLR 349**).

42. In the present case, the Respondent sustained fractures of the femur, radius and ulna together with head injuries. Considering the nature and extent of those injuries and comparable awards made in similar cases, the award of Kshs. 1,000,000 as general damages cannot be said to be excessive.

43. Similarly, the awards of Kshs. 500,000 for diminished earning capacity and Kshs. 11,550 as special damages were supported by the evidence on record. The Court therefore finds no justification for interfering with the awards made by the trial court.

44. In the result, the appeal lacks merit. Accordingly, the Court makes the following orders:

i. The appeal is dismissed in its entirety.

ii. The judgment of the Chief Magistrate's Court delivered on 14th November 2024 in Milimani CMCC No. E3844 of 2020 is hereby upheld.

iii. The Respondent shall have costs of the appeal.

JUDGMENT delivered virtually, dated and signed at **NAIROBI**

This **12th** day of **March** 2026.

P.M. MULWA
JUDGE

In the presence of:

Ms. Waweru h/b for Ms. Ithondeka for Appellant

Mr. Otieno h/b for Mr. Opondo for Respondent

Court Assistant: Carlos