

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CIVIL APPEAL NO. E091 OF 2024

KENNEDY NGUGI KIONGO

APPELLANT

VERSUS

NAIVASHA GENERAL MASTERS DISTRIBUTORS LIMITED

..... RESPONDENT

(Being an appeal from the decision by Hon. Emily C. Jerotich, (Adjudicator) on 18th July 2024 in Naivasha SCCC No. E260 of 2024)

JUDGMENT

- 1.** This appeal arises from the trial court's dismissal of the Appellant's claim for material loss/damages arising from a road traffic accident that occurred on 6th May 2021, involving the Appellant's motor vehicle registration number KBS 397S and motor vehicle registration number KAX 086U.
- 2.** The learned Adjudicator dismissed the claim principally on the ground that the Appellant had sued the wrong party, holding that the Respondent was not the proper party to be held liable.
- 3.** The Appellant was dissatisfied with the decision and filed the present appeal. The appeal is premised on six (6) grounds which, in summary, fault the learned Adjudicator

for allegedly erring in law and fact by failing to properly consider evidence and submissions on ownership and liability of motor vehicle KAX 086U, thereby arriving at an erroneous finding.

- 4.** The Appellant's case before the Small Claims Court was that motor vehicle KAX 086U, though allegedly registered in the name of one Stephen Maina, was at all material times being used for the benefit of the Respondent, and the Respondent ought to be held liable as the beneficial owner and/or through vicarious liability.
- 5.** The Appellant's position was supported by, among others, a Police Abstract dated 7th May 2021, and witness testimony that linked the said motor vehicle KAX 086U to the Respondent's operations and persons associated with it.
- 6.** In opposition, the Respondent's case was that a registered company is a separate legal entity and may sue and be sued. The Respondent emphasized that since motor vehicle KAX 086U was registered in the name of Stephen Maina, the Respondent and the said registered owner are distinct legal persons.
- 7.** The Respondent faulted the Appellant for failing to produce the official motor vehicle records and argued that he therefore failed to prove ownership as against the Respondent.
- 8.** The Respondent further argued that vicarious liability was not applicable in this case because no evidence was tendered to prove that the driver of motor vehicle KAX

086U was an employee, servant and/or agent of the Respondent acting within the scope of employment.

9. The duty of the first appellate court is to reconsider and reanalyse the evidence presented before the trial court with a view to arriving at its own independent findings while bearing in mind the fact that it neither saw nor heard the witnesses testify and to make an allowance for that. (See ***Selle & Another vs. Associated Motor Boat Co. Ltd [1968] EA 123***).

Analysis and Determination

10. I have considered the Record of Appeal, written submissions of both parties, cited authorities, and the law. I find that the following issues arise for determination:

a. Whether the learned Adjudicator erred in law and fact in finding that the Appellant sued the wrong party.

b. Whether ownership and/or beneficial ownership of motor vehicle registration number KAX 086U was proved as against the Respondent.

c. Whether vicarious liability was established against the Respondent.

d. What orders should issue, including on costs.

Analysis and Determination

- 11.** On the first issue, I note that the primary basis upon which the Small Claims Court dismissed the Appellant's claim was that the wrong party was sued.
- 12.** The Respondent's contention was that the motor vehicle KAX 086U was registered in the name of one Stephen Maina, and that the Respondent cannot therefore be held liable for the accident.
- 13.** This Court agrees that ordinarily, where the law requires that a suit be brought against the proper party, a claimant must identify and sue the person against whom liability attaches. In disputes involving motor vehicles, proof of ownership is a critical component, particularly where liability is claimed on the basis of ownership and/or agency.
- 14.** Whereas proof of ownership is a central element in road traffic accident claims, it is equally settled that courts must not restrict themselves to the mere fact of registration when determining liability. Ownership and control of a motor vehicle may, in appropriate cases, be established through evidence demonstrating beneficial ownership, possession, user, control, or insurance, even where the registered owner is different. This is the position that was taken in ***Samuel Mukunya Kamunge vs. John Mwangi Kamuru [2005] eKLR***, where the Court held that ownership may be proved by evidence other than a copy of records, and accepted a police abstract as sufficient where uncontroverted.

- 15.** The above approach was similarly echoed in ***P N M & Another (the legal personal representative of the estate of L M M) vs. Telkom Kenya Limited & 2 others [2015] eKLR***, where the Court accepted that liability may attach to the party shown to be the user and/or beneficial owner of the accident motor vehicle. Further, in ***General Motors East Africa Limited vs. Eunice Alila Ndeswa & another [2015] eKLR***, the Court emphasized that a party may be found liable as a beneficial owner notwithstanding issues of registration, provided the evidence demonstrates control and beneficial interest in the motor vehicle at the material time.
- 16.** In the present appeal, I note that the Appellant's case was not limited to legal registration. The Appellant maintained that the Respondent was the beneficial and insured owner, and that the motor vehicle was being used for the Respondent's benefit at the material time. In this regard, I am persuaded that the question before the trial court was not merely "who is registered", but whether the Respondent was sufficiently connected to the said motor vehicle, through evidence of beneficial ownership and/or agency, to attract liability.
- 17.** In the circumstances of this case, I find that the learned Adjudicator adopted an unduly narrow approach to the question of liability and wrong party, without adequate interrogation of the evidence placed before the Court on beneficial ownership, use, and control.

18. On proof of beneficial ownership, I note that the Appellant relied heavily on the police abstract and supporting testimony linking motor vehicle KAX 086U to the Respondent who, on its part, dismissed the Police Abstract as insufficient proof, and faulted the Appellant for failing to produce an official motor vehicle search.

19. It is correct that a Police Abstract is not the best evidence of ownership where official records are readily available. Nonetheless, courts have consistently held that ownership may be proved through a combination of documentary and oral evidence, including evidence pointing to possession, user, control and benefit derived from a motor vehicle.

20. From the material before Court, I note that there is evidence indicating that motor vehicle KAX 086U was associated with “General Masters”, that the Respondent’s director(s) and address were linked to the said vehicle in the Police Abstract and further, that the said vehicle was being driven by a person associated with “General Masters”. CW3, the Investigating Officer, testified that the name on the Police Abstract is the one for the policy holder(General Masters), the Respondent herein.

21. This Court further notes that the Appellant invoked the application of Section 116 of the Evidence Act (Cap 80 Laws of Kenya) on the presumption arising from possession and control, arguing that a party shown to be

in possession/using property should bear the burden of rebutting ownership.

- 22.** In my humble view, and on a balance of probabilities, the Appellant placed sufficient material before the trial court to demonstrate that the Respondent had a beneficial interest and control of motor vehicle KAX 086U at the material time.
- 23.** Consequently, I find that the learned Adjudicator erred in failing to give proper weight to the evidence and submissions on beneficial ownership and by dismissing the claim purely on the ground of legal registration without analysing the totality of the evidence.
- 24.** On whether vicarious liability was established, the Respondent submitted that the Appellant did not prove that the driver was its employee. This Court however notes that the Appellant's evidence linked the vehicle's use to the Respondent, and further placed the Respondent in the chain of control and benefit.
- 25.** It is trite that vicarious liability attaches where a claimant proves that the tortfeasor was an employee or agent of the defendant and was acting in the course of employment or authority at the material time. In ***Tabitha Nduhi Kinyua vs. Francis Mutua Mbuvi & another [2014] eKLR*** the Court of Appeal reaffirmed that an employer will be held vicariously liable where the wrongful act is committed in the course and scope of employment.
- 26.** Further, in ***Dominic Ndunda Mutiso & another vs. Transallied Limited [2020] eKLR***, the Court reiterated

that a master is liable for the negligent acts of a servant done in the course of employment.

- 27.** While direct proof of the employment relationship is desirable, courts may draw reasonable inferences from surrounding circumstances, particularly where the vehicle is shown to have been used for the benefit or purpose of the defendant. This is the position that was taken in ***Launchbury vs. Morgans [1973] AC 127***, where the Court stated that in the absence of evidence that the driver was on a frolic of his own, the reasonable presumption is that he was on his master's business.
- 28.** This Court therefore finds that vicarious liability was established on a balance of probabilities, sufficient to displace the trial court's conclusion that the Respondent bore no responsibility.
- 29.** For the foregoing reasons, this Court finds that the appeal is merited and makes the following final orders: -
- a) The appeal is hereby allowed.***
 - b) The judgment/decree of the Small Claims Court in Naivasha SCCC No. E260 of 2024 delivered on 18th July 2024 dismissing the Appellant's claim is hereby set aside.***
 - c) Judgment is hereby entered in favour of the Appellant against the Respondent on liability.***
 - d) On quantum, this court notes that the same had been assessed by the Small Claims Court in the impugned judgment and I therefore direct***

that the award on quantum shall stand and the Appellant shall have judgment as assessed.

e) The Appellant shall have costs of the appeal.

f) The Appellant shall also have costs before the Small Claims Court.

30. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 9TH DAY OF APRIL, 2026.

HON. W. A. OKWANY

JUDGE

9/04/2026

FOR APPELLANT Ms Otieno

FOR RESPONDENT No appearance

COURT ASSISTANT Karani

File closed