



**Anil v Ashur Ahmed Transporters Ltd (Civil Appeal 138 of 2019)  
[2023] KECA 1149 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KECA 1149 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL 138 OF 2019  
FA OCHIENG, LA ACHODE & WK KORIR, JJA  
SEPTEMBER 22, 2023**

**BETWEEN**

**ABDUSHAKOOR MAKHAN ANIL ..... APPELLANT**

**AND**

**ASHUR AHMED TRANSPORTERS LTD ..... RESPONDENT**

*((An Appeal from the judgement of the High Court at Nakuru (Hon. J.N. Mulwa, J.) dated and delivered on 27th September 2018 in HCCA No. 128 of 2014))*

**JUDGMENT**

1. Abdushakoor Makhan Anil, the appellant herein, is before us on a second appeal. He is challenging the judgment of the first appellate court on four grounds to wit: that the first appellate court erred in finding that the appellant was not the lawful owner of motor vehicle registration no. KAB 899Z; that the court erred in its interpretation of Section 8 of the *Traffic Act*; that the learned Judge erred in revoking the trial court's award of Kshs. 157,000 to the appellant on grounds of lack of proof of ownership of Motor Vehicle registration no. KAB 899Z; and, that the learned Judge erred in finding that the appellant had not proved his case on a balance of probabilities.
2. The gist of this case was that the appellant alleged to have been the owner of Motor Vehicle registration number KAB 899Z. The appellant seeking to dispose of the said motor vehicle surrendered it to Geopart Motors who owned a car yard. On or about 3<sup>rd</sup> July 2012 while the vehicle was in the car yard, the respondent's lorry registration number KBR 440D hit a canopy at the adjacent Kenol Petrol Station within Nakuru Town causing the wall separating the two businesses to crumble thereby damaging the appellant's car.
3. The trial magistrate found that motor vehicle registration number KAB 899Z belonged to the appellant. Subsequently, the court proceeded to make a compensatory award of Kshs.157,000.00 to the appellant for the damage to the vehicle. The respondent then lodged an appeal in the High Court.



In its judgment, the first appellate court ruled that the appellant had not proved ownership of the damaged motor vehicle and therefore no damages accrued to him.

4. This appeal is against the judgement of the first appellate court which overturned the decision of the trial court. This matter came up for virtual hearing on 16<sup>th</sup> May 2023 when Mrs Mukira appeared for the appellant while there was no appearance for the respondent. Both parties had filed their written submissions. Mrs Mukira sought to rely on her submissions and made a short oral response to the respondent's submissions.
5. Counsel for the appellant reiterated the power of this Court on a second appeal and submitted that the learned Judge of the first appellate court not only erred in law but also failed to take into consideration factors which were relevant to the case thereby arriving at a wrong conclusion. Submitting on whether the appellant proved ownership of motor vehicle registration number KAB 899Z, counsel argued that Section 8 as read with Section 9 of the *Traffic Act* envisaged a situation where ownership of a motor vehicle may be possessory or beneficial notwithstanding that the registration of the motor vehicle shows otherwise. Counsel submitted that the appellant proved ownership of motor vehicle registration number KAB 899Z despite the same being registered in his aunt's name. She relied on the decision of this Court in *Mubambi Koja Said vs. Mbwana Abdi* [2015] eKLR to submit that a police abstract report or any other form of evidence will establish ownership of a motor vehicle and will displace the registration logbook if it is demonstrated that the person named in the registration logbook has since transferred and divested himself of ownership to the person named in that other form of evidence. Also cited in support of this position is the decision of this Court in *Jared Magwaro Bundi & Another vs. Primarosa Flowers Limited* [2018] eKLR.
6. Counsel further submitted that the learned Judge disregarded the principles guiding proof of ownership as established in *Securicor Kenya Ltd vs. Kyumba Holdings Ltd* [2005] eKLR when she failed to appreciate that the strong assertion of ownership by the appellant were not disputed. Counsel contended that the respondent failed to discharge the burden of proof hoisted upon it under Section 116 of the *Evidence Act* which provides that the burden of proving that the person in possession of an item is not the owner is on the person who affirms that the possessor is not the owner. Counsel subsequently urged us to overturn the findings of the first appellate court and uphold the trial court's judgment. She also sought that the appellant be awarded the costs of this appeal.
7. For the respondent, it was submitted that this appeal did not raise matters of law and the Court lacked jurisdiction to hear and determine it by virtue of Section 72(1) of the *Civil Procedure Act*. The respondent nevertheless conceded that the interpretation of Section 8 of the *Traffic Act* is an issue of law. However, it was submitted by counsel for the respondent that the first appellate court properly addressed its mind to the provisions of Section 8 of the *Traffic Act* when it held that the appellant ought to have adduced documentary evidence to support his claim of ownership of motor vehicle registration number KAB 899Z. In conclusion, we were urged to dismiss the appeal with costs and affirm the judgment of the first appellate court.
8. This being a second appeal, under Section 79D as read with Section 72 of the *Civil Procedure Act*, Cap. 21, our mandate is limited to addressing issues of law and not facts. This statement was explained by this Court in *Charles Kipkoeb Leting vs. Express (K) Ltd & another* [2018] eKLR as follows:

“...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.”

9. We have carefully considered the record of appeal and the submissions of both parties. Contrary to the submission of counsel for the respondent, this appeal raises issues of law in as far as proof of ownership of the motor vehicle in question is concerned and whether the learned judge considered all the available evidence and exhibits in arriving at her conclusion. This appeal therefore turns on the resolution of two issues, to wit, whether ownership of a motor vehicle can only be proved by way of registration with the Registrar of Motor Vehicles; and, whether or not the appellant discharged the burden of proof with regard to ownership of the damaged motor vehicle. These two issues are intertwined and cannot be divorced from each other hence we will consider them in unison.

10. In civil cases, the burden of proof is always on a balance of probabilities. Of relevance to the issue of burden of proof are Sections 107 and 108 of the *Evidence Act* which provisions provides as follows:

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“107. Burden of proof.

1. 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.
2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

11. Under Section 8 of the *Traffic Act*, the person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle. Our understanding of this provision is that the registration of the vehicle is not conclusive proof of ownership but only prima facie evidence of title to a motor vehicle. The person in whose name the vehicle is registered is therefore presumed to be the owner thereof unless proved otherwise. Our understanding aligns with the views expressed by this Court in *Securicor Kenya Ltd vs. Kyumba Holdings Ltd* [2005] eKLR as follows:

“We think that the appellant had, by the evidence it led, proved on a balance of probability, that it was not the owner of KWJ 816 at the time the accident occurred since it had sold it. Our holding finds support in the decision in *Osapil Vs. Kaddy* [2000] 1 EALA 187 in which it was held by the Court of Appeal of Uganda that a registration card or logbook was only prima facie evidence of title to a motor vehicle and the person whose name the vehicle was registered was presumed to be the owner thereof unless proved otherwise. The appellant had, indeed, proved otherwise.”

12. Our position rhymes with the cited decision so that where there exists other compelling evidence to prove ownership, then the court can find that the owner of the vehicle is a person other than the one whose name appears in the logbook. Therefore, the presumption that the person registered as owner of a motor vehicle in the logbook is the actual owner is rebuttable. In the case before us, the appellant stated that the motor vehicle belonged to him. He also produced an agreement between him and the car yard owner through which he had authorized the salesman to sell the motor vehicle. Further, the appellant explained the reasons as to why he delayed in securing the transfer of the motor vehicle from



his aunt to his name. During the pendency of the suit, the appellant secured registration of the said motor vehicle in his name. This evidence was not rebutted or challenged by the respondent. It was therefore sufficient to rebut the respondent's insistence that the motor vehicle belonged to the person in whose name the logbook was registered. We find that the learned Judge of the High Court fell into error in arriving at the decision that the appellant was not the owner of vehicle registration number KAB 899Z. She misapplied the law to the evidence adduced at the trial thereby coming up with a decision which was bad in law.

13. In the circumstances, we find that the appellant indeed proved that he was the owner of the motor vehicle registration number KAB 899Z. This appeal therefore succeeds. The judgment of the High Court is hereby set aside and the trial court's judgment is upheld.
14. On the question of costs, this Court is mandated to make orders on costs for proceedings before it. The parties herein have not challenged the award of costs by the two courts below. The question of costs being a discretionary one, we will not interfere the decisions of the courts below on costs for the simple reason that were we seized of the case in the first instance, we would have ordered otherwise. This leaves us with only the question of costs for the proceedings before us. Ordinarily, costs follow the event. In this case, the appeal has succeeded and we do not find any reason to warrant our departure from the rule that costs follow the event. That being the case, the costs of this appeal are awarded to the appellant.
15. In a nutshell, the appeal herein is allowed with costs to the appellant.

**DATED AND DELIVERED AT NAKURU THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2023**

**F. OCHIENG**

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**JUDGE OF APPEAL**

**L. ACHODE**

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**JUDGE OF APPEAL**

**W. KORIR**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

