



REPUBLIC OF KENYA



**Kibui & another v Maina (Civil Appeal E291 of 2022)  
[2025] KEHC 1164 (KLR) (Civ) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1164 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E291 OF 2022**

**REA OUGO, J**

**FEBRUARY 27, 2025**

**BETWEEN**

**LUCYROSE GATHONI KIBUI ..... 1<sup>ST</sup> APPELLANT**

**ALEX STEPHEN MWANGI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**WINNIE WAIRIMU MAINA ..... RESPONDENT**

*(Being an appeal from the judgment and order of the Small Claims Court delivered by Hon. K.G. Odhiambo/ Adjudicator on the 25th day of April 2022 in SCC Civil Case No 425 of 2022)*

**JUDGMENT**

1. At the Subordinate Court, the respondent who was the claimant alleged that she was the insured and/or beneficial owner of Motor vehicle registration number KCE 638Z. The appellants were the owners of KCS 128H.
2. On 24<sup>th</sup> April 2019, the respondent was driving her vehicle along Kagundo Road when suddenly, the appellant's vehicle, managed by the 2<sup>nd</sup> appellant, lost control and hit the respondent's car, damaging it extensively. The respondent attributed the cause of the accident to the appellants' negligence. The respondent sought special damages of Kshs 250,112/-, comprised of repair costs, the assessor's fee, and the trace fee. She also sought the costs of the suit and interests.
3. The appellants denied any occurrence between themselves and the respondent. Although the accident occurred in 2019, the appellants learnt of it in 2022, 3 years after the accident.
4. After conducting a hearing, the trial magistrate found that the appellant's driver was to blame for the accident. He entered judgment against the appellants in the sum of Kshs 250,112/-, the costs of the suit, and interest.



5. The appellants dissatisfied with the finding of the subordinate court have filed this instant appeal raising the following grounds:
  1. That the learned magistrate erred in law and in fact in finding that the 1<sup>st</sup> respondent was the beneficial owner of the motor vehicle registration number KCS 128H in the absence of cogent evidence of the same.
  2. That the learned magistrate erred in law and in fact in finding that the respondent caused the accident involving motor vehicles KCS 128H and KCE 638Z due to careless driving of the driver of motor vehicle KCS 128H.
  3. That the learned magistrate erred in law and in fact in finding that the respondents were liable to pay compensation to the claimant in the sum of Kenya Shillings Two Hundred and Fifty Thousand One Hundred and twelve Shillings only (250,112).
6. The appellants seek that the appeal be allowed and the judgment of 25<sup>th</sup> April 2022 be set aside.
7. At the hearing, Patrick Kanyi (Pw1) testified that he is a legal officer at GA Insurance. He testified that they are claiming Kshs. 250,112/- and produced the following documents: motor vehicle claim (Exh1); police abstract (Exh2); driver's licence (Exh 3); Logbook (Exh4); policy schedule (Exh5); Payment Voucher (Exh7, 8, and 10); Express Auto Assessors (Exh 9); Revelation Insurance report (Exhibit 11); and demand letter (Exhibit 12).
8. No 585576 PC Farfax Masinde Sindamic (Pw2) testified that the motor vehicle KCS 128 H was blamed for the accident, and the driver was charged with the offence of careless driving. On cross-examination, he testified that the vehicle was being driven by Bernard Makau who may have been the legal or the special owner.

### **Submissions**

9. The appellant submits that a motor vehicle search certificate was not produced to show vehicle ownership. The police abstract produced merely indicated that the vehicle's owner was "Bernard Okoro". The appellant cited provisions of sections 107 and 108 of the *Evidence Act* and submitted that the person who alleges must provide all allegations as contained in his claim on a balance of probabilities. In Joel Mugo Opija v East African Sea Food Limited [2013] eKLR the Court of Appeal held as follows:

“ We agree that the best way to prove ownership would be to produce to the court a document from the Registrar of Motor Vehicles showing who the registered owner is, but when the abstract is not challenged and is produced in court without any objection, its contents cannot be later denied.”
10. The investigation report by Revelation Insurance Services Limited was produced contrary to section 35 of the *Evidence Act*, as the law requires the production of the document by the maker. (See Joao Francis Quadros v SDV Transami Kenya Limited [2005] eKLR).
11. The respondent submits that at the hearing, she produced a copy of the investigation report by Revelation Insurance which contained a motor vehicle search showing the appellants as the owner of the motor vehicle KCS 128H at the time of the accident. The production of the investigation report was not challenged neither were its contents. The decision of the lower court was well reasoned and the appeal herein is a tactic to delay justice as the appeal is defective with no triable issues according to section 38 (1) of the Small Claims Act (see E040/2022 Frankline Omundi v Lama Fresh Produce Ltd).



## Analysis And Determination

12. The crux of this appeal lies in whether the respondent proved his case on a balance of probabilities. The respondent's case was that the appellant was a beneficial owner. In *Jared Magwaro Bundi & Another -Vs- Primarosa Flowers Limited* (2018) eKLR, the Court of Appeal held that:

“It was therefore held in *Muhambi Koja* (supra) that section 8 of the *Traffic Act* recognizes registration book or the Registrar's extract of the record as prima facie evidence of title to a vehicle and the persons in whose name the vehicle is registered is presumed to be the owner thereof unless the contrary is proved. The burden is discharged if, on a balance of probabilities, it is shown that as a matter of fact the vehicle had been transferred but not yet registered, to a de facto owner, a beneficial owner or a possessory owner. Such an owner though not registered for practical purposes may be more relevant than that in whose name the vehicle is registered.

The position taken by the court in *Jael Muga Opija* (supra) and *Mohamed Koja* (supra) appears to us to accord with modern thinking and jurisprudence where the law is encouraging courts to interpret the law governed more by substance than the technical chains of form, the latter which does not ordinarily look at the justice of a case ...”

13. In this case, however, it is unclear who the beneficial owner was. The respondent's case was that, according to the copy of records from the National Transport and Safety Authority, the registered owners were Alex Stephen Mwangi, Jan Africa Investments Ltd, and Joseph Kang'ethe Kiarie. This was the position of the report by Revelation Insurance Services Ltd. However, the same report indicates that the beneficial owner was the appellant, as she was the policyholder. There was no evidence of how this information was obtained from the insurance company, nor were the documents from NTSA attached to the report to show conclusive proof of ownership.
14. Interestingly, the police abstract presented in court contained contrary evidence. According to the police abstract, the vehicle was owned by Bernard Okoro. The said Bernard Okoro was not the registered owner according to the respondent. Therefore, the evidence by the respondent was contradictory because it remained unclear who the beneficial owner was, was it Bernard Okoro as per the police abstract, or the appellant?
15. The trial magistrate in his judgment held that ownership in this case was not denied and that the appellant did not call any evidence to controvert this position. In *Billiah Matiangi v Kisii Bottlers Limited & another* [2021] eKLR the court held as follows:

“12. The fact that a defence is held as mere allegations in no way lessens the burden on the plaintiff to prove her case. The court in the case of *Kenya Power and Lighting Company Limited v Nathan Karanja Gachoka & another* [2016] eKLR the court stated:

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant, and that a court should not take it truthful without interrogation for the reason only that it is uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence in unchallenged or not.

(See *Kirugi and Another v Kabiya and Others* [1983] e KLR).



13. The appellant despite the absence of evidence from the respondent was obligated to prove its case on a balance of probabilities.”
16. The contradictory evidence on the ownership of the vehicle did not tilt the scales in the respondent’s favor. In my considered view, the respondent failed to prove ownership of the motor vehicle. In the circumstances, the judgment by the trial court cannot stand. The appeal is allowed, and the judgment and orders given in the judgment dated 25<sup>th</sup> April 2022 are set aside. The appellant is awarded the costs of the appeal.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 27<sup>TH</sup> DAY OF FEBRUARY 2025.**

**R.E. OUGO**

**JUDGE**

In the presence of:

Miss Amutavi -For the Appellant

Mr. Sifuna h/b Mr. Chamwada -For the Respondent

Wilkister -C/A

