



**Njue v Simba Coach Limited & another (Civil Appeal E355 of 2022)
[2025] KEHC 1456 (KLR) (Civ) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 1456 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E355 OF 2022
REA OUGO, J
FEBRUARY 27, 2025**

BETWEEN

EDWIN MUTHII NJUE APPELLANT

AND

SIMBA COACH LIMITED 1ST RESPONDENT

EDWIN ERICK MAGURU 2ND RESPONDENT

*(An appeal from a judgment and decree of the Hon. Aduke JPA (RM)
delivered on 28/4/2022 at Milimani CMCC Case No. 8158 of 2017)*

JUDGMENT

1. The appellant filed a suit at the subordinate court alleging that the 1st respondent owned KBP 380E while the 2nd respondent was his authorized driver. According to the appellant, on 16/11/2014 he was driving motor vehicle registration number KAX 606W along Kariokor roundabout when the 2nd respondent rammed into its vehicle. The appellant claimed that his vehicle was extensively damaged and he suffered loss. Therefore, he sought special damages of Kshs 307,024/-, the cost of the suit and interest.
2. The 1st respondent denied that it was not the motor vehicle's owner and further rejected the occurrence of the accident. In the alternative, he pleaded that if an accident occurred, it was solely or substantially caused by the appellant.
3. After hearing the case, the trial magistrate found no proof of ownership had been established, therefore, she was unable to ascertain and apportion liability.
4. The appellant aggrieved by the finding of the subordinate court has filed his appeal on the following grounds:



1. That the learned magistrate erred in law and in fact in dismissing the appellant's case in the respondent's favour when there was evidence on record to support the appellant's case.
 2. That the learned magistrate erred in law and in fact in holding that the appellant did not file a copy of NTSA search records contrary to the evidence on record.
 3. That the learned magistrate erred in law and in fact in holding that there was no proof of ownership details of motor vehicle KBP 380E when the evidence on record showed that the 1st respondent was the registered owner of the vehicle.
 4. That the learned magistrate erred in law and in fact that there was no proof of ownership details of motor vehicle KBP 380E when the evidence on record showed that the 2nd respondent was in control of the vehicle as of the date of the accident.
 5. That the learned magistrate erred in law and in fact by holding the respondents not liable when evidence clearly showed that the respondents were wholly to blame for the accident.
 6. That the learned magistrate erred in law in applying wrong principles while dismissing the suit.
 7. That the learned magistrate greatly misdirected herself in treating the evidence tendered and the submissions of the appellant very superficially thereby erroneously arriving at a wrong conclusion on liability and quantum.
 8. That the learned magistrate erred in law and in fact in not taking into consideration the evidence and submissions tendered in court on behalf of the appellant to the effect that the respondents were the owners of the suit vehicle as of the date of the accident.
 9. That the learned magistrate erred in law and in fact in not making an award on quantum when the evidence on record proved that the appellant incurred the amount claimed as repairs outlay.
 10. That the learned magistrate erred in law and in fact in applying wrong principles of law on arriving at the said judgment.
5. The appellant prays for orders that the judgment and decree in Milimani CMCC No. E8158 of 2017 on liability and quantum be set aside and in the alternative, the Court do make its own independent assessment on liability and quantum.
 6. In his submissions supporting the appeal, he argues that it produced a copy of the records of motor vehicle KBP 380E, which confirmed that the 1st respondent was the vehicle's owner. They referred the court to section 8 of the [Traffic Act](#) and the case of J.P.K Gateri v EM. Shako [2016] eKLR. They also produced a police abstract which confirmed the 2nd respondent was driving the vehicle.
 7. It was further submitted that the police officer based at Pangani Police Station (Pw4) confirmed that an accident occurred between the two vehicles. The appellant testified that the vehicle driven by the second respondent was to blame for the accident. Pw4 confirmed that investigations were conducted, and the second respondent was to blame for the accident. The respondents did not adduce any evidence or call any witness in the subordinate court.
 8. The appellant claimed Kshs 277,124/- as repair costs and Kshs 29,900/- for fees paid towards investigations. It was submitted that he proved that material damages were caused by the respondent and that the insurance company had paid for the repairs. His claim under the doctrine of subrogation was uncontroverted.



9. The appeal is opposed by the respondents, who submitted that the appellant failed to discharge his burden of proof to the required standard (see *Palace Investments Limited v Geoffrey Kariuki Mwenda & another* [2015] eKLR). The appellant did not tender tangible evidence to back up any of his alleged particulars of negligence against the respondent. Pw1 failed to file any documents in court to show that the respondents were the owners of the motor vehicle. They cited the case of *Simon Omukubi Sakwa v Gerald W. Kibogo* [2021] eKLR and submitted that they challenged the evidence of ownership of the motor vehicle on cross-examination. They also failed to file any sketch maps or police investigation reports to show how the accident occurred.

Analysis And Determination

10. I have considered the appeal in its entirety, including the rival submissions and the only issue before the court is whether the appellant proved that the respondents were liable for the accident therefore entitling him to an award of damages.
11. Being a first Appeal, the court relies on principles as set out in *Selle and Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“.....this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular,, this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”
12. Brian Lukase (Pw1), an assessor in Jubilee Insurance, produced the assessment report as Pexh1 and the re-inspection report as Pexh2. The legal officer at Jubilee Insurance, Beatrice Muriithi (Pw2), testified that they instructed their in-house loss assessor to assess the damage and World Fast Fit Limited to conduct the necessary repairs to the vehicle. Investic Insurance International Limited to investigate the ownership of KBP 380E which it established was owned by the 1st respondent and the 2nd respondent was the authorized driver. Pw2 produced the documents outlined in the list of documents dated 15/11/2017, Nos 1-5.
13. Edwin Muthii Njue (Pw3) testified that he is the owner of KAX 606W. His vehicle was insured by Jubilee Insurance Company Limited under policy number P/NRB/2011/2014/129136. He testified that while driving at Kariokor at the roundabout, the respondent’s driver who was driving behind him at high speed rammed into his vehicle occasioning extensive damage. The vehicle was repaired and the insurance company paid Kshs 277,134 for repairs and Kshs 29,900 for investigations.
14. No 92437 PC Alone Laban (Pw4) testified that he was the investigating officer. He produced the police abstract issued by DCIO Pangani as Pexh 15.
15. It was the appellant’s case that he produced a copy of the records for KBP 380E. The evidence before the trial magistrate, however reveals the contrary. Pw1 produced into evidence the assessment report (Pexh1) and the re-inspection report (Pexh2). Pw2 produced the documents on the appellant’s list of documents nos. 1-5, that is, police abstract, plaintiff’s driving licence, motor accident report form by Jubilee Insurance Limited, Assessment Report dated 24/11/2014 and photographs of KAX 606W after the accident and re-inspection report dated 13/1/2015 and photographs of KAX 606W after repairs. Pw4 also produced the police abstract.



16. Despite the copy of records for KBP 380E having been listed in the appellant's list of documents, the same was never produced as evidence. The police abstract, on the other hand, mentions the 2nd respondent as the owner of the motor vehicle KBP 380E. Therefore, the appellant failed to prove that KBP 380E was owned by the 1st respondent, and the trial magistrate was therefore correct to dismiss the claim against the 1st respondent.
17. However, Pw4 testified that the 2nd respondent had negligently controlled the motor vehicle, and in the police abstract, the 2nd respondent was listed as the driver. Therefore, the appellant proved its case against the 2nd respondent.
18. The appellant produced the assessment report; the estimated repair cost was Kshs 277,124/-. However, when it comes to the costs paid towards Investic Insurance International Investigators Ltd, the invoice issued in respect of their services and the cheque paid towards the settlement of their services were not produced as evidence. Therefore, I find that the claim for Kshs 29,900/- was not proved.
19. In the end, I find that the appeal has merit. Consequently, I set aside the judgment and decree by the trial magistrate, find the 2nd respondent 100% liable for the accident, and hereby award damages of Kshs 277,124/-. The appellant is awarded the costs of the appeal.

DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 27TH DAY OF FEBRUARY 2025.

R.E. OUGO

JUDGE

In the presence of:

Miss Katile -For the Appellant

Miss Wambui -For the Respondent

Wilkister - C/A

