



REPUBLIC OF KENYA



**Kudoyi v Newton Premium Autos Ltd & 2 others (Commercial Appeal 042 of 2024)  
[2025] KEHC 3970 (KLR) (Commercial and Tax) (28 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3970 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL APPEAL 042 OF 2024**

**H NAMISI, J**

**MARCH 28, 2025**

**BETWEEN**

**RONALD KUDOYI ..... APPELLANT**

**AND**

**NEWTON PREMIUM AUTOS LTD ..... 1<sup>ST</sup> RESPONDENT**

**JAMROCK WHEEL LTD ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL TRANSPORT & SAFETY AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal from the Judgement of Hon. B. M. Cheloti, Principle  
Magistrate delivered on 9 February 2024 in Milimani COMMSU E385 of 2022)*

**JUDGMENT**

1. By Plaint dated 10 May 2022, the Appellant herein instituted proceedings in the lower court against the Respondents seeking:
  - i. An order compelling the 3rd Defendant to register motor vehicle registration number KDC 848B in favour of the Plaintiff;
  - ii. Costs of the suit
2. The Appellant's claim was that at all material times, he was the registered owner of motor vehicle registration KDC 848B, having purchased the same from the 1st and 2nd Respondents. The Plaintiff pleaded that he was in actual and uninterrupted possession of the motor vehicle since purchasing the same on 8 November 2022 at the price of Kshs 2,700,000/=. The 1st and 2nd Respondents had refused and/or ignored to transfer ownership and remained in possession of the log book.



3. The 2<sup>nd</sup> Respondent entered appearance and filed a Statement of Defence and Counterclaim. In its Defence, the 2<sup>nd</sup> Respondent pleaded that it was a stranger to the claim. The motor vehicle had not been sold to anyone at any point in time. Instead, the 2<sup>nd</sup> Respondent claimed that the motor vehicle had been stolen from it before it was subsequently recovered and was being held as an exhibit at the Embakasi Police Station. It was the subject of Criminal Case No. E3260 of 2022 at Makadara Law Courts, with charges preferred against Newton Kimathi Karimi for stealing a motor vehicle contrary to section 278A of the [Penal Code](#).
4. In the Counterclaim, the 2<sup>nd</sup> Respondent claimed the sum of Kshs 3,000/= per day, for loss of user, together with interest thereon at the prevailing commercial rates of interest from 1 November 2021.
5. The Appellant filed a Response to the Defence and Defence to Counterclaim.
6. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents did not enter appearance.
7. The matter was heard and submissions filed.
8. In its judgement, the Court identified the issues for determination as whether the 1<sup>st</sup> Defendant (Respondent herein) was acting as an agent of the 2<sup>nd</sup> Defendant and whether the Plaintiff was entitled to the remedies sought. The Court noted that while the Plaintiff submitted that the 1<sup>st</sup> Defendant was acting as an agent of the 2<sup>nd</sup> Defendant, the 2<sup>nd</sup> Defendant submitted that the motor vehicle had been stolen and therefore, the 1<sup>st</sup> Defendant did not have the possession to pass to the Plaintiff. The Court held that the 1<sup>st</sup> Defendant was acting as an agent of the 2<sup>nd</sup> Defendant, which was compounded by the fact that the 1<sup>st</sup> Defendant has been allowed to drive away with the vehicle from the 2<sup>nd</sup> Defendant's premises. The theft of the vehicle would have been reported immediately, but in this instance, the report was made months after the vehicle had left the 2<sup>nd</sup> Defendant's premises.
9. The agency notwithstanding, the Court found that the Sale Agreement between the Plaintiff and the 1<sup>st</sup> Defendant precluded the 2<sup>nd</sup> Defendant owing to privity of contract. Consequently, the Court dismissed the suit as well as the counterclaim.
10. Aggrieved by the judgement, the Appellant lodged this appeal on the following grounds:
  - i. That the learned trial magistrate erred in law and in fact and misdirected herself in failing to acknowledge the fact that agency whether express or implied is an exception to the privity of contract;
  - ii. That the learned trial magistrate erred in law and fact in application of the law on what would constitute exception to privity of contract;
  - iii. That the learned Magistrate erred in law and in fact by failing to apply the law on principal-agent relationship;
  - iv. That the learned Magistrate erred in law and fact by failing to take into account the 3<sup>rd</sup> Respondent is a body corporate capable of being sued under law;
  - v. That the learned trial Magistrate erred in law by misapplying the exception to the general rule of privity of contract.
11. Parties canvassed the Appeal by way of written submissions.



## Analysis and Determination

12. I have read the Record of Appeal, Memorandum of Appeal and respective submissions. It is the duty of a first appellate court to re-appraise and re-analyse the evidence on record and arrive at its own conclusion and give reasons either way – see *Sumaria & Another vs Allied Industries Limited* [2007] 2 KLR. The Court has also to appreciate that in the discharge of its aforesaid mandate the Court should be slow in moving to interfere with a finding of fact by a trial court unless it was based on no evidence, it was based on a misapprehension of the evidence or the Magistrate had been shown demonstrably to have acted on wrong principle in reaching the finding he did –see *Musera vs Mwechelesi & another* [2007] 2 KLR 159.
13. The Appellant’s case was that on 8 November 2021, he purchased the motor vehicle KDC 848B for the price of Kshs 2,100,000/=. He executed a Sale Agreement between himself and the 1<sup>st</sup> Respondent. In the Recitals of the Agreement, the 1<sup>st</sup> Respondent indicated that he had authority to sell the motor vehicle. Newton Kimathi signed the Agreement on behalf of the 1<sup>st</sup> Respondent. The Agreement did not state who the registered owner of the vehicle was. On cross examination, however, the Appellant confirmed that he conducted a search of the motor vehicle records, but did not contact the registered owner.
14. It was a term of the Agreement that upon payment of the full purchase price, the 1<sup>st</sup> Respondent would initiate the process of transferring ownership to the Appellant as well as releasing the log book to the Appellant. According to the Appellant, the transfer was never done, neither did he receive the logbook. It was his testimony that after payment of Kshs 2.1 million, the Appellant took possession of the vehicle. However, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents stopped picking his calls and avoided him completely. The log book was never released, neither was the transfer effected.
15. On the other hand, the 2<sup>nd</sup> Respondent’s case was it was the registered owner of the motor vehicle at all times and that the vehicle was never sold to anyone. It was the private property of the 2<sup>nd</sup> Respondent. On 8 November 2021, the vehicle was stolen from the 2<sup>nd</sup> Respondent’s premises along Mombasa Road. Charges were preferred against Newton Kimathi Kirimi.
16. From the Record of Appeal, it is clear that there was a principal-agent relationship between the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent, even though the 2<sup>nd</sup> Respondent denied the same. The 2<sup>nd</sup> Respondent submitted that in the entire proceedings in the trial court, no document to establish a nexus or agency between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was produced and no claim was made against Newton Kimathi.
17. In the Reply to Defence, the Appellant averred that the 2<sup>nd</sup> Respondent sued its agent, the 1<sup>st</sup> Defendant. The charges preferred against the agent were stealing by agent contrary to section 283(a) of the *Penal Code*, which were later amended to stealing of motor vehicle contrary to section 278A. In deed, the two Charge Sheets are contained in the Record of Appeal. The former was approved by the Office of Director of Public Prosecutions on 24 June 2022, while the latter was approved on 5 July 2022. Further, the extract from the Occurrence Book indicates that the report made on 7 June 2022 was that the individual, Newton Kimathi, who was well known to the 2<sup>nd</sup> Respondent, came to the yard and took the vehicle to go and show a buyer in Kilimani.
18. According to Halsbury’s Law of England 4<sup>th</sup> Edition Volume 1(2) para 19 and 20, a principal agency relationship is created by the express or implied agreement of principal and agent or by ratification by the principal of the agent’s acts done on his behalf. Express agency is created where the principal or



some person authorized by him, expressly appoints the agent whether by deed, by writing under hand or orally. Implied agency arises from the conduct or situation of parties.

19. According to Cheshire and Fifoot, the Law of Contract, 5<sup>th</sup> Edition page 386-394, agency can be created in various ways. These include agency by Estoppel. The quote therein by Lord Cransworth is important in demonstrating how this form of agency is created:

“No one can become an agent of another person except by will of that person. His will may be manifested in writing or orally or simply by placing another in a situation in which according to the ordinary rules of law, or perhaps it would be more correct to say, according to the ordinary usages of mankind, that other is understood to represent and act for the person who has so placed him... this proposition, however, is not at variance with the doctrine that where one has acted as from his conduct to lead another to believe that he has appointed someone to act as his agent, and knows that the other person is about to act on that behalf, then unless he interposes, he will in general be stopped from disputing the agency, though in fact no agency really existed...”

20. In this instance, the 2<sup>nd</sup> Respondent knowingly and voluntarily released the motor vehicle to Newton Kimathi, to show the same to a potential buyer. The Appellant viewed the vehicle that was presented by the 1<sup>st</sup> Respondent. Upon meeting of minds, the 1<sup>st</sup> Respondent caused an agreement to be drafted. The Agreement clearly indicated that the 1<sup>st</sup> Respondent had the authority to sell the motor vehicle. It did not indicate that the 1<sup>st</sup> Respondent was the registered and/or beneficial owner of the vehicle. The Agreement was subsequently executed, the 1<sup>st</sup> Respondent was represented by Newton Kimathi. I concur with the trial court’s finding that for all intents and purposes, the 1<sup>st</sup> Respondent acted as the agent of the 2<sup>nd</sup> Respondent.
21. That notwithstanding, I will not address the issue of privity of contract. This is in view of the relief sought by the Appellant in its Complaint dated 10 May 2022. The Appellant sought one relief only; an order compelling the 3<sup>rd</sup> Respondent to register motor vehicle registration number KDC 848B in favor of the Appellant. In my considered view, in light of the relief sought, addressing the issue of privity of contract would be merely an academic exercise as it would have no bearing whatsoever on the final outcome herein below.
22. The trial court held that it could not compel the 3<sup>rd</sup> Respondent, a state corporation, to perform a task which it is mandated to as that would amount to usurping judicial power.
23. It is trite law, and worth remembering, that a party is bound by its pleadings. It is a cardinal principle of law that a court will only grant reliefs sought by a party. In the instant case, much as I may not concur with the reasoning of the trial court in not granting the relief sought, I concur fully that the order could not be granted under the circumstances. This is because the Appellant sought to compel the 3<sup>rd</sup> Respondent to register the vehicle in his favor yet he had not moved the court to determine the issue of ownership of the vehicle. By so doing, the Appellant was putting the cart before the horse. The Appellant should have first sought a declaration that the vehicle was his, then the order to compel would come subsequently.
24. Further, based on the evidence before it, the trial court was correct in dismissing the suit since, considering the single prayer the Appellant sought, the Appellant had not proved its case against the 3<sup>rd</sup> Respondent on a balance of probabilities. There was no evidence to demonstrate that the 3<sup>rd</sup> Respondent had refused, failed and/or neglected to perform its duty to register the motor vehicle in favour of the Appellant.



25. In view of the foregoing, I find no reason to interfere with the decision of the trial court. The appeal is unsuccessful and the same is dismissed. In view of the outcome, each party shall bear its own costs.

**DATED AND DELIVERED AT NAIROBI THIS 28 DAY OF MARCH 2025.**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Shililu..... for the Appellant

N/A..... for the 1<sup>st</sup> Respondent

Misati.....for the 2<sup>nd</sup> Respondent

N/A.....for the 3<sup>rd</sup> Respondent

Ms. Libertine Achieng..... Court Assistant

