



Tiny Bees Credit (K) Limited v Gachigua & 4 others (Civil Appeal E290 of 2023) [2025] KEHC 3834 (KLR) (27 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3834 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E290 OF 2023
TW OUYA, J
MARCH 27, 2025**

BETWEEN

TINY BEES CREDIT (K) LIMITED APPELLANT

AND

MARGARET WANJIKU GACHIGUA 1ST RESPONDENT

WESTON CAPITAL LIMITED 2ND RESPONDENT

ELISON MUTUNGATI SHEIKH CHANDI 3RD RESPONDENT

**NATIONAL TRANSPORT AND SAFETY AUTHORITY (NTSA) 4TH
RESPONDENT**

THE ATTORNEY GENERAL 5TH RESPONDENT

*(Being an appeal from the judgment of Hon. Kisiangani, C.K.,
PM delivered on 10.08.2023 in Ruiru SPMCC No. E216 of 2022)*

JUDGMENT

Background

1. This appeal emanates from the judgment delivered on 10.08.2023 in Ruiru SPMCC No. E216 of 2022. The suit was commenced by way of a plaint dated 20.04.2022 filed by Margaret Wanjiku Gachigua, being the plaintiff in the lower court (hereafter the 1st Respondent) against Tiny Bees Credit (K) Limited (hereafter the Appellant) alongside Weston Capital Limited, Elison Mutungati Sheikh Chandi, National Transport and Safety Authority (NTSA) and The Attorney General (hereafter the 2nd, 3rd, 4th and 5th Respondents). Therein, the 1st Respondent sought the following reliefs:
 - a. A declaration that the Plaintiff is the rightful owner of motor vehicle Registration No. KCY 657J, Toyota Prado.



- b. A declaration that the sale, transfer and registration of motor vehicle Registration No. KCY 657J, Toyota Prado in favour of the 2nd and 3rd Defendants is unlawful and illegal and an Order be issued for Cancellation of the logbook issued to the 2nd and 3rd Defendants and removal of their names from the Records of the 4th Defendant.
 - c. An order be issued compelling the 4th Defendant to execute prayers a) and b) above.
 - d. A declaration that the 1st and 2nd Defendants have no legally recognizable interest in motor vehicle Registration No. KCY 657J, Toyota Prado the subject matter herein and are therefore inhibited from carrying out any Acts that may interfere with the Plaintiff's proprietary interest of the said vehicle.
 - e. A permanent Order of injunction be issued restraining the Defendants by themselves, their Agents, their Servants or anybody acting on their behalf from advertising for Sale, selling, auctioning, disposing off or in any other way and manner dealing with motor vehicle Registration No. KCY 657J, Toyota Prado.
 - f. Damages for breach of contract and loss of use of the subject motor vehicle.
 - g. Costs of the suit.
 - h. Any other relief that the Honourable Court may deem fit and grant.
2. It was pleaded that the 1st Respondent was at all material times the bona fide registered owner of the motor vehicle registration No. KCY 657J, Toyota Prado (hereafter the subject motor vehicle) insured vide Policy Number 5xx/7xx/102xxxx/xxxx/xx (the Policy), upon acquiring the same back in the year 2020. It was further pleaded that sometime on or about 13.09.2021 the 1st Respondent entered into an agreement for sale of the subject motor vehicle, with the 3rd Respondent, at a consideration of Kshs. 5,300,000/- and that it was a term thereof that the 2nd Respondent would finance the said purchase price; ensuring to remit the same to a bank account belonging to the 1st Respondent, the details of which were set out in the terms of the agreement for sale.
 3. The 1st Respondent pleaded in the plaint that the 3rd Respondent breached the terms of the agreement for sale by failing to channel the purchase price to her, thereby causing her to suffer loss and damage. The particulars of breach of contract were set out in the plaint.
 4. The 1st Respondent further pleaded in the plaint that she was duped by the 2nd and 3rd Respondents into releasing the original logbook for the subject motor vehicle together with her personal details, on the undertaking that the purchase price would be deposited into her bank account, as per the agreement. That upon receipt of the original logbook and the personal details belonging to the 1st Respondent, the 3rd Respondent fraudulently colluded with the 4th Respondent to have the title to the said vehicle illegally transferred and registered in the names of the Appellant and the 3rd Respondent, with the particulars of fraud being set out in the plaint as against the respective parties.
 5. It was the averment by the 1st Respondent that the illegal transfer was further based on an irregular letter of undertaking dated 16.09.2021 and previously issued by the 2nd Respondent, with the 1st Respondent further averring that the fraudulent acts set out hereinabove were reported at Ruiru Police Station vide OB No. 45/21/12/2021.
 6. The 1st Respondent pleaded that soon thereafter, she received what she thought to be the original logbook for the subject motor vehicle, from one Martin Muthee Njagi, only to later discover that the submitted logbook was in fact a fake and a forgery, and that the 3rd Respondent had utilized the original



and true logbook as security for obtaining a loan in the sum of Kshs. 2,500,000/- from the Appellant herein.

7. That subsequent to the aforementioned fraudulent acts, the subject motor vehicle was repossessed by LAAR Auctioneers (the Auctioneers) on 17.12.2021 on the basis of alleged non-repayment of the abovementioned loan by the 3rd Respondent, with the said motor vehicle subsequently being detained at Ruiru Police Station, thereby causing the 1st Respondent to suffer irreparable loss and damage owing to its wear and tear.
8. Upon entering appearance, the Appellant filed a statement of defence and counterclaim dated 24.08.2022. In its defence, the Appellant denied the key averments in the plaint and liability made against it. The Appellant further stated that contrary to the averments being made in the plaint, the 1st Respondent voluntarily transferred the subject motor vehicle jointly to the Appellant and the 3rd Respondent, via the TIMS platform being operated by the 4th Respondent. The Appellant equally stated that the 1st Respondent was at all material times aware that the 3rd Respondent had utilized the subject motor vehicle as security for obtaining a loan facility from the Appellant, and that she voluntarily submitted the original logbook to the 3rd Respondent for that purpose.
9. By way of counterclaim, the Appellant sought judgment against the 1st and 3rd Respondents in the following manner:
 - a. A declaration that Motor Vehicle Registration Number KCY 657J is a security for a loan advanced by the Plaintiff to the 2nd Defendant and that the right to sell the vehicle crystallized upon the 2nd Defendant defaulting in repaying the loan amounts due.
 - b. A declaration that the registration of Motor Vehicle Registration Number KCY 657J in the name of the Plaintiff and the 2nd Defendant is lawful and the Plaintiff is lawfully a joint registered owner of Motor Vehicle Registration Number KCY 657J.
 - c. An order that the interests of the 1st Defendant in Motor Vehicle Registration Number KCY 657J extinguished upon registration of the Motor Vehicle in the names of the Plaintiff and the 2nd Defendant.
 - d. A declaration that the Plaintiff has no legally recognizable interest in Motor Vehicle Registration Number KCY 657J.
 - e. A declaration that the 2nd Defendant lawfully exercised its right of sale and that the sale by public auction was lawful.
 - f. An order compelling the Director of Criminal Investigations Ruiru Police Station to release Motor Vehicle Registration Number KCY 657J to the Plaintiff to enable the Plaintiff release the Motor Vehicle to the bona fide purchaser.
 - g. Costs of the suit.
 - h. Any other relief that the Honourable Court may deem fit and just to grant.
10. The Appellant pleaded in its counterclaim that sometime in September, 2021 the 3rd Respondent approached it with a view to taking out a loan facility, for which the subject motor vehicle would act as security. That consequently, the Appellant advanced a loan sum of Kshs. 2,500,000/- to the 3rd Respondent. That the 1st Respondent on her part facilitated the loan approval process by handing over the original logbook belonging to the subject motor vehicle to the 3rd Respondent who thereafter released the same to the Appellant. That furthermore, the 1st Respondent undertook an online



discharge with TIMS and transferred ownership of the subject motor vehicle to the joint names of the Appellant and the 3rd Respondent.

11. That sometime on or about 10.09.2021, the 3rd Respondent being in possession of the subject motor vehicle, availed the same for inspection and valuation, and later availed it for purposes of installation of a car tracker device. That upon compliance with the loan approval procedures, the Appellant advanced the aforementioned loan sum to the 3rd Respondent, on the terms that the same would be repayable within a period of 18 months commencing 14.09.2021 and ending 14.03.2023 at a sum of Kshs. 226,389/- on the first instalment, and subsequent monthly instalments of Kshs. 228,889/- until repayment in full.
12. That however, the 3rd Respondent defaulted on the loan repayments, upon which the Appellant exercised its right of sale by instructing the Auctioneers to repossess and sell the subject motor vehicle. That following an advertisement in the Standard Newspaper and dated 1.03.2022, the said vehicle was sold by way of a public auction, to a bona fide purchaser.
13. That nevertheless, sometime on or about 21.12.2021 the subject motor vehicle was seized from a car yard situated along Kiambu Road, and detained at Ruiru Police Station, following a report by the 1st Respondent that the same had allegedly been stolen.
14. The 1st Respondent rejoined with a reply to the defence and a defence to the counterclaim dated 31.10.2022 where she denied the key averments made in the counterclaim and joined issue with the defence. In her defence, the 1st Respondent denied the allegations that she voluntarily transferred title on the subject motor vehicle to the Appellant and the 3rd Respondent. The 1st Respondent reiterated her averments earlier made in the plaint and further averred that in the absence of any proper or legal title to the said vehicle, the 3rd Respondent lacked the capacity to seek and/or obtain a loan facility from the Appellant, by utilizing the subject motor vehicle as security thereon. On the basis of those averments, the 1st Respondent urged the lower court to dismiss the Appellant's counterclaim with costs.
15. The Appellant likewise rejoined with a reply to the 1st Respondent's defence to the counterclaim and joined issue with the said defence.
16. The 5th Respondent similarly entered appearance and filed a statement of defence, by and large averring that it is a stranger to the allegations made in the plaint.
17. Going by the record, the 2nd, 3rd and 4th Respondents did not enter appearance or file their respective pleadings in respect of the suit.
18. The suit proceeded for full hearing with the testimony of the 1st Respondent as well as that of a witness summoned by the Appellant. The 5th Respondent opted not to call any witnesses and it was the indication by the 1st Respondent that she had no claim against the said Respondent. Counsel for the 4th Respondent limited her participation in the proceedings to cross-examination of the 1st Respondent.
19. Upon close of submissions, the trial court delivered judgment in favour of the 1st Respondent and granted reliefs a) to e) sought in the plaint, but declined to award any damages. The trial court equally awarded costs of the suit to the 1st Respondent, to be borne by the Appellant, and the 2nd and 3rd Respondents. Resultantly, the trial court proceeded to dismiss the Appellant's counterclaim with no order as to costs.



Substratum Of The Appeal

20. Being aggrieved by the aforementioned decision, the Appellant preferred this appeal by way of the memorandum of appeal dated 5.09.2023 which is based on the following grounds:
- i. That the Learned Magistrate erred in law and in fact in failing to find that the Appellant is the rightful owner of the motor vehicle registration number KCY 657J.
 - ii. That the Learned Magistrate erred in law and in fact in failing to find that the transfer of the motor vehicle registration number KCY 657J to the Appellant was lawful and legal and instead finding that it was unlawful and illegal.
 - iii. That the Learned Magistrate erred in law and in fact in failing to consider and evaluate the evidence that was placed before her thereby dismissing the Appellant's counterclaim.
 - iv. That the Learned Magistrate erred in law and in fact in failing to apply the relevant laws to the facts that were before her.
 - v. That the Learned Magistrate erred in law and in fact by misdirecting herself on the facts before her thereby arriving at a wrong conclusion and decision.
 - vi. That the Learned Magistrate misdirected herself and erred in law and in fact by overruling facts that were not disputed by any of the parties particularly the Counter-claim which was not opposed.
 - vii. That the Learned Magistrate further misdirected herself and erred in law by not addressing all the issues framed for determination.
 - viii. That the Learned Magistrate erred in law in arriving at a decision not supported by any law.
 - ix. That the Learned Magistrate erred in law and in fact in failing to find that the Appellant at all times acted based on the conduct of the 1st Respondent thereby estopping her from gaining from her own actions and conduct.
 - x. That the Learned Magistrate erred in law and in fact in failing to find that the Appellant is the bona fide registered owner of the suit motor vehicle.
 - xi. That the Learned Magistrate erred in law and in fact in failing to find that the Appellant has a superior right of motor vehicle registration number KCY 657J over the 1st Respondent.
 - xii. That the Learned Magistrate erred in law and in fact in failing to find that the Appellant has a legally recognizable interest in the motor vehicle registration number KCY 657J.
 - xiii. That the Learned Magistrate erred in law and in fact in awarding costs of the suit to the 1st Respondent.
 - xiv. That the Learned Magistrate erred in law and in fact in dismissing the Counter-claim. (sic)
21. The Appellant consequently seek the following orders:
- i. The appeal be allowed on the terms prayed.
 - ii. The Judgment and orders of the Magistrate's Court at Ruiru delivered Honourable Magistrate C.k. Kisiangani (P.M.) in Ruiru MCCC/E216/2022 on 10th August 2023, and all consequential directions be set aside and or nullified.



- iii. The Honourable Court does award the Appellant costs of the Appeal and costs of the proceedings at the Trial Court. (sic)

Submissions On The Appeal

22. The appeal was canvassed by way of written submissions. Counsel for the Appellant anchored his submissions on the decision in *Ndolo v Ndolo* [2008] 1 KLR where the court stated that:

“We start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases.....” “.....In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

23. Counsel submitted that the burden of proving the particulars of fraud set out in the plaint lay squarely with the 1st Respondent, who did not discharge that burden. That in the circumstances, the trial court erred in finding in her favour.

24. Counsel further faulted the trial court for not considering the totality of the evidence tendered before it and in particular, the evidence supporting the Appellant’s assertions that the 1st Respondent willingly transferred title as well as physical possession of the subject motor vehicle to the Appellant and the 3rd Respondent. Counsel proceeded to argue that no witness was called or evidence adduced to invalidate the Registration documents bearing the joint names of the Appellant and the 3rd Respondent, as co-owners of the subject motor vehicle, at all material times. The decision in *Vijay Morjaria v Nansingh Madhusingh Darbar* [2000] KECA 34 (KLR) was cited in this regard, where the Court of Appeal reasoned thus:

“...fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

25. It is counsel’s contention that by inferring fraud in the absence of any relevant evidence supporting the claim, the trial court fell into error.

26. Regarding the counterclaim, it is counsel’s contention that in contrast, the trial court erred in failing to declare the Appellant as being the legal and bona fide owner of the subject motor vehicle, as set out in the counterclaim. Counsel faulted the trial court for allegedly failing to consider its pleadings, adding that the trial court ought to have found that upon effecting the transfer in question, the 1st Respondent was estopped from claiming title to the subject motor vehicle. For those reasons, the court was urged to allow the appeal as prayed.

27. On his part, counsel for the 1st Respondent first drew this court’s attention to the case of *Selle v Associated Motor Boat Co.* [1968] EA 123 and Section 78 of the *Civil Procedure Act* (CPA) on the power and duty of an appellate court. Counsel then proceeded to briefly submit that the trial court arrived at a correct finding in the matter, the 1st Respondent having established her ownership of the subject motor vehicle at all material times, as well as the particulars of fraud set out in the plaint.

28. Counsel submitted that the 1st Respondent’s claim remained uncontroverted and hence the trial court’s decision was sound in every respect, relying inter alia, on the decision in *Patrick Muturi v Kenindia Assurance Company Ltd* [1993] KEHC 169 (KLR), to argue that where a party has suffered



any loss resulting from the unlawful detention or conversion of his or her property, such party is entitled to the full value of such property, as well as compensation for any special loss suffered.

29. Ultimately, counsel for the 1st Respondent submitted that the trial court arrived at a well-reasoned finding which ought not to be disturbed. The court was thus urged to dismiss the appeal with costs.

30. The record shows that the 2nd, 3rd, 4th and 5th Respondents did not participate in the appeal proceedings.

Analysis And Determination

31. The court has considered the record of appeal, the pleadings and original record of the proceedings as well as the submissions by the respective parties. This is a first appeal. The Court of Appeal for East Africa set out the duty of the first appellate court in *Selle v Associated Motor Boat Co.* [1968] EA 123 in the following terms:

“An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.

An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that 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 account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.”

32. From the foregoing, it is well settled that an appellate court will not ordinarily interfere with a finding of fact made by a trial court unless such finding was unfounded, or it is demonstrated that the court below acted on wrong principles in arriving at the finding it did. See *Ephantus Mwangi & Another v Duncan Mwangi Wambugu* [1982 – 1988] IKAR 278.

33. Upon review of the memorandum of appeal and submissions by the respective parties before this court it is evident that the appeal turns on two (2) key limbs: namely, the trial court’s finding in favour of the 1st Respondent and against the Appellant in respect of the suit, and consequently, the decision by the trial court to dismiss the Appellant’s counterclaim. That being the position, the court will tackle the 14 grounds of appeal under the two (2) limbs above, beginning with the 1st Respondent’s claim.

34. The legal position is that the burden of proof in civil cases rests with the plaintiff at all material times, while the standard of proof is held on a balance of probabilities. In *Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank* [2004] 2 KLR 91, the Court of Appeal stated in this regard that:

“We have carefully considered the judgment of the superior court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or Court on the basis of those pleadings pursuant to the provisions of Order XIV



of the Civil Procedure Rules. And the burden of proof is on the Plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail.” (Emphasis added).

35. The gist of the parties’ respective pleadings have already been set out hereinabove.
36. At the trial stage, the 1st Respondent being PW1, adopted her executed witness statement dated 20.04.2022 as part of her evidence-in-chief and produced her list and bundle of documents of like date as P. Exhibits 1 to 8; and her further list and bundle of documents dated 9.10.2022 as P. Exhibits 9 and 11.
37. She went on to state that as at 13.09.2021 she was the bona fide owner of the subject motor vehicle. She stated that she entered into an agreement for sale of the subject motor vehicle, with the 3rd Respondent, and obtained an undertaking by Ramadhan Omondi on behalf of the 2nd Respondent, which undertaking was never fulfilled. That nevertheless, she came to learn that the said vehicle had been transferred to the Appellant on 22.09.2021. That notwithstanding the fact that she was requested to share the codes for the 4th Respondent with the 3rd Respondent, the purchase price for the subject motor vehicle was never paid to her. That resultantly, the 2nd and 3rd Respondents transferred the subject motor vehicle to their joint names, in the absence of payment of the purchase price thereon.
38. In cross-examination, the 1st Respondent stated that she did not give physical possession of the subject motor vehicle to the 3rd Respondent, but that a car tracker was installed thereon, at the behest of the 3rd Respondent and in her absence. That she only came to learn of the Appellant’s alleged interest in the subject motor vehicle upon seizure of the said vehicle. The 1st Respondent gave evidence that the transfer of ownership was undertaken through her account with the 4th Respondent, but that she did not apply to have ownership of the subject motor vehicle transferred to the Appellant and the 3rd Respondent; but that the same was to be transferred to the 2nd and 3rd Respondents instead. She further gave evidence that the agreement between her and the 3rd Respondent never terminated.
39. In further cross-examination, the 1st Respondent testified that she has a TIMS account with the 4th Respondent and that at one point, she received codes on her personal mobile contacts, following which she transferred ownership of the subject motor vehicle.
40. In re-examination, it was the 1st Respondent’s testimony that a tracker was installed on the subject motor vehicle by the 3rd Respondent and that no relationship subsisted between her and the Appellant at any point. She stated that she handed over the logbook in respect of the subject motor vehicle to the 2nd Respondent, but that the purchase price thereof was never remitted to her. This marked the close of the 1st Respondent’s case.
41. The Appellant on its part called its Credit and Connection Officer, Christine Awuor Ouma, as DW1. Her evidence-in-chief consisted of the adoption of her signed witness statement dated 24.08.2022 and the production of the Appellant’s list and bundle of documents of like date as D. Exhibits 1 to 11 and its further list and bundle of documents dated 28.11.2022 as D. Exhibits 12 and 13.
42. During cross-examination, the witness stated that she met the 1st Respondent at the time of repossession of the subject motor vehicle by the Auctioneers, at the Appellant’s request. She further stated that the 1st Respondent and the Appellant do not enjoy any contractual relationship, but that the subject motor vehicle belonging to the former at all material times, was utilized as security by the



- 3rd Respondent in respect of a loan facility advanced to him by the Appellant on 24.09.2021. That at the time of taking out the loan facility, the 3rd Respondent had no title to the subject motor vehicle but only possessed a copy of the material logbook, registered in the name of the 1st Respondent.
43. The witness proceeded to testify that in exercising due diligence, the Appellant required ownership of the subject motor vehicle to be transferred jointly to itself and the 3rd Respondent. That at the point of transfer, the 3rd Respondent possessed the original logbook and the relevant agreement for sale. That on its part, the Appellant did not commit any fraud.
44. At the point of re-examination, the witness gave evidence that the Appellant ordinarily offers loans against logbooks. That in the present instance, the 3rd Respondent was in physical possession of the subject motor vehicle, which vehicle was subsequently installed with a car tracker device. That upon the Appellant's request, the 3rd Respondent contacted the 1st Respondent to initiate the transfer process. That upon a transfer being undertaken, the Appellant advanced a loan sum of Kshs. 2,500,000/- to the 3rd Respondent. That all the while, the 1st Respondent never raised any issue pertaining to the subject motor vehicle, until such time as it was repossessed.
45. Upon close of final submissions, the learned trial magistrate after restating and analyzing the evidence, reasoned that the 3rd Respondent had acted fraudulently against the 1st Respondent, the latter of whom transferred the subject motor vehicle to the 2nd and 3rd Respondent on the basis of an undertaking given by the 2nd Respondent, on remission of the agreed purchase price, but which undertaking was not acted upon. The learned trial magistrate further reasoned that the fraudulent actions by the 3rd Respondent are further seen in his decision to take out a loan facility with the Appellant and using the subject motor vehicle as security notwithstanding the fact that the purchase price thereon was yet to be settled. The learned trial magistrate was therefore satisfied that the 1st Respondent had proved the particulars of fraud as against the Appellant and the 3rd Respondent, and entered judgment accordingly, consequently dismissing the Appellant's counterclaim with no order as to costs. It is apparent from the record that the Appellant is now challenging the aforesaid finding, as pertains to the claims made against it.
46. Upon re-examination of the pleadings and material on the lower court record and as earlier set out, the 1st Respondent's claim was founded on breach of contract against the 3rd Respondent, as well as fraud as against the Appellant as well as the 3rd, 4th and 5th Respondents. However, the record shows that the 1st Respondent later opted not to pursue the claim against the 5th Respondent.
47. Upon further re-examination of the pleadings and material on the lower court record, it is not in dispute that the 1st Respondent was at all material times the registered owner of the subject motor vehicle. It is also not in dispute that by virtue of an agreement for sale dated 13.09.2021 (P. Exhibit 1) the said Respondent agreed to sell the subject motor vehicle to the 3rd Respondent at a consideration of Kshs. 5,300,000/- to be financed by the 2nd Respondent. It was also a term of the agreement that the purchase price would be released to the 1st Respondent within 14 days of registration of the transfer and chattel mortgage in favour of the 2nd and 3rd Respondents, respectively (Clause 2.1). Under Clause 3 thereof, the 3rd Respondent would take physical possession of the subject motor vehicle immediately upon payment of the purchase price. Clause 4 provided that upon receiving the offer letter and an unequivocal professional undertaking from the 2nd Respondent, the 1st Respondent would deliver a duly executed transfer form, the original logbook in respect of the subject motor vehicle, and copies of her ID card and KRA PIN Certificate.
48. From the foregoing, it is apparent that the subject motor vehicle, upon transfer, was to be registered in the joint names of the 2nd and 3rd Respondents.



49. From a re-examination of the lower court record, it is apparent that the 2nd Respondent consequently issued an unequivocal letter of undertaking dated 16.09.2021 (P. Exhibit 2) to the 1st Respondent, requesting for release of the abovementioned documents whilst undertaking to remit the purchase price within 14 days of receipt of the requisite documents and successful registration of the subject motor vehicle in the joint names of the 2nd and 3rd Respondents. It is apparent from the record that the purchase price was never remitted to the 1st Respondent.
50. Suffice it to say that, it is apparent from the lower court record that the 3rd Respondent soon thereafter took out a loan facility with the Appellant, vide the loan application form dated 14.09.2021 (D. Exhibit 2) for the sum of KShs. 2,500,000/-. From a reading of the said form, it is clear that the subject motor vehicle was to be utilized as security on the loan sum, thereby resulting in registration of a security agreement dated 14.09.2021 (D. Exhibit 3) and issuance of an undated offer letter (D. Exhibit 4) detailing the terms of the loan facility, to that effect.
51. Going by the lower court record, it is apparent that the subject motor vehicle was subsequently registered in the joint names of the Appellant and the 3rd Respondent, as seen in the registration certificate dated 28.10.2021 and the motor vehicle copy of records as at 17.02.2022 (D. Exhibits 7 and 8). The facts as presented before the trial court are that the 3rd Respondent subsequently defaulted on the loan facility, thereby resulting in the repossession, advertisement and subsequent sale of the subject motor vehicle by the Auctioneers and on behalf of the Appellant, vide a public auction held on 9.03.2022. The above turn of events collectively prompted the filing of the suit by the 1st Respondent.
52. Be that as it may, of concern in the present appeal is whether the learned trial magistrate's finding in favour of the 1st Respondent especially as pertains to the Appellant, is reasonable in the circumstances.
53. The particulars of fraud set out in the plaint as against the Appellant relate to the transfer of the subject motor vehicle in its name jointly with that of the 3rd Respondent, and alleged forgery of the material logbook, while also allegedly relying on forged documents in advancing the loan facility to the 3rd Respondent.
54. The Court of Appeal in *Wambui v Mwangi & 3 others (Civil Appeal 465 of 2019) [2021] KECA 144 (KLR) (19 November 2021) (Judgment)* defined the term 'fraud' as follows:
- “a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.”
55. The Court of Appeal further set out the principles encapsulating the tort of fraud in the case of *Kuria Kiarie & 2 others v Sammy Magera [2018] eKLR* in the manner hereunder:
- “The law is clear and we take it from the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR*, where Tunoi, JA. (as he then was) stated as follows:
- “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.” [Emphasis added].



As regards the standard of proof, this Court in the case of *Kinyanjui Kamau vs George Kamau* [2015] eKLR expressed itself as follows:-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo* (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...” ...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

56. From a reading of the foregoing binding authorities, it is clear that the burden of proof lay squarely with the 1st Respondent herein to prove her claim for fraud as against the relevant parties including the Appellant, to a standard of proof higher than the typical balance of probabilities applicable in civil cases.
57. Upon re-examination of the record, the court observed that while it is apparent that the Appellant did not exercise all due diligence necessary in ascertaining that the 3rd Respondent had a legitimate and lawful title to the subject motor vehicle at the time of applying for the loan facility in question and in offering the said vehicle as security, it is not convinced that the 1st Respondent necessarily proved the particulars of fraud set out in the plaint, as against the Appellant, to the required standard of proof set out in the relevant authorities cited hereinabove. No credible material or evidence was tendered at the trial to demonstrate the manner in which the Appellant purportedly colluded with or otherwise knowingly and willfully participated in the fraudulent actions by the 3rd Respondent. In this sense, the court is satisfied that the learned trial magistrate erred in concluding that the particulars of fraud had been proved as against the Appellant. To this extent, this court departs from the reasoning by the learned trial magistrate.
58. That notwithstanding, upon consideration of the nature of reliefs sought in the plaint; namely the declaratory and injunctive reliefs, and in view of the fact that the title to the subject motor vehicle had changed hands as a result of the fraudulent actions by the 3rd Respondent at the time of filing suit, the court is satisfied that the learned trial magistrate’s ultimate decision to award the pertinent reliefs sought in the 1st Respondent’s plaint was reasonable and justified in the circumstances. The same ought not to be disturbed.
59. The second limb of the appeal has to do with whether the learned trial magistrate acted correctly in dismissing the Appellant’s counterclaim.
60. Upon re-examination of the record, the court supports the finding by the learned trial magistrate, that the 1st Respondent had demonstrated the manner in which the 3rd Respondent had acted fraudulently. Furthermore, the court is of the view that in the absence of any indication of payment of the purchase price to the 1st Respondent in respect of the subject motor vehicle; coupled with the fraudulent actions by the 3rd Respondent; no legal or proper title passed to the 3rd Respondent in respect of the subject motor vehicle, whether at the time of taking out the loan facility or at any material time thereafter. In the circumstances, no legal or proper title could have legitimately been passed on to the Appellant as the said vehicle did not constitute a proper security at any material time.



61. This court concurs with the finding by the learned trial magistrate that the legal title to the subject motor vehicle remained with the 1st Respondent at all material times and hence the Appellant did not have any legal right to transfer and/or sell the said vehicle.
62. Upon considering all the foregoing factors therefore, the court is satisfied that the learned trial magistrate properly analyzed the pleadings and evidence placed before her and arrived at a reasonable finding by dismissing the Appellant's counterclaim. The court finds that no proper basis has been laid, warranting a disturbance of the said finding.

Final Orders

63. Consequently, the appeal is hereby dismissed for want of merit. The judgment delivered by the trial court on August 10, 2023 in Ruiru SPMCC No. E216 of 2022 is hereby upheld. The 1st Respondent shall have the costs of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27th DAY OF MARCH, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....Mangich

For Respondents.....No Appearance

Court Assistant.....Jackline

