



REPUBLIC OF KENYA



**Njoroge v Chege (Civil Appeal E730 of 2023)
[2025] KEHC 3749 (KLR) (Civ) (26 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3749 (KLR)

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

CIVIL

CIVIL APPEAL E730 OF 2023

LP KASSAN, J

MARCH 26, 2025

BETWEEN

RUTH NYATHIRA NJOROGE APPELLANT

AND

PETER MWANGI CHEGE RESPONDENT

*(Being an appeal from the judgment of the Adjudicator Honourable C.A.
Okumu (RM) delivered on 07.07.2023 from Nairobi SCCC No E248 of 2023)*

JUDGMENT

1. The trial magistrate, following the statement of claim filed by the Respondent entered judgment for Respondent the Claimant in the trial court against the 3rd Respondent where there were two other Respondents for:
 - a. The 3rd Respondent is 100% liable
 - b. Special damages at Kshs 133,980/=.
 - c. Cost of the claim
 - d. Interest on (b) and (c) above from date of judgment until payment in full.
2. A brief background of this matter is that a statement of claim was filed by the Respondent who was the claimant in the trial court. The Respondent's vehicle registration no KBH 426R was damaged on 16.03.2021 involving several vehicles in which motor vehicle registration no. KBT 825A was held liable. The registered owner of the liable vehicle was Njoroge Nguyai Kibaya (Deceased) the 1st Respondent in the trial court and it was driven by Njoroge Mwangi the 2nd Respondent therein. The Respondent herein sought leave to amend the statement of claim to join the 3rd Respondent who



was registered the owner of the subject liable vehicle after the accident and to reflect the estate of the 1st Respondent who was deceased. No response was received to the amended statement of claim and interlocutory judgment was entered against the three Respondents.

3. The Appellant has now appealed against the decision of the subordinate court on liability and quantum on the following grounds summarized as:
 1. The trial court erred in finding her wholly liable as the owner of the motor vehicle yet at the time of the accident she was not the actual or beneficial owner of the subject vehicle.
 2. The trial court erred in failing to find the actual owner of the subject vehicle.
 3. The trial court erred in failing to hold the appellant was not properly served with pleadings
4. The appellant seeks that the judgment of the trial magistrate be set aside, the appeal be allowed with costs.
5. The following issues arise for determination:
 - a. Whether the trial magistrate erred in law and fact in finding the Appellant liable based on her post-accident ownership of the vehicle;
 - b. Whether the Appellant was properly served with the summons and pleadings;
 - c. Whether the interlocutory judgment was irregular and should be set aside.
 - d. Whether the trial court erred in law or fact.

Analysis And Determination

6. This appeal being solely against the decision on damages, I am guided by the decision of the Court of Appeal in *Bashir Ahmed Butt v Uwais Ahmed Khan* [1982-88] KAR 5 where the court held that;

“An appellate Court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low”
7. As a first appellate court, I am bound by the principle in *Selle v Associated Motor Boat Co. Ltd* (1968) EA 123 to re-evaluate and re-analyze the evidence afresh while bearing in mind that I did not have the opportunity to see or hear the witnesses testify.
8. The law on ownership of a motor vehicle is governed by Section 8 of the *Traffic Act*, which provides that the person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner. This is, however, a rebuttable presumption.
9. The Appellant has submitted evidence namely, the vehicle transfer records and logbook, indicating that she acquired the motor vehicle KBT 825A on 22nd January 2022, nearly a year after the accident. She therefore had no control, possession, or beneficial ownership of the vehicle at the material time.
10. As held in *Bolpak Trading Co. Ltd v Monica Awuor Ayieko* [2020] eKLR, the court emphasized that vicarious liability cannot attach to someone merely because they are the registered owner—proof must be shown of actual control or relationship with the driver at the time of the accident.
11. The amended statement of claim dated 10.03.2023 being a pleading by the Respondent shows the 1st Respondent therein was the registered owner of the subject vehicle at the time of the accident. That



the 2nd Respondent was the driver and the 3rd Respondent the current owner. The police abstract dated 16.03.2021 shows that the subject motor vehicle KBH 426X was owned by Peter Mwangi Chege and was being driven by Christine Mtindi Munguti.

12. I find merit in the Appellant's position that she was not the owner at the time of the accident and should not have been held liable.
13. Service is not a mere technicality it is the foundation of fair hearing under Article 50 of *the Constitution*. The trial record discloses no affidavit or return of service confirming that the Appellant was personally served with the amended pleadings. In Patrick Omondi Opiyo t/a Dallas Pub v. Shaban Keah & Another [2018] eKLR, the Court of Appeal held that default judgments without proper service are nullities.
14. The proceedings of 06.03.2023 show Counsel representing the Court informing the trial court that although served with the pleadings, the Appellant was not cited as a party and thus unable to enter an appearance and file their response. The Respondent sought leave of the court to amend the claim to join the Appellant who was now the registered proprietor of the subject vehicle. On the said date, the trial court was informed the 1st Respondent therein was deceased.
15. On 17.04.2023, the court entered an interlocutory judgment against all the Respondents therein for failing to respond to the claim. There is no indication that the amended statement of claim had been served upon the Respondent if any or at all. The Appellant, having not been served and having filed a response that appears to have been disregarded, was denied the opportunity to be heard.
16. The entry of interlocutory judgment against the Appellant, based solely on the assumption of current ownership, was a clear error. As reiterated in Nancy Ayemba Ngana v Abdi Ali [2010] eKLR, the registration certificate is not conclusive evidence of ownership.
17. The trial court misdirected itself by failing to weigh the Appellant's documentary evidence. The resulting judgment is therefore unsafe and legally untenable.

Conclusion

18. It is a fundamental principle of natural justice that no person shall be condemned unheard. The ex parte judgment entered against the Appellant, who was neither properly served nor liable at the material time of the accident, is a miscarriage of justice and ought to be set aside with costs. Liability for the accident, if any, lies with the 1st Respondent now deceased and no proper substitution has been effected in this regard. Further, the 2nd Respondent in the trial court was said to be the driver at the time of the accident was also not served.
19. In view of the foregoing, I find that:
 - a. The Appellant was not the legal or beneficial owner of the motor vehicle at the material time of the accident;
 - b. There was no proper service upon the Appellant;
 - c. The interlocutory judgment was irregular and improperly entered against all the Respondents therein.
20. Accordingly, I make the following orders:



1. I therefore allow the appeal, set aside the trial court's finding on liability, and substitute the same with an order that the Respondent's suit be and is hereby dismissed, as against the Appellant.
2. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2025.

HON. L. KASSAN

JUDGE

In the presence of;

Maina for the Appellant

Kurgat holding brief for Muema for the Respondent

Carol – Court Assistant

