



REPUBLIC OF KENYA



**Watu Nominees Company Limited v Ombaso & 3 others (Civil Appeal
E1300 of 2024) [2025] KEHC 5520 (KLR) (Civ) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5520 (KLR)

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

CIVIL

CIVIL APPEAL E1300 OF 2024

AC MRIMA, J

APRIL 30, 2025

BETWEEN

WATU NOMINEES COMPANY LIMITED APPELLANT

AND

JOSEPHINE NYAMBEKI OMBASO 1ST RESPONDENT

JOHN MWANGI 2ND RESPONDENT

SEME ELIUD MARTIN 3RD RESPONDENT

JOASH OKEMWA 4TH RESPONDENT

*(Being an appeal from the Judgment and Decree of the Hon. Rawlings
Liluma Musiega (SRM) in Nairobi [Milimani] Commercial Court
Civil Suit No. E1280 of 2022 delivered on 25th October 2024)*

JUDGMENT

1. The appeal subject of this judgment turns only on one issue which is the liability of a financier of a motor vehicle which causes injuries to a third party in a road traffic accident.
2. According to the impugned judgment of trial Court, the financier, who is the Appellant in this appeal, was held to be the principal to the borrower, [the 2nd Respondent], and thereby jointly and severally liable for the accident. It is that finding that elicited the instant appeal. The appeal, therefore, is only against the liability as apportioned to the Appellant.
3. The role of the first appellate Court was discussed in Abdul Hamed Saif vs. Ali Mohamed Sholan (1955) 22 E.A.C.A. 270. Even though the case was an appeal from the High Court to the Court of



Appeal still the applicable legal principles are similar to appeals from the lower Courts to the High Court, hence, its relevance. The Court of Appeal stated as follows: -

.... 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 demeanour of a witness is inconsistent with the evidence in the case generally....

4. See also *Selle & Another vs. Associated Motor Boat Co. Ltd. & Others* (1968) EA 123.
5. In discharging the above duty, this Court has carefully considered the Memorandum of Appeal, the parties' submissions and the decisions referred to therein.
6. The liability of a party to an accident arises in many ways. In this case, the Appellant was sued as the registered owner of Motor Cycle registration number KMFS 120E make Boxer [hereinafter referred to as 'the motor cycle']. The 2nd Respondent, John Mwangi, was sued on the basis that he '... was the rider and/or either the actual but unregistered owner of the same motor cycle or otherwise had a beneficial or insurable interest therein.' as per paragraph 2 of the Plaintiff.
7. In finding the Appellant liable, the trial Court held as follows: -

..... Therefore, the 1st defendant [the Appellant herein] having been registered as the owner of the accident motor cycle at the time of the accident and having not disclosed the whereabouts of the 1st defendant [sic], there was no way it can escape liability. It has not yet dislodged the claims that the 1st defendant [sic] was its agent. I therefore hold the 1st and 2nd defendant jointly and severally liable for the accident....

8. From the reading of the judgment by the trial Court, it is apparent that the various legal aspects of ownership were not considered even though comprehensive submissions and decisions were on record. Courts have over time discussed the ownership of motor vehicles and the import of Section 8 of the [Traffic Act](#). For instance, the Court in *Nancy Ayemba Ngaira vs. Abdi Ali* [2010] eKLR, correctly so, expressed itself as follows: -

There is no doubt that the registration certificate obtained from the Registrar of motor vehicles will show the name of the registered owner of a motor vehicle. But the indication thus shown on the certificate is not final proof that the sole owner is the person whose name is shown. Section 8 of the [Traffic Act](#) is fully cognizant of the fact that a different person, or different other persons, may be the de facto owners of the motor vehicle – and so the Act has an opening for any evidence in proof of such differing ownership to be given. And in judicial practice, concepts have arisen to describe such alternative forms of ownership: actual ownership; beneficial ownership; possessory ownership. A person who enjoys any of such other categories of ownership, may for practical purposes, be much more relevant than the person whose name appears in the certificate of registration; and in the instant case at the trial level, it had been pleaded that there was such alternative kind of ownership. Indeed, the evidence adduced in the form of the Police Abstract, showed on a balance of probabilities, that 1st defendant was one of the owners of the matatu in question.



9. The above legal position was affirmed in *David Ogol Alwar vs. Mary Atieno Adwera & Another* [2021] eKLR among others.
10. There is, hence, the actual, possessory and beneficial ownership of a motor vehicle. In this case, the Appellant explained the relationship between the 2nd Respondent and itself. Through evidence, the Appellant proved that it was the financier and legally registered owner of the motor cycle as to secure the money it advanced to the 2nd Respondent for the purchase of the motor cycle whereas the 2nd Respondent was the borrower and in actual possession and ownership of the motor cycle. There was no contrary evidence to the position taken by the Appellant.
11. The above scenario is not unique to this case. It is a common practice that an entity advances finances for a purchase of an asset and no doubt the entity must secure that advancement. In this matter, the Appellant secured its interest through the registration of the motor cycle as the owner and with a further view to restrain the 2nd Appellant from disposing of the motor cycle before the Appellant fully recovered the money advanced. That was the basis on which the Appellant's name appeared in the records held by the National Transport and Safety Authority as the registered owner.
12. There has, as well, been several Court determinations on the liability of a financier arising from the above setting. For instance, the Court's in *Abson Motors Limited vs. Tabitha Syombua Mutua & Another* [2019] eKLR, *Diamond Trust Bank Limited vs. Richard Mwangi Kamotho & 2Others* [2017] eKLR and *Swaleh Abdalla & 4 Others vs. Pollman tours & Safaris Limited* took the correct position that a financier of a motor vehicle, without more, does not render it liable out of an accident involving the vehicle which is in the possession of the borrower. In other words, apart from the financier being registered as the owner or co-owner of the vehicle, a party seeking to hold the financier liable is under a legal obligation to demonstrate that there was a further relationship between the financier and the borrower other than the mere financing of the purchase. In the case at hand, none of the Respondents have rendered such further evidence.
13. Having rendered itself above, this Court returns the verdict that the appeal is merited. The Learned Magistrate, with utmost respect, did not make the correct finding on the liability of the Appellant in the circumstances of this matter. For clarity, the Appellant was not liable for the accident.
14. The above rendition, therefore, squarely determines the appeal at hand. Consequently, the following final orders do hereby issue: -
 - (a) The appeal be and is hereby allowed.
 - (b) The finding that the Appellant is jointly and severally liable for the accident with John Mwangi [the 2nd Respondent] is hereby set-aside and is substituted with a finding that the Appellant was not liable or at all for the accident and that the liability apportioned at 80% shall be solely shouldered by John Mwangi.
 - (c) As the appeal revolved between the Appellant and the 1st Respondent, costs of the appeal shall be borne by the 1st Respondent.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF APRIL, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:



Mr. Otieno, Learned Counsel for the Appellant.

Mr. Orina, Learned Counsel for the 1st Respondent.

Mr. Bore, Learned Counsel for the 3rd & 4th Respondents.

No appearance for the 2nd Respondent.

Michael/Amina – Court Assistants.

