



**Car & General (Trading) Limited v Michael (Civil Appeal E906 of 2022)  
[2025] KEHC 5040 (KLR) (Civ) (28 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5040 (KLR)

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

**CIVIL**

**CIVIL APPEAL E906 OF 2022**

**JM NANG'EA, J**

**APRIL 28, 2025**

**BETWEEN**

**CAR & GENERAL (TRADING) LIMITED ..... APPELLANT**

**AND**

**OCHIENG EDWIN MICHAEL ..... RESPONDENT**

*(Being an appeal from Judgement and Decree of Hon. P. Omollo (SRM)/ Adjudicator  
delivered on 2nd November, 2022 in Milimani SCCC No. E1019 of 2022)*

**JUDGMENT**

1. The background to this appeal is that the Respondent instituted Small Claims Court Case No. E1019 of 2022 against the Appellant vide a Statement of Claim dated 26<sup>th</sup> April, 2022 seeking compensation for loss and damage incurred by his insurer as a result of an accident that occurred on 1<sup>st</sup> June, 2019 involving his motor vehicle registration number KBT 300 B and motorcycle registration number KMEL 115 B belonging to the Appellant. The motorcycle is alleged to have rammed into the vehicle thereby causing extensive damage thereto. The suit was brought on behalf of the insurer pursuant to the insurance doctrine of subrogation.
2. In its response, the Appellant denied liability for the accident contending that at the material time it was not the owner of the vehicle having sold it to a third party. It therefore contends that liability, direct or vicarious, could not be ascribed to it.
3. The matter proceeded to hearing at conclusion of which the trial court found the Appellant 100% liable and awarded the Respondent damages in the sum of Kshs. 112,571 that includes the costs of the vehicle's repair and loss of user. The Respondent was also granted the costs of the suit.



4. Being dissatisfied by the decision, the Appellant preferred this appeal vide a Memorandum of Appeal dated 3<sup>rd</sup> November, 2022 centered on thirty (30) grounds that may be summarized into four as follows;
  - a. That the Learned Trial Magistrate/ Adjudicator erred in law and in fact in finding that the Appellant was the owner of motorcycle registration number KMEL 115 B despite evidence to the contrary.
  - b. The Learned Trial Magistrate erred in law and in fact with regard to the principle governing enjoining a third party in a claim.
  - c. That the Learned Trial Magistrate/ Adjudicator generally erred in law and in fact by finding the Appellant liable against the weight of evidence.  
And
  - d. That the learned Trial Magistrate / Adjudicator made an erroneous assessment of damages that were awarded to the Respondent.
5. The Appellant prays that:-
  - a. The Appeal be allowed;
  - b. In result the judgment made by the Learned Adjudicator against the Appellant be set aside and the suit be dismissed.
  - c. The Costs of the Appeal and Subordinate Court be granted to the Appellant against the Respondent.
6. The Appeal was heard by way of written submissions.

### **Appellants' Submissions**

7. The Appellant submitted that the motorcycle in question had already changed ownership and to corroborate the fact, the police abstract the Respondent tendered before the trial court does not by them. To buttress this argument reference is made inter alia to the judicial decisions in *Securicor Kenya Limited vs Kyumba Holdings Limited* [2005] eKLR and *Gichira Peter vs Lucy Wambura Ngaku and Another* [2021] eKLR where it was held that the registered owner of a motor vehicle/motorcycle was only a paper owner in the circumstances.
8. The appellant further contends that by dint of Section 8 of the *Traffic Act* and the judicial pronouncement in *Car General Trading Limited v Owino & Another* [2023] KEHC (KLR) and *Abson Motors Limited v Tabitha Syombua Mutua & Another* [2019] eKLR it cannot also be held liable for the reason that documents of sale of the motorcycle were tendered in evidence and were never challenged.
9. The Appellant therefore holds the position that records of registration of a vehicle are not absolute proof of ownership, citing case law in *Wellington Nganga Muthiora vs Akamba Public Road & Another* [2010] eKLR among other judicial determinations. The Appellant's Counsel point out as noted above that, in any event, the police abstract report the Respondent tendered before the lower court does not show that it was the owner of the motorcycle.
10. The Appellant also takes issue with the trial court's reliance on Rule 16 of the Small Claims Court Rules to fault it for failing to enjoin the buyer of the motorcycle in the suit. Making reference to Order 1 Rule 15 of the Civil Procedure Rules 2010 which mirror the former Rule, Counsel state that the



Appellant did not plead any blameworthiness on the part of the third party and, therefore, it had no duty to bring him into the suit.

### **Respondent's submissions**

11. The Respondent on its part submits that Section 107 of the *Evidence Act* should be read together with Sections 109 and 112 of the same Act and maintains that he had proved its case to the required standards.
12. According to Respondent, the Appellant failed to prove that the motorcycle had been transferred to a third party by providing sale or transfer documents. Furthermore, by failing to enjoin the third party, the Appellant only had itself to blame since it failed to exercise its legal right as provided for under Order 1 Rule 15 and Order 10 Rule 2 of the Civil Procedure Rules 2010 (see *Kabir Mohamed Farouk vs Postal Corporation of Kenya* [2018] eKLR referred to in the Respondent's submissions).
13. The court was further referred to the case of *Mungalo vs Telkom (K) Ltd* (Kisumu HCCC No. 166 of 2021 in which this court posited that where the defendant denies ownership of a vehicle in circumstances as obtain herein, evidence to the contrary should be adduced. The respondent is challenged for failing to produce the vehicle's sale agreement and/or transfer to confirm disposition of the same.
14. The Respondent also relied on the case of *Akamba Public Road Services vs Abdikadir Adan Galgalo* [2016] eKLR to submit that the suit is in the nature of a subrogation claim and the insurer was entitled to enforce its equitable rights under the insurance law.

### **Analysis and determination**

15. I will consider the identified Grounds of Appeal together. An appellate court is generally tasked with re-considering and re-evaluating the evidence adduced in the Trial Court and draw its own independent conclusion on both issues of fact and law.. This was the principle settled in *Selle and Another vs Associated Motor Boat Company Limited and others* [1968] EA 123 and *Williamson Diamonds Ltd. vs Brown* [1970] E.A.L.R. among many other judicial determinations. Pursuant to section 38 of the Small Claims Courts Act, however, an appellate court's jurisdiction is limited to only arising issues of law, and I am so guided herein.
16. The lower court seems to agree that the vehicle was in fact sold but rather inconsistently faults the Appellant for not enjoining the buyer into the proceedings. For this reason the Appellant's defence was rejected and judgement was entered in favour of the Respondent.
17. The general rule as to ownership of motor vehicles/ motorcycles is provided for under Section 8 of the *Traffic Act* (Cap 403 of the Laws of Kenya) which is in the following terms;

“ The person in whose name a vehicle registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”
18. The Court in *Bernard Muia Kilovo vs Kenya Fresh Produce Exporters* [2020] eKLR cited the Court of Appeal decision in *Thuranira Karauri vs Agnes Mocheche* [1997] eKLR wherein it was stated that:

“ i) The presumption that the person registered as the owner of the motor vehicle in the logbook is the actual owner is rebuttable.



- ii) Where there exists other compelling evidence to prove otherwise then the court can make a finding of ownership that is different from that contained in the logbook.
  - iii) Each case must however be considered in its own peculiar facts”
19. The Appellant has submitted extensively that the motorcycle was only registered in its name as per the requirements of the National Transport and Safety Authority since it was in the business of the sale of two and three wheelers . It claims to have sold the motorcycle to one David Kamau Mathenge on 8<sup>th</sup> May 2018 prior to the accident in issue and was in the process of transferring the ownership documents.
  20. Indeed it is not uncommon to find vehicle registration particulars bearing the name of someone while in actual sense it is a different person who is in possession and / or actual ownership. There is no shortage of authorities which have held that a certificate of registration of a vehicle is not final proof that the owner thereof is the person whose name is shown {(See Nancy Ayembe Ngaira vs Abdi Ali [2010] eKLR and Samuel Mukunya Kamunge vs John Mwangi Kamuru [2005] eKLR which are many judicial precedents on the matter.)}
  21. The Respondent having pleaded that the subject motorcycle belonged to the Appellant, he shoulders the burden of proof on a balance of probability. To discharge the onus, he produced records from the National Transport and Safety Authority which indicate the Appellant as the registered owner of the motor cycle. This is prima facie evidence of ownership.
  22. As the Appellant denied ownership, the burden in law shifted to it to disprove ownership and rebut the Respondent’s evidence. A cash sale/delivery note number KIT290003141 which purports to show that the motorcycle was sold to the above named David Kamau Mathenge on 8<sup>th</sup> May 2018 as a walk-in customer was exhibited. No other documentary evidence of the sale was tendered.
  23. My brother Kimaru, J in William Kabogo Gitau vs George Thuo & 2 Others [2010] 1 KLE 526 stated thus:
 

“...In ordinary civil cases a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred...”
  24. In this case therefore what is to be answered is whether the cash sale document is in the circumstances sufficient proof on a balance of probability that the Appellant was not the owner of the motorcycle. The standard of proof in civil cases is requires a reasonable degree of probability. A decision may be made upon a Court deciding that one probability is more likely than the other.
  25. In Mbasu & another vs Onyapindi & Cheseny (Suing as the Legal Representatives of Bernard Simiyu Wamalwa - Deceased [2024] KEHC 11716 (KLR) the Court stated:
 

“...When assessing the probability, the court will have in mind as factors, to whatever extent is appropriate in the particular case, that the more serious allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability...”



## **Determination**

26. Having considered the record including Counsel submissions and the applicable law, I must agree with the Appellant's evidence and submissions that the cash sale receipt it exhibited is sufficient evidence to show that it no longer had ownership or control of the motorcycle in question. It is unnecessary to show actual transfer once the new owner has taken possession. As it is not ascribing liability on the vehicle's purchaser, the Appellant was not also obliged to bring him into the proceedings as a third party. Such a procedure is not mandatory and the court is expected to pronounce itself based on material presented before it.
27. As ownership of the motorcycle passed to a third party, vicarious liability cannot in law attach to the Appellant there being no proof of agency relationship between them. The grounds of appeal thus succeed.
28. Consequently, the appeal has merit and the judgement of the lower court is set aside and substituted with an order dismissing the Claim. The Appellant shall have costs of the Lower Court's Claim and this Appeal.

It is so ordered.

**J. M NANG'EA - JUDGE**

**JUDGEMENT DELIVERED VIRTUALLY THIS 28<sup>TH</sup> DAY OF APRIL, 2025 IN THE PRESENCE OF;**

The Appellant's Advocate, Mr Ndung'u for Mr Kabiru

The Respondent's Advocate, Ms Ocholla

**J. M NANG'EA - JUDGE**

