



REPUBLIC OF KENYA



**Njoka v Kanyiri & another (Civil Appeal E221 of 2024)  
[2025] KEHC 7632 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7632 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E221 OF 2024  
FN MUCHEMI, J  
MAY 29, 2025**

**BETWEEN**

**JACKSON NJIRU NJOKA ..... APPELLANT**

**AND**

**HUMPHREY MWANGI KANYIRI ..... 1<sup>ST</sup> RESPONDENT**

**KANAMAI TIMBER & HARDWARE LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the Judgment and Decree of Hon. P. Mutua  
(CM) delivered on 24th July 2024 in Thika CMCC No. E021 of 2024)*

**JUDGMENT**

**Brief facts**

1. This appeal arises from the judgment of Thika Chief Magistrate in CMCC No. E021 of 2024 arising from a motor vehicle accident claim whereby parties entered a consent of liability at the rate of 80%:20% in favour of the 1<sup>st</sup> respondent and awarded special damages at a sum of Kshs. 1,375,050/-.
2. Dissatisfied with the court's decision, the appellant lodged this appeal citing 5 grounds of appeal summarized as follows:-
  - a. The learned trial magistrate erred in law and in fact in finding that the mere admission of the sale agreement in evidence amounted to its proof.
  - b. The learned trial magistrate erred in law and in fact in finding that the 1<sup>st</sup> respondent was the beneficial owner of the subject motor vehicle on the basis of only the sale agreement despite evidence by the appellant to the contrary.
3. Parties disposed of the appeal by way of written submissions.



### **The Appellant's Submissions**

4. The appellant refers to the case of *Kenneth Nyaga Mwigie vs Austin Kiguta & 2 Others* [2015] eKLR and submits that the mere admission of a document in evidence does not amount to its proof. The appellant argues that even though it produced the sale agreement dated 19<sup>th</sup> September 2017 by consent, the 1<sup>st</sup> respondent ought to have laid a foundation for its authenticity and relevance to the facts of the case. The contents of the sale agreement indicate that the 1<sup>st</sup> respondent bought the subject motor vehicle from one Reuben Leeyio Pareyio and no logbook or search was produced to show that at the time, the said Reuben Leeyio Pareyio was the owner capable of passing ownership to the 1<sup>st</sup> respondent. Further, the 1<sup>st</sup> respondent ought to have adduced further corroborating evidence showing that awaiting transfer of ownership, he was the subsisting beneficial owner. Thus, the appellant argues that the mere production of the sale agreement did not prove its contents.
5. The appellant argues that in material damage claims, the plaintiff must first prove ownership for him to be entitled to compensation which is not the case herein.

### **The Respondent's Submissions**

6. The respondent argues that since the documents in support of his claim were produced by consent, the appellant cannot now question their authenticity which ceased to exist once they were admitted. Thus the court was only left to assess the claim on special damages. The 1<sup>st</sup> respondent relies on the cases of *Ali Ahmed Naji vs Lutheran World Federation Civil Appeal No. 18 of 2003*; *Shadrack Mathias & Another vs Agnes Muluki Wambua* [2021] eKLR and *David Chege Ndungu vs Robert Macharia & 2 Others* [2015] KEHC to support his contentions.
7. The respondent further argues that the case of *Kenneth Nyaga Mwigie vs Austin Kiguta & 2 Others* [2015] eKLR as relied on by the appellant is not relevant to the instant case as it relates to exhibits marked for identification but not produced as exhibits.
8. On the burden of proof, the 1<sup>st</sup> respondent submits that he proved his claim on a balance of probabilities and showed ownership of the suit motor vehicle vide the sale agreement. Relying on the case of *Muhambi Koja vs Said Mbwana Abdi* [2015] eKLR, the 1<sup>st</sup> respondent submits that a copy of records or a logbook is not the only way of proving ownership of a vehicle.

### **Issue for determination**

9. The main issue for determination is whether the appeal has merit.

### **The Law**

10. Being a first Appeal, the court relies on a number of principles as set out in *Selle and Another vs Associated Motor Boat Company Ltd & Others* [1968] 1EA 123:

“.....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 into account of particular circumstances or probabilities materially to estimate the evidence.”



11. In *Gitobu Imanyara & 2 Others vs Attorney General* [2016] eKLR the Court of Appeal stated that:-

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.

12. From the above cases, the appropriate standard of review to be established can be stated in three complementary principles:-

- a. That on first appeal, the Court is under a duty to reconsider and re-evaluate the evidence on record and draw its own conclusions;
- b. That in reconsidering and re-evaluating the evidence, the first appellate court must bear in mind and give due allowance to the fact that the trial court had the advantage of seeing and hearing the witnesses testify before it; and
- c. That it is not open to the first appellate court to review the findings of a trial court simply because it would have reached different results if it were hearing the matter for the first time.

**Whether the appeal has merit.**

13. The appellant argues that the production of the sale agreement dated 19<sup>th</sup> September 2017 by consent did not amount to proof of its contents.

14. The Court of Appeal in *Ali Ahmed Naji vs Lutheran World Federation Civil Appeal No. 18 of 2003* addressed the issue of production of documents by consent as stated as follows:-

The two medical reports before the learned Judge were made by Dr. C. O. Agunda and Dr. Betty Nderitu...The appellant also produced a P3 Form...which set out various fractures which the appellant had suffered as a result of the accident. We repeat that these documents were produced in evidence by the consent of the parties and the question of their authenticity was not open to the learned Judge to deal with.

15. The record shows that on 8/05/2024, the parties recorded a consent to set aside interlocutory judgment. On the same day a consent on liability at the ratio of 80:20 and the production of documents which was to be admitted without calling the makers was recorded as well. The parties then agreed by consent to file submissions on quantum. Following the said consents, the appellant was estopped from questioning the authenticity of the documents produced by consent or the contents. Thus, by admitting the sale agreement in evidence by consent, the appellant agreed with the contents of the document. The 1<sup>st</sup> respondent did not have to lay any basis for its production or prove its contents. The appellant cited the Court of Appeal decision in *Kenneth Nyaga Mwige vs Austin Kiguta & 2 Others* [2015] eKLR, the said case is distinguishable as it relates to production of exhibits marked for identification but not produced as exhibits which is a different scenario. In this case, documents were produced by the consent of the parties and there was no question raised in regard to the said consent during the hearing.

16. Consequently, it is my considered view that the 1<sup>st</sup> respondent proved ownership of the suit motor vehicle based on the documents produced by the parties by consent. The appellant cannot go back to the contents of the consent of the parties on appeal since he has not proved that there was fraud, or mistake or misrepresentation that vitiated the said consent.



17. As for the damages awarded, there was no ground in the memorandum of appeal challenging the award. As such, the sum of KSh.1375,050 awarded as special damages is hereby upheld.
18. It is my finding that this appeal lacks merit and it is hereby dismissed with costs to the respondent.
19. It is hereby so ordered.

**JUDGMENT DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 29<sup>TH</sup> DAY OF MAY 2025.**

**F. MUCHEMI**

**JUDGE**

