



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sheikh & another v Kitavi & another (Civil Appeal E053 & E054 of 2024  
(Consolidated)) [2025] KEHC 7455 (KLR) (28 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 7455 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CIVIL APPEAL E053 & E054 OF 2024 (CONSOLIDATED)**

**RM MWONGO, J**

**MAY 28, 2025**

**BETWEEN**

**ADAN SHEIKH ..... 1<sup>ST</sup> APPELLANT**

**ONETEL LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**DENNIS NZUKI KITAVI ..... 1<sup>ST</sup> RESPONDENT**

**BRIAN KARIUKI GITARI ..... 2<sup>ND</sup> RESPONDENT**

*(Appeal from the Judgments of Hon. D. Endoo, RM in Embu CMCC  
Nos. E169 of 2022 and E170 of 2022 both delivered on 14th May 2024)*

**JUDGMENT**

**The Memoranda of Appeal**

1. The appellants filed separate memoranda of appeal dated 12<sup>th</sup> June 2024 seeking the following orders:
  1. The Appeal be allowed and Judgments entered against the Appellants on 14<sup>th</sup> May, 2024 together with the consequential Orders in EMBU CMCC No. E169 of 2022 and E170 of 2022 be respectively set aside;
  2. Costs of the Appeals be granted to the Appellants; and
  3. Any other relief that this honourable court may deem fit to grant.
2. Upon perusal of the memoranda of appeal, it is noted that the orders sought and the grounds upon which the appeals are premised are identical, save for the decretal amounts. Therefore, the 2 matter shall be consolidated and determined within the same judgment, which is this one.



3. The appellants have disclosed 32 grounds of appeal in each of the memoranda of appeal. In the interest of preservation of judicial time and resources, the grounds of appeal have been considered and may be condensed into the following areas:
  1. Proof of ownership of the motor vehicle registration number KCY 460W;
  2. Liability; and
  3. Quantum: that is, the award of general and special damages in both cases.

### **The Plaints**

4. Each of the respondents filed complaints dated 08<sup>th</sup> December 2022 seeking judgment against the appellants for general damages, special damages, costs and interests. The particulars of the tortious claim are that the respondents were travelling as passengers in motor vehicle registration number KCY 460W along Embu-Kiritiri-road near Don Bosco area. They allege that the said vehicle was so negligently, recklessly or carelessly driven without any due care, regard or attention by the 1<sup>st</sup> appellant or his authorized driver, servant or agent, that he caused the vehicle to lose control, veered off the road and rolled, resulting in a road traffic accident. Consequently, the respondents sustained serious injuries and they suffered loss and pain and damage.
5. The complaint contains details of the negligence and they alleged that the appellants were vicariously liable for the accident. The 1<sup>st</sup> respondent stated that he suffered the following injuries:
  1. Facial injuries- he suffered bruises on the face
  2. Blunt soft tissue injuries (abrasions and swelling) of the neck
  3. Blunt soft tissue injuries (abrasions and swelling) of both legs
  4. Blunt soft tissue injuries of the right ankleThe 2<sup>nd</sup> respondent stated that he suffered the following injuries:
  5. Head injury- he suffered abrasions on the occipital scalp
  6. Blunt soft tissue injuries on the anterior chest
  7. Blunt soft tissue injuries (abrasions and swelling) of both hands
  8. Blunt soft tissue injuries (abrasions and swelling) of both legs

### **Statement of Defense**

6. The appellants filed a joint amended statement of defense in both cases. They denied being the registered or beneficial owners of the motor vehicle registration number KCY 460W and stated that the motor vehicle was transferred to one Zakaria Abdullahi Halane for good consideration. They also denied any liability in the matter and attributed the alleged negligence, if any, to the owner of the motor vehicle and the driver of the motor vehicle, whose driver is not their employee.

### **Summary of the Evidence in EMBU CMCC No. E169 of 2022**

7. In Embu CMCC No. E169 of 2022 (the 1<sup>st</sup> Respondent's case), PW1 was Dr. Patrick Mwangi. He produced his medical report and stated that the 1<sup>st</sup> respondent suffered several injuries for which he would make a full recovery without any complications. On cross-examination, he stated that the 1<sup>st</sup>



respondent suffered soft tissue injuries. That he wrote his report while referring to the P3 issued at Embu Level 5 Hospital.

8. PW2 was PC Noor Adan, whose testimony was adopted as given in Embu CMCC No. E170 of 2022 (the 2<sup>nd</sup> Respondent's case).
9. PW3 was the 1<sup>st</sup> respondent who testified that he worked for the 1<sup>st</sup> appellant and he was recruited through a team leader. On the day of the incident, he stated that he boarded the named motor vehicle from the Embu University gate. The driver that day was known as Maurice, who died at the accident scene. He was sitting at the co-driver's seat and there were no excess passengers in the vehicle. He stated that the insurance sticker showed that the appellant co-owned the motor vehicle with a company. That the driver of the motor vehicle was driving at high speed and he was not within the required lane. That the driver attempted to avoid the accident but in vain.
10. 1<sup>st</sup> appellant testified as DW1. He stated that at the time of the accident, he was not the owner of the motor vehicle. He did not know who the driver of the vehicle was as at the time of the accident. In cross-examination, he denied ever being the owner of the said vehicle. An official search of the vehicle shows that it is owned by the 2<sup>nd</sup> appellant. He stated that the vehicle was sold to one Zakaria Abdullahi Halane vide sale agreement dated 31<sup>st</sup> August 2022.

### **Summary of the Evidence in In EMBU CMCC No. E170 of 2022**

11. In Embu CMCC No. E170 of 2022 (the 2<sup>nd</sup> Respondent's case), PW1 was PC Noor Adan who produced the OB extract. He stated that the motor vehicle was carrying 7 passengers among who were the respondents. That the driver of the said motor vehicle lost control of it and veered onto the oncoming vehicles lane before it rolled, causing some fatal and non-fatal injuries. In cross-examination, he stated that the driver of the motor vehicle died on the spot and the investigations uncovered that the accident was self-involving.
12. PW2 was Dr. Patrick Mwangi who produced the medical examination report which indicated that the 2<sup>nd</sup> respondent suffered soft tissue injuries of the head, chest, hands and legs with emotional and physical distress. He stated that the injuries sustained would resolve fully with time and without any complications.
13. PW3 was the 2<sup>nd</sup> respondent who stated that he was in the named motor vehicle where he was seated at the back. He did not know how fast the vehicle was being driven but he said that at some point, the driver swerved, trying to avert an accident with another motor vehicle. The driver of the motor vehicle died on the spot.
14. The testimony by the 1<sup>st</sup> appellant as DW1 in the 1<sup>st</sup> respondent's case was adopted as the defense evidence in the 2<sup>nd</sup> respondent's case.

### **Findings of the Trial Court**

15. On the issue of ownership of the motor vehicle registration number KCY 460W, the trial court relied on the Court of Appeal decision in the case of Jared Magwaro Bundi & another v Primarosa Flowers Limited [2018] eKLR. The Magistrate stated that even though the appellants produced the sale agreement showing the motor vehicle was sold to another person, the transfer process was not completed as required by law. Guided by the case of Ogembo & another v Arika [2022] KEHC 12219 (KLR) the trial Court awarded general damages of Kshs.180,000/= to the 2<sup>nd</sup> respondent.
16. The trial Court was also guided by the cases of Daniel Gatana Ndungu & another v Harrison Angore Katana [2020] KEHC 6806 (KLR), Justine Nyamweya Ochoki & another v Jumaa Karisa Kipingwa



alias Juma Karisa Kippingwa & another [2020] KEHC 4128 (KLR), John Wambua v Mathew Makau Mwololo & another [2020] KEHC 1602 (KLR) and Pascal v Ouko [2023] KEHC 24463 (KLR) in awarding Kshs.150,000/= to the 1<sup>st</sup> respondent as general damages. In both cases, special damages were awarded as prayed.

### Written Submissions on the appeal

17. The appellants submitted that the motor vehicle did not belong to them and that it was sold to a third party. They relied on section 8 of the *Traffic Act* and the case of Ramesh V. Hiran v Justus Muriangi & another [2017] KEHC 7459 (KLR) for the argument that the respondents ought to have proved that the motor vehicle belonged to the appellants, on a balance of probabilities. They argued that there is a difference between beneficial and possessory ownership of the motor vehicle and they relied on the cases of Muhambi Koja v Said Mbwana Abdi [2015] KECA 635 (KLR), Jared Magwaro Bundi & another v Primarosa Flowers Limited [2018] KEHC 7792 (KLR) and Omumachi v Sakwa [2023] KEHC 21166 (KLR).
18. They submitted that the 2<sup>nd</sup> appellant should not have been included in the suit since it is a legal person, capable of being sued in its own name. That the 1<sup>st</sup> appellant cannot be held accountable for the actions of the 2<sup>nd</sup> appellant as the owner of the motor vehicle. Reliance was placed on the cases of Ruth Ruguru Nyagah v Kariuki Chege & another [2020] KEHC 2888 (KLR), Ukwala Supermarket v Jaideep Shah & another [2022] KEHC 2207 (KLR) and Robert Kinaga Waweru v Northcorr Enterprises Ltd [2021] KEHC 6093 (KLR). It was their argument that the corporate veil should remain in place until the requirements for its lifting are attained.
19. On the issue of liability, they relied on the cases of Kenyatta University v Isaac Karumba Nyuthe [2014] KEHC 895 (KLR), Treadsetters Tyres Ltd v John Wekesa Wepukhulu [2010] KEHC 341 (KLR), Eunice Wayua Munyao v Mutilu Beatrice & 3 others [2017] KEHC 1452 (KLR) and Benter Atieno Obonyo v Anne Nganga & another [2021] KEHC 7520 (KLR). They argued that there cannot be liability without fault, and hence the finding of the trial court is in error.
20. On the issue of damages, they submitted that the trial court did not compare similar cases before reaching its findings on general damages. They relied on the cases of Ephraim Wagura Muthui & 2 others v Toyota Kenya Limited & 2 others [2019] KEHC 8395 (KLR) and Adembesa & another v Gweno [2024] KEHC 5379 (KLR). They urged the court to reduce the general damages awarded to both respondents to Kshs.120,000/= each.
21. On their part, the respondents submitted that the appellants were properly identified as the owners of the motor vehicle in accordance with section 9 of the *Traffic Act*. They relied on the cases of United India Insurance Co Ltd v East African Underwriters (Kenya) Ltd [1985] KECA 39 (KLR) and Nina Mweu t/a Sassma Farm v Muus Kenya Limited & another [2015] KECA 463 (KLR). It was their argument that no points of law have been raised through the agreement and that there is no basis for reviewing the findings of the trial court. They relied on the case of Mbogo v Shah [1968] EA 93.

### Issues for Determination

22. The Court considers that the key issues for determination are the following:
  1. Whether or not the ownership of motor vehicle registration number KCY 460W was proved;
  2. If issue (1) hereinabove is determined in the affirmative, whether or not the trial court's findings on liability and quantum should be reviewed.



23. While sitting as an appellate court, it is expected that the court will re-evaluate all the evidence on record and make a finding, while keeping in mind the finding of the trial court. In the case of *David Njuguna Wairimu v Republic* (2010) eKLR the Court of Appeal held that:

“The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decision.”

24. The respondents sued the appellants jointly. They described the 1<sup>st</sup> appellant as;

a male adult of sound mind and was at all times relevant to this suit the driver, servant and/or agent, in control, possession and/or in ownership of the motor vehicle registration number KCY 460W Nissan Van...’.

They described the 2<sup>nd</sup> appellant as;

a limited liability company duly registered within the Republic of Kenya and was at all material times relevant to this suit the registered owner of motor vehicle registration number KCY 460W Nissan Van....’.

According to the respondents, the 1<sup>st</sup> appellant is not the owner of the motor vehicle but was the driver, servant or agent.

25. In the memoranda of appeal and the written submissions, the appellants contended that the 2<sup>nd</sup> appellant is a legal person, capable of suing and being sued in its own capacity. That the corporate veil must remain, and should have remained drawn until the requirements for its lifting are met.

26. From a perusal of the respondents’ lists of documents, the motor vehicle copy of records indicates that the vehicle is registered to the 2<sup>nd</sup> appellant. However, both appellants contested ownership of the motor vehicle, stating that as at the time of the accident, it had been sold to a third party known as Zakaria Abdullahi Halane. They produced a sale agreement dated 31<sup>st</sup> August 2022 which is signed by the 1<sup>st</sup> appellant for the 2<sup>nd</sup> appellant.

27. The police officer who testified on behalf of the investigating officer, produced the police abstract which showed that the name of the owner was Adan Sheikh, the 1<sup>st</sup> appellant. On the other hand, the 2<sup>nd</sup> appellant is the registered owner of the motor vehicle according to the official records. Section 8 of the *Traffic Act* provides:

“The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle.”

28. This provision creates a rebuttable presumption of ownership of the motor vehicle. It is clear that the 1<sup>st</sup> appellant is not the owner of the vehicle even though the police abstract indicates otherwise. However, that evidence by the police officer was challenged through production of the official records showing that the 2<sup>nd</sup> appellant is the registered owner. Even then, the ownership of the motor vehicle



by the 2<sup>nd</sup> appellant is also rebutted through the sale agreement by the appellants, indicating that the same was sold to a third party.

29. In the case of *Wellington Nganga Muthiora vs Akamba Public Road Services Ltd & Another* (2010) eKLR, it was held:

“Where a police abstract was produced and there was no evidence adduced by a defendant to rebut it and not even cross-examination challenged it, the police abstract being a prima facie evidence not rebutted could be relied on as proof of ownership in the absence of anything else as proof in civil cases was within the standards of probability and not beyond reasonable doubt as is in criminal cases. However, where it was challenged by evidence or in cross-examination, the plaintiff would need to produce a certificate from the Registrar or any other proof such as an agreement for sale of the motor vehicle which would only be conclusive evidence in the absence of proof to the contrary”

30. The sale agreement shows that the vehicle was sold in August 2022 while the accident occurred in December of 2022. The appellant’s argued that the transfer of the motor vehicle to the new owner had not been effected which is why the new owner’s name had not yet reflected on the official motor vehicle records. Thus, upon production of the sale agreement of the motor vehicle in the statement of defense, the respondents should have moved to institute third party proceedings against the current owner of the motor vehicle.

31. In the case of *Anil v Ashur Ahmed Transporters Ltd* [2023] KECA 1149 (KLR), the court held that:

“Under Section 8 of the *Traffic Act*, the person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle. Our understanding of this provision is that the registration of the vehicle is not conclusive proof of ownership but only prima facie evidence of title to a motor vehicle. The person in whose name the vehicle is registered is therefore presumed to be the owner thereof unless proved otherwise. Our understanding aligns with the views expressed by this Court in *Securicor Kenya Ltd v Kyumba Holdings Ltd* [2005] eKLR as follows:

We think that the appellant had, by the evidence it led, proved on a balance of probability, that it was not the owner of KWJ 816 at the time the accident occurred since it had sold it. Our holding finds support in the decision in *Osapil v Kaddy* [2000] 1 EALA 187 in which it was held by the Court of Appeal of Uganda that a registration card or logbook was only prima facie evidence of title to a motor vehicle and the person in whose name the vehicle was registered was presumed to be the owner thereof unless proved otherwise. The appellant had, indeed, proved otherwise.”

Our position rhymes with the cited decision so that where there exists other compelling evidence to prove ownership, then the court can find that the owner of the vehicle is a person other than the one whose name appears in the logbook. Therefore, the presumption that the person registered as owner of a motor vehicle in the logbook is the actual owner is rebuttable. In the case before us, the appellant stated that the motor vehicle belonged to him. He also produced an agreement between him and the car yard owner through which he had authorized the salesman to sell the motor vehicle. Further, the appellant explained the reasons as to why he delayed in securing the transfer of the motor vehicle from his aunt to his name.”



32. Similarly, in the case of *Benard Muia Kilovoo v Kenya Fresh Produce Exporters (2020)* eKLR the court stated: -

“ 41. The Court of Appeal in these binding decisions is clearly stating:-

- (i) That the presumption that the person registered as 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.”

33. Under Section 20 of the *Sale of Goods Act*, ownership of goods, including motor vehicles, passes upon sale and delivery unless the contract specifies otherwise. In this case, the Appellants had no obligation to oversee how the vehicle was being used post-sale or to initiate its transfer unless formally requested to do so. The sale agreement, which was unchallenged, demonstrated that ownership had passed to a third party.

34. Here, the presumption of the 2<sup>nd</sup> appellant’s ownership of the motor vehicle has been successfully rebutted through the sale agreement. This is proof that the vehicle had been sold and was no longer the 2<sup>nd</sup> appellant’s property. The sale agreement was not contested. Therefore, it is held as a valid rebuttal for the presumption of the 2<sup>nd</sup> appellant’s ownership of the motor vehicle.

35. On the same note, it appears from the description of the parties in the plaints that the 1<sup>st</sup> appellant was simply a driver, servant or agent of the 2<sup>nd</sup> appellant, not a director of the 2<sup>nd</sup> appellant. More so, the glaring fact from the evidence adduced in both cases is that the driver of the motor vehicle at the time of the accident was one Maurice who died on the spot following the accident. Both respondents confirmed that they did not pursue compensation from the estate of the deceased driver of the motor vehicle.

36. The 1<sup>st</sup> appellant was also enjoined in the suit as a defendant, probably because the police abstract indicated that he was the owner of the vehicle. It is important to note that the 2<sup>nd</sup> appellant’s directors are not disclosed in these cases and, as far as the cases are concerned, the corporate veil cannot be lifted. In fact, it would be careless to assume that the 1<sup>st</sup> appellant is a director of the 2<sup>nd</sup> appellant without procedurally lifting the corporate veil.

37. In any event, the 2<sup>nd</sup> appellant, as stated earlier, is an independent person, capable of suing and being sued in its own name. Even if the 1<sup>st</sup> appellant were a member or agent of the 2<sup>nd</sup> appellant, the corporate veil must remain in place given the company’s legal personality. This position flows from the greatest legal innovation of separate corporate legal entity which was formulated in the case of *Salomon v Salomon [1897] AC 78*, that:

“The company is at law a different person altogether from the subscribers to the memorandum and though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers and the same hands receive the profits, the company is not in law the agent of the subscribers or trustees for them nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act”.



## **Conclusions and Disposition**

38. In light of all the foregoing, on the first issue the ownership of Motor vehicle Registration No. KCY 460W was not proved on a balance of probabilities. The sale agreement rebutted the 2<sup>nd</sup> appellant's ownership of the vehicle.
39. The second issue for determination becomes obsolete in this appeal for the following reasons:
  - a. It has become evident that the ownership of the motor vehicle was not established.
  - b. Ultimately, the respondents sued the wrong parties unconnected to the accident.
40. Accordingly, the appeal herein succeeds and it is ordered that the judgments entered against the Appellants on 14<sup>th</sup> May, 2024 together with the consequential orders in Embu CMCC No. E169 of 2022 and E170 of 2022 are hereby set aside.
41. Costs of the appeals are hereby awarded to the appellants.
42. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 28<sup>TH</sup> DAY OF MAY, 2025.**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. Adongo holding brief for Kebongo for Respondents.
2. Shikanda holding brief for Osundwa for Appellants
3. Francis Munyao - Court Assistant

