



REPUBLIC OF KENYA



**Kamau v Omondi & 2 others (Civil Appeal E961 of 2024)  
[2025] KEHC 9138 (KLR) (Civ) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9138 (KLR)

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

**CIVIL**

**CIVIL APPEAL E961 OF 2024**

**AN ONGERI, J**

**JUNE 26, 2025**

**BETWEEN**

**EDWARD MUCHIRI KAMAU ..... APPELLANT**

**AND**

**KELVING OMONDI ..... 1<sup>ST</sup> RESPONDENT**

**PETER MUCHIRI ..... 2<sup>ND</sup> RESPONDENT**

**SIMON NDUNGU ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. E. Riany (PM)  
in Milimani CMCC No. 5591 of 2017 delivered on 15th August 2024)*

**JUDGMENT**

1. The Respondent filed Milimani CMCC No. 5591 of 2017 seeking special damages of Kshs. 201,828/= with costs of the suit for damages occasioned to the Respondent's registration number KBV 251Y by the Appellant's motor vehicle registration KAY 510X.
2. The Appellant's defence was that he had sold the motor vehicle at the time of the accident and he cannot be held liable.
3. The trial court found that the copy of records indicated that the 1<sup>st</sup> Appellant was the owner of the motor vehicle.
4. Further that the alleged 3<sup>rd</sup> Party was not a party to these proceedings.
5. The trial court found that the 1<sup>st</sup> Appellant 100% liable and entered judgment in the sum of Kshs. 201,828/= against Respondents in respect of special damages together with costs of the suit and interest.



6. The 1<sup>st</sup> Appellant has appealed on the following grounds:-
- i. The learned Magistrate failed to consider matters which she should have taken account by looking into the issues raised by the Appellant herein.
  - ii. The trial Magistrate erred in law and fact in failing to appreciate the evidence before her on issues as to change of ownership of the subject property as had been presented by the Appellant.
  - iii. The Learned trial Magistrate erred in fact and in law by disregarding the Appellant's testimonies and documentary evidence before court on change of ownership of the subject property.
  - iv. The Learned Magistrate erred in law and fact in and misdirected herself in law in finding that the Appellant did not discharge the burden of proof as to change of ownership.
  - v. The learned Magistrate erred in law and fact in stating that a copy of records is enough proof of ownership of vehicles.
  - vi. The learned Magistrate erred in law and fact in stating that the 3<sup>rd</sup> Respondent was not a party to the proceedings and that it being mentioned was a mere allegation.
  - vii. The learned Magistrate erred in law and fact in failing to consider that the 3<sup>rd</sup> Respondent had been enjoined in the suit as a third party and orders that default judgment be entered against them had been issued.
  - viii. The learned Magistrate erred in fact and in law in failing to note that the Appellant's action to enjoin the third party in the suit is because ownership of the subject property had changed only that transfer had not been done and therefore could not be held liable.
  - ix. The learned trail Magistrate erred in law and fact in failing to dismiss the 1<sup>st</sup> Respondent's suit and instead awarded remedies sought by the 1<sup>st</sup> Respondent.
  - x. The Learned trial Magistrate erred in law and fact in and misdirected herself in law in finding that the Appellant and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are liable 100% jointly and severally.
  - xi. The Learned Magistrate failed to consider the Appellant's submissions and authorities in support of his case.
  - xii. The Learned Magistrate erred in law and in failing to award costs to the Appellant.
  - xiii. The Learned trial Magistrate erred in law and in fact in failing to be guided by law in determining the matter and issuing Judgment dated the 15<sup>th</sup> August 2024 and therefore arriving at a wrong conclusion.
7. The parties field written submissions as follows:-
8. The appellant's submissions challenged the trial court's judgment on three main fronts.
9. Firstly, they argued that the court improperly determined ownership of motor vehicle KAY 510X by disregarding conclusive evidence showing the appellant had sold the vehicle to the 3<sup>rd</sup> Respondent four years before the accident.
10. The appellant produced a sale agreement, bank records, transfer forms, and a vehicle inspection report—all demonstrating the 3<sup>rd</sup> Respondent was the possessory owner at the time of the accident.



11. Citing Section 8 of the *Traffic Act* and supporting case law (e.g., David Ogol Alwar and Wellington Nganga Muthiora), the appellant contended that the trial court failed to recognize that registration is only prima facie proof of ownership, which can be rebutted.
12. The appellate court is urged to re-evaluate this evidence under its duty to reconsider facts and law (*Peters v Sunday Post*).
13. Secondly, the submissions asserted that the appellant cannot be liable for the accident since he had no control over the vehicle after its sale.
14. Relying on Jared Magwaro Bundi and Yumen Ali Shamil, they emphasized that liability rests with the possessory owner—in this case, the 3rd Respondent—and the trial court erred in ignoring this distinction.
15. Finally, the appellant defended the procedural validity of the third-party notice served on the 3rd Respondent under Order 1 Rule 15 of the Civil Procedure Rules.
16. The record shows leave was granted, notices were served, and judgment was entered against the 3rd Respondent for non-appearance.
17. The trial court’s oversight of this process, coupled with its failure to properly assess ownership evidence, warrants overturning the judgment.
18. The appellant seeks dismissal of the suit against him with costs. Authorities cited are attached for reference.
19. The 1st Respondent submitted that the Appellant’s appeal is premature, irregular, and lacks merit due to procedural shortcomings.
20. Further, that the Appellant seeks to challenge the Trial Court’s judgment, which held them liable alongside the 2nd Respondent for special damages of Kshs. 201,828/- after the 3rd Respondent failed to appear despite being served with a third-party notice.
21. The 1st Respondent contended that the Appellant ignored the proper legal procedure under Order 1 Rules 19 and 21 of the Civil Procedure Rules, which require a defendant to first satisfy the decree against themselves before seeking judgment against a defaulting third party.
22. The 1st Respondent asserted that the Trial Court correctly proceeded with the case based on the evidence presented, as the Appellant failed to seek directions under Order 1 Rule 22 to determine the third party’s liability.
23. Citing case law such as *Ovugi v Okoro* and *Makario Makone Monyancha v George Mokuia Mamboleo*, the 1<sup>st</sup> respondent emphasized that a defaulting third party is deemed to admit liability, but judgment against them can only be entered after the defendant satisfies the decree.
24. Since the Appellant did not follow this process, the Trial Court’s decision was sound.
25. Additionally, the 1st Respondent maintained that they sufficiently proved their case at trial, establishing that the accident occurred, damages were suffered, and the Appellant was the registered owner of the vehicle at the time.
26. They argued that the Appellant’s recourse is to first comply with the judgment and then pursue indemnity from the 3rd Respondent, as outlined in *Chai Housing Co-operative Society Ltd v Marie Wambui Thande*.



27. Consequently, the 1st Respondent urged the court to dismiss the appeal with costs, deeming it procedurally flawed and substantively unmeritorious.
28. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence adduced before the trial court and to arrive at its own conclusion whether it would support the findings of the trial court. In *Selle –Vs- Associated Motor Boat Co.* [1968] EA 123 it was held in the following terms: -
- “An appeal from the High Court is by way of re-trial and the Court of Appeal is not bound to follow the trial judge’s finding of fact if it appears either that he failed to take account of particular circumstances or probabilities, or if the impression of the demeanour of a witness is inconsistent with the evidence generally.
- 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 demeanor of a witness is inconsistent with the evidence in the case generally.”
29. The sole issue for determination in this appeal is whether the trial court was right in holding the 1<sup>st</sup> Appellant liable in negligence in view of his assertion that he had sold the motor vehicle to a 3<sup>rd</sup> Party.
30. The Court of Appeal in *Peters v Sunday Post* [1958] EA 424 reiterated the duty of a first appellate court to re-evaluate the evidence and arrive at its own conclusions.
31. The appeal before this Court arises from the judgment in *Milimani CMCC No. 5591 of 2017* delivered on 15th August 2024, wherein the trial court held the Appellant 100% liable for damages occasioned to the Respondent’s motor vehicle KBV 251Y by the Appellant’s motor vehicle KAY 510X.
32. The Appellant’s primary contention is that he had sold the vehicle to a third party prior to the accident and thus should not be held liable.
33. The 1<sup>st</sup> Respondent, on the other hand, maintained that the trial court correctly relied on the copy of records indicating the Appellant’s ownership and that the appeal is procedurally flawed.
34. Under section 8 of the *Traffic Act*, proof of ownership of a motor vehicle is by the registration of a person as the owner of the motor-vehicle, unless proved otherwise.
35. My understanding of this section is that the registration of the motor-vehicle is not conclusive proof of ownership but only prima facie evidence of title to a motor vehicle.
36. The person in whose name the vehicle was registered is presumed to be the owner thereof unless proved otherwise.
37. There is a rebuttable presumption that the ownership of a motor vehicle is prima facie determined by the records kept by the Registrar of Motor Vehicles under Section 8 of the *Traffic Act* (Cap 403).
38. This principle was affirmed in *David Ogol Alwar v Elijah Ochieng Odera* [2016] eKLR, where the Court held that while the register is prima facie evidence of ownership, it is not conclusive and can be rebutted by other evidence demonstrating a change in ownership.



39. Similarly, in *Wellington Nganga Muthiora v Peter Mungai Gichuhi* [2015] eKLR, the Court emphasized that where a vehicle has been sold but the transfer has not been effected, the registered owner remains liable to third parties unless they can prove they had no control over the vehicle at the time of the accident.
40. In the present case, the Appellant adduced evidence including a sale agreement, bank records, transfer forms, and a vehicle inspection report to demonstrate that the vehicle had been sold to the 3rd Respondent four years before the accident.
41. However, the trial court disregarded this evidence, relying solely on the copy of records. This was a misdirection.
42. Upon re-examination of the evidence adduced in the trial court, it is evident that the Appellant discharged the burden of proving that the 3rd Respondent was the possessory owner at the time of the accident.
43. The authorities of *Jared Magwaro Bundi v Kenya Bus Services Ltd & Another* [2016] eKLR and *Yumen Ali Shamil v A.G. & Another* [2017] eKLR support the proposition that liability for negligence rests with the person in possession and control of the vehicle, not necessarily the registered owner.
44. Regarding the procedural issue of the third-party notice, the Appellant correctly invoked Order 1 Rule 15 of the Civil Procedure Rules to enjoin the 3rd Respondent.
45. The record confirms that leave was granted, notices were served, and judgment was entered against the 3rd Respondent for non-appearance.
46. The trial court's failure to acknowledge this process was erroneous.
47. As held in *Chai Housing Co-operative Society Ltd v Marie Wambui Thande* [2019] eKLR, a defendant who has satisfied a decree against them is entitled to seek indemnity from a third party.
48. The Appellant's recourse was properly initiated, and the trial court ought to have considered this in its determination of liability.
49. The 1<sup>st</sup> Respondent's argument that the appeal is premature is untenable.
50. The Appellant is entitled to challenge the trial court's decision on liability, particularly where the court ignored material evidence and misapplied the law.
51. The cases cited by the 1<sup>st</sup> Respondent, such as *Ovugi v Okoro* and *Makario Makone Monyancha v George Mokuia Mamboleo*, are distinguishable as they pertain to the procedural steps after a decree is satisfied, not the initial determination of liability.
52. In conclusion, the trial court erred in holding the Appellant liable despite conclusive evidence of the vehicle's sale and transfer of possession to the 3rd Respondent.
53. The appeal is merited, and the judgment of the lower court is hereby set aside and the suit against the Appellant is accordingly dismissed.
54. The 1<sup>st</sup> Respondent, should pursue their claim against the 3rd Respondent against whom judgment had already been entered.
55. The suit against the Appellant is dismissed with costs in the lower court and in this appeal to be paid by the 3<sup>rd</sup> Respondent.



**DATED, SIGNED AND DELIVERED THIS 26<sup>TH</sup> DAY OF JUNE 2025 VIRTUALLY VIA MT AT  
VOI HIGH COURT.**

**ASENATH ONGERI**

**JUDGE**

In the presence of:-

Court Assistant: Millicent

