



**City Hopper Limited v Wamaitha & another (Civil Appeal E1038 of 2024)
[2025] KEHC 11381 (KLR) (Civ) (31 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11381 (KLR)

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

CIVIL

CIVIL APPEAL E1038 OF 2024

AC MRIMA, J

JULY 31, 2025

BETWEEN

CITY HOPPER LIMITED APPELLANT

AND

FELISTAS WAMAITHA 1ST RESPONDENT

KAMAU STEPHEN 2ND RESPONDENT

(Being an appeal from the judgment and decree of the Hon. H. Mwangi (PM) in Nairobi Chief Magistrates Court Civil Suit No. 3416 of 2015 delivered on 8th August 2024)

JUDGMENT

1. The appeal, subject of this judgment emanates from the decision of the trial court where City Hopper Limited, the Appellant herein, and Kamau Stephen, the 2nd Respondent herein, were found wholly and severally liable for the road traffic accident that occasioned, Felistas Wamaitha, the Respondent herein, various bodily injuries.
2. Disgruntled, the Appellant lodged the Memorandum of Appeal dated 6th September 2024, where he urged this Court to set aside the entire judgment of the trial court on grounds as hereunder;
 1. That the Learned Magistrate erred in law and fact in holding both the Appellant and the 2nd Respondent jointly and severally liable for the claim filed by the 1st Respondent.
 2. That the Learned Magistrate erred in law and fact in holding that the Appellant was the registered and or beneficial owner of the vehicle in which the 1st Respondent was travelling in at the time of the accident.



3. That the Learned Magistrate erred in law and fact in holding that the 1st Appellant was the owner of the said vehicle simply on account that the vehicle was branded “CITI HOPPA”.
4. That the Learned Magistrate erred in law and fact in relying on evidence that had been sought to be introduced by the 1st Respondent after the hearing of the case in the lower court, which evidence had been the subject of an application made before the same trial Magistrate and which application was declined by the trial Magistrate.
5. That the Learned Magistrate erred in law and fact in reversing and going back on his ruling in the trial court declining the adduction (sic) of evidence regarding any connection between the name CITI HOPPA and the Appellant.
6. That the Learned Magistrate erred in law and fact in relying on evidence that was not presented before the trial court and which the Appellant did not have a chance to contest during the hearing.
7. That the Learned Magistrate erred in law and fact in holding for the 1st Respondent as against the Appellant.
8. That the Leaned Magistrate erred in law and fact in totally disregarding and failing to take into account the defence raised by the Appellant in the lower court.
9. That the Learned Magistrate erred in law and fact in holding and awarding a sum of Kshs 950,000 for General Damages, and Kshs. 17,270 for Special damages which sums were grossly excessive and/or unsupported by the evidence before the trial court.
10. That the Learned Magistrate’s finding quantum was erroneous for the reasons that the award for general damages was in complete variance with the evidence presented to the court and was manifestly excessive
11. That the Learned Magistrate erred in law and fact in making an award of damages that was manifestly excessive and unsupported by the evidence before him.

The Submissions

3. In its written submissions dated 16th April 2025, the Appellant submitted that trial court was wrong to have held that the Appellant was the registered owner of the motor vehicle KBT 360F, simply on account that it was branded “CITI HOPPA”.
4. It was its case that the trial court erred in law and fact in relying on evidence that it had rejected in its Ruling which declined the 1st Respondent’s Application to adduce further evidence regarding the connection between the name ‘CITI HOPPA’ and the Appellant.
5. The Appellant submitted that the only reason it was sued was because it was alleged to be the driver and/or beneficial owner of the motor vehicle that was involved in the accident.
6. It urged that the entry in the police abstract could not be said to be conclusive proof of beneficial ownership, rather, it is a summary of the report and what was recorded un the Occurrence Book.
7. The Appellant submitted that it was not the registered or beneficial interest of the vehicle and was not the employer or principal to the driver of the vehicle
8. In faulting the 1st Respondent’s case even further, the Appellant submitted that the entry in the police abstract was City Hoppa Sacco whereas he sued City Hopper Company Limited, which he did not



present evidence to demonstrate that the two were related. It was its case that the attempt to connect the two was made but the Court rejected the application.

9. On the foregoing, the Appellant submitted that the trial court erred in holding that the Appellant was the registered and or beneficial owner of the vehicle motor vehicle that caused the accident.

The Respondent's case:

10. Felistas Wamaitha challenged the appeal through written submissions dated 10th June 2025.
11. She submitted that the Appellant failed to rebut his claim of ownership and neither did it produce any documentation to support the assertion that it was not the beneficial owner.
12. On the issue of liability, the Appellant submitted that under section 8 of the *Traffic Act*, a person in whose name a vehicle is registered is presumed to be its owner unless proved otherwise.
13. The Respondent stated that the branding 'Citi Hoppa' the route licence, and control over the vehicle's operations may be sufficient to infer ownership or liability even in absence of formal registration under common law principle of vicarious liability. To that end, the Respondent called to its aid the decision in *John Nderi Wamugi -vs- Rubesh Okumu Tangela* where it was observed that vicarious liability is not pegged in legal ownership of a vehicle.
14. He submitted that the Appellant did not call any evidence to rebut the foregoing presumption neither did it shift the burden by disclosing the true beneficial owner.
15. The Respondent referred to section 60(1) of the *Evidence Act* that empowers this court to take judicial notice of all matters of general or local notoriety. He argued that the Appellant did not require formal proof. Its existence, as a prominent public transport service operations in Nairobi and its environs, falls within the ambit of general notoriety.
16. It was his case that the Appellant's buses are distinctively branded and ply major routes across the city making them visible and known to general public on daily basis.
17. The Respondent stated that the Appellant's argument that the trial court relied on inadmissible evidence is not only misconceived but designed to mislead this Court.
18. As regards quantum of damages, the Respondent asserted that the serious injuries he suffered have long term physical and psychological effects. It was his case that the trial court, based on comparable injuries rightfully awarded Kshs. 950,000/-.

Analysis:

19. From the foregoing discourse, the issues that emerge for determination are as follows;
 - i. Whether the Appellant was the registered and/or beneficial owner of the motor vehicle KBB 360F
 - ii. Whether liability was rightfully attributed to the Appellant.
 - iii. Whether the general and special damages awarded were manifestly excessive.



20. This Court's role as a first appellate Court is settled. It is to re-consider the evidence afresh with a view to arriving at its own conclusions. In *Selle -vs- Associated Motor Boat Co.* [1968] EA 123, the Court of Appeal for East Africa aptly spoke to the foregoing in the following fashion.

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.

21. With the foregoing, this Court will now consider the above issues.

Whether the Appellant was the registered and/or beneficial owner of the motor vehicle KBB 981T:

22. The 1st Respondent testified as PW1. She produced the Police Abstract as PExh. 1. On cross-examination, it was her evidence that as at 11th September 2014, the record of the motor vehicle, KBB 981T, indicated that NIC Bank and Kamau Stephen were the registered owners. She conceded that the name Citi Hopper did not appear in the document.
23. She further agreed that the Police Abstract did not indicate ownership of the motor vehicle.
24. Abackson Nduma was DW1. He adopted his statement as his evidence. Therein, he stated that he is employed by the Appellant as its fleet manager.
25. He testified that as of 2nd August 2014, when the accident occurred, the Appellant did not own the motor vehicle and was not in control of it.
26. On cross-examination, he stated that he had no documents to show that he was the fleet manager. He admitted that some motor vehicles use their brand but are not owned by City Hopper.
27. The foregoing evidence paves way for a look at the process of establishing ownership status of a motor vehicle and more importantly, the distinguishing features and the legal implications that accrue to a registered owner vis-à-vis a beneficial owner.
28. In instances where a person cannot access the registration certificate or log book, the primary document containing ownership details of a motor vehicle, proof of legal ownership, upon payment of requisite fees, can be established through a search of the registration details of the said motor vehicle at the National Transport and Safety Authority (NTSA) website.
29. In instances where one seeks compensation for injuries occasioned by a motor vehicle, a suit commenced against the registered owner will inevitably yield other beneficial owners of the said vehicle. The reason being, a registered owner would not defend the suit on behalf of the beneficial owner of their motor motor vehicle.
30. The Appellant herein contested ownership of the vehicle KBB 981T. The 1st Respondent's sole evidence of ownership of the vehicle was the Police Abstract, a document that, legally speaking, is a formal report to the Police Station of the occurrence of an accident.



31. Whereas the sheet contains the entries in respect of the date of the accident, the cars involved, the insurance cover, the owner and address of the vehicles involved, it is by no means, pursuant to section 8 of the [Traffic Act](#), the document a litigant would use to conclusively prove ownership.
32. The document, having been contested, and in view of the evidence that the registered owners were NIC Bank and Kamau Stephen, it cannot be the basis upon which the 1st Respondent placed liability upon the Appellant.
33. I now turn to the concept of beneficial ownership and whether it was proved by the 1st Respondent.
34. In her Amended Plaint, the 1st Respondent pleaded that the Appellant was the beneficial owner of the motor in its control, management and direction. I have interrogated the 1st Respondent's witness statement dated 10th June 2015. Save from stating the registration number of the vehicle, she made no description of the vehicle she was travelling in. In her evidence in court, she simply stated as follows;
- ‘I sued City Hopper because the motor vehicle was City Hopper.’
35. Not only was there an absence of corroborating evidence that the vehicle was branded City Hopper but more importantly, there was no evidence it was the beneficial owner. Proof of beneficial ownership involves adducing documentary evidence showing the ultimate beneficiary or person/ entity in control of the vehicle.
36. The Court of Appeal in [Nancy Ayemba -vs- Abdi Ali](#) (2010) eKLR recognized that in judicial practice there have arisen concepts to describe alternative forms of ownership such as actual ownership, beneficial ownership and possessory ownership. The Court noted that there was need prove such kind of alternative ownership. The 1st Respondent strenuously submitted on the principle of Judicial Notice in a bid to have this court make the finding that the Appellant was the beneficial owner.
37. The [Black's Law Dictionary](#) Tenth Edition defines ‘Judicial Notice’ at Page 975 as follows: -
- A court's acceptance, for purposes of convenience and without requiring a party's proof of a well-known an indisputable fact; the Court's power to accept such a fact the trial court took judicial notice of the fact water freezes at 32 degrees.
38. The [Oxford Dictionary of Law](#) defines it as;
- The means by which the court may take as had proven certain facts without hearing evidence. Notorious facts may be judicially noticed without inquiry.
39. The [Evidence Act](#) in Section 60 lists the matters courts should take judicial notice of certain things. Section 60(3) provides as follows;
- If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it considers necessary to enable it to do so.
40. The circumstances of the case herein do not fall within the matters contemplated in section 60 of and neither did the 1st Respondent avail any material to bring itself within the provision of section 60(3) of the [Evidence Act](#).
41. Not every motor vehicle in the colour theme and the name City Hopper is for the beneficial use of the Appellant. To ask the court to take Judicial Notice of such a fact would be synonymous to waiving or suspending the requirements under section 107 of the [Evidence Act](#) that requires a party to discharge



its burden of proof. Taking Judicial Notice of beneficial ownership would occasion injustice to the Company.

42. Similarly, the 1st Respondent, having not discharged its burden of proof could not impose it upon the Appellant to prove that it was not the owner. It is an arduous task to expect a respondent to prove a negative fact.
43. In Civil Appeal E069 of 2022, *Njoroge v Karuku* (Civil Appeal E069 of 2022) [2024] KECA 553 (KLR) (24 May 2024) (Judgment), the Court of Appeal discussed the foregoing as follows: -
 45. The respondent could not be expected to prove a negative fact, that the Caution was not removed. He could have only proved that the Caution existed by the time of the registration of the suit property in the name of the appellant, if the records were available. In the absence of the records, his only burden was to prove that the Caution had been registered. It is always a hard task to expect a party alleging a negative to prove the same. We take to mind the decision of Seaton, JSC in the Supreme Court of Uganda case of *J K Patel v Spear Motors Ltd* SCCA No. 4 of 1991 in which it was held, citing *Constantine Steamship Line Ltd v Imperial Smelting Corp* [1914] 2 All ER 165 (H.L); *Trevor Price v Kelsall* [1975] EA 752 at 761; and *Phipps on Evidence*, 12th Ed Para 91; Phipps on at Para 95. that:

“The proving of a negative task is always difficult and often impossible, and would be a most exceptional burden to impose upon a litigant. The burden of proof in any particular case depends on circumstances in which the claim arises. In general, the rule which applies is *ei qui affirmat not ei qui negat incumbit probatio*. It is an ancient rule founded on considerations of good sense and it should not be departed from without strong reasons...As applied to judicial proceedings the phrase “burden of proof” has two distinct and frequently confused meanings, (1) the burden of proof as a matter of law and pleading – the burden, as it has been called, of establishing a case, whether by preponderance of evidence, or beyond reasonable doubt; and (2) the burden of proof in the sense of adducing evidence...The onus probandi rests, before evidence is gone into, upon the party asserting the affirmative of the issue; and it rests, after evidence is gone into, upon the party against whom the tribunal, at the time the question arises, would give judgement if no further evidence were adduced.”
 46. The same Court reiterated the position in the case of *Sheikh Ali Senyonga & 7 Others vs. Shaikh Hussein Rajab Kakooza and 6 Others* SCCA NO. 9 of 1990, where the Court held that to hold that the negative position must be proved by the respondents would be to impose an unnecessary burden on them.
44. Deriving from the foregoing, it is discernible that the rest of the issues hinged on the establishment of the beneficial owner of the motor vehicle. They, therefore, fall by the wayside.

Disposition:

45. This Court finds that the trial Court, with utmost respect, fell into error by making the sweeping, yet uncorroborated conclusion that the Appellant was the beneficial owner of the motor vehicle KBB 981T. It was a finding based on no evidence and this Court has the legal obligation to correct.
46. The following final orders hereby issue: -



- (a) The appeal succeeds and the part of the judgment and decree of the trial Court delivered on the 8th August 2024 finding the Appellant liable be and is hereby set aside in its entirety. The suit against the Appellant stands dismissed with costs.
- (b) For clarity, the judgment and decree of the trial Court delivered on the 8th August 2024 against the 2nd Respondent herein, Kamau Stephen, is hereby affirmed and the said Kamau Stephen shall wholly and solely satisfy the judgment and decree in Nairobi Chief Magistrates Court Civil Suit No. 3416 of 2015.
- (c) The 1st Respondent shall bear the costs of the appeal.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 31ST DAY OF JULY, 2025.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Mwangi , Learned Counsel for the Appellant.

Amina/Michael – Court Assistants.

