



**Mahavir Transporters & Contractors Ltd v Ochieng & another (Civil Appeal
E260 of 2024) [2025] KEHC 11204 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 11204 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E260 OF 2024**

**A MABEYA, J
JULY 30, 2025**

BETWEEN

MAHAVIR TRANSPORTERS & CONTRACTORS LTD APPELLANT

AND

EDWIN OBADO OCHIENG 1ST RESPONDENT

MAKWANA MOTORS KENYA LTD 2ND RESPONDENT

*(Being an appeal from the judgment/decree of the Honourable D. Ogal (PM)
at Winam in Winam PMCC No. E033 of 2023 delivered on 14/11/2024)*

JUDGMENT

1. By a Complaint dated 16/3/2023, the appellant sued the respondents claiming an injunction to restrain them from interfering with the possession of motor vehicle Registration No. KBB 758N, (the said vehicle), a declaration that its intended repossession by the 2nd respondent unlawful and order for its transfer and registration in its name. In the alternative, it sought the refund of Kshs.3.5 million from the 1st respondent.
2. The appellant contended that by an agreement made on 20/11/2017 between it and the 2nd respondent, the appellant acquired the said vehicle from the 1st respondent at an agreed price of Kshs. 3.5 million. It had remained in possession thereof until 2023 when the 2nd respondent attempted to repossess the same. That it was an innocent purchaser for value without notice.
3. The 1st respondent opposed the suit vide his statement of defence dated 21/3/2023. He denied ever selling the said vehicle to the appellant. He however admitted having given possession thereof to the appellant for usage for an indefinite period in exchange of building materials delivered to him by the appellant.



4. He admitted that the 2nd respondent had obtained some repossession order for the said vehicle but he had had the same stayed. That he had purchased the said vehicle from the 2nd respondent in 2016.
5. The 2nd respondent denied the appellant's claim vide its statement of defence dated 11/9/2023. It contended that it had sold the said vehicle to the 1st respondent on 18/11/2016 for Kshs.6.8 million. That the 1st respondent traded in his vehicle KCC 803A at Kshs.1.8 million and had a previous debt of Kshs.950,000/-.
6. That the 1st respondent paid a sum of Kshs.4.7 million leaving a balance of Kshs.3, 050,000/-. It claimed that the 1st respondent and the appellant had acted fraudulently in the sale and purchase of the said vehicle in the circumstances of the cause. It denied being privy to the dealings between the appellant and 1st respondent.
7. The trial ensued whereby the plaintiff called 4 witnesses while the respondents called a witness each. After considering the evidence, the trial court dismissed the plaintiff's suit with costs.
8. Aggrieved by the said decision, the appellant appealed to this Court setting out 6 grounds of appeal which can be summarized into one broad ground; 'that the trial court erred in failing to consider the clear weighty and overwhelming evidence proffered by the appellant and misapprehended the evidence thereby arriving at an unfair decision not supported by the evidence.'
9. This being a first appellate Court, its duty is well defined, that is; to re-evaluate and analyse the evidence tendered before the trial court with a view to arriving at its own independent findings and conclusions at all times having in mind that it did not see the witnesses testify. (See *Selle & Another -vs- Associated Motors Boat Company Ltd & Others*).
10. Pw 1 Chandrakant Devji Chhabhadia adopted his witness statement dated 11/4/2023 and produced the documents relied on by the appellant. He told the Court how the appellant and the 1st respondent entered into an agreement on 20/11/2017 for the purchase of the said vehicle for Kshs.3.5 million. Due diligence revealed that the same was registered in the name of one Hussein Tarry Sasura. The appellant took possession thereof together with the original log book and transfer Form signed by the 1st respondent.
11. That on 14/3/2023, he was summoned to Kondele Police Station where he was shown an order in which the 2nd respondent was claiming repossession of the said vehicle. That on 30/8/2023, the said vehicle was availed at the DCI for Forensic analysis which contradicted a report dated 8/2/2022 that was used by the 2nd respondent to obtain or effect a forced transfer of the said vehicle in its name in 2022.
12. When cross-examined by both the 1st and 2nd respondent, he maintained that there was a Sale agreement between the appellant and 1st respondent dated 20/11/2017. That he was unaware that the 1st respondent had purchased the said vehicle from the 2nd respondent.
13. Pw 2 PC James Nderitu, a DCI officer from CSI Kayole told the Court that he made the forensic report dated 8/8/2023. The same disapproved the previous report dated 8/2/2022. Pw 3 CIP Mbugi, the In-charge of CSI Kajiado, disclaimed ever having made the report dated 8/2/2022.
14. Pw 4 Philemon Lowoi, a registration officer at NTSA, testified that the application for the registration for the said vehicle was made by Papu Shantilal Makwana. The same were received on 24/5/2022 and NTSA proceeded with the registration of the said vehicle in the name of the 2nd respondent.
15. Dw 1 Edwin Obado Ochieng adopted his witness statement dated 21/9/2023 and stated that, he purchased the said vehicle from the 2nd respondent on 18/11/2016 for Kshs.6.3 million. That it was



- a trade in for KCC 803A valued at Kshs.2.8 million and cash payment of Kshs.3.8 million. He took possession thereof but the same was not transferred to him. He later transferred possession of the same to the appellant for usage in exchange of building materials. The transfer for usage was for an indefinite period pending the registration in his name.
16. That the 2nd respondent maliciously instructed an auctioneer to repossess the same but he blocked that order in Ksm CMC Misc. Civil Appln No. E051 of 2023.
 17. In cross-examination, he admitted that he sold the said vehicle to the appellant in exchange for building materials valued at Kshs.3.5 million. When shown the agreement dated 20/11/2017, he admitted having signed it. That it is the 2nd respondent who did the forced transfer. That he had traded in his vanguard for Kshs.2.5 million and not Kshs.1.8 million.
 18. Dw 2 Papu Shantilal Makwana, the director of the 2nd respondent adopted his undated witness statement as evidence in chief. He said that the 2nd respondent became owner of the said vehicle on 18/10/2016 when one Moses Ngang'a traded the same for purchase of a KCJ 909R. On 18/11/2016, the 1st respondent purchased the same for Kshs.6.8 million, paid a total of Kshs.4.7 million and there was a balance of Kshs.3,050,000/-.
 19. In cross-examination, he admitted that it is the 2nd respondent who did the forced transfer. That the tape lifting was done by the 1st respondent. That he, his father and the 1st respondent had agreed that the 1st respondent was to get the vehicle registered in the name of the 2nd respondent. That all agreements were orally made.
 20. It is on the foregoing evidence that the trial court held that the appellant had failed to prove its case. That the Sale agreement dated 20/11/2017 was disputed, that the 2nd defendant disputed an agreement between it and one Sasura. That the 1st defendant had claimed that he had only transferred possession of the motor vehicle for usage in exchange for construction materials. And, on the foregoing basis, it dismissed the appellants suit with costs.
 21. The summarized ground of appeal was that the trial court misapprehended the evidence proffered and thereby arrived at an erroneous decision.
 22. The starting point is the burden of proof. Under section 107 of the *Evidence Act*, the general rule is that he who alleges must prove. The burden was on the appellant to prove that there was a sale of the said of motor vehicle by the 1st respondent to it. That it was entitled to it and the actions of the respondents were unlawful and therefore, that it was entitled to the reliefs sought. See CA decision in Ann Wambui Ndiritu –vs- Joseph Kiprono Ropkoi & Another [2005] IEA 334.
 23. There are several undisputed facts; that the subject vehicle was sold by the 2nd respondent to the 1st respondent in November, 2016 for either Kshs.6.3 million or Kshs.6.8 million. The price does not matter in the circumstances of this case but the transaction of sale. That subsequently, the 1st respondent parted possession thereof in November, 2017 to the appellant for an agreed consideration of Kshs.3.5 million. That the said motor vehicle was registered in the name of Hussein Tarry Sasura until 2022 when through a forced transfer it became registered in the name of the 2nd respondent.
 24. The dispute is whether the parting of the possession by the 1st respondent was only as contended by him or it was a sale. Secondly, whether ownership thereof passed.
 25. It was the appellant's contention that it purchased the said vehicle vide an agreement in writing dated 20/11/2017. The Court rejected the sale agreement on the grounds that the 1st respondent disputed



- the same. That the transaction between the appellant and 1st defendant was release of possession of the motor vehicle for an indefinite period in consideration of building materials valued at Kshs.3.5 million.
26. In order to arrive at a correct and fair conclusion, the Court need examine the totality of the evidence presented before it. It is true that the 1st respondent contended in his statement of defence, witness statement and evidence in chief that there was no sale agreement between him and the appellant.
27. However, when testifying on oath he could not explain what the alleged transaction was, whether it was a long lease of the vehicle or what it was. When cross-examined by Counsel for the appellant, he stated: -
- “I bought the vehicle from Makwana Motors on the 16/11/2016. I stayed with the vehicle for 3 years then sold it to the plaintiff. I did not sign an agreement with the plaintiff. Referred to plaintiff exhibit (1) – I signed the document.... I don’t have any claim against Mahavir. I do not know where the vehicle went since I gave it out.” (Emphasis added).
28. Again when cross-examined by Counsel for the 2nd respondent, he stated on oath: -
- “The records show that Makwana is the owner of the vehicle. The copy of the log book I have bore the name Sasura. Makwana did the forced transfer. I am not the one who did the transfer. I sold the vehicle to Mahavir on the 20/11/2017... I sold the vehicle for Kshs.3.5 million.” (Emphasis added).
29. In re-examination, he stated: -
- “I bought the vehicle on the 16/11/2016. I did not sign the contract dated 20/11/2017. I did not sign any agreement in Mahavir. The services received was worth the document.”
30. It is on the foregoing testimony of the 1st respondent that the trial court should have made a decision whether or not the appellant’s case was proved. It should be recalled that while the appellant’s testimony and case remained consistent throughout that it purchased the subject vehicle from the 1st respondent, not so with the latter. He kept on shifting from, ‘only parting with possession of the vehicle to the appellant for usage’ to selling it to the latter.
31. Finally, in his submissions dated 1/10/2024 at page 124 of the record, the 1st respondent submitted: -
- “In view of the foregoing, the 1st defendant, in asserting his ownership rights and lawful sale of the motor vehicle to the plaintiff, ...
- 3) Acting in good faith and under the bonafide belief of being the lawful owner, the 1st defendant subsequently sold the vehicle to the plaintiffs providing them with the original logbook but failing to do the transfer as he was waiting the transfer from the 2nd defendant.”
32. Apart from all the foregoing admissions that he had actually sold the vehicle to the applicant, he admitted that he is the one who opposed the repossession proceedings commenced by the 2nd respondent. That he did not have any further claims against the appellant including the vehicle itself.
33. Accordingly, in view of the foregoing, this Court makes a finding that, the appellant proved its case to the required standard that; it had purchased the subject vehicle from the 1st respondent for Kshs.3.5 million. That it was in lawful possession thereof. That it was also holding the original logbook in the name of Mr. Sasura and signed a transfer form by the 1st respondent. It had properly carried out a search



at the NTSA and confirmed that the name in the original log book that was handed over to it was the one appearing in the records of the Registrar of Motor Vehicles as the owner thereof.

34. With greatest respect, the trial court failed to properly analyse the evidence before it. It made a fundamental error by applying the principles of granting a temporary injunction to a fully tried suit. It thereby fell to error.
35. Had the title passed? The provisions of the *Sale of Goods Act* Cap 31 Laws of Kenya are apt on this issue. Section 14 thereof provides: -
- “(a) an implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;
 - (b) an implied warranty that the buyer shall have and enjoy quiet possession of the goods;
 - (c) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party, not declared or known to the buyer before or at the time when the contract is made.”

And section 19 thereof provides: -

- “(a) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
 - (b) For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.”
36. In the present case, the undisputed facts are that the 2nd respondent did sell to and the 1st respondent did purchase from the 2nd respondent the subject vehicle on 16/11/2016. Possession of the original log book and the vehicle were handed over to the 1st respondent. Title to the same passed on to him thereupon. What followed was Sale of the vehicle by the 1st respondent to the appellant on 20/11/2017. Possession and ownership thereon passed over on that date. The original log book, which is the document of title thereon was all along handed over to the purchasers, those to whom possession of the vehicle was given. The name in the log book was the one which was still appearing in the registration records of the vehicle at NTSA until someone interfered with them in 2022.
37. The circumstances of this case reveal and satisfy the fact that, the intention of the parties in 2016 and 2017, respectively was that title in the subject vehicle was to pass with the handing over of the possession of the vehicle and its log book simultaneously to the 1st respondent and subsequently to the appellant, respectively.
38. Accordingly, this Court makes a finding that, the property in the vehicle passed on to the appellant on 20/11/2017. The allegation that the 1st respondent did the forced transfer does not hold. The testimony of Pw 4 was unshaken. The application for the forced transfer was made by Papu Shantilal Makwana in 2022 in favour of the 2nd respondent in which he was a director. There would be no motivation or any reason why the same was to be made by the 1st respondent as alleged by the 2nd respondent. Such registration would not have been of any benefit to the 1st respondent. It is instructive that; it is



after the forced transfer that the 2nd respondent immediately commenced the purported repossession proceedings.

39. In view of the foregoing, the appeal is meritorious. The same is hereby allowed, the judgment of the trial court dated 14/11/2024 is set aside and substituted with an order in terms of prayer Nos. (a), (b) and (c) of the Plaint dated 16/3/2023. In default of prayer No. (c), the Deputy Registrar of this Court does execute all the necessary documents to effect the transfer. The appellant to have the costs of the appeal and the suit below against the respondents equally.

It is so decreed.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

