



**Darson Trading Limited v Wangai & another (Civil Appeal E025 of 2024)  
[2025] KEHC 12427 (KLR) (3 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12427 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E025 OF 2024  
EM MURIITHI, J  
SEPTEMBER 3, 2025**

**BETWEEN**

**DARSON TRADING LIMITED ..... APPELLANT**

**AND**

**ZACHARY WAMUTITU WANGAI ..... 1<sup>ST</sup> RESPONDENT**

**MUTWIRI MWIYANDIA MWIYANDI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the Judgment of Honorable S.K Manyura (R.M)  
delivered on 28/3/2024 at Kerugoya Small Claims Court No. E001 of 2024)*

**JUDGMENT**

1. By a statement of claim dated 31/1/2024, the 1<sup>st</sup> Respondent sued the Appellant and the 2<sup>nd</sup> Respondent seeking judgment in the sum of Ksh. 497,930, general damages and costs of the claim plus interest. The 1<sup>st</sup> Respondent pleaded that on or about 28/9/2023, at about 1230 hrs, he was lawfully driving his motor vehicle registration No. KBQ 738 T Toyota Probox along Sagana - Karatina road at Kibingoti area, when the 2<sup>nd</sup> Respondent who was the authorized agent, driver or servant so negligently steered or controlled Motor Vehicle Registration No. KDJ 712 K that it veered off its lane to the lane of his vehicle, extensively damaging it, as a result of which he sustained severe bodily injuries, and his vehicle was declared a total loss. The Appellant and the 2<sup>nd</sup> Respondent were jointly and severally liable by virtue of being the registered owner and the beneficial owner and/or owner in possession, respectively, and the doctrine of Res Ipsa Loquitur was applicable.
2. The Appellant filed its Response to the statement of claim dated 14/3/2024 urging that at the time of the accident, the 2<sup>nd</sup> Respondent had beneficial ownership and possession of the vehicle.
3. There is nothing on record to show that the 2<sup>nd</sup> Respondent responded to the claim.



4. Upon full hearing of the claim, the trial court apportioned liability in the ratio of 30:70 against the Appellant and the 2<sup>nd</sup> Respondent and awarded general damages of Ksh.300,000, special damages for personal injury of Ksh. 12,380, special damages for material damage of Ksh.485,550 together with costs and interest.

## Appeal

5. On appeal, the Appellant vide its memorandum of appeal dated 9/4/2024 set out 13 grounds as follows:
  1. The Learned Magistrate erred in law and fact in finding the Appellant to be the owner of the accident motor vehicle on the ground that the Appellant was the registered owner of the same, without considering the compelling evidence that possessory ownership and beneficial ownership had passed to the 2<sup>nd</sup> Respondent.
  2. The Learned Magistrate erred in law and fact in disregarding the proof that the subject motor vehicle had been sold to the 2<sup>nd</sup> Respondent, and that the Appellant was no longer in ownership and control of the same as at the time of the accident in question.
  3. The Learned Magistrate erred in law and fact in disregarding the compelling evidence that the 2<sup>nd</sup> Respondent was to indemnify the Appellant in case of any liability or claim with respect to Motor Vehicle Registration Number KDJ 712 K whilst the same was in the 2<sup>nd</sup> Respondent's possession.
  4. The Learned Magistrate erred in law and fact in failing to consider that it is trite law that despite a person being the registered owner of a motor vehicle, there may exist beneficial and possessory ownership of the same which may be more relevant than the registration thereof.
  5. The Learned Magistrate erred in law and fact in failing to consider that it was the 2<sup>nd</sup> Respondent who was the insured of the subject motor vehicle as at the time of the accident in question.
  6. The Learned Magistrate erred in law and fact in failing to consider that other than the Motor Vehicle Copy of Search, a Police Abstract can by dint of Section 6 of the Traffic Act, provide sufficient proof of ownership of the accident motor vehicle.
  7. The Learned Magistrate erred in law and fact in holding the Appellant liable for the accident herein on the ground that the motor vehicle title had not been transferred to the buyer based on section 20 (b) of the Sales of Goods Act, without considering that in fact as per that specific section, the motor vehicle in question was in a deliverable state at the time of sale for the Appellant was not required to do anything to it for the purpose of putting it into a deliverable state.
  8. The Learned Magistrate erred in law and fact in holding the Appellant 100% liable for an accident wherein it had sold the accident motor vehicle to the 2<sup>nd</sup> Respondent who acknowledged the Sale Agreement of Motor Vehicle.
  9. The Learned Magistrate erred in law and fact in failing to consider that the main concern of the court is to do justice to the parties.
  10. The Learned Magistrate erred in law and fact in disregarding the evidence that in civil matters liability trickles down to who actually caused an accident.



11. The Learned Magistrate erred in law and fact in disregarding the proof that nothing impeded that Court's right to exercise its discretion in this matter.
12. The Learned magistrate erred in law and fact by disregarding all the evidence presented by the Appellant in support of its position that it had sold the subject motor vehicle as at the time of the accident in question.
13. The Learned Magistrate erred in law and fact in making a Judgment that is unfair, biased, unjust and an absurdity to the norms of equity and justice.

### **Duty of the Court**

6. This being a first appeal, this court is duty bound to delve at some length into factual details and revisit the facts as presented in the trial court, analyse the same and arrive at its own independent conclusions, but always remembering that, the trial court had the advantage of seeing the witnesses testify. (See *Selle & Another v Associated Motor Boat Company Ltd & Others* [1968] EA 123).

### **Oral Evidence**

7. CW1 Zachary Wamutitu Wangai, the 1<sup>st</sup> Respondent herein and a nursing officer at Murang'a Hospital, adopted his witness statement dated 31/2/2024 as part of his evidence in chief and produced the logbook, P3 form, copy of Motor vehicle search, the receipt for motor vehicle search, motor vehicle assessment report, receipt dated 7/12/2023, medical receipts, demand letter, G4S report and the towing receipt as exhibits. He testified that, "I wish for the Court to be compensated for damage of my car and personal injuries I sustained."
8. On cross examination by counsel for the Appellant, he stated that, "I confirm on 28/9/2023 Mutwiri Mwiya was driving KDJ 712 K. I don't know the employees of the 1<sup>st</sup> respondent."
9. On cross examination by counsel for the 2<sup>nd</sup> Respondent, he stated that, "I confirm accident occurred on 28/9/2023. My prayer is that I claim for both loss of my motor vehicle and personal injuries. I stand guided that in the small claims court I cannot claim for general damages especially. I said motor vehicle was declared total loss and did not get anything. I had an insurance policy that is 3<sup>rd</sup> party. Respondent was driving in my lane. I veered to my extreme left to avoid head on collision but vehicle still followed me."
10. In re-examination, he stated that, "I court has jurisdiction as per the Act to hear personal injury and determine the case."
11. CW2 Cpl Charles Kariu, based at Sagana Traffic Base, performing investigation duties, produced the police abstract and the OB extract as exhibits. He testified that, "I appear on behalf of the Base CSO with regard abstracted issued on 30/10/2023 to Claimant owner of KBQ 738T. The accident occurred on 28/9/2023 and reported by OB no. 22/28/09/2023. Accident occurred within Kibingoti area involving KBQ 738T belonging to claimant, KDJ 712K Toyota Hilux Pickup and KCR 098A Toyota Land cruiser. I was not able to establish driver of KDJ 712K but the driver Mutwiri Mwiya Mwiya when the accident occurred. I visited the scene. The person to blame for accident was Mr. Mutwiri Mwiya he failed to keep to his left side of the road by failing to keep to his side. I made a follow up on O.B."
12. On cross examination by counsel for the Appellant, he stated that, "I confirm person driving KDJ 712K was 2<sup>nd</sup> respondent. Form police Abstract on day of accident. 2<sup>nd</sup> respondent state vehicle was on sale and belonged to certain client. There is no were on police abstract that mention 1<sup>st</sup> respondent."



13. On cross examination by counsel for the 2<sup>nd</sup> Respondent, he stated that, “I conducted investigation and the driver of KDJ 712K as he did not keep to his side of the road, turned from his corner and moved to the left side. I drew a sketch though I do not have it in Court. Establish accident occurred as I have a lot of evidence though not before Court. I was summoned to give evidence. There was another vehicle who driver was simply a victim.”
14. In re-examination, he stated that, “OB extract points that driver of Motor vehicle KDJ 712K is to blame for accident.”
15. CW3 Dr. Fred Muleshe, a Surgeon practising in Nyeri town, produced the medical report as an exhibit. He testified that, “I have been a general Surgeon for 20 years. I have medical report for claimant dated 19/12/2023 and court attendance receipt dated 20/3/2024 of Ksh 6,000/=. The report is in respect to Zachary Wamutitu Wangai hailing from Sagana involved in accident on 28/9/2023 at Kibingoti area along Nyeri-Nairobi highway taken to Murang’a County Hospital. I reviewed the 3 months and complained of pains in the left upper limbs.”
16. On cross examination by counsel for the 2<sup>nd</sup> Respondent, he stated that, “When I examined claimant I did CT Scan and result was normal. Claimant was in good health three months down the line from accident.”
17. 1<sup>st</sup> Respondent’s Witness 1 Nicholus Ngoli Inyangala, the Appellant’s Sales Manager produced his statement dated 14/3/2024 as his evidence in chief and produced the Sale Agreement, Deed of Indemnity & consent dated 28/9/2022, copy of ID card of Mutwiri, Affidavit of Liability dated 28/9/2022, T & C of Sale dated 28/9/2022, copy of authority letter and copy of financial statement as exhibits.
18. On cross examination by counsel for the 1<sup>st</sup> Respondent, he stated that, “By the time of accident 28/9/2023, Darson Trading was still registered owner of KDJ 712K, 2<sup>nd</sup> respondent is still paying payment and to date he is making payment and 1<sup>st</sup> respondent is still owner of KDJ 712K.”
19. On cross examination by counsel for the 2<sup>nd</sup> Respondent, he stated that, “On 28/9/2023, 2<sup>nd</sup> respondent came to buy motor vehicle and time of accident on 28/9/2023, we are still registered owners of motor vehicle KDJ 712K but 2<sup>nd</sup> respondent was responsible for motor vehicle.”
20. In re-examination, he stated that, “We sold vehicle to 2<sup>nd</sup> respondent and reason we appear to be the owners because motor vehicle was sold on H.P terms to be cleared within 2 year where he has not cleared hence cannot do the transfer to him.”
21. 2<sup>nd</sup> Respondent Witness 1 Mutwiri Mwiyaandi Mwiyaandi, a civil servant, testified that, “I am aware of the suit before me. On 28/9/2023, I moving from Nairobi to Isiolo. When I reach Kibingoti, there 2 lanes, I was in climbing, something happened to my vehicle where my vehicle veered off, it rolled and people came to my rescue and took me to hospital. The car rolled 4 times. When car fell down, I was not able to control it. I was not under any medication. I was not tired when I drove motor vehicle.”
22. On cross examination by counsel for the 1<sup>st</sup> Respondent, he stated that, “I confirm I was driver of KDJ 712K Toyota Hilux. I was at scene of accident on 28/9/2023 as I was driving. I did not contribute to the accident. I was not sick, I was okay. I was not tired. I am not the one to blame for accident. My motor vehicle veered off, fell down and rolled.”
23. On cross examination by counsel for the Appellant, he stated that, “My motor vehicle veered off the rolled. I confirm motor vehicle is mine but not registered under my name. I confirm I signed sale agreement between 1<sup>st</sup> respondent and myself together with deed of indemnity. I am not aware I signed



deed of indemnity of consent. I cant remember what I signed apart from sale agreement that I signed. I signed sale agreement.”

24. In re-examination, he stated that, “I am aware that I signed Deed of indemnity and consent. I am only aware I signed a sale agreement.”

### **Submissions**

25. The Appellant urges that the 2<sup>nd</sup> Respondent was the beneficial owner of the motor vehicle at the time of the accident, and cites *Securicor Kenya Ltd v Kyumba Holdings* [2005] eKLR, *Osapil v Kaddu* [2000] 1 EA 194, *Nancy Ayemba Ngaira v Abdi Ali* (2010) eKLR and *Superfoam Ltd & Another v Gladys Nchororo Mbero* (2014) eKLR. It urges that it was not vicariously liable for the accident, and cites *Pius Kimaiyo Langat v Co-operative Bank of Kenya Ltd* (2017) eKLR, *National Bank of Kenya Ltd v Pipeplastic Samkolit & Another* (2001) KLR 112, *Fina Bank Limited v Spares & Industries Limited* (Civil Appeal No. 51 of 2000) (UR), *Gichira Peter v Lucy Wambura Ngaku & Another* (2021) eKLR and *Elizabeth Gathoni Thuku* (suing as the legal representative of the estate of Charles Gitonga Wathuta) v *Peter Kamau Maina & Another* (2021) eKLR.
26. The 1<sup>st</sup> Respondent urges that there was evidence that the 2<sup>nd</sup> Respondent operated as the Appellant’s agent, servant or assignee, and cites *Mate v Wangombe* (Civil Appeal 292 of 2023) [2024] KEHC 10190 (KLR) (5 July 2024) (Judgment).
27. The 2<sup>nd</sup> Respondent did not file any submissions.

### **Analysis and determination**

28. From the grounds of appeal as framed, the sole issue for determination is whether the Appellant was vicariously or otherwise liable for the accident.
29. The Court of Appeal in *John Nderi Wamugi v Ruhesh Okumu Otiangala & 2 others* [2015] KECA 214 (KLR), held that:
- “...Vicarious liability is a doctrine in the law of torts that assigns liability for an injury to a person who did not personally cause the injury but who has a particular legal relationship to the person who acted negligently. Such liability is not pegged on ownership, but on the legal relationship, for example between an employer and an employee...The reason behind the principle of vicarious liability is to place liability on the party who should in law bear it and to peg it on legal ownership of a motor vehicle in a case of this nature, to the total exclusion of employer/employee relationship, would amount to grave injustice to the appellant.”
30. The undisputed facts in this case are that the Appellant sold the accident motor vehicle to the 2<sup>nd</sup> Respondent on 28/9/2022 on hire purchase terms, and the transfer would be effected in the 2<sup>nd</sup> Respondent’s name once the entire purchase price had been duly paid. The 2<sup>nd</sup> Respondent took immediate possession thereof and was indeed driving it on 28/9/2023 when the accident occurred.
31. The 1<sup>st</sup> Respondent affirmed on cross examination that, “I confirm on 28/9/2023 Mutwiri Mwiya was driving KDJ 712 K. I don’t know the employees of the 1<sup>st</sup> respondent.”
32. CW2 confirmed that the person driving motor vehicle registration No. KDJ 712 K on the material date was the 2<sup>nd</sup> Respondent. He testified that, “The person to blame for accident was Mr. Mutwiri Mwiya he failed to keep to his left side of the road by failing to keep to his side.”



33. The Appellant's Sales Manager recorded in his statement dated 14/3/2024, that, "I do remember very well that on the 28<sup>th</sup> day of September 2022 one Mutwiri Mwiandia, the 2<sup>nd</sup> Respondent herein, approached Darson Trading Ltd, the 1<sup>st</sup> Respondent herein, with the intention of purchasing Motor Vehicle Registration Number KDJ 712K and entered into a Sale Agreement of Motor Vehicle to purchase Motor Vehicle Registration Number KDJ 712K on Hire Purchase basis, which was sold to him at Kshs. 3,700,000/-. The 2<sup>nd</sup> Respondent, Mutwiri Mwiandi, paid a deposit of Kshs. 1,150,000/- and thereby took possession of the motor vehicle after signing the said agreement. At the time of the accident in question, on the 28<sup>th</sup> day of September 2023, the 2<sup>nd</sup> Respondent, Mutwiri Mwiandi, was still paying the monthly instalments and was yet to clear the balance to enable the 1<sup>st</sup> Respondent transfer the motor vehicle into his name. The 1<sup>st</sup> Respondent was not in a position to transfer the Motor Vehicle Registration Number KDJ 712K as afore-said, and the log Book was the only security the 1<sup>st</sup> Respondent had to enable it realize the full purchase price of Motor Vehicle Registration Number KDJ 712K. That at the time of the accident in question the Motor Vehicle Registration Number KDJ 712K was in actual and beneficial possession of the 2<sup>nd</sup> Respondent herein who in accordance with the Deed of Indemnity & Consent dated 28<sup>th</sup> September 2022 and the Affidavit of Liability of corresponding date, took full responsibility for any claim and liability touching on the subject motor vehicle whilst the said motor vehicle was in his possession and care. Mutwiri Mwiandi Mwiandi, the 2<sup>nd</sup> Respondent herein, who is the purchaser of the subject motor vehicle at the time of the accident in question, should be held liable."
34. On cross examination, he stated that, "By the time of accident 28/9/2023, Darson Trading was still registered owner of KDJ 712K, 2<sup>nd</sup> respondent is still paying payment and to date he is making payment and 1<sup>st</sup> respondent is still owner of KDJ 712K."
35. In re-examination, he stated that, "We sold vehicle to 2<sup>nd</sup> respondent and reason we appear to be the owners because motor vehicle was sold on H.P terms to be cleared within 2 year where he has not cleared hence cannot do the transfer to him."
36. The 2<sup>nd</sup> Respondent acknowledged on cross examination that, "I confirm I was driver of KDJ 712K Toyota Hilux. I was at scene of accident on 28/9/2023 as I was driving. I confirm motor vehicle is mine but not registered under my name. I confirm I signed sale agreement between 1<sup>st</sup> respondent and myself together with deed of indemnity."
37. According to the police abstract, the owner of the accident motor vehicle was the 2<sup>nd</sup> Respondent while the Appellant is indicated as the owner thereof in the log book.
38. Section 2 of the [Traffic Act](#) defines an owner in relation to a vehicle which is the subject of a hire-purchase agreement or hiring agreement to include the person in possession of the vehicle under that agreement, as follows:
- "owner", in relation to a vehicle which is the subject of a hire-purchase agreement or hiring agreement, includes the person in possession of the vehicle under that agreement;"
39. Section 8 of the [Traffic Act](#) provides that; "The person in whose name a vehicle is registered shall, unless the contrary is proved, be deemed to be the owner of the vehicle."
40. The court takes cognizance of the letter dated 28/9/2022 duly executed by the 2<sup>nd</sup> Respondent, authorizing Mr. Kelvin Thuo Maina to sign the agreement and affidavit on his behalf. The Appellant has exhibited the sale agreement dated 28/9/2022, the Affidavit of Liability and the Deed of Indemnity and Consent duly executed by the 2<sup>nd</sup> Respondent.



41. Paragraph 8 of the Sale Agreement stipulates that, “In the event of any liability, claim, arising during the subsistence of this agreement in respect of the said motor vehicle, the HIRER SHALL be 100% accountable and do hereby GUARANTEE the OWNERS that this condition shall lawfully comply with this condition in event of any eventuality. This covenant shall be pleaded as defense to any claim the OWNERS may be required to answer.”

42. In *Osapul v Kaddu* [2000] EA 194, cited by the Appellant, the Court held that:

“A registration card or logbook was 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...Section 20 of the *Sale of Goods Act* provided, inter alia, that where there was a contract for the sale of specific goods in a deliverable state, the property in them passed to the buyer when the contract was made irrespective of whether the time for payment or delivery or both were postponed, unless a different intention appeared. In this instance, the property in the vehicle passed from the Appellant to the First Respondent when the sale agreement was executed and the Appellant’s prima facie title to the vehicle was thereby rebutted. Accordingly, the First Respondent could legally pass title to the Second Respondent and the trial Judge’s holding in this regard could not be faulted. Although an unpaid seller who was in possession of goods was entitled to a lien over the goods until he was paid, that lien was lost the moment the buyer lawfully obtained possession of the goods. The Appellant therefore had no right of lien over the vehicle.”

43. This court finds that the Appellant proved on a balance of probabilities that, although it was still the registered owner of the accident motor vehicle at the time of the accident, beneficial and/or actual ownership, possession and control had already passed to the 2<sup>nd</sup> Respondent on 28/9/2022 upon execution of the sale agreement.

44. Consequently, this court finds that the trial court misapprehended the evidence on record and the principles of law in finding that the Appellant liable for the accident. There existed no legal relationship between the Appellant and the 2<sup>nd</sup> Respondent, upon which vicarious liability could be properly founded, and to hold the Appellant vicariously liable for the acts and/or omissions of the 2<sup>nd</sup> Respondent would be stretching the meaning of the word too far.

45. This court thus finds an error of law and principle by the trial court, to justify its interference on the test in *Selle & Another Vs Associated Motor Boat Co. Ltd. & Others* [1968] EA 123 at 126:

“An appeal to this court from a trial by the High Court is by way of a 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 it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound to follow the trial judge’s findings of fact if it appears that either he 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 demeanour of a witness is inconsistent with the evidence on the case generally. (*Abdul Hameed Saif – Vs- Ali Mohamed Sholani* (1955) 22 EACA 270).”

## Orders

46. Accordingly, for the reasons set out above, the Court finds the Appellant’s appeal to be merited and it is allowed in the following terms:



1. The trial court's judgment dated 28/3/2024 in respect of liability is hereby set aside.
2. Liability is hereby apportioned at 100% against the 2<sup>nd</sup> Respondent, to the total exclusion of the Appellant.
3. The Court does not disturb the trial court's finding on quantum of damages.
4. The 2<sup>nd</sup> Respondent shall pay the costs of the appeal to the appellant and the 1<sup>st</sup> Respondent.

Order accordingly.

**DATED AND DELIVERED THIS 3<sup>RD</sup> DAY OF SEPTEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Osoro for the Appellant.

Ms. Wambui Mwai for the 1<sup>st</sup> Respondent.

N/A for the 2<sup>nd</sup> Respondent.

