



**Autocats International Ltd v Auma (Civil Appeal E036 of 2023)  
[2024] KEHC 1963 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1963 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E036 OF 2023  
MS SHARIFF, J  
FEBRUARY 29, 2024**

**BETWEEN**

**AUTOCATS INTERNATIONAL LTD ..... APPELLANT**

**AND**

**MORINE LEAH AKECH AUMA ..... RESPONDENT**

*(Being an Appeal from the judgment of Hon W.K Onkunya (SRM)  
in Kisumu CMCC No. E185 of 2021 delivered on 11 th April, 2022)*

**JUDGMENT**

**A. Case Background:**

1. The Respondent (Plaintiff in the trial court) was for inter alia a declaration that the Respondent is the owner of Motor vehicle registration number KCB 098S and an order of transfer of the said motor vehicle to her.
2. The suit proceeded before that court orally and the Respondent tendered her evidence while Mercy Kavenga Abdul testified on behalf of the Appellant. The court after considering the evidence tendered entered judgment for the Respondent and ordered immediate transfer of the suit motor vehicle to her.

**B. Appeal:**

3. The Appellant being aggrieved moved this court by way of appeal raising the following grounds;
  - a. The learned trial magistrate erred by failing to find that the Respondent did not tender enough evidence of proof of payment of the purchase price of the suit motor vehicle.
  - b. The learned trial magistrate erred in finding that the Respondent had proved payment of the suit motor vehicle when she did not prove the same on a balance of probability.



- c. The learned trial magistrate erred by failing to uphold the appellant's defence, documents in support of the said defence and the submissions in entirety.
  - d. The learned trial magistrate erred in finding that the Respondent is entitled to the suit motor vehicle when she did not prove any such ownership.
  - e. The learned trial magistrate erred in overlooking the payments made by the Respondent to the appellant as the same did not amount to the purchase price agreed upon.
  - f. The learned trial magistrate erred in awarding the Respondent herein with costs of the suit when she did not deserve the same.
  - g. The learned trial magistrate misdirected herself on the applicable principles of law by failing to take into consideration and appreciate the submissions and the authorities submitted to the court by the appellant.
4. The appeal was canvassed by way of written submissions. Both submissions are on record and have been considered.

### **C. Analysis and determination:**

5. This being a first appeal, the duty of the court is as was held in *Mursal & another v Manese* (suing as the legal administrator of Daphine Kanini Manesa) (Civil Appeal E20 of 2021) [2022] KEHC 282 (KLR) (6 April 2022) (Judgment) as follows;

A first appellate court is mandated to re-evaluate the evidence before the trial court as well as the judgment and arrive at its own independent judgment on whether or not to allow the appeal. A first appellate court is empowered to subject the whole of the evidence to a fresh and exhaustive scrutiny and make conclusions about it, bearing in mind that it did not have the opportunity of seeing and hearing the witnesses first hand.

6. Upon perusal of the subordinate court's record, the memorandum of appeal and the record of appeal, the issues for determination that emerge herein are; whether the Respondent proved her case to the required standards, whether the Respondent was entitled to the orders sought and finally what orders commend themselves for issuance.
7. On the first issue, the dispute herein relates to ownership of motor vehicle registration number KCB 098S. The Respondent claimed that she entered into a motor vehicle purchase agreement with the Appellant sometimes in February, 2015 over the suit motor vehicle for the sum of Kshs.1,300,000/-. That she made a deposit of Kshs.300,000/- and the balance would be liquidated in nine monthly installments of Kshs.100,000/-.
8. The Respondent further averred that she made payments amounting to Kshs.1,450,000/- thus an overpayment which she claimed from the appellant. That despite the over payment, the appellant failed and or refused to transfer the motor vehicle to the Respondent and finally illegally and unlawfully repossessed the vehicle claiming Kshs.300,000/-.
9. The Appellant on its part contended that the Respondent entered into an agreement for the purchase of the vehicle at Kshs.1,360,000/- but the Respondent left a sum of Kshs.300,000/- as outstanding and attracting an interest of Kshs.10,000/- monthly. That the sum remains unpaid and cannot therefore transfer the motor vehicle.



10. The Respondent produced proof of payments as follows; Kshs.20,000/- and Kshs.300,000/- on 21/2/2015, Kshs.50,000/- on 13/4/2015, Kshs.500,000/- on 7/4/2015 and a payment of Kshs.100,000/- on 11/5/2015.
11. In arriving at his decision, the trial magistrate considered the payments made against the agreement and found that the Respondent had fully paid for the vehicle. More importantly, the trial magistrate considered the sum of Kshs.500,000/- allegedly paid on 7/4/2015 though not acknowledged in the agreement of 13/4/2015.
12. I have perused the agreement of 13/4/2023 and find that the same relates to another motor vehicle registration number KCB 332W. The payment therein does not show any relationship with the suit motor vehicle. I find the finding by the trial magistrate to be erroneous and not supported by the evidence. In any event, as per the agreement dated 14/9/2015 relating to motor vehicle registration number KCB 098S, the said amount is not reflected. The Respondent had occasion to raise any payment not captured in the schedule of payments.
13. It is common ground that the burden of proof lies on he who asserts the existence of a certain fact. In the instant case, the Respondent being the plaintiff bore the duty as ordained by Sections 107-109 of the Evidence Act to adduce evidence showing that she had overpaid the motor vehicle. Her tabulation of the payments is not in tandem with the evidence tendered.

**D. Conclusion:**

14. Ultimately, it is my finding that the Respondent did not prove her case to the required standards and this calls for the setting aside of the trial magistrate's findings to the extent that the Respondent had completed payment for the motor vehicle.
15. Having found as above, the second issue therefore means that the Respondent was not entitled to the orders sought for failure to complete payment of the motor vehicle. Her evidence fell short of the threshold for the grant of the prayers sought.
16. On the third issue, the orders commending themselves for issuance are that the trial magistrate's findings are hereby set aside and substituted therewith an order dismissing the Respondent's suit. The appellant's suit succeeds to the extent that the appellant is still owed Kshs.300,000/- by the Respondent. Each party to bear its own costs of the suit and the appeal.

**DELIVERED, DATED, AND SIGNED AT KISUMU THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024.**

**MWANAISHA S. SHARIF**

**JUDGE**

