



**Kamau v Matunda (Fruits) Bus Services (Civil Appeal E316 of 2022)  
[2024] KEHC 4829 (KLR) (Civ) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4829 (KLR)

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

**CIVIL**

**CIVIL APPEAL E316 OF 2022**

**DAS MAJANJA, J**

**APRIL 24, 2024**

**BETWEEN**

**ROSE WAIRIMU KAMAU ..... APPELLANT**

**AND**

**MATUNDA (FRUITS) BUS SERVICES ..... RESPONDENT**

*(Being an appeal from the Judgment and Decree of Hon. J.W Munene Adjudicator/RM dated 21st April 2022 at the Nairobi Small Claims Court, Milimani in SCCC No. E174 of 2022)*

**JUDGMENT**

1. The appeal relates to a material damage suit filed by the Appellant before the Small Claims Court. By the claim dated 31<sup>st</sup> January, 2022, she claimed Kshs. 262,216.00 being compensation for monies expended towards the repair of motor vehicle KBW xxxx F after it was involved in a road traffic accident with motor vehicle KCJ xxxx Z. She stated that her motor vehicle was knocked from behind by motor vehicle KCJ xxxx Z on 05.04.2019 along Chiromo Road towards Westlands.
2. The trial court entered interlocutory judgment after the Respondent failed to enter appearance and file its defence. Upon conclusion of the hearing, the trial court found that damages would have been recoverable as pleaded save for the fact that ownership of the motor vehicle KCJ xxxx Z was not proved. In its finding, the court observed that the Appellant failed to produce a copy of records from NTSA to prove that the Respondent was the owner of the vehicle. The court further observed that the police abstract, though not proof of ownership, indicated that a different person, KMN, was the owner of the vehicle. The court thus dismissed the suit with no orders as to costs.
3. In her memorandum of appeal, the Appellant assails the court for having entered the realm of litigating for the Respondent. She contends that ownership of the motor vehicle was not an issue for determination and such the trial court erred in delving into it and reaching the conclusion it did.



4. The appeal was canvassed by way of written submissions. The main issue for determination is whether the trial court erred in law in requiring that ownership of motor vehicle KCJ xxxx Z ought to have been proved before liability could attach to the Respondent.
5. This court's jurisdiction in dealing with appeals from the Small Claims Court is limited by section 38(1) of the [Small Claims Court Act](#), 2016 ("SCCA") which provides that

"A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law."

A court limited to matters of law is not permitted to substitute the Subordinate Court's decision with its own conclusions based on its own analysis and appreciation of the facts unless the findings are so perverse that no reasonable tribunal would have arrived at them ([John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others](#) [2018] eKLR).

6. As I understand, the Appellant's contention is that the issue of ownership was not up for determination because of the interlocutory judgment entered against the Respondent. In my view, once interlocutory judgment is entered, the plaintiff proceeds to prove its case without the defendant. The effect of the interlocutory judgment is to bar the defendant from presenting its case. In common parlance, where the court enters interlocutory judgment, the plaintiff proceeds to formally prove its claim. The purport of a formal proof was considered by Emukule J. in [Samson S. Maitai & Another v African Safari Club Ltd & Another](#) [2010] eKLR cited with approval by Havelock J in [Rosaline Mary Kabumbu v National Bank of Kenya Ltd](#) [2014] eKLR as follows:

In the present circumstances however, the Defence was struck out and thus the Defendant does not have the opportunity or privilege to present its evidence and argument. In light of the absence of a Defence on the file, it follows logically, that the matter would proceed to formal proof. What therefore is hearing by formal proof? In the case of [Samson S. Maitai & Another v African Safari Club Ltd & Another](#) [2010] eKLR, Emukule, J observed thus;

".... I have not seen judicial definition of the phrase "Formal Proof". "Formal" in its ordinary Dictionary meanings - refers to being "methodical" according to rules (of evidence). On the other hand according to [Halsbury's Laws of England](#), Vol. 15, para, 260, "proof" is that which leads to a conviction as to the truth or falsity of alleged facts which are the subject of inquiry. Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of proof lies on the party who asserts the truth of the issue in dispute. If that party adduces sufficient evidence to raise a presumption that what is claimed is true, the burden passes to the other party who will fail unless sufficient evidence is adduced to rebut the presumption."

Can hearing therefore, by formal proof, be similar to a full hearing? According to the observations of Emukule, J, in a formal hearing, all rules of evidence and procedure are observed and the party to a suit has to adduce evidence sufficient to sustain the suit. In adducing this evidence, the party has to raise a presumption that whatever is claimed is true and this therefore goes to the merits of the case. The Court considering a full hearing, to determine the matter based on the evidence that is presented before it by parties. In contrast, at a formal proof hearing, if the party with the onus of adducing evidence fails to satisfy the truth threshold, the matter would stand to be dismissed on the basis that it was



unmeritorious and did not raise sufficient proof of any issues of fact or law. It would be heard and determined on its merits.

7. It is clear therefore that in a formal proof, the plaintiff still bears the burden of proving its case in accordance with the normal rules of evidence. Turning to the facts of this case, did the Appellant prove her case to the required standard? Liability does not attach to the vehicle as an item, but rather to the owner of the motor vehicle. The question as to who is liable rather than what is liable flows from this assumption. Section 8 of the *Traffic Act* (Chapter 403 of the Laws of Kenya) 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.”

Prima facie proof of ownership is thus a copy of records at NTSA. However, that is a rebuttable presumption. In certain circumstances, a police abstract is sufficient to prove ownership of a motor vehicle where there is no evidence to the contrary (see *Samuel Mukunya Kamunge v John Mwangi Kamuru* [2005] eKLR).

8. The problem with the Appellant’s case is that whereas the police abstract relied on indicates KMN as the owner of the vehicle, its case is that Matunda (Fruits) Bus Service, the Respondent, is the owner. No evidence has been provided to show the nexus between the KMN and the Respondent. The court could not award damages against a party whose connection to the case has not been established. The court did not fall into error in pointing out the anomaly because liability has to attach to the right party.
9. The Adjudicator’s conclusion was supported by the evidence. I thus dismiss the appeal with no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL 2024.**

**D. S. MAJANJA**

**JUDGE**

J. S. Khakula and Company Advocates for the Appellant.

