Case ID: [2026] KEHC 305 (KLR) Copy

Title: Bingwa Sacco Society Limited v Lumumba & 2 others [2026] KEHC 305 (KLR) Copy

Court: High Court

Judges: AN Ongeri

Date: 22 January 2026

Parties: Bingwa Sacco Society Limited v Lumumba & 2 others [2026] KEHC 305 (KLR) Copy

Summary: REPUBLIC OF KENYA

legal_issues: ['The issues falling for determination in this appeal are twofold:', 'On the first issue, the 2nd Respondent has raised a preliminary objection regarding the competence of the appeal. Order 42 Rule 13(4)(f) of the Civil Procedure Rules, 2010, is explicit that a memorandum of appeal shall be accompanied by, inter alia, a certified copy of the decree or order appealed from.']

decision: That the learned magistrate erred in law and in fact in failing to find that the abstract from police on a road accident clearly indicated the subject motor vehicle as KBP 699D Tourag.

legal_principles: ['In the circumstances, the learned trial magistrate was correct in her application of the principles in Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (Deceased) Vs Kiarie Shoe Stores Limited [2015] eKLR, where the court reiterated that proof on a balance of probabilities means a court is satisfied that an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not.']

---- JUDGMENT TEXT ----

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. E850 OF 2024

BINGWA SACCO SOCIETY LIMITED..... APPELLANT

-VERSUS-

PAULINE AKETCH LUMUMBA.....1ST RESPONDENT

ALFRED OKHAKO ONGACHI.....2ND RESPONDENT

ALPHAYO LUSISA.....3RD RESPONDENT

(Being an appeal from the judgment of Hon. Lucy Ambasi (CM) in Milimani CMCC no. E2148 of 2022 delivered on 28/6/2024.)

JUDGMENT

The 1st respondent sued the appellant together with the 2nd and 3rd respondents in Milimani CMCC No. E2148 of 2022 seeking general damages for pain and suffering and loss of amenities of life and future medical costs and also special damages and lost earing capacity.

The 1st respondent stated in her plaint that the motor vehicle which injured her was owned by the appellant and the 2nd respondent was the driver employed by the appellant.

The appellant filed a defence denying having employed the 2nd respondent.

The 2nd and 3rd respondents denied the 1st respondents claim in their statements of defence.

The 1st respondent's case was that on 8/8/2021, she was travelling as a passenger in motor vehicle registration no. KCT 625N along Nairobi-Nakuru road when the said motor vehicle collided with motor vehicle registration no. KBP 699B at Myrendat area as a result of the negligent manner motor vehicle registration no. KCT 635N was being driven.

The respondent sustained the following injuries;

Fracture of the right radius

Fracture of the left femur

18% disability

The respondent was working as a business lady earning 2000 per day and she said she lost earnings from August 2021 to January 2022 amount to kssh.268,000/=.

The fractures the respondent sustained were immobilized with external metal fixator.

The trial court found the appellant and the 2nd and 3rd respondents 100% liable in negligence.

The damages were assesse as follows:

General damages ksh.1,000,000

Future medical costs ksh. 80,000

Special damages ksh. 250,114

Lost earnings ksh. 24,000

Total ksh.1,384,114

The appellant has appealed against the said judgment on the following grounds;

That the learned magistrate erred in law and in fact in making judgment against the weight of evidence.

That the learned magistrate erred in law and in fact in failing to note that the motor vehicle involved in the accident, KBP 699D ROURAG was different from the appellants motor vehicle registration number KBP 699B Toyota Hilux double cabin relied on motor vehicle search produced by the 1st respondent from the NTSA portal for the appellant motor vehicle that had an accident KBP 699d Tourag.

That the learned magistrate erred in law and in fact in failing to find that the abstract from police on a road accident clearly indicated the subject motor vehicle as KBP 699D Tourag.

That the learned magistrate erred in law and in fact in failing to find that the abstract from police on a road accident blamed motor vehicle KCT 635N.

That the learned magistrate erred in law and in fact in failing to find that the plaintiff did not prove that the 2nd defendant was the appellant's driver.

That the learned magistrate erred in law and in fact in failing to find that there was no evidence or the involvement of the appellant's motor vehicle in the accident.

That the learned magistrate erred in law and in fact in failing to consider that the plaintiff in her evidence clearly stated that she could not explain how the accident occurred.

That the learned magistrate erred in law and in fact in shifting the burden of proof to the appellant.

That the learned magistrate erred in law and in fact in failing to fairly evaluate and analyse the evidence adduced by the parties.

That the learned magistrate erred in law and in fact in failing to fairly consider the evidence adduced and submissions made on behalf of the appellant.

The parties filed written submissions as follows; the appellant submitted that the burden of proof in a claim for damages arising out of negligence lay with the 1st respondent who was required to demonstrate on a balance of probabilities that the appellant owed her a duty of care, that such duty was breached and that as a result of the said breach she suffered loss and damage.

During the 1st respondent's cross examination, she indicated that she did not know how the road traffic accident occurred.

Further, she failed to prove that the 2nd respondent was an employee of the appellant.

The appellant in its witness statement clearly indicated that the 2nd respondent had never been its employee or driver an assertion that was not denied by the 2nd respondent.

It was the appellants assertion that she failed to discharged this burden on a balance of probabilities.

The 1st respondent alternatively argued that the appellant admitted ownership of its vehicle and availed its log book.

The appellant did not avail a record of its employees or duty roaster or vehicle movement records or work permit or list of its drivers to prove its plea that the sued driver was not its employees as it pleaded.

Further upon production of a police abstract naming its vehicle driver as the 2nd defendant and upon its denial the burden was squarely upon the appellant to prove its denial to disprove that abstract and to rebut the presumption.

The 2nd respondent submitted that the 1st Respondent's documentary evidence produced before the trial court included a Motor vehicle search record as of November 2021, which clearly indicated that motor vehicle registration number KBP 699B, as captured in the police abstract, was registered in the name of the Appellant, Bingwa Sacco Society.

Further, that the police abstract was not erroneous in indicating motor vehicle registration number KBP 699B as belonging to the Appellant.

The record from the National Transport and Safety Authority (NTSA) confirmed that ownership. Section 8 of the Traffic Act, Cap 403 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."

The 2nd respondent submitted further that the appeal herein was incompetent as it lacked a certified copy of the decree as required by Order 42 Rule (4) (f) of the Civil Procedure rules. Section 65(1)(b) of the Civil Procedure Act provides:

“(1) Except where otherwise expressly provided by this Act, and subject to such provision as to the furnishing of security as may be prescribed, an appeal shall lie to the High Court—

b. from any original decree or part of a decree of a subordinate court, on a question of law or fact”.

Order 42, rule 13(4)(f) requires the judgment and decree appealed from to be part of the record.

In the present appeal, a perusal of the Record of Appeal shows that the Appellant attached a copy of the Judgment together with the certified copy of the lower court’s proceedings however, there is no certified copy of the decree attached as is mandatorily required.

It was therefore the position of 2nd respondent that the appeal herein should be dismissed as the record is incomplete and incompetent.

The issues falling for determination in this appeal are twofold:

Whether this appeal is competent given the absence of a certified copy of the decree from the lower court; and

Whether the learned trial magistrate erred in finding the Appellant liable for the accident involving the 1st Respondent.

On the first issue, the 2nd Respondent has raised a preliminary objection regarding the competence of the appeal. Order 42 Rule 13(4)(f) of the Civil Procedure Rules, 2010, is explicit that a memorandum of appeal shall be accompanied by, inter alia, a certified copy of the decree or order appealed from.

The necessity of a decree is not a mere technicality; it is the formal expression of an adjudication which conclusively determines the rights of the parties with regard to all matters in controversy.

An appeal is instituted against a decree, not a judgment and the judgment merely contains the reasons for the decree.

A perusal of the Record of Appeal filed herein reveals that while a copy of the judgment and certified proceedings are attached, there is no certified copy of the decree.

This omission renders the appeal fatally defective and incompetent. Consequently, the appeal is liable to be struck out on this ground alone.

Notwithstanding the above fatal procedural flaw, and for completeness, I have considered the substantive grounds of appeal on liability.

The Appellant’s core contention is that the 1st Respondent failed to prove, on a balance of probabilities, that its motor vehicle was involved in the accident or that the 2nd Respondent was its driver.

The Appellant emphasizes a discrepancy in the registration number, pointing out that the police abstract refers to KBP 699D (Tourag), whereas the vehicle registered to it is KBP 699B (Toyota Hilux).

The trial court, however, had before it a Motor Vehicle Search from the National Transport and Safety Authority (NTSA) dated 24th November 2021, produced by the 1st Respondent, which clearly listed motor vehicle registration number KBP 699B as owned by "BINGWA SACCO SOCIETY."

The police abstract, though referencing "KBP 699D Tourag," also lists the owner as "BINGWA SACCO."

Section 8 of the Traffic Act (Cap. 403) provides a statutory presumption that the person in whose name a vehicle is registered is deemed to be its owner, unless the contrary is proved.

The Appellant, despite denying ownership and involvement, did not lead any evidence to rebut this presumption.

It did not, for instance, produce its own official NTSA search to demonstrate that KBP 699B was a different vehicle, nor did it provide records to show that its vehicle was elsewhere at the material time.

The burden to disprove its vehicle's involvement, having been triggered by the documentary evidence adduced by the Plaintiff, shifted to the Appellant, which it failed to discharge.

Regarding the employment of the driver, the police abstract named the 2nd Respondent as the driver of the Appellant's vehicle.

The Appellant’s mere denial in its defence, unsupported by any evidence such as employment records, duty rosters, or even a witness statement from a responsible officer, was insufficient to displace the prima facie evidence contained in the official police document.

In the circumstances, the learned trial magistrate was correct in her application of the principles in Hellen Waruguru Waweru (suing as the legal representative of Peter Waweru Mwenja (Deceased) Vs Kiarie Shoe Stores Limited [2015] eKLR, where the court reiterated that proof on a balance of probabilities means a court is satisfied that an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not.

The totality of the evidence—the NTSA search, the police abstract, and the Appellant’s failure to offer any credible alternative—made it more likely than not that the Appellant’s vehicle, KBP 699B, was involved and that the 2nd Respondent was its driver at the material time.

The magistrate’s finding on liability was therefore sound and cannot be disturbed.

In the final analysis, this appeal fails both procedurally and substantively.

Procedurally, it is incompetent for want of a certified copy of the decree.

Substantively, the Appellant’s grounds challenging the trial court’s finding on liability are devoid of merit.

The learned magistrate’s evaluation of the evidence was thorough and her conclusions were squarely within the bounds of the law and evidence presented.

Accordingly, the appeal is hereby dismissed with costs to the 1st and 2nd Respondents.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 22nd day of January, 2026.

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N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent