

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 264 OF 1986

D.T. DOBIE (K) LTD.....PLAINTIFF

VERSUS

ADEN AHMED.....DEFENDANT

JUDGMENT

In the suit in the lower Court the respondent sought an order for a refund of Kshs. 25,000/- and alternatively the repair of his motor vehicle by he appellant to his(the respondent's) satisfaction. After a full trial the trial magistrate gave judgment in favour of he respondent for the appellant to repair the respondents vehicle to full satisfaction of the respondent. The respondent was also awarded the costs of the suit.

This appeal arises from the said judgment. The appeal must succeed on the submissions of the learned counsel for the appellant which are uncontroverted.

The appellant having carried out he repairs set out in the job card which were confirmed by the mechanic on behalf of the respondent was not obliged to go beyond that obligation. Further as rightly submitted by the learned counsel for he appellant the order given by he trial magistrate was incapable of supervision by the court.

With respect, the judgment of the trial magistrate was against the evidence of both Pw1 and DW2.

Accordingly, the appeal is hereby allowed consequently the respondents suit in the lower court stands dismissed with cots. The appellant shall also have the costs of this appeal. Orders accordingly.

Dated and delivered at Nairobi this 8th day of July, 1998

A. MBOGHOLI MSAGHA

JUDGE