



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OMOLO, AKIWUMI & SHAH, J.J.A.)
CIVIL APPEAL NO. 181 OF 1997

BETWEEN

GRACAN (K) LIMITED.....APPELLANT

AND

1. GENERAL MOTORS (K) LTD

2. RYCE MOTORS (K) LTD.....RESPONDENTS

**(An appeal from the decision of the High Court of Kenya
at Nairobi (Hon. Mr. Justice Gedion P. Mbiti) dated
27th day of May, 1997**

in

H.C.C.C. NO. 1598 OF 1996)

JUDGMENT OF THE COURT

This appeal is against the refusal by the superior court (Mbiti, J) to strike out the defence of the first defendant. The main argument propounded by Mr. Ogeto for the appellant is that as the vehicle in question broke down within the warranty period the first respondent is liable for the damages suffered by the appellant as a result of the vehicle being off the road for 162 days. There is no averment in the plaint of any particular fundamental breach on part of the first respondent. Nor does the plaint show what was the particular defect in the engine of the vehicle in question which enabled the appellant to invoke the warranty clause. In these circumstances the first respondent could not plead any further than what it did. To enable the first respondent to properly plead to a particular defect that defect had to be specifically pleaded.

In the result this appeal is dismissed with no order as to costs as against the first respondent but the appellant will pay the second respondent's costs.

Dated and delivered at Nairobi this 20th day of May,

1998.

R.S.C. OMOLO

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JUDGE OF APPEAL

A. M. AKIWUMI

.....

JUDGE OF APPEAL

A. B. SHAH

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR