



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Misc Civ Appli 1623 of 2005**

**IMAGE APPARELS LTD.....APPLICANT**

**VERSUS**

**FREIGHT IN TIME LIMITED.....RESPONDENT**

**RULING**

The applicant applied in the Chief Magistrate's Court in **CMCC NO. 8966 OF 2004** for the release of his goods which were wrongfully attached by the respondent. The application was allowed and the court issued the order on 9<sup>th</sup> March 2005. But the respondent did not release the said goods as ordered by the court. The applicant filed this application by way of Notice of Motion expressed to be brought under Section 5 of the Judicature Act and Section 3A of the Civil Procedure Act seeking orders that Mr. Karim

Sayed an officer of the Respondent to civil jail for a period of 6 months together with Shantilal Barmal Shah Linah Bharat Shah, Hasit Shanklal shah and Amit Shah, general manager of the respondent, all ... whom are members of the Board of Directors of the respondent, that an order do issue for the attachment of the respondent's property to the tune of Shs. 8 million.

The application is based on the grounds that an order for the release of the applicant's goods was issued on 9<sup>th</sup> March 2005 and the same was served on 27<sup>th</sup> October 2005 on the officers and directors of the respondent who have disregarded the same, that the dignity of the court is at stake and of paramount importance that the respondents, its directors, its officers and directors be punished for disrespecting court orders so that the courts image can be redeemed. When this application came up for hearing Mr. Opande counsel for the respondent raised a Preliminary Objection on the ground that no notice was issued to the Attorney General, that no notice was issued to the Registrar of the High Court, that application for leave to apply for orders for committal was not accompanied by verifying affidavit, that the respondent and or its officers and or its directors were not served personally, that the orders of the court of 9<sup>th</sup> March 2005 and 27<sup>th</sup> October 2005 are unenforceable against the respondents and or its directors and lastly that this court lacks jurisdiction to hear and determine the application.

The Preliminary Objection is opposed by Mr. Sumba counsel for the applicant who submitted that this being a civil matter there is no requirement that in law that the Attorney General be served with notice. He further submitted that the issues raised in the Preliminary Objection are issues of fact and not points of law. He urged the court to dismiss the Preliminary Objection and allow the applicant to prosecute his application.

A Preliminary Objection raises a pure point of law which is argued on the assumption that the facts pleaded by the other side are correct. It consists of point of law which has been pleaded or which arises by clear implication of the pleadings and which it argued as a Preliminary Objection may dispose off the suit.

The issues raised in the Preliminary Objection would be canvassed during the hearing of the application. The Preliminary Objection lacks in merit and it is dismissed with costs.

Orders accordingly.

Dated and delivered at Nairobi this 5<sup>th</sup> day of May, 2006.

**J.L.A. OSIEMO**

**JUDGE**