



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASAKITALE**

**CIV CASE 23 OF 00**

**KENYA PORTS AUTHORITY ..... PLAINTIFF**

**- Versus -**

**AMARCO (KENYA) LTD. .... DEFENDANT**

**R U L I N G**

Before me are two applications. The first one dated the 6th October 2003 is by the Objector seeking an order under Order 21 Rule 55 of raising the attachment of its goods as the attaching creditor had not filed a notice of intention to proceed with attachment. The second application dated 19th February 2004 is by the decree holder seeking, under Order 49 Rule 5, an order extending the time for filing the notice of intention to proceed with attachment. The applications were argued together.

Mrs. Maina for the Objector argued that the attaching creditors having failed to intimate in writing within the time allowed that it wished to proceed with the attachment, the same should be lifted. She submitted that the application by the attaching creditor for extension of time is an afterthought. Mr. Khagram for attaching creditor readily accepted that intimation to proceed with attachment was not filed in time. He blamed the failure on the attaching creditor's former advocates.

I accept Mr. Khagram's submission that the failure to intimate that the attaching creditor's intention to proceed with the attachment was caused by the attaching creditor's advocates. Immediately on taking over the conduct of this case on behalf of the attaching creditor Mr. Khagram's firm filed the notice of intention to proceed with attachment. Counsel's mistake should not be visited on the client. In this case I find that the Objector can adequately be compensated by way of costs. Consequently I dismiss the objector's application and allow the one by the attaching creditor and order that the notice of intention to proceed with attachment filed herein on 1st December 2003 is hereby deemed as having been filed in time. The attaching however, creditor shall pay to the objector the costs of both the applications.

**DATED this 24th day of March 2004.**

**D. K. MARAGA**

**Ag. JUDGE**