



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**ADMIRALTY CAUSE No. 17 OF 1994**

**DUBAI DRYDOCKS.....PLAINTIFF**

**V E R S U S**

**THE OWNERS OF MOTOR VESSEL 'TILIA'.....DEFENDANT**

**R U L I N G**

The Plaintiff/Respondent applied for leave to appeal as the kind of order made by this court is one that requires such leave. The leave applied for was opposed by the applicant. I have carefully considered the application. This court found that the service challenged by the Plaintiff by the preliminary objection in the points of law was indeed irregular in that it failed to comply in complete details the procedures provided under Order V of the Civil Procedure Rules. The court however also found the irregularity of the said service did not in any way offend the basic principle for such service in that it did not prejudice the other party. The court finally found that even if the service could be set aside and a fresh one ordered, the plaintiff did not show that it could approach the pending application with any other newer or better grounds than those already on the record. For the above reasons the court concluded that apart from such a course being a cause for more delay it would be a waste of further time. It was also noted that the plaintiff did not file a formal application to set aside the said faulty service but merely attacked it by raising a preliminary objection in points of law, which this court doubted to really have amounted to such preliminary points of law.

It is the view of this court therefore that there is no serious or rare point of law that needs to go for a decision in the Court of Appeal. For these reasons, this application must and is rejected.

**Dated and delivered at Mombasa this 3rd day of September, 2003.**

**D. A. ONYANCHA**  
**J U D G E**