



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL CASE NO.259 OF 2000**

PLANET INTERNATIONAL LTD. .... PLAINTIFF

VERSUS

EDWARD OLUOCH ODUMBE t/a

VIVATION ELECTRICALS &

HARDWARE SUPPLIES ..... DEFENDANT

**RULING**

The Applicant is the Defendant in this case. He entered appearance by his advocate J.J. Weloba who also filed defence. By application dated 8/9/2000 Mr. Weloba sought leave to withdraw from acting for the Defendant which leave was granted on 6.11.2000. Earlier on the same date Mr. Taib for Plaintiff had obtained orders in application dated 19/9/2000 for supply of particulars. This application was heard ex parte since the other side did not appear. In default of supplying particulars within 14 days the court has ordered that the defence shall stand struck off.

The Defendant did not supply particulars as ordered and it appears the Plaintiff immediately moved to execute decree.

The Defendant now applies to set aside that decree on the grounds that he was not made aware of the order of the court made on 6/11/2000 and that he is ready and willing to supply the same. His affidavit in support shows that he was not notified of the order of the court. The warrant of attachment was signed on 5/1/2001.

On 12/1/2001 the Applicant was visited by auctioneers. He came to know that his advocate had abandoned his case when he visited him on 16/1/2001 and learned of the orders. He now says he is ready and willing to supply particulars and he has engaged a new advocate. This application is objected to by the Respondent who states he sent notice of decree to applicant by letter dated 14.9.2000 to post office Box Number 39826 Nairobi which address the Applicant says it is not the correct address. He has given his address as 39240 Nairobi. The Respondent does not show that he served the order upon the Applicant or his advocate and in the circumstances it would be contrary to the principles of justice to condemn the applicant for not having obeyed the order he was not aware of. Again it may be he was let down by his advocate who should probably have put more effort to get in touch with his client.

In the circumstances I set aside decree and all execution proceedings. The Applicant is granted extension of time to comply with court order as to supply of particulars made on 6/11/2000 within the next 7 days

from the date of this ruling.

Costs shall be in the cause.

**Dated at Mombasa this 3rd Day of May, 2002.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**

Read in presence of: Mr. Omollo

Mr. Mwinyi

**J.**  
**COMMISSIONER OF ASSIZE**

**KHAMINWA**