

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT MOMBASA

CORAM: TUNOI, O'KUBASU & GITHINJI, JJA

CIVIL APPEAL NO. 295 OF 2003

BETWEEN

GRAIN BULK HANDLERS LIMITED.....APPELLANT

AND

J.B. MAINA & CO. LTD.....1ST RESPONDENT

COAST SILOS [K] LTD.....2ND RESPONDENT

KENYA PORTS AUTHORITY.....3RD RESPONDENT

*(An appeal against the decision of the High Court of Kenya at Mombasa
(Khaminwa, J) given on 8 th August, 2003*

in

H.C.MISC.C. NO. 479 OF 2003)

RULING OF THE COURT

In our view, the 3rd respondent is not seeking to vary or reverse the decision of the superior court nor does it seek to have it affirmed on any other grounds than those relied upon by that Court. Further, the 3rd respondent is not cross-appealing. In the circumstances, **rule 90** is not applicable. It must follow, therefore, that the objection on the course taken by *Mr. Amoko* is misplaced and we reject it. Moreover, the objection is belatedly taken the appellant's counsel having concluded his submissions.

DATED and DELIVERED at NAIROBI this 4 th day of February, 2005.

P.K. TUNOI

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JUDGE OF APPEAL

E.O. O'KUBASU

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JUDGE OF APPEAL

E.M. GITHINJI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR