



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL &ADMIRALTY DIVISION
HCC NO. 51 OF 2008
PROTON MOTORS CC.....PLAINTIFF
-VS-
HENRY N. KHAEMBA1ST DEFENDANT
HUSSEIN DADO.....2nd DEFENDANT

RULING

1. The Notice of Motion application before the court is dated 20th May 2013. The application is filed Under Sections 1A, 1B and 3A of the Civil Procedure Act, Order 19 Rule 1 & 2 (1), Order 51 Rule 1 of the Civil Procedure Rules 2010, and all other enabling provisions of the law.
2. The application seeks the following Orders;
 - a. That the Plaintiff be granted leave to have the Affidavit of **POOVENTHRAN MOODLEY** annexed to the Affidavit sworn in support of this application, admitted in evidence and read at the hearing.
 - b. That the costs of this application be in the cause.
3. The application is supported by Affidavit of **Mr. POOVENTHRAN MOODLEY** witnessed in **WINDHOEK, NAMIBIA** on 20th May 2013 with annexures and further premised on the grounds stated therein.
4. The application is not opposed but there is no evidence on record that the same was served upon the Respondents. Neither is there an affidavit of service to confirm that it was served.
5. The main reasons for the application is that the said **MR. POOVENTHRAN MOODLEY** is the Managing Director of the Plaintiff's company and is the Plaintiff's principal witness in this suit. The witness resides in **WINDHOEK, NAMIBIA** and it would be unreasonably expensive for the Plaintiff to facilitate the personal attendance of the witness. Further, it is submitted that the witness is also suffering from ill health with a heart problem and is on chronic medication and has been advised by his Doctor against travelling to Kenya. The travel costs is said to be in the region of **USD 11,500.00** which is said to be unreasonable.
6. The applicants Affidavit was sworn before a Notary Public in **WINDHOEK, NAMIBIA** and was properly authenticated by the Registrar of the High Court of Namibia.
7. The application is also supported by a report by **DR. P. VERBURGE** who confirms that the witness is not fit to travel to Kenya.

8. On the above grounds I am satisfied that the application has merits the grant, and subject to proof before me that the application was served, I allow it as prayed.

Orders accordingly.

Dated, Read and Delivered at NAIROBI this 26th Day of September 2014.

E.K.O OGOLA

JUDGE

PRESENT:

Ogunde for Applicant

Absent for Defendant

Teresia – Court clerk