REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL CASE NO. 160 OF 2010

IBRAHIM NJIRU …….……..……. PLAINTIFF

VERSUS

CANON MOTORS LIMITED…….....……1ST RESPONDENT

DANIEL GIKUNDA …….....……..2ND RESPONDENT

ANTONY MURIITHI GITONGA …….....……..3RD RESPONDENT

R U L I N G

This is the Application dated 29/8/2011. It's supported by the affidavit of the Managing Director of the 1st Defendant. He says that at the time of the accident the 1st Defendant was no longer in possession of the motor vehicle.

It has been opposed and the Plaintiff has filed a Replying affidavit.

I have read through the case of ***SECURICOR KENYA LTD. –VS- KYUMBA HOLDINGS LTD CIVIL APPEAL NO.73/02 NAIROBI***. Whatever is deponed to by the Managing Director of the 1st Defendant and the Plaintiff are all matters of evidence which must be tested through cross-examination. The Court of Appeal arrived at the Judgment after going through the evidence adduced before the High Court.

I need to give the parties the opportunity to testify. This is not a matter to dispose of by way of an interlocutory application, unless the parties have entered into a consent on anything.

I therefore disallow the application.

DATED SIGNED AND DELIVERED THIS 15TH DAY OF DECEMBER 2011.

H.I. ONG'UDI
J U D G E