



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 195 of 2004

SATYA HOTEL LIMITED.....PLAINTIFF

VERSUS

MALTI DEVI.....1ST DEFENDANT

DR. AJIT BARUAH.....2ND DEFENDANT

RULING

1. The application before court is the chamber summons dated 23/04/08 expressed to be brought under Order 27 Rules 1, 3, 7 and 20 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all other enabling provisions of the law seeking in the main an order issuing a commission for examination and of taking evidence of the 1st Defendant herein at the close of the plaintiff's case and that the said Commission be issued to any person whom the court thinks fit. The applicant, who is the 1st Defendant herein also prays that costs of this application be provided for.

2. The application is premised on the grounds **THAT**?:

(a) *The 1st Defendant is suffering from diabetes, hypertension and is at the end stage of the renal disease thus unable to attend court and give evidence.*

(b) *The 1st Defendant is physically very weak thus unable to move out and sit for a long time due to her sickness.*

(c) *The Evidence of the 1st Defendant is necessary for proper and just determination of the matter before the Honourable Court.*

and is also supported by the sworn affidavit of the applicant dated 23/04/08. She says that the suit against her is now fixed for hearing on 11th and 12th June 2008 and that because she suffers from chronic diabetes and hypertension and is at the end stage of the renal disease, she is weak in body and would thus find it difficult to attend court and give evidence. The applicant has annexed copies of medical documents to prove that she suffers from the two debilitating medical conditions. The letter dated 14/04/2008 by Dr. Paresh Kumar J. Patel shows that **Mrs. Malti Devi Mudhar** suffers from renal failure and has dialysis three times a week and that as such she is not in a fit state to attend court proceedings. It is for this reason that the applicant makes this application.

3. The application is not opposed. The only issue therefore is for the court to determine whether the

applicant meets the requirements of the law in as set out under the relevant rules of Order 27. Section 3A of the Civil Procedure Act gives this court unlimited inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. On the other hand, Order 27 Rule 1 of the Civil Procedure Rules provides:?

“Any court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the limits of its jurisdiction who is exempted under the Act from attending the court or who is from sickness or infirmity unable to attend it.”

4. The applicant in this case has shown by affidavit evidence and annexures thereto that she is chronically sick from diabetes and hypertension and through annexure MD (a) that she has renal failure and is too weak to attend hearing of her case in court. In the circumstances, and for the reason also that the application is not opposed, I am inclined to allow the application by making the following orders:?

- (a) That there be a Commission for examination and of taking of evidence of the 1st Defendant herein at the close of the plaintiff's case.***
- (b) That the said commission shall issue to the Registrar of the High Court of Kenya, Nairobi.***
- (c) That on execution of the Commission, the same shall be returned, together with the evidence taken under it to this Honourable Court at the close of the plaintiff's case.***
- (d) That the applicant shall meet the expenses arising from or pertaining to the Commission.***
- (e) That costs of this application shall be in the cause.***

Orders accordingly.

Dated and delivered at Nairobi this 23rd day of May 2008.

R.N. SITATI

JUDGE

Delivered in the presence of:?

Miss Oduor for 1st defendant/applicant

M/s King'oo Wanjau (absent) for plaintiff/respondent

Odero Olonde (absent) for 2nd defendant