



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL CASE NO. 22 OF 2018**

**SPEEDAG INTERFREIGHT KENYA LIMITED.....1<sup>ST</sup> PLAINTIFF**

**SPEEDAG INTERFREIGHT TANZANIA LIMITED.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JYOTI STRUCTURES LIMITED.....1<sup>ST</sup> DEFENDANT**

**JYOTI STRUCTURES KENYA LIMITED.....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

**NO. 1**

1. Ultimately the conduct of proceedings and case management falls upon the shoulders of the court and cannot be delegated even to the parties. If the overriding objectives of the court have to be met, that jurisdiction is everything is not doubt here just as I appreciate that the dictate that makes finding on jurisdiction dealt with fast and first does mean that the court must separate it from all else even if to do that would be to employ judicial resource in time in a less efficient manner.

2. I appreciate the law to say that a preliminary objection is one of the ways to oppose an application. That to me means that if there be filed an objection to a suit or an application and the same goes to jurisdiction nothing stops the court from taking argument on the application together with the objection and rendering one ruling which may however commence with a determination whether the court has jurisdiction. I believe none of the principles applicable on handling jurisdictional questions has escaped my mind and I will strive not to be escaped in this matter. I will treat the objection to the application dated 10/10/2018 together with any other in the file with the seriousness all deserve but shall treat them as oppositions to the application by the plaintiff.

3. On the procedure on how to show cause, once gain ask counsel to appreciate that this is a court of law and it can only apply the law not whim or caprice. None should doubt that the law will ever be applied in this matter.

4. All considered, the previous directions given in this file resting with those of yesterday is what the court considers best suited to have the dispute herein dealt with proportionately and expeditiously and the court upholds those directions and now directs that the matter proceeds as earlier on directed.

4. I would have considered dealing with the application dated 10/10/2018 separately had the plaintiff sought time to reply to it but the plaintiff says he can answer to it on pure points of law. In coming to this conclusion and directions, it is not lost to court that the conduct of the defendants have not been anywhere near their obligations to court under section 1A(3) but that shall not sway me in applying my mind and best to resolve the dispute before me today.

**Dated, signed and delivered this 12<sup>th</sup> day of October 2018.**

**P J O OTIENO**

**JUDGE**