



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL CASE NO. 22 OF 2018**

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

**SPEDAG 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 N O. 3**

1. I have expressed myself on the fear that the defendant had intended to force an adjournment which has now come to pass on account of late serve of submissions, the matter cannot proceed because both court and even the plaintiff may want to read those submissions to be on the same footing with the defendant during highlighting. For that reason this matter is now adjourned and stood over to the 4/12/2018 for hearing of the three applications on record.

2. Leave is granted to the plaintiff to file a Replying Affidavit to the notice of motion dated 10/10/2018 with corresponding leave to the defendant to file a further affidavit if need shall arise.

3. On application to amend, I do agree that it would be appropriate to file a formal application so that one appreciates the nature of amendment sought. On costs, all considered, the matter cannot proceed today as it did not yesterday courtesy of the defendants conduct of filling an application, yesterday and submissions today. The defendants cannot escape the accusation that they have caused the adjournment.

4. I appreciate that parties were before me yesterday for morning and afternoon and as I write this ruling it is some 15 minutes into the afternoon. I award the costs of yesterday and today to the plaintiff to be paid by the defendants in all events. The costs are awarded on the basis of a full day attendance for the two days.

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

**P.J.O OTIENO**

**JUDGE**