



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NUMBER 427 OF 2007

STEPHEN T. ROY.....1ST PLAINTIFF

MARGOT P. ROY.2ND PLAINTIFF

VERSUS

CALEB OKECHI OTWILI.....DEFENDANT

R U L I N G

This is a Notice of Motion filed under Order 27 Rule 4(1) (a) and Order 50 Rule 1 of the Civil Procedure Rules (Cap 21). It was dated 12th November, 2009 and filed on behalf of **STEPHEN T. ROY** and **MARGOT P. ROY** (suing as administrators of the estate of **JESSICA LINDSEY ROY**).

The prayers in the application are as follows:-

- 1. THAT this Honourable court be pleased to issue a commission for the examination of the plaintiffs who are resident outside this Honourable Court's jurisdiction.**
- 2. THAT the commission aforesaid be issued to Mr. Michael Churbrich Esq.**
- 3. THAT the costs of this application be in the cause.**

The application has grounds on the face of the Notice of Motion. It was filed with a supporting affidavit sworn on 12th November, 2009 by **MARGOT P. ROY**.

When the application came up for hearing on 4th February, 2011, Mr. Mbaluto who appeared for the applicants informed me that the defendant **CALEB OKECHI OTWILI** was not present and had never entered appearance.

Indeed, I see from documents filed herein that service on the defendant was done through substituted method of advertisement in the Daily Nation Newspaper on 15th November, 2009. No appearance was filed however by the defendant.

Under Order 27 Rule 4(1) of the Civil Procedure Rules, this court has jurisdiction to issue a commission for the examination of a witness outside jurisdiction. I am informed that the plaintiffs herein are residents of New Hampshire USA. They have found it difficult to travel to Kenya for formal proof evidence in this case. The application, is not opposed. A suitable commissioner has been identified. I will therefore, allow the application in the interests of justice.

For the above reasons, I allow the application and order as follows: -

- 1. A Commission for the examination of the plaintiffs who are resident outside this court's jurisdiction is hereby issued.**
- 2. The commission aforesaid is issued to Mr. Michael Churbrich Esq.**
- 3. Costs in the cause.**

Dated and delivered at Nairobi this 7th day of March, 2011.

.....

GEORGE DULU

JUDGE

In the presence

Mr. Mbaluto for plaintiffs

C Muendo – court clerk