

**IN THE MAGISTRATES COURT AT NADI
CIVIL JURISDICTION**

Civil Action No. 09/22

BETWEEN : SANJNISH SINGH

First Plaintiff

AND : PRANEET REDDY

Second Plaintiff

AND : KUPSAMI K

Defendant

RULING

1. This is the Second Plaintiff's application filed on 1 December 2025 seeking leave to give oral evidence at the substantive hearing listed for 8 December 2025 via audio-visual link (Skype) from Australia, where he says he will be temporarily located during the relevant period. The Court also notes that this hearing date was fixed on 22 April 2025, more than 7 months ago. The application is supported by the Affidavit of the Second Plaintiff sworn 28 November 2025. The Defendant strongly opposes the application and both parties made oral submissions on 2 December 2025. The matter was fixed for Ruling on 4 December 2025. The claim arises out of a road accident on 18 September 2021, more than 4 years ago. A Statement of Defence and Counterclaim is on record.
2. The application is brought pursuant to Order XXVI of the Magistrates' Court Rules 1945 and section 16 of the Magistrates' Court Act 1944.

Defective Affidavit

3. Order 41 Rule 1(8) of the High Court Rules 1988 provides that every affidavit must be signed by the deponent and the jurat completed and signed before the authorised officer administering the oath.

4. At paragraphs 4 to 7 of his affidavit, the Second Plaintiff deposes as follows:

“I have made arrangements to travel to Brisbane, Australia for urgent personal reasons and will be temporarily located there from 26 November 2025 to 10 January 2026. Annexed hereto and marked Annexure A is a copy of my confirmed airfare itinerary.

As a result of this travel, I will be outside the jurisdiction at the time of the trial and unable to attend court in person however, I do respect and understand the necessity of giving evidence on the day of trial.

I confirm that I will avail myself via skype during the proceedings. I will be situated in a private and quiet location during the giving of evidence and will have access to stable internet connection and suitable equipment to support a clear and uninterrupted audio and visual link.

I humbly seek ... leave to allow me to give my oral evidence via skype from Australia during the trial.”

5. The itinerary annexed confirms his departure from Nadi on 26 November 2025 and return from Brisbane on 10 January 2026. However, the jurat and annexure are dated 28 November 2025, indicating that the affidavit was sworn by the Second Plaintiff before a Commissioner in Fiji on that date. These two positions cannot stand. If the deponent had already left Fiji on 26 November 2025, he could not have been physically present before a Commissioner in Fiji on 28 November 2025.

6. This inconsistency renders the affidavit improperly sworn and therefore defective within the meaning of Order 41 Rule 1(8). The affidavit is accordingly expunged from the record.

The Application on Its Merits

7. Even if the affidavit was accepted despite the defect, the Second Plaintiff still fails to meet the requirements for overseas video-link evidence as set out in the High Court decisions of ***Great Wall Builders Pte Ltd v Sichi Liu*** (HBC 177 of 2021, 11 November 2024) and ***Peter Allan Lowing v David Graham*** (HBC 30 of

2012, 4 June 2018). Those authorities make it clear that such applications are granted only in rare and exceptional circumstances, and only where strict safeguards are satisfied.

8. The Second Plaintiff provides no evidence of proper or formal arrangements for the administration of the oath overseas, no confirmation of an authorised officer or official venue, no mechanism ensuring accountability for perjury or contempt, and no assurance that cross-examination, particularly on contested evidence, could be conducted fairly. A "**private and quiet location**" with internet access does not meet the threshold required by the authorities, which emphasise the need for controlled, formal, and supervised environments.
9. The application was also made at the eleventh hour and as such the Defendant has not had a proper opportunity to file an Affidavit in Opposition. The application was filed on 1 December 2025 and heard on 2 December 2025. The High Court authorities stress that late applications are inherently prejudicial and will generally be refused.
10. The reasons advanced by the Second Plaintiff amount to personal convenience arising from overseas travel. The cases make it clear that convenience, business commitments, or personal arrangements are insufficient. The interests of justice, including the ability of the Court to assess demeanour and conduct effective cross-examination, outweigh the Second Plaintiff's preference to remain abroad.

Costs

11. The Defendant has been put to unnecessary expense in responding to an application that was both procedurally defective and substantively without merit. The Defendant was required to prepare and present oral submissions on short notice, and court time has been unnecessarily expended on an application that should not have been brought in its present form.
12. Costs follow the event. In the circumstances, I consider it fair, reasonable, and proportionate to award the Defendant costs. This award also reflects the need to discourage last-minute and inadequately prepared applications that impose unnecessary burdens on opposing parties and the Court.

ORDERS

(1) The Second Plaintiff's application for leave to give evidence via Skype is dismissed.

(2) The Affidavit of the Second Plaintiff sworn 28 November 2025 is expunged from the Court record.

(3) The Second Plaintiff shall pay the Defendant costs in the sum of \$800 within 21 days.

(4) The matter shall proceed to hearing as scheduled on 8 December, 2025 at 10.30 am.

Any party aggrieved by this decision has the right to appeal.



Setavana Saumatua
Resident Magistrate
4 December, 2025

