



**Chepkoech alias Milcah v Chelugui & another (Environment and Land Appeal E038 of 2022) [2025] KEELC 178 (KLR) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 178 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND APPEAL E038 OF 2022  
GMA ONGONDO, J  
JANUARY 29, 2025**

**BETWEEN**

**MILKA CHEPKOECH ALIAS MILCAH ..... PLAINTIFF**

**AND**

**KIBAES CHELUGUI ..... 1<sup>ST</sup> DEFENDANT**

**NIMROD KIPTUM KOECH ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The instant ruling is precipitated by an application by Mr. Korir learned counsel for the defendants that PW2, Marcella Jerotich Bett, should not testify in this suit on the grounds that her name is not in the Plaintiff's list of witnesses and her statement was not filed and served upon the defendant's counsel as required by law.
2. In response to the application, Mr M. Orina learned counsel for the plaintiff stated that the statement of PW1 is available. That the same was not served on the Defendant's Counsel and her name is not shown in the list of the Plaintiff's list of witnesses dated 14/11/2022 and 25/4/2024.
3. In that regard, is the application sustainable?
4. Notably, it is common ground that the plaintiff's list of witnesses herein does not contain the name of PW2. Further the statement of PW2 was not filed and served on the defendants' counsel within the prescribed timelines.
5. It is trite that a party to a suit must be made aware of the existence of the matter; see Ogada-vs-Mollin (2009) KLR 620.
6. Clearly, the plaintiff's counsel neither filed and served the statement of PW2 nor included the name of PW2 in the plaintiff's list of witnesses. The defendant is entitled to the said documents in the spirit of



access to justice and fair hearing as enshrined under Articles 48, 50 (1) and 25 (c) of *the Constitution* of Kenya 2010.

7. Thus, the defendants' application is meritorious. The same is allowed accordingly.

8. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 29<sup>TH</sup> DAY OF JANUARY 2025.**

**G M A ONGONDO**

**JUDGE**

Present;

1. Mark Orina, Learned Counsel for the plaintiff
2. A. Korir, Learned Counsel for the defendants
3. Walter, Court Assistant

