



**Amisi v Siaya County Referral Hospital & another (Civil Case  
5 of 2019) [2022] KEHC 10594 (KLR) (28 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10594 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CIVIL CASE 5 OF 2019  
RE ABURILI, J  
JUNE 28, 2022**

**BETWEEN**

**ELIZABETH AMBALE AMISI ..... PLAINTIFF**

**AND**

**SIAYA COUNTY REFERRAL HOSPITAL ..... 1<sup>ST</sup> DEFENDANT**

**DR. ALLAN ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling determines the oral application that the plaintiff be allowed to testify without a written statement. Order 11 rule 7(2) of the [Civil Procedure Rules](#) provides that it shall be the duty of every party and or his advocate to strictly comply with the provisions of rule 3(2) of order 11 of [Civil Procedure Rules](#) and to give such Information on the witnesses that are expected to be called and the nature of their evidence to enable the court to consider and settle the length of time which will probably be required for the hearing of the suit. The order further stipulates that:

(3) Any party or his advocate who willfully facts or omits to comply with the provisions of this order shall be deemed to have violated the overriding objectives as stipulated 1A and 1B of the Act and the court may order costs against the defaulting party unless for reasons to be recorded, the court orders otherwise.

2. Under order 11 rule 4(2) of the [Civil Procedure Rules](#), each party shall at least seven days before the date appointed for the settlement conference prepare and exchange a settlement conference brief which should include the following:

(c) a final list of witness and a summary of each witness' statement.



3. The plaintiff in this case did not file any witness statement which she could rely on as her evidence in chief. She seeks leave of court to give oral testimony on account that she does not wish to produce any document.
4. The purpose of the law in requiring, in mandatory terms, the filing of witness statements in advance and service of the same upon the adverse party is to avoid trial by ambush or the party adducing evidence which the other party has no knowledge of or time to challenge the same.
5. In addition, it is intended to aid the court to consider and settle the length of time which will probably be required for the hearing of the suit (expeditious) disposal of the suit.
6. In the absence of any witness statements filed by the plaintiff in this case, the plaintiff can testify on account that she shall not be permitted to introduce any evidence which is not within the knowledge of the defendants which no doubt limits her testimony to her own detriment. I shall therefore grant the plaintiff leave to testify orally but no new matter or evidence which is not on record already or within the knowledge or possession of the defendants shall be adduced.
7. I so order.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT SLAYA THIS 28<sup>TH</sup> DAY OF JUNE, 2022.**

**R.E. ABURILI**

JUDGE

