



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

CASE NO. 102 OF 2018

**CHRISTINA BARABARA MALAKWEN (Suing as legal representative of the Estate of the late
RAPHAEL KIPTOO BIEBEI).....PLAINTIFF**

VERSUS

BENJAMIN MWALE ENGAIRO.....1ST DEFENDANT

TITUS KIPYAB.....2ND DEFENDANT

LAND ADJUDICATION & SETTLEMENT OFFICER TRANS-NZOIA.....3RD DEFENDANT

IBRAHIM WAFULA.....4TH DEFENDANT

RULING

1. By a Notice of Motion dated 17/3/2020 brought under **Section 3, 3A and 63(e) of the Civil Procedure Act, Order 50 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules 2010**, the applicant who is the plaintiff seeks the following orders:

(1) ...spent

(2) That this honourable court do grant the applicant/plaintiff leave to file a witness statement for one PHILIP CHEPKWONY and further list of witnesses and documents to be relied on during the hearing out of time.

(3) That the list of documents and list of witnesses and the witness statement of PHILIP CHEPKWONY filed herewith be deemed as properly filed.

(4) That the costs be in the cause.

2. The application is supported by the affidavit of the plaintiff sworn on 17/3/2020. That affidavit has a number of annexures attached to it.

3. The application is based on the grounds that although the name of **Philip Chepkwony** was included in the list of witnesses, his statement was not filed; that there is need to include some further documents and also call the Land Registrar, Trans-Nzoia as a witness in this case; that the respondents shall not be prejudiced if the application is allowed and that the further documents and the calling of the formal witness will assist the court in the determination of the dispute.

4. The supporting affidavit reiterates the same matters set out in the grounds above. An affidavit of service was filed showing that the application was served. However, the respondents did not file any responses despite being served. The plaintiff filed her submissions on 30/6/2020. I have considered the application and the filed submissions.

5. The issues that arise in the instant application or whether the plaintiff should be granted leave to file a witness statement Philip Chepkwony and a further a list of witnesses and documents to be relied on during the hearing at this juncture and whether the list of documents and the witness statement filed in the record with the application be deemed as properly filed.

6. I have considered the application before me. It is not opposed. It is explained in the supporting affidavit that the current advocate took over the matter after it was transferred to this station from Eldoret.

7. It is stated that in the course of preparing for the trial it became apparent that the statement of Philip Chepkwony a son to the plaintiff had not been recorded and filed though his name had been included in the list of plaintiff's witnesses.

8. The deponent further states that it has become necessary to issue summons the County Land Registrar to produce the register in respect of the suit land.

9. Finally, the deponent states that it is necessary to include further documents for production at the trial and that the respondents would not be prejudiced should the instant application be allowed.

10. As stated before the application is not opposed. This is a suit that was filed in the middle of the year **2018**. Hearing has not yet commenced and I am of the opinion no prejudice would be occasioned to the respondents if the application was granted.

11. I therefore grant the application dated **17th March 2020** as prayed **Prayer No. 2 and 3**. The costs of the application shall be in the cause. This case shall be mentioned on the **29th July 2020** via teleconference for pre-trials.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 23rd day of July, 2020.

MWANGI NJOROGI

JUDGE, ELC, KITALE.