REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

HIGH COURT CIVIL APPEAL NO 54 OF 2018

PRAYOSHA VENTURES LIMITED.....APPLICANT

VERSUS

NIC BANK LTD.....1ST RESPONDENT

GARAM AUCTIONEERS.....2ND RESPONDENT

AND

BEARTICE JERUTO KIPKETER.....1ST INTERESTED PARTY

JOYLAND AUCTIONEERS.....2ND INTERESTED PARTY

RULING

By a notice of motion dated 9th June 2020, BEARTICE JERUTO KIPKETER (1ST INTERESTED PARTY) seeks the following prayers:

1. THAT pending the hearing and determination of this Application, the status quo be and is hereby maintained, and for avoidance of doubt, the status quo as at 21st May,2020 be maintained.

2. THAT pending the hearing and determination of this Application, the interim orders issued on 21st May,2020 by Hon.Justice S.M. Githinji be reinstated and extended.

3. THAT the status quo be and is hereby maintained, and for avoidance of doubt, the status quo as at 21st May,2020 be maintained.

4. That the trial Judge Honourable Justice H.A. OMONDI be pleased to disqualify herself from hearing/presiding over this the matter and the file be transmitted to the Principal Judge of the High Court or Hon. Lord Chief Justice for directions and re-allocation.

That in the alternative, Honourable Justice H.A. OMONDI be pleased to transfer the matter to another Judge for determination in the interest of justice.

5. That the directions/Orders of 4" June,2020 be vacated forthwith.

6. That the ruling slated for 23" June,2020 be arrested forthwith.

7. THAT the costs of this application be in the cause.

1. The application is premised on grounds that **JOYLAND AUCTIONEERS (2nd Interested party)** has advertised for sale by auction the subject property which is scheduled for 26 June,2020.

2. The Applicant says she is extremely constrained to seek the indulgence of the Court on the basis that the trial Judge **Honourable Justice H.A. OMONDI,** recuses herself/ disqualifies herself from further presiding over this matter or in the alternative and in the interest of justice transfers the matter to another Judge for hearing and determination**.**

3. The Judge is unhappy with the review Application before and she has formed the mind that she has given a ruling in the matter and therefore she wants to abdicate her responsibility to review the matter despite the fact that currently there exists new and compelling evidence in the matter and the compelling evidence has been filed in affidavit form and has been served on all parties

4. The Learned Judge made alarming remarks that she does not want to waste time to hear the matter and told off the Advocate without hearing the legal contest that was before her.

5.The trial Judge did not see the need to extend the interim orders issued by another Judge and meant to preserve the substratum of the application and suit.

6. The judge has formed an opinion and exhausted her mind in determination of the matter in question therefore the interested party is apprehensive that justice cannot be done in the matter.

7. The Applicant is apprehensive that if the said Judge continues to hear this matter, further, the case will not be handled in a proportionate and fair manner to all the parties, hence equitable Justice may never be served to the Applicant contrary to Article 48 and 50 of the Constitution of Kenya,2010.

8. The Applicant is concerned that the conduct of trial Judge raises eye brows and there exists real and apparent bias on the part of the said Judge to the detriment of these proceedings at hand, hence the likelihood of bias or miscarriage of justice.

9. The logical conclusion of events is that the trial Judge Honourable Justice H.A.OMONDI is not independent, objective and fair contrary to the dictates of Constitution of Kenya, 2010 and all attendant laws and Judicial service code of conduct.

10. That the Applicant is not forum shopping for a Judge to hear this Matter; neither is the Applicant angry or the Application is made out of any vendetta.

In the supporting affidavit sworn by the 1st interested party, she reiterates that she is not forum shopping for a Judge to hear this matter; nor is she propelled by emotions of anger or vendetta in seeking for my recusal in the matter.

She states thus:

"THAT I am extremely constrained to seek the indulgence of the Court on the basis that the trial Judge Honourable Justice H.A.OMONDI , recuses herself/ disqualifies herself from further presiding over this matter or in the alternative and in the interest of justice transfers the matter to another Judge for hearing and determination."

5. She repeats the allegation that the judge is unhappy with the review Application before her and she has formed the mind that she has given a ruling in the matter and therefore she wants to abdicate her responsibility to review the matter despite the fact that currently there exists new and compelling evidence in the matter.

She further states that the Learned Judge made alarming remarks that she does not want to waste time to hear the matter and told off the my Advocate without hearing the legal contest that was before her.

8. THAT the trial Judge did not see the need to extend the interim orders issued by another Judge and meant to preserve the substratum of the application and suit

9. THAT the judge has formed an opinion and exhausted her mind in determination of the matter in question therefore the interested party is apprehensive that justice cannot be done in the matter.

10. She exprsses apprehension that if I continue to hear this matter further, the case will not be handled in a proportionate and fair manner to all the parties, hence equitable Justice may never be served to the Applicant contrary to Article 48 and 50 of the Constitution of Kenya,2010.

11. She also expresses concern at the conduct of trial Judge raises eye brows and there exists real and apparent bias on the part of the said Judge to the detriment of these proceedings at hand, hence the likelihood of bias or miscarriage of justice.

It is her contention that the logical conclusion of events is that the trial Judge Honourable Justice H.A. OMONDI is not independent, objective and fair contrary to the dictates of Constitution of Kenya, 2010 and all attendant laws and Judicial service code of conduct.

In opposing the application, the respondents have filed grounds of opposition to the effect that:

a) The application is a gross abuse of the Court process, frivolous and vexatious, ex facie incompetent, and fatally defective.

b) The application is brought in bad faith and is merely meant to frustrate, delay and/or disrupt the Court process.

c) The Application is hopelessly incompetent and has nil chances of success and merely calculated at embarrassing the Court for the following reasons

d) The Applicant has failed to specifically allege and establish facts constituting bias in a manner that meets the objective test.

e) There is no evidence or cogent facts before the Court to demonstrate real proof of actual bias/ prejudice or manifest risk of partiality/ imputed bias on the part of the Learned Judge.

f) The basis being relied on by the Applicant to seek recusal of the Learned Judge are peripheral, figments of imaginations, fanciful and mere beliefs and thus incompetent and unmerited.

On account of the prayer for my recusal, I ***so moto*** suspended writing and delivery of the ruling which was scheduled for 23rd June 2020, pointing out that if the application for recusal turned out to be merited, then I would have no business lifting my pen to make any other orders

RECUSAL: On this limb, referring to the case of **Philip K. Tunoi & Another -V- Judicial Service Commission & another (2016) eKLR** where the counsel had applied for two Judges to *recuse themselves and the Court stated that: -*

> ***"In determining the existence or otherwise of bias, the test to be applied is that of a fair minded and informed observer who will adopt a balanced approach and will neither be complacent nor be unduly sensitive or suspicious in determining whether or not there is a real possibility of bias."***

Dr Kiprono submits that the test for bias, is that of a fair minded and informed observer, who will adopt an open-minded approach as to the possibility of bias. According to Dr Kiprono, this court has already predetermined the substantive element of this matter, and the Interested Party will be prejudiced. In support of this allegation he referred to the ruling of 15/]03/2019 at paragraph 34 which reads in part:

> ***"… indeed this court is in agreement that the applicant has made no effort to repay…"***

He insists that I had already exhausted my mind in the matter, against ALL pre-existing judicial precedents, and that I would not exercise fairness in determining the matter Counsel also sought to draw from the Bangalore Principles regarding independence of a judicial officer. Counsel also referred to the case of **KalpanaRawal -V- Judicial Service Commission & 2 Others (2016) eKLR:**

> ***"An application for recusal of a judge is a necessary evil. On the one hand it calls into question the fairness of a judge who has sworn to do justice impartially, in accordance with the Constitution without any fear, favour, bias, affection, ill-will, prejudice, political, religious, or other influence. In such applications, the impartiality of the judge is called into question and his independence is impugned. On the other hand, the oath of office notwithstanding, the judge is all too human and above all the Constitution does guarantee all litigants the right to a fair hearing by an independent and impartial judge. When reasonable basis for requesting a judge to recuse himself or herself exists, the application has to be made, unpleasant as it may be. That is the lesser of two evils. The alternative is to risk violating a cardinal guarantee of the Constitution, namely the right to fair trial, upon which the entire judicial edifice is built. Allowing a judge who is reasonably suspected of bias to sit in a matter would be in violation of the constitutional guarantee of a trial by an independent and impartial court.....***

I echo the sentiments of the court to the effect that an application for recusal of a judge in which actual bias is established on the part of the judge such as a judge being a party to the suit or has a direct financial or proprietary interest in the outcome of the case hardly poses any difficulties. Definitely the judge must, without further ado, recuse him/herself as in such a scenario bias is presumed to exist. The challenge however, arises where, like in the present case, the application is founded on appearance of bias attributable to behaviour or conduct of a judge

Counsel was very specific as to why I should recuse myself, categorically stating: **"Apart from your ruling of 15/03/2019, we ask you to consider the grounds stated in the application, because you failed to extend the interim orders issued by Githinji (J)"**

It is also alleged that I am unhappy with the pending application which inter alia seeks review of the earlier orders, and that I have shown hostility to Mr. Lagat because I declined to hear him, stating as follows: ***"You have nurse virulent, hostile attitude towards counsel, and not given him a chance to be heard. You have made up your mind on a substantive matter***"

Mr. Lagat added that, this court had summarily decided the suit, and predetermined the outcome of the case, and the Interested Party had lost confidence in the judge. His contention is that if this matter is transferred to a different judicial officer, and a contrary decision is given, the bank might be forced tore-open the charge and pursue the loan defaulter.

He laments that the property in issue is matrimonial property which the Interested party, and her husband (who is a retired athlete) had invested in, and this is a plea for justice from a spouse whose husband took a loan, and the bank hurriedly gave out the same without conducting due diligence, yet when she brought the matter to court, she saw nothing but injustice and unfairness.

TRANSFER

Dr. Kiprono offered an alternative approach, that even if it turns out that the issue of bias fails to hold, this court, should nonetheless consider transferring this matter to another judge in the interest of justice. He urged this court to draw from the approach by Odunga (J) in the case of **R v IEBC exparte CORD** where the judge, although certain that he was not partial, nonetheless transferred the matter from himself, in the interest of justice without necessarily recusing himself

In opposing the prayer for recusal/transfer, Mr Mumia filed grounds of opposition in which he is basically saying that the application for recusal is a knee-jerk reaction, which in-fact only arose at the end of the proceedings because the applicants failed to persuade this court to

extend the orders. He points out that the issue regarding the content of paragraph 34 of the ruling dated 15/03/2019, had never been raised earlier.

Counsel contends that the Interested Party has failed to demonstrate specific allegations in a manner which constitutes the objective test, as no facts constituting bias have been set out. That claims about my being unhappy with the nature of the application for review have no basis as there was no point in time when the judge disagreed with counsel until the point when it got to the request for extension of orders. That the court exercised its discretion and declined. He further argues that a court cannot just recuse itself at whim just because a decision or pronouncement does not sit well with one party

Mr Mumia has informed this court that the property has not yet been sold as he had advised the bank to await the outcome of the ruling which had been set for 23/06/2020. That even after 15/03/2029 when this court gave orders staying the sale on 30/01/2020, the interested party did not seem to have a problem with the court, but now when she cannot have her way, then bias is alleged. He urged this court to be guided by the decision in **A.G. -V- Anyang Nyongo and Others (2007) E.A. 12,** saying the manner in which the whole issue was raised amounted to talking down at the court, and was intended to embarrass and intimidate this court.

ANALYSIS AND DETERMINATION:

The Background to this matter is that this suit had initially been filed at the Environment **and Land Court in Eldoret, as ELC NO. 376 OF 2017 with Prayosha Ventures, Sammy Kipketer Cheruiyot and Stephen Kipkiyeny Torus** were the Plaintiffs and NIC **Bank and Garam Investments Auctioneers** were the Defendants and ELC **NO. 384 OF 2017** where Beatrice **Jeruto Kipketer** was the Plaintiff. The two suits were consolidated and transferred to the High Court for hearing and determination.

An application for injunction, dated 04/12/2017 was dismissed vide the ruling dated 15th March, 2019. Thereafter, the Interested Party **(Beatrice Jeruto Kipketer)** filed another Application dated **21st January, 2020** seeking inter alia stay of sale of the suit property pending hearing and determination of the instant suit. Once again, the Court heard and determined the said Application by way of the ruling dated the 2O February, 2020 effectively dismissing the Application with costs.

After the dismissal of the Application for injunction on the 15th March, 2019, the Interested Party requested that the matter be referred to Mediation, but the same collapsed and subsequently the 1st respondent advertised the suit property for sale on the 30th January, 2020.

However, on the 21st January, the Interested Party approached this Court and successfully obtained orders temporarily stopping the sale. Eventually, the application was heard and dismissed on 20th January 2020.

> 5) From the record as per the documents filed by the 1st respondent's counsel, sale of the property was once again advertised and was scheduled for the 20th March, 2020. However, on the 19th March, 2020 a day before the said sale, a suit CMCC NO. 271 of 2020 accompanied with an application for injunction and orders stopping the sale were successfully obtained.
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> The restraining orders were later and the 1st respondent advertised the property for sale but the Interested Party filed the application dated 20/05/2020 and successfully obtained temporary stay orders. The said application seeks the following
>
> a) THAT the Ruling issued by this Honourable Court on the 15t March, 2019 be stayed pending the hearing and determination of this application inter partes;
>
> b) THAT the Interested Party Joy/and Auctioneers be temporarily stopped from selling and/or auctioning the subject suit property otherwise known as Kibargoi House situated along Utalii Street pending hearing and determination of the application;
>
> c) THAT the Ruling issued by this Honourable Court on the 15th March, 2019 be reviewed, vacated and/or set aside.
>
> d) Costs of the application

The matter was then listed for 04/06/2020 when Dr. Kiprono, on behalf of the Interested Party informed this court that the 1st respondent had just served them with a notice of Preliminary Objection dated 02/06/2020, and suggested that the same could be treated as a response, and there was also a detailed replying affidavit as well, which the Interested Party wished to react to through a supplementary affidavit.

The court then gave the following directions:

> 1) The application and the Preliminary Objection will be argued simultaneously
>
> 2) The Interested Party is granted leave to e-file and serve a supplementary affidavit and written submissions within 7 days hereof
>
> 3) The 1st respondent shall e-file and serve written submissions within 7 days of service
>
> 4) The Interested Party as at liberty to e-file and serve reply to the submissions within 3 days of the last service
>
> 5) Ruling shall be on 23rd June 2020

Dr. Kiprono then requested the court for an extension of the interim orders which had been granted by Githinji (J) on 21st May 2020 to the effect that there was to be a stay of execution of the sale of the property. This was opposed by Mr. Mumia on behalf of the 1st respondent, on

grounds that the court in its ruling of 15th March 2019 had given negative orders, and there was nothing to stay.

Mr Lagat, who was acting alongside Dr. Kiprono on behalf of the Interested Party responded that they were contesting the validity of a legal charge which the bank charged to their client, and they were seeking to stop an auction which the bank wanted to carry out.

The issue that was contested is that since this court had dismissed the application, there was nothing to stay. I agreed with Mr Mumia that extending those orders served no purpose, and declined the Interested Party's request. At that point Mr Lagat attempted to address the court but I declined to entertain any further arguments, and in fact reduced the period within which parties were to comply with the directions.

I also sought from Mr Mumia a clarification whether the bank would re-advertise the sale, because that is what would have warranted any further address. Mr Mumia informed the court that he had advised his clients not to take any action until the court makes a determination on the pending application and he stated: ***"My lady, I think you must now recuse yourself from this matter…"***

My remarks, which are on record and also video recorded as the proceedings were conducted virtually, were: "**Please file a formal application on that, I will be happy to deal with it"**

That background was necessary so as to put matters in perspective, and indeed this application dated 9th June 2020, seeking my recusal was then filed, and it proceeded to hearing on 22/o6/2020

In giving out the policy, rationale and objective of the rule on recusal, the Supreme Court set out the test in Kenya on the issue of bias by a judicial officer in **Jasbir Singh Rai & 3 Others v. Tarlochan Singh Rai & 4 Others [2013] eKLR**. In that case, the Supreme Court of Kenya gave in these words:

> "*…….Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised."*

13. The Supreme Court, stated the test to be applied when a party requests a Judicial Officer to recuse themselves is the perception of a reasonable person, this being a "well-informed, thoughtful observer who understands all the facts", and who has "examined the record and the law"; and thus, "unsubstantiated suspicion of personal bias or prejudice" will not suffice.

Lord Justice Edmund Davis in **Metropolitan Properties Co. (FGC) Ltd. Vs Lannon [1969] 1 QB 577** stated that disqualification was imperative even in the absence of a real likelihood of bias if a reasonable man would reasonably suspect bias. Acker LJ in **R vs Liverpool City Justices, ex parte Topping [1983] 1 WLR 119 elaborated on the test applicable. The Court has to address its mind to the question as to whether a reasonable and fair-minded man sitting in Court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant was not possible. If the answer is in the affirmative, disqualification will be inevitable.**

15. This is the same test contained in the Commentaries on the Bangalore Principles of Judicial Conduct, which, at paragraph 81 postulates that:

> **The generally accepted criterion for disqualification is the reasonable apprehension of bias. Different formulae have been applied to determine whether there is an apprehension of bias or prejudgment. These have ranged from "a high probability" of bias to "a real likelihood", "a substantial possibility", and "a reasonable suspicion" of bias. The apprehension of bias must be a reasonable one, held by reasonable, fair minded and informed persons, who apply themselves to the question and obtain the required information. The test is "what would such a person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would such person think that it is more likely than not that the judge, whether consciously or unconsciously, would not decide fairly."**

I have adopted a very objective and broad-minded approach, and asked myself whether in the present instance, applying the appropriate test, one can fairly say that the apprehension by the Applicant that I, as the Presiding Officer in her case will not be impartial is a reasonable one. Cory (J) in **R V S. (R.D.): 37** stated that:

> *'Courts have rightly recognized that there is a presumption that judges will carry out their oath of office……This is one of the reasons why the threshold for a successful allegation of perceived judicial bias is high. However, despite this high threshold, the presumption can be displaced with cogent evidence' that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias."*

I bear in mind that the test insists that the apprehension of bias must be a reasonable one, held by reasonable, fair minded and informed persons, who apply themselves to the question and obtain the required information. Can this be said to the case here? I am alive to the decision in **Tumaini v R**, where Mwakasendo J held, view, that

> *"in considering the possibility of bias, it is not the mind of the Judge which is considered but the impression given to reasonable people…."*

As pointed out by Mr. Mumia, the Interested party was very comfortable with coming before this court to seek orders of review. Indeed, at no point did she intimate that she was apprehensive that as a result of the very ruling for which she was seeking review, she had formed an

impression that I had already condemned her. I do not know what mood-o-meter either the Interested Party or her counsel have as to determine that I was unhappy with an application whose arguments had not yet even been presented to me.

In-fact at the point of giving directions on hearing of the application for review, there was no reference to the now impugned paragraph 34 of the ruling. I think it would be the height of professional folly, for a judicial officer to take offence because the orders [s]he has given have been contested and either a review is sought or even an appeal.

The Civil Procedure Rules, recognising the possibility of errors, omissions, discovery of new evidence that would impact on the trial court's initial finding, deliberately given a window for review under order 45

ORDER 45 – REVIEW

1. **Application for review of decree or order [Order 45, rule 1.] (1) Any person considering himself aggrieved—**

   (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

   (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

I have no doubt in my mind that the applicant is within her legal rights to approach this court for review, and would have no basis whatsoever to exhibit emotionalism of any shade, whether in the form of joyous celebration, or deep grief. It is a contradiction to allege that ***"the judge wants to abdicate her responsibility to review the matter despite the fact that currently there exists new and compelling evidence in the matter"***, while at the same time, the parties were more than willing to take directions on hearing of the application

As pointed out by Mr. Mumia, if I was governed by such misguided sense of emotion, then I could not have given temporary restraining orders immediately after the contested ruling

It is not lost to me that the issue of recusal was spontaneously announced once I declined to extend the orders, and there should be no pretence by Mr. Lagat that the Interested Party instructed him to apply for my recusal. At the time of making such pronouncement, the 1st respondent was not in session, and indeed from the video clip, no one even moved close to him to suggest receiving instructions from the bar

I have no lien over the matter, and would be more than willing to have this matter taken over by another judicial officer, **EXCEPT** that the manner in which the recusal is sought reeks of mala fides clothed with sharp practice, outright bullying and intimidation. That where a litigant does not call the tune and play the piper, then the bias flag is waved all over. Indeed, for good measure, Dr Kiprono reminded this court that his client would be considering presenting a complaint to the Judicial Service Commission over my conduct in this matter. If that was not intended to scare the daylights out of me, then I do not know why the name of my employer was being invoked at that point.

The applicant is now trying to extrapolate issues, why would I be hostile to Mr Lagat who has made very few appearances before me, in-fact they cannot be more than three appearances since I reported to Eldoret in May 2018. Certainly I stopped Mr. Lagat from addressing me further after I had made it clear, and firmly so, that I was not going to make any orders of extension, and would not listen to any further arguments on the issue. To claim that I said I had no time to listen to him, is in my considered view, being less than candid, and the IT personnel can replay the video clip. If he chooses to interpret that as hostility, then the word has really evolved, nay mutated, as far as I know, I exercised my discretion with open firmness.

I draw from the sentiments expressed in in **A.G. -V- Anyang Nyongo and Others (supra)** where the Court stated:

"The Court must guard against litigants who all too often blame their losses in court cases to bias on the part of the Judge. Success or failure of the government or any other litigant is neither ground for praise or for condemnation of a court. What is important is whether the decisions are good in law and whether they are justifiable in relation to the reasons given for them. There is unfortunate tendency for the decisions of the Courts with which there is disagreement to be attacked by impugning the integrity of the Judges, rather than by examining the reasons for the judgment. Decisions of our courts are not immune from criticism but political discontent or dissatisfaction with the outcome of the case is no justification for recklessly attacking the integrity of judicial officer…….that this application brought more out of a desire to delay the hearing of the reference than a desire to ensure that the applicant receives a fair hearing is tantamount to abuse of court process……It is indisputable that different minds are capable of perceiving different images from the same facts. This results from diverse facts. A "suspicious mind" in the literal sense will suspect even where no cause for suspicion exists and unfortunately this is a common phenomenon among unsuccessful litigants and that is why the mind envisaged in the test to determine perception of possible or likely bias on the part of the Judge is a reasonable, fair and informed mind……..While litigants have the right to apply for the recusal of judicial officers where there is a reasonable apprehension that they will not decide a case impartially, this does not give them the right to object to their cases being heard by particular judicial officers merely because they believe that such persons will be less likely to decide the case in their favour."

In my mind these remarks replicate the scenario played out in the present case, and there is nothing in the interest of justice or rules of fairness to persuade me to recuse myself.

TRANSFER? To whom should applications for review may be made? Under **[Order 45, rule 2.]**

> **(1) An application for review of a decree or order of a court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree, or made the order sought to be reviewed.** [Emphasis added]
>
> (2) If the judge who passed the decree or made the order is no longer attached to the court, the application may be heard by any other judge who is attached to that court at the time the application comes for hearing.

The refrain that even if there is no proof of bias, the court should nonetheless transfer the matter to another judge would be making a total mockery of what I have just concluded. The allegations made ring hollow and have not established any reasonable apprehension that the impartiality of the justice process is at stake**.**

I echo the pronouncements that the Application does not meet the test laid down in our law and international best practices to request a Judicial Officer who is seized of a matter to recuse him/herself. If Judicial Officers formed the habit of easily recusing themselves based on unproven allegations which are not reasonably capable of being plausible, then no matter would ever make headway in the courts, as the nature of our decisions is such that there will always be a loser. I am unwilling to be an ally of what appears to be a forum shopping process where a party says ***"you have not ruled in my favour, recuse and get another Judicial officer who is likely to rule in her favour".***

The upshot is that I decline the request for recusal.

E-delivered and dated under my hand this 30th day of June 2020

H.A. OMONDI

JUDGE