



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL & ADMIRALTY DIVISION**

**HCCC NO. 450 OF 2011**

**(CONSOLIDATED WITH HCCC NO. 476 OF 2015 AND HCCC NO. 637 OF 2015)**

**FAROUK RAVATE.....1<sup>ST</sup> PLAINTIFF**

**JUSTIN SAMOURGOMPOULLE.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ERIC AGBEKO.....1<sup>ST</sup> DEFENDANT**

**PHILLIP NYAMBOK.....2<sup>ND</sup> DEFENDANT**

**SPIRE BANK (FORMERLY KNOWN AS**

**EQUATORIAL COMMERCIAL BANK LIMITED).....3<sup>RD</sup> DEFENDANT**

**RAVASAM DEVELOPMENT COMPANY LIMITED.....INTERESTED PARTY**

**ORDER ON RECUSAL**

1. On 13<sup>th</sup> July 2020, I dismissed an application dated 1<sup>st</sup> June 2020 which sought my removal from this matter. I then informed counsel that a matter had arisen after the application had been argued on 8<sup>th</sup> June 2020 which made it untenable for me to continue presiding over these proceedings. I invited counsel for their comments.

2. Today, 22<sup>nd</sup> July 2020, all counsel in this matter have graciously acceded to my request to recuse myself. The following is the reason I have taken the position.

3. In the affidavit of Mr. Eric Agbeko to the Judicial Service Commission and presented to Court on 8<sup>th</sup> June 2020, he makes serious and personalized allegations and attacks against me. One such allegation is that I sent a proxy to solicit for a 10 Million Shillings bribe from him but which he refused to pay. This is false and malicious. Not once, in more than 8 years that I have served as a Judge has a complaint been made against me on allegations of corruption.

4. I took the matter seriously and so I travelled from Eldoret as soon as I was able, to lodge a complaint with the Directorate of Criminal Investigations, Kilimani. The complaint was booked on 10<sup>th</sup> June 2020. I requested the Directorate to investigate whether anyone had used my name, falsely, to solicit for a bribe from Agbeko, and if so to take whatever action the Directorate deemed fit. I hope and trust that the police will get to the bottom of the matter and that the investigations will reveal whether there was an attempt to pervert the course of justice, and if so, those involved.

5. I do not know where those investigations will lead but, I do not intend to let the matter rest until the truth is known.

6. It being so, I have mulled over the matter and asked the question, now that I am a complainant in relation to matters that touch on these proceedings and unable to tell where the investigations will lead, can there be reasonable apprehension, in the mind of a reasonable, fair minded and informed member of the public that going forward, I as the Judge presiding over these proceedings will be totally dispassionate?

7. While I would, in fidelity to the oath of my office, remain impartial and neutral, the “reasonable apprehension of bias” test requires me to envisage what the perception of a member of public would be in the circumstances. I am afraid that a reasonable member of public may

rightly feel that given where matters have reached, it would be improper for me to continue presiding over these proceedings.

8. For this reason, I now recuse myself.

9. The file shall be placed before the Presiding Judge of this Division for her to allocate this matter to another Judge.

**Dated and signed at Nairobi this 22<sup>nd</sup> Day of July 2020**

**F. TUIYOTT**

**JUDGE**