



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 691 OF 2018

IN THE MATTER OF THE ESTATE OF JOHN GICHIA MACHARIA (DECEASED)

RULING

Factual Background

1. The deceased herein John Gichia Macharia died intestate on 26th April 2020. Subsequently, David Karanja Macharia and Stella Nyanjiru Macharia brother and sister to the deceased respectively petitioned for a limited grant of Letters of Administration Ad Colligenda Bona on 29th May 2018 seeking to collect and preserve the deceased's estate. In their application, they listed AKM a son to the deceased then aged 16 years and Serah Njeri Macharia deceased's mother as the only dependants.
2. Consequently, a Limited Grant of Letters of Administration Ad Litem was made on 31st May 2018, and issued jointly to David Karanja Macharia and Stella Nyanjiru Macharia. According to the court record, the grant was to last for a period of 90 days. On 27th November, 2018 S. K. Macharia and Serah Njeri Macharia father and mother to the deceased respectively lodged Summons dated 27th March 2018 and filed the same day, seeking to revoke the Limited Grant issued on 29th May 2020 to David Karanja Macharia and Stella Nyanjiru Macharia. The application was based on the argument that the said David Karanja Macharia and Stella Nyanjiru Macharia had resigned from their office of being administrators to the estate. That the said resignation had left a vacuum in the administration of the estate thus exposing it to waste. That the sole beneficiary being a minor, it was in the interest of justice that the estate be reserved.
3. Contemporaneously filed with the application for revocation is a Petition for grant of Letters of Administration Ad Colligenda Bona to Samuel Kamau Macharia and his wife Serah Njeri Macharia. The application was certified urgent and the applicants directed to effect service upon the Respondents. Hearing date was to be taken on priority basis at the registry.
4. On 7th December, 2019 Lisa Anyango Amenyo mother to AKM (minor) filed Summons for enjoinder. She claimed that being the mother to the minor the sole beneficiary of the estate, she had an interest in the estate for the sake of protecting the minor's interest. She sought to be enjoined in the suit as an Interested Party.
5. In response, S. K. Macharia and Serah Macharia filed a Preliminary Objection dated 10th December 2018 challenging Lisa Amenya's application dated 7th December 2018 claiming that she had no locus standi in the estate as the child was born out of wedlock and that she has no known interest in the estate under the law of Succession.
6. When the matter came up on 10th December 2018 before J. Achode, Mrs. Wambugu appeared for Lisa Amenya and Mr. Amin for the original administrators David Karanja and Stella Macharia. Mr. Amin dismissed the allegation that his clients had resigned from being administrators of the estate for purposes of collecting and preserving the estate.
7. Mr. Amin was however not opposed to Lisa Amenya's application for her joinder as an Interested Party. On that day Mr. Gacheru Advocate appearing for S. K. Macharia asked the court to hear the application dated 27th November 2018 for grant of Letters of Administration Ad Colligenda Bona to preserve the estate. Mr. Gacheru opposed the application for joinder of Lisa Amenya. Mr. Amin proposed further for the matter to be referred for Mediation.
8. After considering respective counsel's arguments, the court fixed the matter for mention on 15th January 2019 for parties to record an agreement on appointment of administrators and the joinder of M/s Amenya as an Interested party. Meanwhile, on 11th December 2018, S. K. Macharia petitioned the court for a full grant of letters of administration intestate in respect of the estate of the deceased listing AKM(minor) as the only sole dependant and beneficiary to the estate.

9. However, before the mention date set for 15th January 2019, Mr. Gacheru Nganga appearing for S. K. Macharia, lodged Summons for Review dated 13th December 2018 and filed the same date seeking the court to review, vary and or set aside its orders and directions made on 10th December 2018 and that the court to issue Mr. S. K. Macharia and Mrs. Sarah Njeri Macharia with Limited Grant as prayed in their application dated 27th November 2018. The application was certified urgent by J. Muigai on 14th December 2018 and directions made for the applicant to serve. Mention was fixed on 18th December 2018.
10. On 18th December 2018, the file was placed before J. Muchelule who directed for its mention on 19th December 2018. On that day, by consent of both parties, the court directed that both the applications dated 7th December 2018 and 13th December 2018 be responded to within 30 days. Hearing was fixed for 13th February 2019.
11. Meanwhile, as directed by J. Achode on 10th December 2020, the matter was mentioned on 15th January 2019. On that day, S. C. Dr. Kamau Kuria appeared as leading counsel together with Mr. Gacheru Nganga for S. K. Macharia. Mr. Amin for the original petitioners (David Karanja and Stella Macharia) and Mrs. Wambugu for Lisa Amenitya for application dated 7th December 2018 were also present.
12. Dr. Kuria requested the matter to be mentioned on 13th February 2020 as per J. Muchelule's directions. Mr. Amin indicated that his clients being children to S. K. Macharia had reached out to their father and they needed time to settle the matter. Mr. Amin further argued that his clients' mandate of administration of the estate could not be limited to 90 days as directed by J. Muchelule and that the Judge erred in limiting the grant to 90 days.
13. On her part, Mrs. Wambugu suggested for the court to direct for hearing of the main petition for grant of a full grant filed by Dr. Kamau Kuria's client S. K. Macharia. Mrs. Wambugu also alerted the court that Serah Macharia had withdrawn from being a petitioner or administrator of the estate. Counsel suggested that parties withdraw all the applications and proceed with the hearing of the main application for grant of a full grant filed by S. K. Macharia.
14. In response, Dr. Kuria opposed Ms. Wambugu's suggestion arguing that any objection to his clients' application for a full grant would only come up after gazettelement of the estate. Senior Counsel argued that orders of J. Muchelule made on 31st May 2018 limiting the grant's lifespan to 90 days could not be disobeyed.
15. After listening to parties' arguments, the court directed for hearing on 13th February 2019 as directed by J. Muchelule. The court further directed for the matter to go for gazettelement instantly.
16. From the record, it appears like the court did not sit on 13th February 2019. Afresh date was taken at the Registry and the matter was mentioned on 11th March 2019 before J. Achode. On that day Dr. Kamau lamented that there was a vacuum in the administration of the estate as the original administrator's mandate had lapsed after the expiry of 90 days. Learned counsel indicated his readiness to proceed although he expressed the view that the court had appeared to have made up its mind. Mr. Amin indicated also that his clients had agreed to step out of the matter so that the application for a full grant could be brought to court. Mr. Amin suggested for a grant of letters of administration to issue to S. K. Macharia as grandfather to the minor as sole beneficiary together with the minor's mother Lisa Amenitya. Counsel argued that the application dated 13th December 2018 had been overtaken by events as the applicant could not apply for a grant by way of review. Counsel expressed his readiness to proceed with the Preliminary Objection of 10th December 2018.
17. Ms. Wambugu supported Mr. Amin's sentiments. Learned Counsel also insisted that there was only one beneficiary who was due to attain 18 years soon. In response, Dr. Kuria urged the court to recuse itself on grounds that it had made its views known by stating that his application and that of Amin were not necessary.
18. Consequently, J. Achode recused herself by stating that parties should not be forced to proceed before her. The Hon. Judge insisted that Dr. Kamau's application and that of Amin were not necessary. The matter was referred to J. Muchelule the Presiding Judge and mention fixed for 27th March 2019. On that day, the Judge was not sitting and the Deputy Registrar fixed it for mention on 5th June 2019. On 5th June 2019, there is no record to show if the court ever sat. However, on 24th June, 2019 the Presiding Judge referred this matter to me for hearing.
19. Meanwhile, following the gazettelement of the estate on 8th March 2020 vide gazette notice No. 691/2018 and amended on 5th June 2019 vide Gazette Notice No. 2294/2019 a grant was issued jointly to Samuel Kamau Macharia and Serah Njeri Macharia on 11th March 2020 and rectified on 23rd May 2019 as co-administrator and administratrix respectively.
20. On 11th June 2019, Mr. Amin appearing for David Karanja Macharia and Nyanjiru Macharia filed summons for Revocation of Grant of letters of administration made to the said Samuel Kamau Macharia and Serah Njeri Macharia on 5th April 2019 and rectified on 23rd May 2019. The argument was that the second petitioner Serah Macharia had withdrawn from the petition hence there was need for a co-administrator to S. K. Macharia as the estate has a minor whose resulting trust interest ought to have been taken care of.
21. Equally, on 11th June 2019, the Interested party mother to the minor filed Summons for Revocation of Grant dated 11th June 2019 seeking similar prayers to those of Mr. Amin's client. Subsequently, S. K. Macharia (administrator) filed another application dated 10th July 2019 seeking removal of his co-administrator (his wife) from office of administration and for depositing into court monies held by his wife Sarah Njeri (1st respondent), David Karanja Macharia (2nd respondent) and Stella Nyanjiru Macharia (3rd respondent). The application also sought replacement of Serah Njeri Macharia with her daughter M/s. Wanjiku Macharia as co-administratrix.
22. The court on 13th June 2019 having certified the application dated 11th June 2019 as not urgent, directed for service and hearing on 23rd

July 2019. On 10th June 2019, the court again certified the application dated 11th June 2019 also filed by Ms. Wambugu and seeking similar prayers just like the one certified urgent on 13th July 2019 filed by Mr. Amin. It was also fixed for hearing on 23rd July, 2019.

23. On 10th July, 2019 S. K. Macharia application dated 10th July 2019 was also not certified urgent. The Applicant was directed to serve and mention fixed for 23rd July, 2019.

24. However, it would appear that this court did not sit I believe due to August Vacation until 16th September 2019 when parties appeared and Dr. Kuria expressed readiness to proceed with the two applications dated 11th June 2019 and his application dated 10th July 2019.

25. On that Dr. Kuria invited the court to consider parties' willingness to compromise on the appointment of an administrator. They were however unable to agree as Mrs. Wambugu's client and those of Mr. Amin did not want S. K. Macharia in the grant. They were comfortable with anybody else but not S. K. Macharia. Dr. Kuria insisted that S. K. Macharia be appointed together with one of his daughters one Wanjiku. Parties requested for more time to record a consent. Mention was then fixed for 20th September 2019.

26. On that day, there was no compromise. Parties agreed to have the two applications dated 11th June 2019 consolidated and be disposed together by way of written submissions. The application dated 10th July 2019 was held in abeyance pending the outcome of the two applications dated 11th June 2019. Mention was fixed for 14th October 2019 to confirm compliance. From the record again, it appears the court did not sit hence the Deputy Registrar fixed the matter for mention on 12th November 2019. On that day, Mr. Amin confirmed filing their submissions. Dr. Kamau was nowhere but Mr. Gacheru his colleague was present. Mr. Amin indicated to the court that the minor and the sole beneficiary was due to attain age of majority in 22 days' time. He requested the court to have the matter mentioned after 22 days to enable them consider whether it was necessary for the court to proceed with writing a Ruling in respect of the two applications dated 11th June 2019. Ms. Wambugu also confirmed.

27. The court went ahead and fixed the matter for mention on 16th December 2019 for further directions. On 16th December 2019, the matter was mentioned before the Deputy Registrar. Thereafter, the court went on long leave from 21st December 2019 upto 24th February 2020 and later Corona virus caught up with us thus paralyzing court operations.

28. During the intervening period, the child (minor) the sole beneficiary attained age of majority. He subsequently lodged a Chamber Summons dated 25th February 2020 and filed on 27th February 2020 seeking a Limited Grant Ad Colligenda Bona in respect of the estate of his father to issue to him and his mother jointly. The application was certified urgent and the applicant directed to be served and thereafter hearing date be taken at the registry.

29. In the intervening period, as stated, Corona struck and the file remained in the registry without action. On 20th May 2019, Mr. Amin wrote a letter to me personally seeking a Ruling date in respect of the two applications dated 11th June 2019. Alternatively, he sought a mention date for further directions.

30. Following that letter by Mr. Amin which was brought to my attention on 21st March 2020 by the Deputy Registrar, I made directions for parties to appear on 9th June 2020 to confirm whether the matter was to proceed with delivery of the Ruling or not in view of the parties' sentiments expressed on 12th November 2019.

31. On 9th June 2020, the matter went before J. Muchelule by mistake who fixed it for mention before me on 16th June 2020. On 16th June 2020, Mrs. Wambugu and Amin indicated that there had been no progress in settlement on appointment of administrators. They asked for a Ruling date. To my surprise, Dr. Kuria asked this court to recuse itself from hearing this matter arguing that the directions made on 21st May 2020 and issued on 22nd May 2020 by this court were prejudicial to his client. Mrs. Wambugu and Mr. Amin opposed the application on my recusal claiming that Dr. Kamau was threatening every Judge who has touched this file. They expressed shock that he had sought recusal of Judges Achode, Muchelule and now myself.

32. After due consideration, the court directed Dr. Kamau to file a formal application for its recusal. Subsequently, an application by way of Chamber Summons dated 19th June 2020 was filed. Meanwhile, on 12th June 2020 Adam Kamau and his mother filed an application seeking to restrain the administrators from intermeddling with the estate and a declaration that S. K. Macharia having been declared Bankrupt had no capacity to sue or be sued.

Application for Court's recusal dated 19th June 2020

33. By a Summons for recusal dated 19th June 2020 and filed on 7th July 2020, the Petitioner/Applicant S. K. Macharia through the firm of Gacheru Ng'ang'a and Dr. Gibson Kamau Kuria as leading counsel moved this court pursuant to Rules 49, 63 and 73 of the Probate and Administrations Rules seeking;

i. That Honourable Justice J. N. Onyiego be pleased to disqualify himself from hearing this cause.

ii. That if prayer 1 is allowed, the court be pleased to order that the said file be placed before the Presiding Judge of the Division for re-allocation to another Judge to hear and determine the said cause.

iii. That costs of this application be in the cause.

34. The application is premised upon grounds supported by several authorities referring to circumstances when a court can recuse itself and an affidavit in support sworn on 19th June 2020 by S. K. Macharia.

35. It is the Applicant's case that through a letter dated 8th May 2020 by Mrs. Wambugu and Co. Advocates addressed to the Deputy Registrar seeking to know the status of this matter, she mentioned the reason for her writing the letter as, 'the estate was being grossly exposed to acts of wanton plunder and unless directions were given the beneficiary will have no inheritance'.

36. He averred that the words used in Wambugu's letter were offending and defamatory thus attracting his response vide a letter dated 11th May 2020 through his lawyer. According to the Applicant, the remarks by Mrs. Wambugu in her letter of 8th May 2020 seemed not to have invoked any reaction from the court as they did not receive any further communication.

37. That a further letter dated 20th May 2020 written by Mr. Amin addressed to the Judge in person again asking for directions on the pending applications further defamed his character by indicating that the estate was being wasted by illegal transfer of Capital Shares which actions could substantially affect the sole beneficiary's inheritance. That on 19th May 2020 he directed Mrs. Wambugu and Amin to restraint their defamatory remarks but failed thus necessitating him to file a defamatory suit against them. He attached a copy of the Complaint (marked SKM.6).

38. He averred that, he was shocked to learn that the court had fixed the matter for mention without considering or seeking any response to the allegations made against him. He therefore claimed that failure by the court to intervene and consider his letter dated 23rd May 2020 and court's failure to respond to Mrs. Wambugu's allegation was good ground for the court to disqualify itself.

39. He contended that the court having fixed the matter for mention on 9th June 2020 vide its orders of 21st May 2020 without considering the content of his letter dated 25th May 2020 is clear proof that the court had made up its mind on the applications pending Ruling.

40. In submission, Dr. Gibson Kuria for the applicant orally submitted that the directions made on 21st May 2020 by the court following Mr. Amin's letter of 20th May 2020 was without basis and it was prompted by one party. He further argued that the orders made against his client on 16th June 2020 issuing an injunction against his client was biased as his client had not been declared bankrupt.

41. Learned counsel made reference to several authorities stating circumstances under which a court can recuse itself. Among the authorities referred to are the case of **Justice K. Tunoi and Another v. Judicial Service Commission and Another (2016)eKLR** where the Court considered an application for recusal and held 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.”

42. Further reference was made to the holding in the case of **De Souza v Tanga County Council 1961 EA 977** where the Court held that;

“The tribunal should see that the matter which has come into the existence for the purpose of the *quasi-lis* is made available to both sides and once the *quasi-lis* has started, if the tribunal receives a communication from one party or from a third party, it should give the other party an opportunity of commenting on it.”

43. According to Dr. Kamau, consideration of Mr. Amin's letter of 20th May 2020 without giving a hearing to his clients was a violation of the principles of natural justice and the order of 21st May 2020 directing mention on 9th June 2020 should be declared to be no decision. In support of this proposition, counsel referred the court to the decision in the case of **Republic v. Chief Justice of Kenya and 6 Others Ex parte Ole Keiwua (2010)1 KLR 428**, where the court accepted as correct the statement in **General Medical Council v. Sparckman (1943)2 ALL ER. 337** that;

“If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision.”

44. Learned counsel contended that a without prejudice position taken on 12th November 2019 that the Ruling of the applications dated 11th June 2019 do await further consultation pending attainment of the minor beneficiary's age of majority was not a ground to direct a mention on 21st May 2020 for 9th June 2020.

1st and 2nd Respondents' Response

45. Mr. Amin appearing for David Karanja and Stella Macharia filed Grounds of Opposition stating that: the Applicant's application is frivolous, mischievous, dilatory with the intention of delaying the matter; application casts aspersions on the independence and impartiality of the court; Applicant has sought similar recusal of J. Achode; allegations of defamation are baseless, false and scandalous thus intimidating other counsel; application is founded on falsehood and misrepresentation of facts with sole purpose of besmirching reputation of Judges; court should not recuse itself but proceed with hearing and delivery of pending Ruling so as to serve the ends of justice.

46. In submission which was orally made, Mr. Amin reiterated his Grounds of Opposition. Counsel submitted that by fixing a matter for a mention without making any substantive order based on any application is no reasonable ground for a Judge to recuse himself. Mr. Amin contended that the applicant is used to seeking disqualification of Judges in cases where he has appeared as a litigant.

3rd Respondent's Response

47. The Interested Party M/s Ameyna, filed a replying affidavit sworn on 1st July 2020 opposing the application stating that it was frivolous and an abuse of the court process as the grounds cited do not meet the threshold for a Judges' recusal.

48. That an order for mention or further directions does not amount to any prejudice to any party. She averred that Mr. Amin's letter of 20th May 2020 seeking directions over the matter did not defame anybody. That if he was offended with the directions of 21st May 2020 the Applicant should have appealed.

49. In her submission, Mrs. Wambugu also adopted the content contained in her client's replying affidavit. Counsel submitted that the order of 12th November 2019 delaying delivery of the pending Ruling was by consent of both parties to await attainment of majority age of the minor. Counsel submitted that S. K. Macharia has since been declared Bankrupt and in law he has no capacity to sue or be sued hence another pending application to strike him out of this proceedings.

Response by AK(sole beneficiary)

50. Mr. Adam Kamau now over 18 years and the sole beneficiary of the estate swore an affidavit on 25th June 2020 opposing the application for this court's recusal. He confirmed filing an application dated 12th December 2019 challenging S. K. Macharia's appointment as the administrator of his (Adam) father's estate.

51. He contended that S. K. Macharia has no capacity to sue or be sued as he has been declared Bankrupt by a court of law. That the grounds for recusal are regrettable and ill-informed and intended to delay this matter.

52. In submission, Mr. Munge appearing for the said beneficiary who has since filed a Cross Petition for grant of letters of administration opposed the application terming it as unfortunate. He submitted a decision of the Court of Appeal **Civil Appeal No. 62/2011** between **Samuel Kamau Macharia and Purity Gathoni Githae v. Oceanic Freight Transport Company Ltd** in which S. K. Macharia was declared Bankrupt.

Rejoinder by the Applicant

53. Dr. Kamau S.C, in response to the allegations of his client's bankruptcy proceedings opposed that argument stating that it is only the Official Receiver who can challenge his legal capacity and not the Cross Petitioner. That in any event proceedings challenging the order declaring him bankrupt are pending before the Supreme Court.

Analysis and Determination

54. I have considered the application herein seeking for my recusal, responses thereto, oral submissions by the respective counsel and the authorities cited thereof. This court has been asked to recuse itself on grounds; firstly, that on 21st May 2020 it made directions for the matter to be mentioned for parties to confirm on whether the court should proceed to writing a Ruling in respect to the applications dated 11th June 2019 now that the minor sole beneficiary had attained the age of majority. Secondly, that by giving those directions following a letter by the law firm of Amin and Co. Advocates dated 20th May 2020, seeking a mention date for directions, this court acted on Amin's instructions without giving the other parties audience. Thirdly, that by the court failing to comment on remarks made by Mr. Amin in his letter dated 20th May 2020 seeking the court to move quickly to forestall further plundering and gross interference with the estate by the Applicant was a sign of bias. Fourthly, that after the Applicant received Mrs. Wambugu's letter of 8th May 2020 accusing him of interference with the estate and the Applicant's response vide a letter dated 25th May 2020 which letters found their way to the Court file, the court did not react or intervene hence a sign of bias. Fifth, that the court had given ex parte injunctive orders against his client who is the holder of a Grant of Letters of Administration.

55. Having summarized the grounds for my recusal, one would have to evaluate what recusal entails and under what circumstances can a court recuse itself. The word recusal has been defined by Black Law Dictionary 10th Edition as;

“Removal of oneself as a Judge or policy maker in a particular matter because of conflict of interest.”

56. In the case of **Jasbir Singh Rai and 3 Others v. Tarlochan Singh Rai and 4 Others (2013)eKLR**, the supreme court stated that:-

“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.”

57. The test for consideration before a Judge recuses himself or herself was further considered in a South African Court in the case of **South African Defence Force and Others v. Monning and Others (1993) (3) SA 482 (A)** where the court stated that;

“The test for establishing a judge's impartiality 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.”

58. Realizing the importance of recusal proceedings, the Judiciary developed Judicial Service (Code of Conduct and Ethics) Regulations 2020 dated 26th May 2020 vide Gazette Notice No. 162 which set out the test or circumstances under which a Judge or Judicial Officer should recuse himself.

59. Regulation 21 Part II of the said Code provides that, a Judge can recuse himself or herself on any of the proceedings in which his or her impartiality might reasonably be questioned where a Judge;

(a) Is a party to the proceedings;

(b) Was, or is a material witness in the matter in controversy;

(c) Has personal knowledge of disputed evidentiary facts concerning the proceedings;

(d) Has actual bias or prejudice concerning a party;

(e) Has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;

(f) Had previously acted as a counsel for a party in the same matter;

(g) Is precluded from hearing the matter on account of any other sufficient reason; or

(h) Or a member of the Judge's family has economic or other interest in the outcome of the matter in question.

60. It is trite law and indeed a Constitutional imperative that for fair hearing, a dispute resolution should be conducted before and determined by an impartial court or tribunal (See Article 50(1) of the Constitution). This position is further recognized under the Bangalore Principles Clause 2.1 which underscores the importance of impartiality of a Judicial Officer in resolving disputes.

61. To recuse oneself or not is a matter of discretion by the individual Judge being asked to recuse himself. It is however not a matter of course. It is the conscience of a Judge which will govern the ultimate decision to take when faced with a recusal application. Indeed, recusal of a Judge calls for a higher calling of maintaining purity and integrity of the legal and judicial process and that justice should be seen to be done. Parties should have confidence in the Judicial system by objectively addressing genuine concerns and not raising unfounded, vexatious, selfish, malicious and basically matters that amount to abuse of the court process when it comes to filing of recusal proceedings. In the case of **Rishad Hamed Ahamed and Another v. Independent Electoral and Boundaries Commission (2016) eKLR** a Judge who was faced with recusal application stated that it is the duty of a Judicial Officer to ensure that litigants have faith in the court determining the dispute between parties. The Judge went further to state that even if the Judge will not be biased, such remote feeling by the litigant should be avoided by having the matter heard by an independent Judicial Officer.

62. In the instant case, I am accused of making directions that the matter which had remained pending for so long be mentioned for parties to confirm whether it was necessary to continue writing the Ruling in respect of the applications dated 11th June 2019 considering that the minor sole beneficiary had attained the age of majority. The order for a mention was later made on 21st May 2020 following a letter by Mr. Amin Advocate dated 20th May 2020 which was making a follow up and requested for a mention date for further directions alleging that the estate was being plundered or being wasted

63. On 12th November 2011, parties by consent requested the court not to write the pending Ruling as the position was likely to change upon the minor beneficiary attaining age of majority. By the court fixing the matter for mention to confirm the position and whether it was necessary to write a Ruling in my view does not amount to bias against anybody. What prejudice would the Applicant suffer or likely to suffer by fixing a matter for mention? None. To argue that the court gave Mr. Amin audience without hearing him is nothing but an absurd argument.

64. In the routine performance of court duties, Advocates do write letters to courts inquiring the position of their cases and even call Deputy Registrars seeking for a mention dates. A court does not need to write to the other party seeking for a comment or concurrence. There were no substantive prayers or orders made to warrant participation of other parties.

65. Fixing a mention date was in the best interest of both parties to which the Applicant and Dr. Kamau should thank the court and Mr. Amin for moving the court.

66. Any alleged defamatory remarks in the said letter against the Applicant could not attract any action from this court. For the Applicant to argue that the court did not act on the exchange of their letters as counsel particularly Mrs. Wambugu's letter of 8th May 2020 and the Applicant's letter of 25th May 2020 is unfortunate and a sad story not expected to be a ground for a Judge's recusal. A court cannot ascend to the arena of arbitrating extraneous matters happening outside court business and which are not part of the issues for determination before it.

67. What reaction did the Applicant expect from the court regarding their Advocates' correspondences? This is ridiculous. I do agree with the Respondents and their respective counsel's submissions that the application is malicious, misadvised, unfounded, misconceived and ill informed. It is intended to delay this matter further.

68. Courts should be treated with decorum by parties and counsel. Courts are not playing grounds but places of dignity in dispensing justice.

69. To allege or even infer bias simply because a court has fixed a matter for mention for further directions is to say the least an insult to the legal system and abuse of recusal proceedings by an Applicant and counsel.

70. As stated, all the grounds set out for my recusal are baseless and not worthy consideration. However, courts are presided by human beings made of flesh, bones, blood and brains to think. Courts also have feelings and conscious to govern their operations. Even when there is no such clear ground for recusal such as this case, a court properly exercising its conscious can still recuse itself if that can give both parties satisfaction that their matter has been determined by a court to which they have confidence in even if false in their sub-conscious. Courts have a lot of work to do and this is not the only matter that must be heard by me.

71. I do not have to force parties to proceed with the matter before me. It is worth noting that my sister Achode was equally pushed out of this matter maliciously. Obviously, the Applicant is forum shopping. Whether that will be achieved only time will tell. Listening to my inner conscious, I am of the view that this matter should be heard by another Judge. See **Gitobu Imanyara and 3 Others v. Attorney General (2012)eKLR where** the court stated that:-

“Having considered the facts as presented by the petitioner and looking at the matters objectively, I do not think a reasonable person with knowledge of the facts of the case would conclude I would be biased. The application for my recusal lacks merit and is not well founded.

However, I note that Hon. Imanyara feels strongly that I should not handle this matter particularly given his history of suffering which is well known to Kenyans at large. This is his opportunity to vindicate his rights and I will not stand in his way. In the circumstances, I refer the matter to the Head of the Constitutional and Human Rights Division to assign the matter to another judge.”

72. Since the applications dated 11th June 2020 were never argued before me, their determination based on the filed submissions without highlighting will not pose a challenge to the Judge taking over.

73. For the above reasons stated and with a heavy heart, I wish to recuse myself if that will restore confidence of the judiciary on S. C. Dr. Kuria and his client. Having done so, I do refer this file to the Presiding Judge for re-allocation to another Judge whom I hope Dr. Kuria and his client will not so quickly find fault in.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF AUGUST 2020.

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J. N. ONYIEGO

JUDGE