



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

(FAMILY DIVISION)

SUCCESSION CAUSE NO 19 OF 2016

IN THE MATTER OF THE ESTATE OF MIRIAM MUGURE MAMBO Alias MILLIAM MAMBO(DECEASED)

ELIZABETH WANGARI NGUGI.....PETITIONER/APPLICANT

AND

MR. PAUL NDUNGU MAMBO.....1ST RESPONDENT

MS. GRACE WAMAITHA WAINAINA.....2ND RESPONDENT

R U L I N G

1. The application before court dated 22nd May 2019 by **Elizabeth Wangari Ngugi** who seeks to have the judge disqualify herself.
2. The Applicant represents herself and from the application and affidavit it can be gathered that her reasons for seeking for the disqualification are;
 - a. The Judge issued two conflicting orders on 17th and 30th January, 2019 respectively;
 - b. The Judge has allowed lawyers other than those on record to appear;
 - c. The Judge is biased; and
 - d. The Judge has delayed the matter.
3. The application has been objected to by the 1st Respondent on grounds that the same is vexatious, misconceived, irregular, bad in law and an abuse of court process, it is farfetched and does not meet the necessary threshold for a judge to disqualify oneself and lastly, on issue of representation it is urged that it is not for the court to interfere with representation of parties.
4. The necessary parameters as to when a judicial officer may disqualify himself are well settled.

In **REPUBLIC VERSUS DAVID MAKALI & 3 OTHERS** (“the people case”) cited by the Court of Appeal in **JUSTICE PHILIP TUNOI & DAVID ONYANCHA VERSUS JUDICIAL SERVICE COMMISSION & JUDICIARY Civil Application Nai 6 of 2016** the Court of Appeal stated:

“Para 45 in the people case, this court expressed itself as follows in relation to the application for disqualification of the members of the bench;

‘How should judges treat the subject of disqualification when raised before them?’

.....when the courts in this country are faced with such proceedings as these, it is necessary to consider whether there is a reasonable ground for assuming the possibility of bias and whether it is likely to produce in the minds of the public at large a reasonable doubt about the fairness of the administration of justice. The test is objective and the facts constituting bias must be specifically alleged and established.”

5. The applicant has not specifically pleaded facts that would constitute the court's bias if at all. The applicant has simply made an allegation. This court is not known to any of the parties, neither is it likely to benefit from the outcome of the case. The allegations are farfetched, outrageous and an attempt to forum shop.

6. The applicant also alleged that the court gave contradictory orders. The correct position is that on hearing the matter the court was of the view that before it pens down its judgment, the parties who are siblings ought to be given an opportunity to meet and first agree on a list of properties to be distributed, secondly, if possible the parties do attempt to agree on distribution. This directive was given on 17th of January 2019.

On 30th of January 2019 when the matter was mentioned before court in the presence of the applicant acting in person, Mr. Mungai holding brief for Mr. Ngige for the 2nd Objector and Mr. Kantai for the 1st Objector the court was informed that the parties had partially agreed save for one asset. The applicant uttered no word of objection and went along. The court gave parties more time and directed that parties do file a consent if they strike one if not the matter would proceed for further hearing on 25th March 2019.

The two orders are not in any way contradictory.

7. The other allegation is that the court has employed delaying tactics. The court records prove otherwise and the ground certainly unfounded.

8. Who holds brief for which lawyer/party is not really the concern of the court but litigants as each party has the right to be represented by a counsel of his choice or to act in person. This I agree with the respondents counsel is not a function of the court to determine.

9. Consequently I see no merit in the application and dismiss the same with costs.

10. Hearing of the matter will proceed on a date to be agreed upon as directed by this court on 30th of April, 2019.

Dated and Delivered in Nairobi on this 28TH day of November, 2019

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ALI-ARONI

JUDGE