



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

MISC CIVIL APPLICATION NO 82 OF 2015

C. MWANGI GACHICHIO.....ADVOCATE/APPLICANT

VERSUS

MURANG'A WATER AND SANITATION COMPANY LTD.....CLIENT/RESPONDENT

R U L I N G

1. The Advocate in this matter, **C. Mwangi Gachichio**, acted for the Client, **Murang'a Water and Sanitation Co. Ltd.** in **Murang'a HC Judicial Review Application No 3 of 2015**. His advocate/client bill of costs in that matter was subsequently taxed by the **Taxing Officer** of this court. He and the Client were each not satisfied with the sum(s) awarded and each filed a reference herein under **Paragraph 11** of the **Advocates (Remuneration) Order**.

2. On 27/09/2016 both the Advocate and the Client's learned counsel appeared before me and I gave a date for hearing of both references together. Subsequently the Advocate filed **notice of motion dated 22/11/2016** by which he sought my recusal from hearing or handling the references against taxation any further. That application is the subject of this ruling.

3. The application is premised upon the following grounds –

1. That I exhibited “glaring hostilities” against the Advocate in the matter.
2. That I subjected the Advocate to gross indignity in court.
3. That there seems to be bad blood between me and the Advocate.
4. That I seemed “very angry” with the Advocate.
5. That the Advocate is apprehensive that I will not give him justice in the matter.
6. That I seem to have already made up my mind that the Advocate has no case even before hearing the matter.
7. That I have unjustifiably “treated the (Advocate) as a truant child in a kindergarten set up despite the (Advocate's) age and professional standing”.
8. That I am “failing to live up to the Judiciary's pledge to treat lawyers and members of the public with courtesy and dignity”.
9. That I am “exercising inappropriately excessive power over the (Advocate) which is inconsistent with the rule of law, rules of natural justice, the new Constitution and the new constitutional dispensation”.
10. That I “seem not cognisant of the fact that the (Advocate) is an equal in the dispensation of justice only that they are playing from different angles.”
11. That I have treated the (Advocate) in similar fashion “in related Murang'a HC JR Application No 3 of 2015 “and when asked by the (Advocate) to recuse myself (I) refused”.
12. That “circumstances do exist in the present cause and the related matter as might reasonably be expected to influence (me) against the (Advocate).
13. That it is “necessary that (I) recuse himself for justice to be done.”

14. That it is otherwise in the interests of justice that the application be allowed.

There is an affidavit sworn by the Advocate in support of the application.

4. The Client has opposed the application by grounds of opposition dated 16/02/2017. The grounds set out therein are –

1. That the application is brought in bad faith and intended to frustrate the ends of justice.
2. That the application does not meet the standards required to warrant the orders sought.
3. That the application is an afterthought, and the overriding objectives of the law weigh heavily against it.
4. That the application lacks merit and is an abuse of the court process.

There is also a replying affidavit sworn by one **Ruth Wanyonyi**, an advocate of this court who states that she has conducted this matter on behalf of the Client, and further, that she was present in court on 27/09/2016 together with the Advocate.

5. I have read the affidavits sworn in support of and in opposition of the application. I have also considered the submissions of the learned counsels appearing, along with the cases cited. Finally, I have tried my best to recollect the proceedings of 27/09/2016 when the learned counsels herein appeared before me.

6. I am well aware of the **fundamental right to fair trial** now enshrined at **Article 25(c)** of the **Constitution of Kenya, 2010**, and in my day-to-day interaction with litigants and their counsels in my court I always accord fair opportunity to be heard in terms of reasonable time, opportunity and freedom from intimidation or harassment of any type, bias or appearance of bias. I am equally aware, and have always been in my entire career at law (both at the bar and bench), of the right to a fair hearing now enshrined at **Article 50** of the **Constitution** and have always jealously guarded it in my court.

7. In my entire time at the bench since 1998 (now nearly 19 years), as far as I can recall there have been only three or four applications brought for my recusal (including the present application), two of them by the Advocate herein.

8. I am well versed in the law pertaining to recusal of a judge, and would do so willingly and even *suo moto* should the legal parameters for such recusal be met. Those parameters have recently been reviewed and re-stated by the **Supreme Court of Kenya** in **Jasbir Singh Rai & 3 Others –vs- Tarlochan Singh Rai & 4 Others [2013] eKLR**.

9. My recollection of the interaction I had with the two advocates on 27/09/2016 when their respective applications challenging the taxation of the Advocate's advocate/client bill of costs, is that in my usual fashion, and to better understand and narrow down the issues involved, I engaged the advocates in turn, asking them to explain to me briefly the basis of their respective objections to the taxation. I was courteous to both in equal measure, and the suggestion that I was rude or discourteous or intimidating, etc. to the Advocate is preposterous. I never at any time expressed myself in any way to intimate that I had made up my mind regarding the applications before me, which I had yet to hear. I had no reason to reprimand the Advocate as he had done nothing before me that would have required a reprimand.

10. The recollection of **Advocate Wanyonyi** in her replying affidavit of my interaction with both advocates at the material time is the correct one. **Advocate Gachichio's** complaints represent an exaggerated grievance that has no foundation in fact.

11. I find no reason at all to recuse myself, and the notice of motion dated 22nd November 2016 is hereby dismissed with costs to the Client/Respondent. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 25TH DAY OF MAY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 31ST DAY OF MAY 2017