



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
MISC. APPLICATION NO. 2 OF 2016

PETER LAWRENCE KINYUA MWAI APPLICANT

VERSUS

THE HON. ATTORNEY GENERAL 1ST RESPONDENT

THE DIRECTOR, NATIONAL REGISTRATION

OF PERSONS2ND RESPONDENT

DIRECTOR MANAGING TRUSTEE,

NATIONAL SOCIAL SECURITY FUND (N.S.S.F) 3RD RESPONDENT

DISTRICT REGISTRATION OF PERSONS NANYUKI 4TH RESPONDENT

JAMES OTIENO, REGISTRATION OF PERSONS OFFICER 5TH RESPONDENT

OSCAR CRISPUS OPIYO, REGISTRATION OF PERSONS OFFICER6TH RESPONDENT

CHRISTOPHER MURIUKI MWAI 7TH RESPONDENT

RULING

1. **PETER LAWRENCE KINYUA MWAI** has filed a notice of motion dated 26th May 2016. This is the application under consideration in this ruling. By that application the applicant seeks that I do recuse myself from hearing not only this matter but also **Nanyuki High Court Succession Cause No. 42 of 2016** and **Nanyuki High Court Misc No. 27 of 2015** where he is a party.

2. I do not wish to reproduce the reasons that the applicant has set out in his application as the basis of my recusal. It suffices to state that the applicant has lied under oath that I abused him in open court. I am sure if I wanted to I could obtain evidence from other court users that were in attendance in court when the applicant’s matter was before me and who could confirm that I did not abuse him. What however I am clear about is that I am not in any way biased against the applicant indeed I have no basis to be biased. I have all along maintained the required judicial high standards in respect to the applicant’s matters before the court just as I do in all matters that I handle. In this regard I wish to refer to the statement made by Justice GBM Kariuki (as he then was now a court of appeal judge) in the case **RPM v. PKM (2011) eKLR** where the judge stated:-

“They (Judicial Officers) are required to act valiantly in preserving and using judicial power to do justice and to maintain truth. They must do that which good conscience dictates to be right upon application of the law regardless of criticisms. But they would be naïve not to expect criticisms. After all, there will always be winners and losers who will be disgruntled in litigation.”

3. The applicant began to allege that I was biased against him after I made two decisions in his matters which decisions were not in his favour. That alone cannot be a basis for seeking a judicial officer to recuse himself. In that regard I refer to the case **THE PRESIDENT OF THE REPUBLIC & 2 OTHERS V SOUTH AFRICAN RUGBY FOOTBALL UNION & 3 OTHERS (CASE CCT 16/98)** where the court stated:

“Success or failure of the government or any other litigant is neither grounds for praise nor for condemnation of a court. What is important whether the decisions are good in law, and whether they are justifiable in relations to the reasons given for them. There is an unfortunate tendency for decisions of 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 ... dissatisfaction with the outcome of a case is no justification for recklessly attacking the integrity of judicial officers.”

4. That aside it is clear that the applicant does not wish to have his cases heard by me. Accordingly and only on that ground and because of the applicant’s disruptive attitude in my court I shall recuse myself. I have considered the objections to the application by the learned counsel Mr. Makori on behalf of the 1st to the 7th Respondents and by Christopher Peter Kinyua Mwai the 8th Respondent but in my view the interest of justice demand that I recuse myself from the matters that the applicant has before the Nanyuki High Court.

5. Accordingly I order as follows:

(a) I hereby recuse myself from hearing High Court Nanyuki Misc No. 7/15, Misc No. 2/16 and Succession Cause No. 42 of 2016.

(b) There shall be no order as to cost in respect of the Notice of Motion dated 26th May 2016.

DATED AND DELIVERED THIS 29TH DAY OF JUNE 2016.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Njue

Applicant:

Respondents:

For Applicant:

For Respondents:

COURT

Ruling read in open court.

MARY KASANGO

JUDGE