



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

H.C.C. NO. 120 OF 1988

LAWRENCE KINYUA MWAI.....PLAINTIFF/APPLICANT

VERSUS

NYARIGUNU FARMERS CO.LTD.....DEFENDANT/RESPONDENT

MWEBIA NKAABU.....DEFENDANT/RESPONDENT

H.C.C. NO. 141 OF 1988

LAWRENCE KINYUA MWAI..... PLAINTIFF/APPLICANT

KABARAGU MUTA.....DEFENDANT/RESPONDENT

R U L I N G

1. The applicant/plaintiff LAWRENCE KINYUA MWAI, through a Notice of Motion dated 18th September, 2014 sought inter alia the following orders; that the Hon. Justice J. A. Makau, be pleased to disqualify himself from hearing the above mentioned case at Meru being HCCC 120 of 1988 and HCCC 141 of 1988; that he ceases discussing about the applicant with other Hon. Judges in his private Judge Chamber's and discussing about the (Plaintiff) home affairs; that the costs of the application be provided for.
2. The applicant avers that his differences with Hon. Justice Makau started when he noticed that the applicant clearly saw Mr. Mutunga Advocate come out from the back door of the private Judge chambers before the court started on 9th April, 2014. He further avers that when the court called for his file, he raised the matter to why Mr. Mutunga was in Judges private Chambers upon which the applicant alleges the judge repeated the words he had been calling him, that he is good for nothing and does not use his mind and he is unthinking person. He further alleges the Judge allows him only one minute to argue his application, that there was an extension of time to an arbitration award filed on 23/7/1992; that the application was a ghost application and declined to grant it and that when he insisted he was not served with the applications the court told him to shut up; that the court could not hear his objection that the ruling of 9th February, 2009 was read without other parties, that he noticed his matter in the notice board when he went for other matters; that the court relied on affidavit of Zacharia Nkaabu(deceased) dated 17th February, 2014 notwithstanding court's order of 13th June, 1996 expunging his name from court file. That the respondents counsel has been using the names of the deceased to reply to the applicant's application.

3. The application is supported by the applicant's supporting affidavit dated 18th September, 2014; in which the applicant depones that he has no confidence with this Honourable Court as the court favours defence counsel Mr. Mutunga because they come from the same place of Machakos in the Eastern Province and they speak the same mother language and they are friends. That Mr. Mutunga enters the Judge's chambers severally and that at the time of the application he pleaded for sympathy with court urging the applicant has another plot elsewhere. That the court's ruling was based on tribalism, favourism and nepotism. That court favours advocates and treats unrepresented parties unfairly, stating that he noticed 5 unrepresented parties who were not fairly treated by court and lost their matters as they did not have advocates. That the court has refused him to be served with an application for extension of time and has advised Mr. Mutunga not to serve him with the application. That court omits the applicant's submissions and adds some for Mr. Mutunga. That the court underrates the applicant adding the court does not remember that "justice is the Shield and defender".
4. The counsel for the respondent Mr. Mutunga, who had been adversely mentioned by the applicant herein in his application seeking the court to disqualify itself filed a replying affidavit dated 7th October, 2014. He deponed that he read the applicant's affidavit dated 18th September, 2014 in utter shock and termed the said affidavit as contemptuous, frivolous, vexatious, and an abuse of the court process only meant to tarnish the advocate and the Honourable Judge's name; he totally denied and disassociated himself with the applicant's averments that the instant suit is in the condition of danger, nepotism, corruption, favourism and tribalism. He termed the application for the court to disqualify itself from the hearing of this suit to be misplaced and unfounded. Mr. Mutunga has deponed that he has never attended any Judge's chambers in his life leave alone the instant suit nor had he heard the applicant raise the matters alluded to in his application in open court as claimed in his application and he sought that he proves his allegation and clarify the same. The counsel deponed further that he does not share the applicant vote of no confidence with the Honourable court determining this matter urging the court to ignore the applicant's malicious words.
5. Mr. Mutunga Advocate in demonstration of his residence and tribe attached his National Identity Card NO.251729 issued on 19/08/2014 showing his full names as **Boos Murithi Mutunga a resident of Meru Central**. He therefore termed the applicant's allegations as unfounded, malicious, reckless, and unbecoming of the applicant urging the court to crack whip on such abusive and defamatory statements. He urged that he was borne and raised in Meru, Kibirichia, location, Kimbo Sub-location and that he only went to Machakos while in High School for ball games. He averred that he does not share any language with any Judge and he has always maintained his professional integrity. He further added he never entered any Judges chambers as all matters are handled in open court. He added that he has argued all his cases with passion and professionalism and this allegation of him stretching hands in court are blatant lies only meant to tarnish court reputation. He added he is not aware how many plots the applicants owns and has no interest so long as they do not touch on the matter before court. He denied that the court's ruling was based on tribalism, favourism and nepotism. He further deponed that the applicant should give evidence of the 5 people he alleges have been judged unfairly by the Honourable Court for being unrepresented. The Counsel averred that he cannot understand the contents of paragraph 11 of the applicant's affidavit. He referred to several applications made before various judges as follows:
 - a. *Application dated 14th October, 2013 the applicant tarnished Hon. Judge Justice S. O. Oduk,*
 - b. *The applicant further affidavit dated 10th October, 2012 the applicant tarnished Hon. Lady J. Lessit and Madam Joan Ndorongo an advocate of the firm of Joan W. G.Ndorongo & Co. Advocates*
 - c. *That in an application dated 2nd July, 2012 the applicant sought Hon. Lady Lessit to disqualify herself from hearing the matter.*
 - d. *It is on record the applicant has written numerous letters to the Chief Justice dated 13th February, 2012.*

- e. *He is also on record saying that the panel of elders who arbitrated the suit were biased to him and they were smoking during the hearing.*
- f. *He also sought lady Justice Mary Kasango to disqualify herself in the instant suit and the same was transferred to Hon. Justice Lesiit.*
- g. *That in his application dated 2nd day of July, 2012 the applicant paragraph 6 of his supporting affidavit claim that the office of the PC Nakuru corrupt while handling the case.*

Mr. Mutunga averred that he believes the applicant ought to be declared of unsound mind for he has lost touch with the issues at hand and now he is on a witch hunting expedition. He urged further the applicant has done ten(10) applications on diverse dates and court has always listened to him and even given ruling in writing expeditiously and that he has never appealed against them. He added that the court has always listened to him and he has been afforded time to argue his case. He urged the court to dismiss the present application with costs to pave way for further hearing in this case.

6. I have taken a lot of pain to reproduce the contents of the applicant's application and the reply by the respondent, so that all the matters raised are within this ruling. I have very carefully considered the contents of the pleadings and I have warned myself of the need to be impartial in this matter and to be focused and sober as the matters are raised against this court. I know with the coming into force of the Judges and Magistrates Vetting Board, the Ombudsman and having active Judicial Service Commission and the new Constitution, the consumers of Judicial Services have become more focused as they put Judicial Officers and courts on the limelight for bad things. Judicial Officers in exercising Judicial authority should be guided by Article 159 of the Constitution of Kenya but while courts are exercising the Judicial authority the litigants should treat the officers with dignity and accord them due respect without being malicious. The issue that this court should consider is whether the applicant has laid sufficient grounds for this court to disqualify itself from handling this matter.
7. The applicant in his submissions in open court averred that he had been fed with information by Senior staff of this court that on 9th April, 2014 that Mr. Mutunga visited the Judge's chambers notwithstanding that advocates are prohibited from doing so. He further submitted that the court abused him but did not state the abusive words uttered by this court to him. He averred that this matter is always listed last and as such wanted the court to disqualify itself. He alleged that he had sought transfer of the case to Nyeri to ELC court but this court refused. He went on to submit that he saw Mr. Mutunga going to private Judge's chambers. He turned about turn in submissions and said he was only suspicious of Mr. Mutunga's visit to the Judge's Chambers and the date Mr. Mutunga visited the Judge in his private chambers was 13th April, 2014 adding that he does not know how many Judges are accommodated at the back of the building. He averred that it was a typing error for him to have stated that Mr. Mutunga is a Kamba by tribe. Mr. Mutunga countered the applicant's oral submissions and denied having visited the Judge's chambers as alleged. He challenged the applicant's assertion as false as he did not disclose the alleged abusive words and pointed out none were uttered by the honourable court. On cause listing of matters he pointed out the Judge has no role in preparing the cause list and that is done by the registry. He added that this court follows cause list to the letter in handling its matters. He added the applicant has always been listened to and if dissatisfied with court's ruling he should have appealed. He also pointed out if applicant intends to transfer the suit he should file a formal application.
8. In the present application the applicant has no truth as to Mr. Mutunga Advocate having been a frequent visitor to Judges chambers. He has in his affidavit not given the instances or mentioned any single date when Mr. Mutunga Advocate visited the Judge's chambers. He should have done so in his supportive affidavit rather than making a generalized statement. He purported to have seen Mr. Mutunga while at the registry on 13th April, 2014 go to the Judge's chambers when is at the back of the registry. The court observed that he could not from the registry which is at the front of Judge's Chambers have been where Mr. Mutunga Advocate went as at the back of the

building there are two Judges chambers, secretaries offices, and even washrooms. That in this courts' chambers one has to pass through the secretary's office to see the Judge. The applicant did not secure an affidavit from the Secretary to confirm that Mr. Mutunga has been to Judges chambers. Mr. Mutunga Advocate denies having visited any Judges chambers in his lifetime. He denied having been to Judges chambers on 9/4/2014 or 13/4/2013. The applicant on the other hand claimed he was told of Mr. Mutunga's visit by a Senior staff of this court, if that was so and the truth, why did the applicant not disclose the officer's name and secure the officers affidavit in support of his application in an allegation which is so serious as against the court and the advocate mentioned. This court is alive of the fact that at no time has Mr. Mutunga advocate mentioned in this application, ever visited the private chambers of the Judge mentioned in this application nor has Mr. Mutunga Advocate sought any assistance of the Judge in any matter leave alone this case. The court never saw any advocate in its chambers on 9/4/2014 nor on 13th April, 2014. The judge was not even at his chambers on 13th April, 2014 as alluded to by the applicant as the court was on vacation and the Judge was not sitting on the said date. A quick perusal of the applicant's supportive affidavit reveals that none of the alleged dates in oral submission of the applicant form part of his affidavit. One wonders if what the applicant states happened and was within his knowledge then why did he not depone on those facts unless the allegations are malicious and falsehood. The applicant raises issues under prayer No. 2 to the effect that the Judge with other honourable judges discusses him in his private chambers and discusses about the applicant's home affairs. This is a serious allegation against honourable Judges and the applicant who raised the issue strange enough did not put in a single word in his affidavit in support of such serious allegations. He did not dare state the source of his information nor mention what Judges discusses about him and his home affairs; where that is done and by which Judges. This court is disturbed by the malicious allegations by the applicant not only of this court but of honourable Judges and more so when the court knows nothing about the applicant. The court does not know the background of the applicant, or his family or of his locality and has nothing that it can discuss about a stranger. That after all Judges are not idle nor are they busybodies to be engaged in gossip about people they do not know and discuss home affairs of strangers. The applicant made serious allegation but failed even to depone on the same. The applicant intention is to intimidate and coerce, the court to disqualify itself through threats and by peddling falsehood and painting courts as lacking integrity. All the aforesaid allegations have not been supported by an affidavit, and as such I find that the same are contemptuous and only intended to tarnish the courts reputation and are vexatious and frivolous.

9. The applicant's allegations that he was abused in open court and that he raised the issue with court is not true because if that was so he would have had one of the people he alleged were not fairly treated by court swear an affidavit in support of his case as he alleged they would be having nothing to fear after court had denied them justice as per the applicant's allegation that their cases were unfairly handled.
10. The applicant allegations that this court favours Mr. Mutunga Advocate because he comes from the same place with the Judge; that is Machakos, and that they speak the same mother tongue and are friends has been demonstrated by Mr. Mutunga's documents to be nothing but falsehood. Mr. Mutunga Advocate do not come from the same locality with the Judge nor do they share the same language nor are they friends as alleged.
11. The allegations that the court decisions are based on tribalism, favourism, and nepotism is nothing but falsehood. The applicant admitted Mr. Mutunga Advocate do not share any relationship with the Judge nor do they come from the same locality. The applicant relied on speculations, rumours, beliefs, conclusions, innuendos, suspicions, opinions and similar nonfactual matters to tarnish the good reputation of Mr. Mutunga Advocate and this court. The applicant's application as per his affidavit is further based on prior court ruling because it was adverse to him.
12. Blacks' Law Dictionary defines "**recusal**" or "disqualification" of Judicial Officer or removal of oneself as Judge or "policy maker" in a particular matter (especially) because of conflict of interest. 8th Ed.(2014) page 1303). As pointed out the grounds for seeking recusal of this court is

based on rumours, speculations, beliefs, conclusions, innuendos, suspicions, opinions, nonfactual matters; the previous ruling by this court and expression of an opinion on point of law which were adverse to the applicant and on baseless attack of the defence counsel and the court. The instances raised in seeking disqualification of this court are no grounds for which a court should disqualify itself as they are malicious, false and intended to intimidate this court.

13. The matters and allegations raised against this court are all false and malicious with intention to intimidate the court. The applicant even in open court was waving papers to court and which papers he was saying were complaints against the court and intimidating the court with raising complaints with the Judges and Magistrates Vetting Board and asking this court to disqualify itself. He was extremely disrespectful to the Advocate who had seek court's protection to stop the applicant from demeaning the officer of the court however both the court and counsel kept their cool. The applicant is a party who is used to making complainants against the Judges as is evidenced in paragraph 19 of the affidavit of Mr. Mutunga Advocate which consents the applicant did not controvert. The applicant is used to applying for Judges to disqualify themselves whenever his case does not go his way.

14. This court took oath of office for Judges of the High Court Kenya in the name of the Almighty God to diligently serve the people and the Republic of Kenya and to impartially do justice in accordance with the Constitution as by law established, and the laws and customs of the Republic, without any fear, favour, bias, affection, ill-will, prejudice or any political, religious, or other influences in the exercise of the Judicial direction entrusted on it. That is what this court believes in and has been doing. It has not favoured anyone or feared anyone nor has it been biased or shown affection or ill-will or prejudice in its decisions. The court treats with contempt it deserves are false and malicious allegations by the applicant in seeking the court to disqualify itself. This court has no personal interest in any matters that it handles but only to administer justice as per oath of office. The applicant should have been candid enough and prayed the court to disqualify itself without making false and malicious allegations and the same would have been considered. The applicant on the other hand should not have alluded to the fact that this court has refused to transfer this matter to Nyeri High Court ELC court as no application has ever been filed and heard on such prayers. Further though this case deals with land matters it is part heard by the High Court and in such matters the Hon. Chief Justice had given practices notes to the effect that such matter shall continue to be heard and determined by the High Court. In view of the foregoing how can one say the Judge has refused to transfer the suit to ELC court at Nyeri or the High court at Nyeri without any application to that effect having been made unless one is simply being malicious?

15. In view of the reasons stated herein above I find and hold that all allegations against the advocate herein and this court is frivolous, vexatious and an abuse of the court process and I find there are no merits in the applicant's application for the court to disqualify itself. I therefore dismiss the application with costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF NOVEMBER, 2014.

J. A. MAKAU

JUDGE

DELIVERED IN OPEN COURT IN THE PRESENCE OF:

1. Applicant – present in person
2. Mr. Mutunga advocate for the respondent.

J. A. MAKAU

JUDGE