

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JUDICIAL REVIEW DIVISION

JR CASE NO. 2452 OF 1982

BENSON OWENGA ANJEREPLAINTIFF

VERSUS

KITAVI NDUTO1ST DEFENDANT

JUBILEE INSURANCE CO. LTD2ND DEFENDANT

RULING

When this matter was placed before me on 25th March, 2013 the Plaintiff, Mr. Benson Owenga Anjere indicated to me that he intended to make an application that I recuse myself from this matter. I was taken aback and I asked him to file a formal application so that I could understand why he did not want me to hear this matter. The Plaintiff subsequently filed an application by way of notice of motion dated 27th March, 2013 and his main prayer is **“(t)hat Hon. Justice Korir does disqualify himself from the hearing of the application dated 18th June, 2012 and this matter in totality.”** The application is supported by grounds on its face and a supporting affidavit sworn by the Plaintiff/Applicant on 27th March, 2013.

In short the Applicant claims that on 29th October, 2012 this file was mentioned before me and I engaged the Defendant’s counsel to his exclusion. He alleges that I have made up my mind about this matter and I will not be fair if I hear this matter. The Applicant also drags another Judge into this matter by stating in paragraph 12 of his affidavit:-

“THAT being that Justice Korir was in the same division with Justice Warsame and later was his superior they may have discussed my complaint to the Judges and Magistrates Vetting Board hence making Justice Korir have a bias against me.”

I must apologize to the parties for the delay in dispensing with this application. As can be noted from the court record the application was adjourned several times for various reasons. However, the buck stops with me.

I have considered the Applicant’s application and note that the same is a disguised attack on the advocate for the defendant and Warsame, JA. Although his allegations are without any merit, the Applicant already perceives that this court will not treat him fairly. No good reason has been given for my recusal but once a party alleges that a judicial officer is biased, the judicial officer is put in an awkward position. If the decision goes against the Applicant, he will say: “I told you the judicial officer was biased.” If on the other hand the decision is in his favour, the Respondent will perceive that the judicial officer has succumbed to the intimidations of the Applicant. It is therefore in the best interest of justice that I recuse myself from this matter. The Deputy Registrar of this Division is directed to immediately place this file before the Honourable Chief Justice so that he can appoint another judge to hear this matter.

Dated, signed and delivered at Nairobi this 14th day of August , 2013

W. K. KORIR,

JUDGE