



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NYERI**

**Civil Case 147 of 2010**

**MAKOMBOKI TEA FACTORY COMPANY LIMITED.....PLAINTIFF**

**-versus-**

**JOSEPH MWANGI MBOTE.....1<sup>ST</sup> DEFENDANT**

**HUDSON MOFFAT KAMAU MBUE.....2<sup>ND</sup> DEFENDANT**

**JOSEPH KINUTHIA GITONGA.....3<sup>RD</sup> DEFENDANT**

**JOSEPH MUTURI MARITE.....4<sup>TH</sup> DEFENDANT**

**BENSON MWANGI.....5<sup>TH</sup> DEFENDANT**

**FRANCIS GICHUI KARANJA.....6<sup>TH</sup> DEFENDANT**

**R U L I N G**

The subject matter of this ruling is the Notice of Motion dated 27<sup>th</sup> February 2012, in which the Defendants/Applicants sought for the following orders:

***“(a) That Justice Sergon do disqualify himself from hearing this matter forthwith.***

***(b) That the matter be transferred to Nairobi High Court for hearing and final determination.***

***(c) Cost of this application be provided for.”***

The motion is supported by the affidavit of Joseph Mwangi Mbote and the Supplementary Affidavit of Moffat Kamau Mbue. The Plaintiff/Respondent opposed the motion by filing the Replying Affidavit of Mwangi Kibicho.

When the motion came up for Interpartes Hearing, Mr. Sane, Learned Advocate for the Applicants solely relied on the grounds set out on the face of the motion and the facts deponed in the Supporting and Supplementary Affidavits. The 2<sup>nd</sup> Defendant who appeared in person supported the motion by relying on his Supplementary Affidavit. Mrs. Cherono who appeared as holding brief for Mr. Mwangi for Plaintiff made brief oral submissions to oppose the motion.

It is the submission of the Defendants/Applicants that this court handled this case in a manner prejudicial to them. It is argued that Hon. Maraga had issued an order stopping the elections from being held as that would affect the substratum of the case but this Court allowed the elections to go on by dismissing the application. It is further argued that the case was supposed to have been concluded within a time frame given by Justice Maraga which time frame was not followed. It is further alleged that this Court refused to hear the case on 20<sup>th</sup> December 2011, but instead adjourned it to 5<sup>th</sup> January 2012, yet it knew the matter was extremely urgent. The Defendants proposed the matter to be transferred to Nairobi since the parties are based or resident next to Thika within the territorial jurisdiction of Nairobi High Court. The Plaintiffs on the other hand are of the view that the application lacks merit and is calculated to derail the substantive hearing of the suit. It is argued that the Defendants have not adequately demonstrated why this Court should recuse itself from further hearing the matter.

I have carefully considered the rival submissions plus the material placed before this court. The main order sought is for this Court to disqualify itself from hearing this case. The second prayer is for the case to be transferred to Nairobi High Court for hearing and determination. In such cases a party must demonstrate inter alia:

***“(i) That a Judge has personal bias or prejudice concerning a party or his advocate or has personal knowledge of the facts in the proceedings before him.***

***(ii) That the Judge has served as a lawyer in the matter in controversy.***

***(iii) That he or his family or a close relative has a financial or any other interest that could substantially affect the outcome of the proceedings.***

***(iv) That the Judge or his spouse or a person related to either of them or the spouse of such person or a friend is a party to the proceedings.”***

The question which I must grapple with is: whether the application meets the threshold set to enable a judge recuse himself? In my estimation, the motion does not meet the conditions required to enable me disqualify myself from hearing the case. There is a complaint that the hearing of the case has delayed for a long time. The record speaks for itself. I appreciate the fact that cases must be expeditiously disposed of. However, that view is not cast on stone. Courts will in certain instances adjourn the hearing of cases for good reasons. In this case the case could not be reached on 17<sup>th</sup> November 2011 due to a heavy cause list. The case was mentioned before Hon. Justice Wakiaga on 16<sup>th</sup> December 2011, who directed the parties to appear before me on 20<sup>th</sup> December 2011, for purposes of fixing the case for hearing on priority basis. On the aforesaid date, Learned Counsels appearing in the matter opted to have the motion dated 15<sup>th</sup> December 2011, fixed for hearing on 5<sup>th</sup> January 2012, instead of fixing the suit for substantive hearing. In fact the Court had to give in to the demands of the parties by fixing the motion for hearing during the Court Vacation. In a nutshell, it is apparent this Court appreciated the urgency of the matter.

The Defendants are of the view that this case should be transferred to Nairobi for hearing and disposal. It is said the parties reside near Thika, hence the suit should have been filed in Nairobi. Apart

from the affidavit averments made herein there is no sufficient material to show that all the parties and the subject matter of the suit are resident in Thika. If well advised the Defendants may provide sufficient material in future to support such an application. For now I am not convinced that the application is well founded.

The motion is dismissed with costs abiding the outcome of this suit.

**Dated and delivered this 8<sup>th</sup> day of June 2012.**

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**J. K. SERGON**  
**JUDGE**