



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**CIVIL CASE NO. 40 OF 2007**

**TROPICAL TRADING COMPANY LIMITED.....1<sup>ST</sup> PLAINTIFF**

**HARDEV SINGH SAIMBHI.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**TROPICAL QUARRIES (KENYA) LIMITED.....1<sup>ST</sup> DEFENDANT**

**INDERJIT SINGH SAIMBHI.....2<sup>ND</sup> DEFENDANT**

**SUKHWINDER KAUR SAIMBHI.....3<sup>RD</sup> DEFENDANT**

**RULING**

The subject matter of this ruling is the Motion dated 25<sup>th</sup> May 2011, in which Tropical Quarries (K) Ltd., Inderjit Singh Saimbhi, Sukhwinder Kaur Saimbhi, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants herein sought for the following orders:

0. *That this Honourable Court be pleased to certify this application as urgent and direct that the same be heard forthwith and in priority over all the pending applications, and that service be dispensed with and the same be heard ex parte in the first instance.*
0. *That this Honourable Court be pleased to stay any further proceedings in the matter herein pending the hearing and determination of this Application.*
1. *That the Honourable Mr. Justice Sergon do hereby recuse and/or disqualify himself from further hearing the matter.*

0. ***That this Honourable Court be pleased to direct that the pending applications in the matter do proceed for hearing before any other Judge and there being no other Judge at the High Court of Kenya at Nyeri, that this matter be transferred to the High court of Kenya at Nairobi.***
0. ***That costs of this application be provided for.***

The Motion is supported by the affidavit of Inderjit Singh Saimbhi sworn on 25<sup>th</sup> May 2011. Tropical Trading Company Limited and Hander Singh Saimbhi, the Plaintiffs herein, filed grounds of opposition to oppose the Motion.

It is the Defendants' submission that this Court has consistently shown open bias towards the Plaintiffs. They alleged that on 18<sup>th</sup> February 2011 this Court did not consider all the arguments put forward by the Defendants but went ahead to put too much weight on the evidence by the Plaintiffs. It is also alleged that the Court imposed a hearing date without considering the protest of the Defendants' advocate. The Plaintiffs on their part were of the view that the Motion lacks merit hence it should be dismissed. It was pointed out that the Defendants' complaints are issues which should be argued on appeal instead of being utilized to vilify the court.

The Plaintiffs further pointed out that the Defendants have formed the habit of seeking for the disqualification of judges from hearing their case when they get unfavourable decisions. It was alleged that the Defendants intend to delay the final conclusion of this case.

I have considered the rival submissions of learned counsels. I have also considered the material placed before me. I think the serious question which has been put to this court for determination is whether or not this court should recuse itself from further hearing this case. It is alleged that the court has shown bias towards the Plaintiffs. The ruling of 18<sup>th</sup> February 2011 was referred to as a point of reference. I think it is important to look at that ruling. Basically the ruling was the outcome of the summons dated 25<sup>th</sup> June 2010 in which the Defendants had sought for the suit to be struck out for various reasons set out on the face of the Summons. This Court considered the rival submissions and the averments and finally dismissed the application on 18<sup>th</sup> February 2011. The Defendants were dissatisfied with the ruling hence they were prompted to file a notice of appeal to express its intention to challenge the ruling before the Court of Appeal. The appeal is yet to be heard. The Defendants are now before this Court claiming that this Court was biased. With respect, it will not be fair for me to make any findings over the claim because if there is apparent bias then it will be upon the Court of Appeal to examine the proceedings and the decision itself to determine the issue. What I can only state at this stage is that my ruling speaks for itself. This court devoted 1 ½ pages each to set out the arguments of both the Plaintiffs and the Defendants in the ruling. This Court devoted six pages analyzing the issues. In short, I do not see any bias on my part that manifests itself from the ruling. It has also been alleged that this Court has imposed a hearing date without taking into account the protests of the Defendants' advocate. The record shows that learned counsels from both sides appeared before me on 11<sup>th</sup> march 2011. The Plaintiffs' advocate applied for a hearing date. The Defendants' counsel protested stating that the suit was not ready. The proceedings of that date show that this Court proceeded to fix the case for hearing on 22<sup>nd</sup> June 2011 which was a period of over three months away. It should be noted that it is within the discretion of the Court to control its diary. It must be appreciated that the Court is always alive of the fact that litigants are supposed to ready themselves for the hearing of their case by ensuring that preliminary procedures are complied with before the case is heard. With respect, the element of bias towards any side does not manifest itself. There is an allegation that the judge engaged on several occasions with the

Defendants' advocates and that he was at times rude to the said advocate. I expected the concerned advocate to either directly address me on this issue or in the alternative to swear an affidavit so that the issue can be adequately addressed. The lay litigants like the one who has deposed the affidavit in support of Motion may not always understand when the judge engages an advocate on certain issues of law, procedure and fact. At times heated arguments may take place between a judge and an advocate but no one takes any issue. In most cases the lay litigants may not differentiate where there is a quarrel between a judge and an advocate and when they are involved in serious arguments over the issues involved in the case. Let me state that this could be one of those cases. What I can remember about this case is that at times I have had to step in to calm learned advocates when their tempers rise and begin to altercate. In such occasions this Court has not taken sides. I think in the circumstances of this case and since the Defendants have not established any element of bias on the part of the court, I will decline to recuse myself. Consequently the Motion dated 25<sup>th</sup> May 2011 is dismissed with costs abiding the outcome of the suit.

*Dated and delivered at Nyeri this 23<sup>rd</sup> day of September 2011.*

**J. K. SERGON**

**JUDGE**

In open court in the presence of Karweru for the Plaintiff and Njenga for the Defendants.