



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Civil Case 114 of 2005

SALIM MOHAMMED MAKASHA APPELLANT

VERSUS

JAMES NJOROGE MBATIA

T/A JOYLAND AUCTIONEERS 1ST DEFENDANT

SAVINGS & LOAN (K) LIMITED 2ND DEFENDANT

Coram:

Ibrahim – Judge

In Chambers:

ORDER

During the pendency of the Ruling, I was approached by an old friend who stated that he knew that I was to deliver a Ruling today. He interceded on behalf of one of the parties and requested me to assist since he is a friend of his. In other words, the said person wanted me to grant a favour in this matter on behalf of one of the parties. I have firmly told off the said acquaintance and that surely means severance of any friendship.

This puts me on the inquiry but my conscience was clear that I could not be influenced by such interferences. However, while in the course of preparing the Ruling one of the names of the parties seemed to ring a bell. On a close scrutiny, I realized that one of the parties was indeed a member of a funeral Committee at Eldoret involving a former class mate who had passed away (the late Hon. J. Choge). I was also a member of the Committee. I met the party during the said funeral arrangements though we did not interact thereafter. Again, such interaction was so brief and incidental that it should not be enough to interfere with performance of my duties as a judicial officer.

However, in view of the two incidences, my conscience is not free and I am compelled to make this disclosure. I believe in the well established principle that “justice must not only be done but be manifestly be seen to be done”.

Perceptions are important and I think that if in the circumstances the ruling happens to be in favour of the said party even on merit, then there may be a perception among some people that indeed I granted this favour and compromised my judicial honour and duty.

I wish to state that there are allegations of corruption, prejudice or bias in the Judiciary. While this could be true in some cases, but many parties/litigants really are themselves, not free of blame.

This Court aspires to be the 24 carat gold referred to in **MM BUTT –V- RENT RESTRICTION TRIBUNAL CIVIL APPLICATION NO. 6 OF 1978 (NAIROBI)** by J.A. Madan, Miller and Potter – one which is “free from doubt, bias and prejudice”.

As a result, I hereby disqualify myself from delivering the ruling and hearing any other matter in this file.

The Judge who will hear the matter will give directions as to the fate of the proceedings before me in respect of the application.

DATED AND DELIVERED AT ELDORET ON THIS 2ND JULY, 2008.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Njuguna for the 1st Defendant

Mr. Cheruiyot holding brief for Mr. J. N. Njuguna for the 3rd Defendant

Mr. Chepkwony for Mr. Omboto for the Plaintiff