

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 504 of 2005

ROSE WAKUTHII MWANGI NJUNU

(suing as Administratrix of the Estate of the Late

JULIUS W MWANGI NJUNU)..... PLAINTIFF

VERSUS

EDWARD KITHINJI1ST DEFENDANT

HOUSING FINANCE CO. OF KENYA LTD.....2ND DEFENDANT

ABDILLAHI WARSAME ALI T/A NADHIA AUCTIONEERS.....3RD DEFENDANT

RULING

The plaintiff has made two distinct but separate applications. The first application seeks the disqualification of this court on the ground that this court had rendered a previous ruling on amendment of pleadings that was not in favour of the plaintiff. The second application regards the staying of the proceedings herein pending the hearing of an appeal that is currently before the Court of Appeal. From the outset, I wish to state that the issue of a disqualification of a judicial officer is a serious issue that must be raised, ideally, by the filing of a formal application. This will enable the court consider the merits of the application, and if need be, disqualify or recuse itself before the actual hearing of the application.

The practice that is currently taking root where parties raise the issue regarding the disqualification of a judicial officer orally in court and without notice to all the parties concerned, is a practice that ought to be discouraged. As earlier stated, the issue regarding the disqualification of a judicial officer is a serious issue. It is serious because it negatively impacts in the administration of justice. A party should not be given an opportunity to shop around for a judicial officer to hear his or her case, especially where it appears that such a party has formed an opinion that a favourable decision may likely be rendered by such a judicial officer. I think it would be a travesty of justice if parties were allowed to seek disqualification of judicial officers on the basis of decisions that they had previously rendered which may not be to the liking of such litigants.

In the present case, the plaintiff has made no allegation of bias, either real or perceived, by the judge. Neither has she made any claim teaching on the impartiality of the court in hearing and determining the matters in dispute in this case. It has not been alleged that the court has had any association either with the plaintiff or the defendants. No allegation of impropriety has been made against the court. It is apparent that the basis of the plaintiff's application in seeking the disqualification of this court is not, on the face of it, that the plaintiff lacks faith in this court, but rather that the plaintiff is fearful that the court will proceed to expeditiously hear and determine the pending dispute between the plaintiff and the defendants. The sentiments expressed by Mr. Mogikoyo for the 1ST defendant that the plaintiff, in making the application, is seeking to buy time and postpone the hearing of this case is more to the point. I find no merit with the plaintiff's application which seeks the disqualification of this court. I think the application was made purposely to frustrate the hearing of this case on the scheduled hearing date.

As regard the second aspect of the plaintiff's application, I decline to grant stay of proceedings since no formal application has been made before this court. I will not make any comments regarding the other

suit which is pending before this court. This court did express its opinion regarding the said suit in its ruling delivered on 15th May 2008. It will serve no useful purpose to repeat it. In any event, this court cannot be called upon to sit on appeal against its own decision. I have said enough. The plaintiff's application lacks merit and is hereby dismissed with costs. The hearing of the case shall proceed.

DATED at NAIROBI this 24th day of SEPTEMBER, 2008.

L. KIMARU

JUDGE