

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
SUCCESSION CAUSE 527 OF 1981

IN THE MATTER OF THE ESTATE OF MBIYU KOINANGE – DECEASED

RULING

After I read my ruling on preliminary points raised, Mr. King'ara, Counsel for the interested party first made an application for leave to file an appeal against the ruling. After considering submissions from all concerned, I directed that a formal application be filed.

Thereafter, Mr. King'ara made an oral application asking me to disqualify myself on the ground of bias.

He elaborated his submissions by saying that as I have observed in my ruling that the transfer was registered in haste, I have formed a bias against his client. With all due respect to Mr. King'ara, that fact has emerged from the record of the case and not from my opinion.

He further added that I have made observation on the manner in which he has made his representation before the court and thus he does not feel comfortable that the court shall be able to surmount the issue.

Yes, I have made that observation in my ruling with full justification. Whenever, I had raised any question on the issues raised by Mr. King'ara to enable me understand the submissions made, Mr. King'ara had not been co-operative and had most of the time stated that “*court can rule against me and I shall appeal.*”

This attitude from the counsel, who is a senior member of the Bar, has to be checked and properly dealt with, which I did. If it was for any bias, I would have been careful not to observe the same and to keep it hidden. It is evident that Mr. King'ara did not like any questions to be raised from the court and expected the court to record his submissions silently without any effort to understand the issues raised.

I shall hope that this attitude from the Bar should vanish from the court and the Judges should not be subjected to hearing the matter with meekness and submissiveness.

Mr. King'ara's half-hearted apology tendered during hearing of this application on his behaviour cannot wish away his manner of representation.

In my view, and in short, none of the issues raised is sufficient to force me in law to disqualify.

However, I am on my own accord, shall not like to be subjected to an unhealthy and disrespectful proceedings. I therefore direct that the two applications dated 19th May, 2006 and 23rd May, 2006 be heard by any other Judge of this Division.

Dated and signed at Nairobi this 20th day of September, 2006.

K.H. RAWAL

JUDGE

20.9.06