



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO 430 OF 2002

RUAHA CONCRETE COMPANY LIMITED 1ST PLAINTIFF

MANJIT SINGH SETHI 2ND PLAINTIFF

PERMINDER SINGH SETHI 3RD PLAINTIFF

VERSUS

PARAMOUNT UNIVERSAL BANK LTD DEFENDANT

RULING

Counsel for the defendant filed an application by way of motion on notice under the provisions of Order L of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, for an order that I should disqualify myself from the hearing of this suit on the accusation that I am biased against the defendant and that I have made some orders herein which cannot be supported in law and which orders are consistent with bias against the defendant. It is also alleged that the defendant is apprehensive that there will be an improper interference with the cause of justice. The application is supported by the annexed affidavit of Mr Musau advocate for the defendant.

A replying affidavit sworn by the 2nd defendant was filed. I gave the two counsel for the parties an opportunity to elect to either let me decide the application on the affidavits filed, as I did not consider it necessary to hear the same and if they insisted on hearing the application, then I gave them the option of filing written submissions. Mr Musau was ready to leave the application to be determined on the affidavits but Mr King'ara said that he wanted to file submissions. Consequently the court ordered that written submissions be filed. The same have been filed together with case law and I have read through them.

All the accusations made against me are baseless. The real problem is that Mr Musau for the defendant has made it extremely difficult for this court to continue hearing this case. I have patiently tried my best to accommodate his conduct of shouting at the court and directing the court on how to record its proceedings. He is in a habit of telling the court what he wants to be recorded, as if the court does not know how to record its proceedings. I even remember one occasion when he insisted that the court records that Mr King'ara for the Plaintiff banged the telephone on him, the relevance of which I did not know and I of course did not record that as it was between the two counsel. Recording proceedings is entirely for the court to do and that is a duty I will never share with any litigant or advocate. I have refused to be intimidated by counsel for the defendant, and that is the real problem here.

Although counsel for the Plaintiff is opposed to the application, I do not see why I should continue hearing this case amidst wild and baseless allegations and accusations by counsel for the defendant. I have made orders favourable to the defendant in this case and surprisingly, counsel for the defendant does not complain on any orders made in favour of his client.

I am capable of hearing this case and determining it fairly but should the defendant lose, his counsel will believe that I was biased. If the defendant wins the case, I do not know if he would be brave enough to apologize to the court.

With all these allegations of bias against me and a more serious allegation that the defendant is apprehensive that there will be an improper interference with the with the cause of justice, whatever that means, I do not find it right to continue hearing this case, and although those allegations are false and baseless, they are such that the interests of justice demand that the parties be heard by someone else. No doubt counsel for the defendant knows that if I have made any orders which the applicant thinks are not supported by law, the best cause of action is to appeal and not ask for disqualification.

I now disqualify myself from the hearing and determination of this case. The same shall be heard by any other judge at the station. The costs of the application shall be in the main suit.

This ruling shall also apply to HCCC No 63 of 2003.

Delivered at Nairobi this 9th day of May, 2003

S. C. ONDEYO

JUDGE

9.5.2003