



**Rono (Suing as the Executrix of the Estate of the Late David Rono) v
Almer Farm Limited (Environment and Land Miscellaneous Application
E015 of 2024) [2025] KEELC 4403 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4403 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E015 OF 2024
CK NZILI, J
JUNE 10, 2025**

BETWEEN

**BETTY RONO APPLICANT
SUING AS THE EXECUTRIX OF THE ESTATE OF THE LATE DAVID RONO**

AND

ALMER FARM LIMITED RESPONDENT

RULING

1. Before the court is an application for recusal dated 01/04/2025. The law relating to recusal is governed by Rule 5 of the Judicial Service Code of Conduct & Ethics Regulations 2020. The grounds under which a judge may recuse himself are:
 - (a) Personal bias concerning a party or advocate.
 - (b) Where the judicial officer had acted as an advocate for a party in the suit.
 - (c) Close relation with a party before court.
 - (d) If the Judge or spouse has a financial interest in the case.
2. The principles governing recusal were laid out in Republic v Jackson Mwalulu & Others Civil Application No. 310 of 2004. The court observed that “when courts are faced with such proceedings for disqualification of a judge, it is necessary to consider whether there is a reasonable ground for assuming the possibility of bias and whether it is likely to produce in the mind of the public at large, a reasonable doubt about the fairness of the administration of justice. The test is objective and the facts constituting bias must be specifically alleged and established”.



3. In *P.K. Tunoi & Another v Judicial Service Commission & Another* [2016] eKLR, the court observed that the test as propounded in *Porter v Magili* [2002] 1ALLER 465 is whether a fair-minded and informed observer having considered the facts would conclude a real possibility that the tribunal was biased would exist. Regulation 21 Part 11 of the Code of Conduct provides that a judge may recuse himself in any proceedings where his impartiality might be reasonably questioned if:
 - a. He is a party to the proceedings.
 - b. Was or is a material witness in the matter.
 - c. Has personal knowledge of disputed evidentiary facts.
 - d. Has actual bias or prejudice concerning a party.
 - e. Has personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter.
 - f. Had previously acted as counsel for a party in the same matter.
 - g. Is precluded from hearing the matter on account of some other sufficient reasons.
 - h. A member of his family has economic or other interests in the outcome of the matter in question.
4. Rule 9(1) of the Code provides that a judge shall at all times carry out the duties of the office with impartiality and objectivity, in accordance with Articles 10, 27, 73(2)(b), and 232 of *the Constitution* and shall not practice, favoritism, nepotism, tribalism, cronyism, relitigating and cultural bias or engage in corruption or unethical practices.
5. The applicant bases this application for recusal on an alleged complaint lodged with the Judicial Service Commission regarding the manner in which the court heard and determined a preliminary objection dated 13/1/2024, whose ruling was delivered on 5/2/2025. Following the ruling, the applicant filed an application dated 7/2/2025 seeking for the review of the ruling and orders on the basis that the ruling was with respect only to the preliminary objection and not the main motion, hence there was an error apparent on the face of the record.
6. The application was supported by a supporting affidavit and supplementary affidavit sworn by Joseph Yego on 7/2/2025 and 5/3/2025.
7. The application was certified urgent on 11/2/2025 and placed for hearing on 27/2/2025. Orders of maintenance of the status quo were also issued to forestall any adverse orders. Eventually, it was heard in the open court on 6/3/2025 and a ruling issued for 14/5/2025.
8. The applicant on the interpartes hearing did not seek for the recusal of the court on account of a perceived bias or lack of impartiality on the part of the court. The court also issued stay orders of the impugned ruling and the orders.
9. In *Jasbir Singh Rai & 7 Others v Tarlochan Singh Rai & Others* [2013] eKLR, the definition of recusal in Black's Law Dictionary 8th Edition [2004] page 1203 is the removal of oneself as a judge because of a conflict of interest. The court observed that circumstances of recusal include perception of fairness, of conviction of moral authority to hear the matter, the objective view being that justice between the parties be uncompromised, due process of the law be realized and be seen to have had its role, and the profile of the rule of law in the matter in question be seen to have remained uncompromised.



10. Article 50 of *the Constitution* relates to a fair hearing before an independent and impartial court or tribunal. One of the constitutional duties of a judge is the dispensation of justice through the expeditious determination of cases. See *Stanbic Bank (K) Ltd v Bank of South Sudan & Another* (Civil Appl. No E592 of 2024 [2025] KECA 495 [KLR] (21st March 2025) (Ruling).
11. Parties and their advocates have a duty under Sections 1A, 1B of the Civil Produce Act and Article 159 of *the Constitution* to statutorily and constitutionally assist the court to expeditiously deliver justice, in a timely, efficient, and cost-effective manner. In the discharge of these constitutional obligations, a judge has a duty to sit, hear, and determine matters falling under his jurisdiction or which have been assigned to him.
12. The application for recusal was filed after the parties were heard, and made oral submissions on the day that the application for review was listed for hearing. The nature of the application under Section 80 of the *Civil Procedure Act* as read together with Order 45 of the Civil Procedure Rules is that the judge who heard and determined the ruling and issued the order if still available must determine the issue.
13. The application seeking recusal is not also seeking to arrest the ruling due for delivery. The court notes that the applicant is a limited liability company. The deponent of the supporting affidavits does not state in what capacity he deposes the affidavit and whether he has been authorized through a board resolution to swear the affidavit and represent the applicant.
14. Other than relying on the advocate's advice, he does not state who has authorized him from the company and states the alleged reasonable apprehension of bias in the mind of the company and any fair-minded observer. How he is seized of full knowledge of the material facts and fair-mindedness is unclear. He does not say that during the hearing of the application he formed an opinion of open bias and partiality on the part of the court such that he fears the ruling would be unfair.
15. In *Republic v Njoka & Another* EL JR E001 of 2022[2025] KEELC 838 [KLR] (20th February 2025) (Ruling). In *Attorney General & Others v Anyang' Nyong' & Others* EA Court of Justice Appl. No. 5 of 2006, it was observed that judicial impartiality is the bedrock of every civilized and democratic judicial system and the system requires a judge to adjudicate disputes with impartiality, and without bias in favour of or against any party in the dispute. It is also the law that a party aggrieved by a decision has a right to apply for review or appeal to a higher court. Through the two avenues, the court or a higher court has an opportunity to relook at the ruling or order, based on the guiding law and precedents and agree or disagree with the applicant's view that the decision was arrived at without strict adherence to the established principles in order to preserve confidence in the judicial process.
16. Courts have held that the mere fact that a court has made previous unfavourable orders against a party is not a ground for recusal. In *Charity Muthoni Gitabi v Joseph Gichangi Gitahi* [2017] eKLR and *K.H. Rawal v JSC & Others* [2016] eKLR, the court said "An application for recusal of a judge is a necessary evil. On the one hand, it calls into question the fairness of a judge who has sworn to do justice impartially, in accordance with *the constitution*, without any fear, favour, bias, affection, ill will, prejudice, political, religious, or other influence. In such an application, the impartiality of the judge is called into question and his independence is impugned. On the other hand, the oath of office notwithstanding, the judge is all too human, and above all, *the Constitution* does guarantee all litigants the right to a fair hearing by an independent and impartial judge. When a reasonable basis for requesting a judge to recuse himself or herself exists, the application has to be made, unpleasant as it may be. That is the lesser of the two evils. The alternative is to risk violating a cardinal guarantee of *the Constitution* namely; the right to a fair trial, upon which the entire judicial edifice is built. Allowing a judge who is reasonably suspected of bias to sit in a matter would be in violation of the constitutional guarantee of a trial by an independent and impartial court. In determining the existence or otherwise



of bias, the test to be applied is that of a fair-minded and informed observer who will adopt a balanced approach and will neither be complacent nor be unduly sensitive or suspicious in determining whether or not there is a real possibility of bias”.

17. As indicated above, and looking at the events leading to this application, no compelling reasons were placed before the court not to sit on 6/3/2025. The doctrine of the duty to sit was discussed in *Gladys Boss Shollei v JSC* [2018] eKLR. The court held that:

“...every judge has a duty to sit, in a matter which he should sit. So that recusal should not be used to cripple a judge from sitting to hear a matter. This duty is buttressed by the fact that “every judge takes an oath to serve impartially and to protect, administer and defend *the constitution*”. It is a doctrine that recognizes that having taken the oath of office, a judge is capable of rising above any prejudice, save for those rare cases in which he has to recuse himself. The doctrine also safeguards the parties’ right to have their cases heard and determined before a court of law”.

18. The determination of whether to recuse or not is a judicial discretion to be exercised judiciously; taking into account the duty to sit, in a case where one is not obliged to recuse himself.
19. It is not lost that when the application came up on for hearing on 6/3/2025, Mr. Obuya learned counsel for the applicant conducted himself inappropriately, to an extent that the court had had to direct him to address himself on the application and the issues raised therein, and to conduct himself as an officer of the court who must assist the court to achieve its overriding objectives under the law. The learned counsel ably represented his client’s case and sought interim orders which the court granted pending the ruling.
20. A court of law should not succumb to threats and intimidation by parties or be scared of threats to lodge a complaint with the employer if they do not issue favourable orders, rulings, or judgments. Fear is one of the issues one taking an oath of office as a judge is warned to guard against.
21. In *Dobbs v Tridios Bank NV* [2005] EWCA 468, the court observed that if judges were to recuse themselves whenever a litigant, be it represented or in person criticized them, we would reach a position in which litigants would select by simply criticizing all the judges that they did not want to hear their cases, by producing a situation for a judge to feel obliged to recuse himself, whether the criticism is justified or not.
22. Actual or real likelihood of bias is the test that the applicant must meet. It is not enough to allege a complaint has been lodged with the employer. The applicant has a right to pursue that path to its logical conclusion. As indicated in *Jasbir Singh Rai & Others v Tarlochan Singh Rai & Others* [2013] eKLR, the reasonable apprehension seen in the eyes of a reasonable man and concluded by stating the basis of the apprehension. The deponent to the application as indicated above has not stated under whose authority he swears the affidavit and has lodged the complaint on behalf of the limited liability company.
23. The application before the court at the moment is for review of the ruling delivered on 5/2/2025. The court is yet to determine the application. The onus is on the applicant to establish the basis of the apprehension of bias in a reasonable, objective, and informed perspective, based on the correct facts that the judge will not bring an impartial mind to bear on the adjudication of the case, since his mind will not be open to persuasion by the evidence and submissions of counsel. For instance, and at the moment, other than the preliminary objection, and the ruling, the applicant is yet to seek and be denied review and leave to put in a replying to the main motion, such that there is a reasonable apprehension



of bias and partiality. See *President of Republic of South African v South African Rugby Football Union* [1999] 45A 147.

24. In *Re JRL v CJL* [1986] 161 CLR 342, the court observed that judges have a duty to sit and should not accede too readily to suggestions of appearance of bias or encourage parties to believe that by seeking a disqualification, they will have their case tried by someone thought to be more likely to decide the case in their favour. In *Uhuru Highway Development Ltd v CBK & Others* Civil Appeal No. 36 of 1996 and *Musiara Ltd v Ntimama* [2005] 1 EA 317 (CAK), the court observed that one must be a fair-minded person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. It is not an unduly sensitive or suspicious person. In *Helow v Home Secretary* [2008] 1 WLR 2416; [2009] 2 All ER 103 the court observed that the real possibility of test ensures that there is a measure of detail and an informed one.
25. Having considered the application in the backdrop of the cited case law and the distilled principles, I find no basis to recuse myself. I shall proceed forthwith to dismiss the motion before me.
26. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 10TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Mr. Okoth for the intended interested parties

Mr. Obuya for the respondent present

Mr. Gemenet for the applicant/respondent present

HON. C.K. NZILI

JUDGE, ELC KITALE.

