Omar & another v Kulei & 2 others (Environment and Land Case E033 of 2023) [2025] KEELC 5164 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5164 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

ENVIRONMENT AND LAND CASE E033 OF 2023

A OMBWAYO, J

JULY 10, 2025

BETWEEN

OMAR MOHAMED OMAR ..... 1ST PLAINTIFF

PATRICK MAINA MAKANDA ..... 2ND PLAINTIFF

AND

JOSHUA KULEI ..... 1ST DEFENDANT

CHIEF LAND REGISTRAR & ANOTHER & ANOTHER & ANOTHER & ANOTHER & ANOTHER & ANOTHER & ANOTHER & ANOTHER ..... 2ND DEFENDANT

RULING

Introduction

1. Before this court are two applications dated 12th March 2025 supported by two affidavits sworn on the 12th March 2025 by the applicant herein and a letter by Juma Okumu to the Deputy Registrar Envionment and Land Court Nakuru dated 30th April 2025.

2. Mr Juma Okumu prays that he be enjoined in Nakuru *ELC E033 of 2023* as the 6th defendant and that I recuse myself and place the file before another judge for hearing and determination.

3. The parcel in dispute is public land, namely, Land Reference Number 13287/99 that is purportedly registered in the names of the Plaintiffs and the 4th Defendant.

4. The Applicant claims to be a Kenyan interested in good governance, transparency and accountability who has established that the Plaintiffs and the 4th Defendant illegally acquired interest over the disputed parcel from a public entity, the 5th Defendant.

5. The applicant contends that whilst the 5th Defendant is aware that the disputed parcel is a public land that was illegally acquired by the above stated purported owners it has reneged on its obligation to protect public property through filing of a counterclaim to revoke, cancel and reinstate ownership of the disputed parcel to the Government. That applicant, who has just learnt of these proceedings is desirous of filing a counterclaim in these proceedings and adducing evidence that would protect public property and reinstate ownership of the disputed parcel to Government.

6. The applicant urges that in pursuit of public interest, he has filed related proceedings in Nakuru ELC Petition Number EOII of 2024 *Juma Okumu v Agricultural Development Corporations & others* against the 1st and 4th Defendants ('the petition") seeking cancellation of illegal titles over a number of public properties including LR No. 13287/1, 2 and 88 that were acquired illegally and through clandestine means as is the situation with the subject matter of this litigation. The petition is pending before Honorable Mr. Justice Anthony Oteng'o Ombwayo who delivered a very outrageous ruling on 6th February, 2025 denying the Applicant an opportunity to cross examine the 1st and 4th

7. Defendants with a view to shielding an illegitimate acquisition of public property contrary to the decision of the Supreme Court in *Fanikiwa Limited & 3 others v Sirikwa Squatters croup & 17 others* (Petition 32 9E036), 35 (E038) 7 36 (E039) of 2022 (Consolidated) [20231 KLR that set aside his own judgment as upheld by the Court of Appeal and settled the law that proceedings for cancellation of titles must proceed through *viva voce* evidence.

8. He further urges that Article 163 (7) of the *Constitution* provides that all courts, other than the Supreme Court are bound by the decision of the Supreme Court. The ruling by Ombwayo J declining the hearing of the petition for cancellation of titles in the above cited matter despite the ratio in the Supreme Court decision *Fanikiwa Limited & 3 others v Sirikwa Squatters Group & 17 others* (Petition 32 9E036), 35 (E038) 7 36 (E039) of 2022 (Consolidated) [2023] KLR demonstrates outright violation of the *Constitution*, incompetence and gross misbehavior.

9. According to the applicants, there is a reasonable suspicion that a fair trial in this matter of great public interest that touches on public land shall not result going by the ruling of the Honorable Judge in Nakuru ELC Petition Number EOII of 2024 - *Juma Okumu v Agricultural Development Corporations & others* that not only disregarded a decision of the Supreme Court that is binding on him but further declined joinder of a critical constitutional commission. The joinder of the Applicant is necessary and shall afford the Court an opportunity to protect public interest given the failure by the 5th Defendant to file a counterclaim. The judge should disqualify himself from this matter for due process to be realized and be seen to have had its role. The conduct of the judge in the constitutional petition gives rise to the suspicion that he is not going to be impartial in the hearing and determination of a dispute that touches on illegal acquisition of public land. Lastly, that the disqualification of Ombwayo J is of fundamental importance for justice to be done and be seen to have been done in as much the Applicant is seeking to redress against him before the judicial service for this and other infractions relating to the conduct of this matter and the proceedings in Nakuru ELC Petition Number EOII of 2024 *Juma Okumu v Agricultural Development Corporations & others*. The circumstances of this case are such that the Court should in the interest of justice recuse itself without insisting on the hearing of the present application. It is fair, just and equitable that Ombwayo disqualifies himself from handling this matter to enable an impartial Court hear and determine this matter. The applicant further alleges that this has received a lot of money from the litigants and therefore shall be impartial in the matter before it which is of great public interest.

Response by 1st and 4th Defendant

10. The 1st and 4th respondents urge that the application is a blatant abuse of court process, brought by a busy body that has neither a stake in the suit nor whose presence shall be of any assistance in the determination of this suit by this Honorable Court.

11. Further that the application is an appeal, as admitted by the Applicant's counsel, against this Honorable Court's decision in ELC Petition No. EOII of 2024*Juma Okumu v Agricultural Development Corporation and Others* delivered on 6th February 2025, couched as an Application to enjoin an intended defendant. Particularly, the applicant raises issue with the fact that this Honorable Court in finding his application to dispense with the Petition through *viva voce* evidence and to enjoin the Ethics and Anti-Corruption Commission unmerited. He proceeds to state that it is for the very reason of this court dismissing his Application that he now seeks to be enjoined in this suit, at the tail end.

12. The two argue that the application calls for the court to take a second look at the proceedings in ELC *Petition No. EOM of 2024* and its Ruling to determine whether its decision was proper or not. This in itself will amount to the court sitting on an Appeal of its own decision and that in Kenyan jurisprudence, a court cannot be called to re-evaluate its own decision with the intended effect of it finding that the same was erroneous, much less in a suit that has no bearing to the one in which the decision was made. This Honorable Court must reject the Applicants invitation and dismiss his

Application with costs.

13. The Applicant also seeks orders that the Honorable Judge recuse himself, again for reasons that the Ruling dated 6th February 2025 allegedly revealed a bias on the part of the Judge against the entire public, and accused the Judge not only of incompetence but also gross misbehavior.

14. According to the two respondents, bias has been defined as an inclination or prejudice for or against one thing or person, and that the test to be applied in interrogating whether or not it is present must be that of a reasonable person and that the Supreme Court has held that where no cogent evidence is placed before the court to prove bias, it cannot be expected that an application seeking its disqualification would stand. Moreover, an apprehension that a party may not get justice is a normal apprehension that any party to a proceeding has, so that said apprehension cannot form a basis, without factual proof, for recusal of a judge. The sole reason that the applicant seeks disqualification of the Judge is that the Judge delivered a "very outrageous" Ruling in ELC *Petition No. EOII of 2024* in denying him an opportunity to cross examine the 1st and 4th Defendants and that it is instructive to note that the Applicants Application before the Judge in ELC *Petition No. EMI of 2024* sought orders that the Petition proceed by way of *viva voce* evidence, not that the Applicant be allowed to cross examine the 1st and4th Defendants, which are two very different issues. That the Applicant's only issue is that he feels aggrieved by this Court's Ruling, not that there is any proof of bias exhibited by the judge during hearing of the suit. The Applicant has not annexed any proof of bias on the part of the judge, nor adduced any facts that point to anything other than that he is aggrieved with the Ruling delivered on 6th February 2025.

15. That in any event, the present suit is at the final stage. Parties conducted hearing and neither of them raised issue as to the integrity of the Judge. It cannot be said that a third-party busy body has knowledge of the court's conduct more than the parties that took part in the hearing. To allow the Application would amount to the court sanctioning the misuse of precious judicial resources, and indeed the wastage of the parties' resources, in conducting a fresh hearing. The same does not the objective test to be applied in recusal Applications and ought to be dismissed with costs. The Applicant also seeks

to be joined in this suit as a Defendant, to file a Counterclaim, on account of being a necessary party. This, to use the Applicant's own words, is a "very outrageous" request.

16. That Order 1 Rule 10(2) of the *Civil Procedure Rules*, mandates the Court, either on its own motion or on the Application of either party to the suit, order that a party be joined either as a Plaintiff or Defendant, on the condition that such person's presence is necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

17. According to the respondents, where a party is to be joined on grounds that they are necessary, it must be shown that the orders the Plaintiff seeks would legally affect the person and that it is desirable, to avoid a multiplicity of suits, to have said person participate in the proceedings.

18. The Applicant is not a necessary party and shall not add any value if enjoined in a suit where all parties have led evidence and documents have been tendered. In any case, the suit involves a dispute over the ownership of private property, not public land, the Applicant, as a member of the public, does not have any personal interest in its determination that would warrant a fresh hearing of the same.

19. The powers given to the court under the Order 1 Rule 10(2) are discretionary but such discretion must be exercised on a case by case basis and within the confines of what is set out in the order. Where no prejudice shall be suffered by an Applicant who has shall not be adversely affected by orders issued by the court, the court's only recourse is to dismiss the application to prevent a miscarriage of justice.

Reply by the 5th Respondent

20. The 5th defendant through the affidavit of Nicholas Ayugi in reply states that the application for recusal is wholly unfounded, legally untenable and completely misguided as the judge is a judicial officer of highest integrity impartiality and competence, duly appointed and mandated to preside over matters before this honorable court. The mere dissatisfaction of the proposed 6th defendant with prior ruling delivered in a separate and unrelated matter does not form a sufficient, reasonable or legal basis to seek his recusal in this matter. That judicial independence and impartiality are the cornerstone of the administration of justice and baseless attempts to have a judge recuse himself without any valid ground amounts to an unjustified attack on the judiciary and the rule of law. That if the proposed 6th defendant is dissatisfied with the ruling in Nakuru ELC *Petition Number E011 of 2024*, the proper legal avenue available to him is to seek a review, file an application for judicial review or lodge an appeal to the court of appeal.

21. By consent of the parties, it was agreed that the two suits be consolidated only for purposes of the hearing of the applications for recusal. The applications for joinder were to be heard later depending on the outcome of this applications for recusal. The applicants pray that I do recuse myself from the hearing of this matter and that the matter be placed before another judge.

Rival Submissions

22. Mr Keaton learned counsel for the applicant in a nutshell submits that this court is conflicted and cannot proceed with the hearing impartially. He relies on the letter by Juma Okumu who is the petitioner in *Petition no E011 of 2024* wherein it is alleged that this court received money from an agent of Juma Okumu known as Kariuki Stanley and therefore should transfer the files to the other Environment and Land Court judge in Nakuru. Counsel argues that one of the litigants has moved to the Judicial Service Commission in *petition no 44 of 2025* for the removal of the judge and therefore the court should not continue with the matter.

23. Mr Havi Senior Counsel on behalf of the applicant in Nakuru Environment and Land Court *Number E033 Of 2023* argues that this is the most uncomfortable applications he has to make because a judge must ensure that his conduct is beyond reproach. That a court should not be associated with claims of benefitting from a case. Counsel argues that they do not want a judgment that will take this court to the Judicial Service Commission.

24. The gravamen of Senior Counsel Professor Ojienda's submissions is that the court should not recuse itself when there exists no evidence. Senior counsel submits that the tactic of scare mongering should not be allowed. He denies having been in the court's chambers of the judge.

25. M/S Kollum Counsel for the 5th defendant submits that the dissatisfaction with the ruling of the court should not be a ground for recusal of the judge who made the decision. The allegations by the applicant are purely speculative and mere suspicion cannot be grounds for recusal. The court should protect the independence of the judiciary.

26. Mr Osiemo Counsel for the 4th respondent argues that the application is an appeal disguised as an application for recusal. That there is no evidence that parties oor the litigants have compromised the judge.

Analysis and Determination

27. I have considered the applications and the evidence on record and the written submissions of the parties in the two suits and on the evidence before court.

28. The argument by the applicant that all courts, other than the Supreme Court are bound by the decision of the Supreme Court is valid but can only be made in the court of appeal which has the power to review my decision on appeal but not before me because I have no powers to review my decision based on merit. The ruling by this court declining the hearing of the petition for cancellation of titles *viva voce* cannot be a ground for recusal of the judge on grounds of bias or prejudice.

29. The Supreme Court of Kenya restated the law on recusal of a judge on the ground of bias in *Robert Tom Martins Kibisu v Republic* (*supra*), as follows:

> " 59. We agree that bias is prima facie a factor that may lead to a judge recusing himself from a matter. Such an action is meant to safeguard the sanctity of the judicial process in tandem with the principle of natural justice that no man should be a judge in his own case and that one should be tried and/or have his dispute determined by an impartial tribunal. This is what is provided for in Article 50(1) of the *Constitution* thus:
>
> > " Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body".
>
> 60. What is bias? The *Oxford English Dictionary* defines bias thus: "as an inclination or prejudice for or against one thing or person". The *Blacks' Law Dictionary* 9th edition defines the word bias as "Inclination; prejudice; predilection". Hence, as one of the fundamental tenets of the Rule of Law is impartiality of the judiciary, in circumstances where bias is alleged and proved, then the pragmatic practice is that the particular judge or magistrate will as a

matter of course recuse/remove himself from the hearing and determination of the matter.

61. From the onset, it is worth noting that when interrogating a case of bias, the test is that of a reasonable person and not the mindset of the judge. That is why in *Tumaini v. Republic* [1972] EA LR 441 Mwakasendo J held that "in considering the possibility of bias, it is not the mind of the Judge which is considered but the impression given to reasonable people..."

30. I do find that *petition Number E011 of 2024* was filed on 18th September 2024 by Juma Okumu whereas the alleged mpesa transactions were made on 26th June 2023 more than one year before the petition was filed by Juma Okumu and therefore it does not make any sense that this court has been soliciting bribes from litigants when the alleged transaction were made before the cases were filed. There is no evidence of the relationship between those mentioned in the transactions and the litigants. There is no scintilla of evidence that this court has received any money from the litigants in this matter and indeed this court has not received any money from the litigants.

31. Moreover the relationship between Mr Kariuki a person not known to me and Juma Okumu has not been properly demonstrated. The mpessa transactions are meant to scare the court into recusing itself.

32. A lot of ink and paper has been used in this application but basically the accusation against the judge that forms the basis of the application for recusal is that the judge has been soliciting for bribes through his relatives and that the judge has been meeting litigants and their lawyers and that one Joshua Kulei has given the judge Ksh 30, 000,000 with a balance of Ksh 20,000,000 to be paid at the conclusion of the case.

33. The court agrees with the parties that the right to a fair hearing before an impartial tribunal is a cornerstone of the Kenyan Judicial system. That Article 500) of the *Constitution* of Kenya. 2010, guarantees every person the right to have any dispute resolved by an independent and impartial tribunal. This right is further reinforced by the *Judicial Service (Code of Conduct and Ethics) Regulations*, 2020, which provide guidelines on the circumstances under which a judge should recuse themselves, Rule 21(1) of the *Judicial Service (Code of Conduct and Ethics) Regulations*, 2020, states that a judge may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judge is a party to proceedings, was or is a material witness in the matter under controversy or has persona/ knowledge of disputed evidentiary facts concerning the proceedings, moreover that he ;

1. has actual/ bias or prejudice concerning a party;
2. has a personal/ interest or is in a relationship with a person who has a personal/ interest in the outcome of the matter.
3. had previously acted as a counsel for a party in the same matter;
4. is precluded from hearing the matter on account of any other sufficient reason; or
5. a member of the judge's family has economic or other interest in the outcome of the matter in question.

34. This court notes that the allegations made by the applicant do not fall within the ambit of these conditions but are conditions of removal of the judge.

35. The court observes that that the *Privy Council in Lesage v The Mauritius Commercial Bank Ltd* (2012) UKPC 41 has elaborated on that test at paragraphs 47 and 49 of its judgment as follows; This

formulation has been followed by the Board in, for instance, *Attorney General of the Cayman Islands v Tibbetts* (2010) UKPC 8, para 3, *Prince Jefri Bolkiak v The State of Brunei: Darussalam* (20071 UKPC 62. para 15and *Belize Bank Ltd v The Attorney General of Belize* [20111 UKPC 36. paras 34 and 35. The notional observer must be presumed to have two characteristics: full knowledge of the material facts and fair-mindedness. One should recall Lord Steyn's approval in *Lawal v Northern Spirit Ltd* [20031 UKHL 35. 2004 1 All ER 187 of Kirby J's comment in *Johnson v Johnson* (2000 201 CLR 488,509 that "a reasonable member of the public is neither complacent nor unduly sensitive or suspicious.

36. On the question of the state of knowledge that the fair-minded observer should be presumed to have, Lord Hope said in *Gillies v Secretary of State for Work and pensions* (Scotland) [20061 UKHL 2, [20061 1 All ER 731, para 17:

> " The fair-minded and informed observer can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it Is the appearance that these facts give rise to that matters, not what is in the mind of the particular judge or tribunal member who is under scrutiny."

37. The East African Court of Justice has stated in application no. 5 of 2006 *Attorney General of the Republic of Kenya v Anyang Nyong'o and others* that judicial impartiality is the bedrock of every civilized and democratic judicial system and has incidents whose perception is that in this suit that impartiality is not there. The system requires a judge to adjudicate disputes before him impartially, without bias in favour of or against any party to the dispute. There are two modes in which the Court guards and enforce impartiality. First, a judge, either on his own motion or on application by a party, will recuse himself from hearing a cause before him, if there are circumstances that are likely to undermine, or that appear to be likely to undermine his impartiality in determining the cause, Secondly, through appellate or review jurisdiction, a court will nullify a judicial decision if it is established that the decision was arrived at without strict adherence to the established principle that ensure judicial impartiality. The first is that a man ought not to be a judge in his own cause. The second, which additionally is intended to preserve public confidence in the judicial process, is that justice must not only be done but must be seen to be done.

38. Legal principles governing recusal of a Judicial Officer are that the importance of judicial impartiality is foundational to the administration of justice, as enshrined in Article 50 (1) of the *Constitution* of Kenya, 2010 which guarantees every individual the right to a fair hearing before an impartial tribunal. Further, *The Judicial Service (Code of Conduct and Ethics) Regulation*, 2020 establishes guidelines that govern the conduct of judicial officers and the circumstances under which they may recuse themselves from handling a matter before them.

39. There are endless judicial precedents in this country that give the test for recusal such that an applicant seeking recusal' of a judge on allegation of bias or partiality must demonstrate, with factual proof, reasonable apprehension of bias as would be perceived by reasonable right- minded persons applying themselves to the question, and sized of all relevant information. This test has clearly not been met in the instant case as the allegations that this court has received money from the litigants herein has not been proved.

40. In the case of *Philip K. Tunoi &Anor v Judicial Service Commission & Anor* [20161 eKLR the Court of Appeal reiterated the position that was held in the case of *Peter v Magill* (200211 Al ER 465 ER 465/ that the question is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased. The court finds that in the instant case, there are absolutely no facts of circumstances bespeaking of any bias or partiality of the court herein.

41. The court is guided by the case of *Charity Muthoni Gitabi v Joseph Gichangi Gitabi* (2017)eKLR, and *Kalpana H. Rawal v Judicial Service Commission and 2 others* (2016)eKLR, where the Court of Appeal held;

> " An application for recusal of a Judge is a necessary evil. On the one hand, it calls into a question the fairness of a judge who has sworn to do justice impartially, the accordance with the *Constitution* without any fear, favour bias, affection, ill will, prejudice, political, religion or other influence. In such applications, the impartially 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 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 2 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 independent and impartial court ....."

42. This court finds that the applicants do not demonstrate any discernable ground that call for the judge to recuse himself.

43. This court is bound by principle 5.2 of the *Bangalore Principles* to which Kenya is a signatory underpins the importance of impartiality of a Judge in the course of conducting proceedings. Regulation 9 of the *Judiciary Code of Conduct* aforesaid also emphasizes the importance of impartiality of a Judge. Regulation 9(1) provides:-

> " A Judge shall, at all times, carry out the duties of the office with impartiality and objectively in accordance with Articles 10, 27, 73(2) (b) and 232 of the *Constitution* and shall not practice favoritism, nepotism, tribalism, cronyism, religious and cultural bias, or engage in corrupt or unethical practices."

44. This court is also bound by the doctrine of the duty to sit which flows from the *Constitution* and Common law. It has been held that all judicial officers take an oath to serve and administer justice, it is implied that there is a duty to sit imposed upon them by the value and the principle of the rule of law. Judicial officers should thus resist the temptation to recuse themselves simply because it would be more convenient to do so.

45. The doctrine requires judicial officers not to recuse themselves unless there are compelling reasons not to sit. The doctrine was discussed by the Supreme Court (Ibrahim, SCJ) in his Lordship's concurring opinion in *Gladys Boss Shollei v Judicial Service Commission* (2018) eKLR stating that the doctrine safeguards a party's right to be heard and determined before a Court of law:

> " Tied to the Constitutional argument above, is the doctrine of the duty of a Judge to sit. Though not profound in our jurisdiction, 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 to sit is buttressed by the fact that every Judge takes an oath of office "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

prejudices, save for those rare cases when has to recuse himself. The doctrine also safeguards the parties' right to have their cases heard and determined before a Court of law."

46. Recusal is a matter of judicial discretion and judicial officers should recuse themselves whenever they feel they may not appear to be fair or where they feel their impartiality would be called into question. Regulation 21 of the *Judicial Service Regulations*, behoves a judicial officer to disqualify oneself in proceedings where his or her impartiality might reasonably be called into question.

47. Judicial officers must therefore take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. They should therefore not readily succumb to bullying or intimidation by a party to recuse themselves.

48. In the case of *Prayosha Ventures Limited v NIC Bank Ltd & Others* (2020) eKLR the Court (Omondi, J – as she then was) dismissed a recusal application and found thus:-

> " It is not lost to me that the issue of recusal was spontaneously announced once I declined to extend the orders, and there should be no pretence by Mr. Lagat that the Interested Party instructed him to apply for my recusal... I have no lien over the matter, and would be more than willing to have this matter taken over by another judicial officer, except that the manner in which the recusal is sought reeks of mala fides clothed with sharp practice, outright bullying and intimidation. That where a litigant does not call the tune and pay the piper, then the bias flag is waved all over. Indeed, for good measure, Dr Kiprono reminded this Court that his client would be considering presenting a complaint to the Judicial Service Commission over my conduct in this matter. If that was not intended to scare the daylights out of me, then I do not know why the name of my employer was being invoked at that point."

49. Similarly, in *Dobbs v Tridios Bank* NV (2005) EWCA 468 the Court cautioned itself as follows with respect to the antics of a certain Mr. Dobbs:

> " ... But it is important for a Judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If Judges were to recuse themselves whenever a litigant – whether it be a represented litigant or a litigant in person – criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select Judges to hear their cases simply by criticizing all the Judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a Judge felt obliged to recuse himself simply because he had been criticized – whether that criticism was justified or not.
>
> That would apply, not only to the individual Judge, but to all Judges in this court; if the criticism is indeed that there is no Judge of this court who can give Mr. Dobbs a fair hearing because he is criticizing the system generally. Mr. Dobbs' appeal could never be heard."

Conclusion

50. It has been held by the courts that Judicial recusal is a fundamental principle that upholds the integrity and impartiality of the justice system. It ensures that judicial officers presiding over cases have no conflicts of interest and can deliver fair and unbiased decisions. It is essential for judicial officers to exercise their discretion judiciously when considering recusal, balancing the principles of fairness, independence, and the efficient administration of justice. Ultimately, the goal is to maintain the integrity of the judicial system and safeguard the fundamental right to a fair and impartial trial for

all parties involved. The judge should not recuse himself without proper grounds for the same and not because the issue of recusal has been raised by a party because to do so will be encouraging forum shopping.

51. The court has not discerned any evidence of actual bias or impartiality in the supporting affidavits. Moreover, there are no sufficient grounds to require me to recuse myself from hearing the matters which are pending judgment. This court should guard against being boxed into a corner of fear by an applicant who has no basis in her application for recusal but merely wants another judge to hear the case which is pending judgment. The applicants have not demonstrated to this court the alleged breach of integrity and therefore the applications have no basis and are dismissed accordingly.

HON. JUSTICE ANTONY O. OMBWAYO

NAKURU ENVIRONMENT AND LAND COURT

2025-07-10