



**Kenya Copyrights Board v Kenya Association of Music Producers & another;
Music copyright Society of Kenya (MSCSK) (Interested Party) (Civil Appeal
E1035 of 2024) [2025] KEHC 4779 (KLR) (Civ) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4779 (KLR)

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

CIVIL

CIVIL APPEAL E1035 OF 2024

TW CHERERE, J

MARCH 20, 2025

BETWEEN

KENYA COPYRIGHTS BOARD APPELLANT

AND

KENYA ASSOCIATION OF MUSIC PRODUCERS 1ST RESPONDENT

PERFORMING AND AUDIO-VISUAL RIGHTS SOCIETY OF KENYA

(PAVRISK 2ND RESPONDENT

AND

MUSIC COPYRIGHT SOCIETY OF KENYA (MSCSK) INTERESTED PARTY

RULING

1. Mr. Okubasu, learned counsel for the Interested Party, Music Copyright Society of Kenya (MSCSK), has made an oral application for my recusal from handling this matter on the grounds that I have previously adjudicated cases involving some of the parties. The cited cases are:
 - (a) Laban Toto Juma & 4 others v Kenya Copyright Board & 9 others [2018] KEHC 5729 (KLR)
This court declared that the issuance of a license on 27th March 2017 by the Kenya Copyright Board (KECOBO) to Music Publishers Association of Kenya (MPAKE) violated Section 5 of the Fair Administrative Actions Act and Article 47(1) of *the Constitution* and was, therefore, null and void.
 - b. Kisumu Bar Owners Association & another v Music Copyright Society of Kenya & 2 others [2017] KEHC 3647 (KLR)



The court issued interim orders restraining the respondent, whether by itself, its agents, or servants, from demanding and collecting royalties for the exploitation of performing and reproduction rights of authors, composers, publishers, and arrangers of copyrighted musical works from users, pending the hearing and determination of the application.

- (c) Petition No. 15 of 2017 (not available in the Kenya Law database).

Analysis and Determination

2. I have carefully considered the submissions of counsel for the Interested Party, Applicant and the Respondents.
3. The primary issue for determination is whether my recusal from this matter is warranted.
4. The Black's Law Dictionary defines recusal as "the process by which a judge is disqualified on objection of either party (or disqualifies himself or herself) from hearing a lawsuit because of self-interest, bias, or prejudice."
5. An application for recusal is an occupational hazard that every judge faces. The challenge arises because the judge, who is the subject of the application, is expected to rise above the proceedings and determine the matter rationally (Republic v Raphael Muoki Kalungu (2015) eKLR).

Principles Governing Recusal

6. The test for recusal in this jurisdiction has been set out in several authorities: The Court of Appeal in R v David Makali & Others (Criminal Application No. NAI 4 & 5 of 1995) (Unreported) and R v Jackson Mwalulu & Others (Civil Application No. NAI 310 of 2004) (Unreported) stated:

"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 a bias and whether it is likely to produce in the minds 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."
7. In Philip K. Tunoi & another v Judicial Service Commission & Another CA Civil Application No. 6 of 2016 [2016] eKLR, the Court of Appeal adopted the test in Porter v Magill [2002] 1 All ER 465, which states:

"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."
8. In Jasbir Rai & 3 Others v Tarlochan Singh Rai & 4 Others (SCK Petition No. 4 of 2012) [2013] eKLR Justice Ibrahim J. held that:

"The Court has to address its mind to the question as to whether a reasonable and fair-minded man sitting in Court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant was not possible. If the answer is in the affirmative, disqualification will be inevitable."
9. The Judicial Service (Code of Conduct and Ethics) Regulations, 2020 Regulation 21, Part II, provides that a judge may recuse himself or herself in proceedings where his or her impartiality might reasonably be questioned, including where the judge: Has personal knowledge of disputed evidentiary facts; Has



actual bias or prejudice concerning a party; Has a personal interest in the outcome; Previously acted as counsel in the same matter; or Is precluded from hearing the matter for any other sufficient reason.

10. Additionally, Regulation 9(1) of the Judiciary Code of Conduct emphasizes the importance of impartiality, requiring that a judge shall not practice favoritism, nepotism, tribalism, cronyism, religious or cultural bias, or engage in corrupt or unethical practices.

Findings

11. The Applicant seeks my recusal solely on the basis that I have previously handled cases involving some or all of the parties herein. However, I find that:

1. There is no allegation or evidence that I have exhibited bias or prejudice towards any party.
2. The cases cited involved distinct facts and were determined on their respective merits.

12. As held in *Re Reunad ex Parte CJL* (1986) 60 ALJR 528:

“Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favor.”

13. The mere fact that a judge has previously handled a matter involving some of the parties is not, by itself, a sufficient ground for recusal. The test remains whether a fair-minded and informed observer would reasonably apprehend bias. In the absence of such a reasonable apprehension, acceding to such applications would set a dangerous precedent and encourage forum shopping.

Conclusion

14. The Applicant has not placed before this Court any material that warrants my recusal. I decline the invitation to entertain an unmerited application for disqualification. Accordingly, the application for my recusal is dismissed.

DELIVERED AT NAIROBI THIS 20th DAY OF March 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Applicant - Mr. Kaindo

For 1st Respondent - Mr. Mr Ochieng Oduor

For 2nd Respondent - Mr. Wambua and Mr. Maina

For I. Party - Mr. Okubasu

