



**In re Estate of Rashid Maro Mwinyingwisa (Succession Cause  
357 of 2014) [2025] KEHC 5082 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5082 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 357 OF 2014**

**G MUTAI, J**

**APRIL 2, 2025**

**IN THE MATTER OF THE ESTATE OF RASHID MARO MWINYINGWISA**

**BETWEEN**

**DAVID KINISU SIFUNA ..... APPLICANT**

**AND**

**MOHAMED RASHIND MARO ..... 1<sup>ST</sup> ADMINISTRATOR**

**MARO RASHID MARO ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**IDRIS HUSSEIN MOHAMED ..... INTERESTED PARTY**

**LAND REGISTRAR, MOMBASA ..... INTERESTED PARTY**

**THE ATTORNEY GENERAL ..... INTERESTED PARTY**

**RULING**

1. Vide a notice of motion dated 9<sup>th</sup> January 2025, the 1<sup>st</sup> interested party /applicant sought the following orders:-
  1. That the learned Judge currently handling this matter recuses himself;
  2. That this matter be placed before another Judge, do issue the following orders:-
    - i. That this succession cause having been terminated, struck out, dismissed, and the file closed on the 25<sup>th</sup> day of April 2023, there is basically nothing left to be litigated upon by the parties;
    - ii. For a declaration that the letters of administration purportedly issued on the 26<sup>th</sup> day of June 2015 by Justice Edward Muriithi, together with a confirmed grant purportedly



issued on the 6<sup>th</sup> day of March 2017 by Justice M Thande be deemed a forgery, a nullity, invalid, nonexistent, not forming part of the court record and a such the same be annulled, expunged, struck out from the court record and if deemed appropriately, revoked.

3. That the costs of the application be provided for.
2. In the grounds supporting the application the applicant adverted that a record of this court ought to be authentic, intact and “authoritative with a force of law.” He stated that the succession proceedings in this matter had been terminated, struck out, dismissed, and the file closed on the 25<sup>th</sup> day of April 2023 and that there was basically nothing left to be ligated upon by the parties. The applicant stated that the grant of representation in the court record purportedly issued by Mr Justice Edward Muriithi on 26<sup>th</sup> June 2015 and confirmed by Lady Justice M Thande were “forgery, fabrications and superimposed documents which were prepared outside the jurisdiction of the court and sneaked in the court record, by the respondents.”
3. The applicant accused the learned judge of being indecisive by not updating the court records on his own motion under what the applicant called the “relevant provision of the Succession Act” by expunging the offensive documents on record and had directed instead that the matter be heard on 20<sup>th</sup> January 2025. The 1<sup>st</sup> interested party/applicant was apprehensive that the learned judge might not uphold his oath of office. In particular, he urged that the judge may not dispense justice to all, irrespective of status and would not ensure that justice is not delayed and that the court remains impartial, fair, transparent, accountable, efficient and acts in good faith at all times.
4. The interested party/applicant stated that he had written to the court on 15<sup>th</sup> and 28<sup>th</sup> October 2024 seeking to have the court address his complaints of malpractices, irregularities, document alterations forgeries, possible impersonation of learned judges, discrepancies, lifting and copy-pasting of documents. He urged that the inaction on the part of the court could be construed as either cover-up or protection of culprits responsible for the malpractice, which undermines the integrity of the court and constitutes an affront to the judiciary.
5. The applicant further accused the court of delaying the hearing and determination of the matter, facilitating the respondents to obtain evidence, exceeding his jurisdiction by entertaining matters within the purview of the Environment and Land Court and entertaining unwarranted and irrelevant narratives and wild allegations verbally introduced by the respondents’ advocates.
6. He stated that it was highly improbable that he would receive justice from the said court. He, therefore, sought to have the matter heard by another judge in a different High Court station. The applicant stated that he no longer had confidence in the current trial court to adjudicate this matter fairly.
7. The applicant was opposed by administrators /respondents and the 2<sup>nd</sup> interested party.
8. The administrators/respondents filed a replying affidavit sworn by Mohamed Rashid Maro on 20<sup>th</sup> January 2025 in which it was deposed that the applicant hadn’t stated why the recusal of the judge was being sought.
9. The deponent stated that the file was closed on 25<sup>th</sup> April 2023 as the grant was confirmed in March 2017, and as such, by April 2023, the “grant had already been collected by the administrators; hence the file being closed was as an administrative action”.
10. Mr Mohamed Rashid Maro stated that they attended court for the hearing of the matter whenever the succession cause came up for hearing and were, therefore, witnesses to the proceedings. He averred that



since the two judges named in the applications were still sitting judges, they could be called to testify. It was urged that the charge of forgery could not be invoked without due process.

11. Mr Maro accused the 1<sup>st</sup> interested party of making wild allegations without evidence and dared him to report the matter to the Judicial Service Commission. He further stated that the applicant ought to be made to furnish evidence of bribery of judicial officers. He accused him of seeking to forum shop and engaging in sideshows, having realized that the summons for revocation of grant was without merit.
12. Mr Maro thus urged that the application be dismissed with costs.
13. The 2<sup>nd</sup> interested party filed grounds of opposing dated 20<sup>th</sup> January 2025 in which his counsel stated that the application was misconceived, lacked merit, abused the court process and was a waste of the court's time. It was further stated the threshold of recusal under the Judicial Service (Code of Conduct and Ethics) Regulations 2020 had not been met.
14. The 1<sup>st</sup> interested party stated that the applicant sought to portray the court and the judge badly by accusing him of being unfair, partial, inefficient and covering malpractices without providing definitive proof of his allegations. It was stated that the file was marked as closed on 25<sup>th</sup> April 2023 when the applicants sought to have the grant dated 10<sup>th</sup> March 2017 revoked. The 2<sup>nd</sup> interested party stated that the applicants couldn't complain about something he had instituted in the first place.
15. It was urged that the applicant was seeking to revoke the grant without adhering to due process and was resorting to theatrics by making false and baseless allegations against the judge. The applicant was also accused of making false accusations against the two judges and judicial staff. The 2<sup>nd</sup> interested party prayed that the said application be dismissed with costs as it was an abuse of the process and only meant to deny justice to the affected respondents.
16. Mr David Kinisu Sifuna filed a supplementary affidavit sworn on 24<sup>th</sup> January 2025 in which he stated that the replying affidavit of Mr Maro was illogical. He deposed that his concern was that his complaints had not been addressed despite the fact that he wrote letters on the 15<sup>th</sup> and 28<sup>th</sup> of October 2024.
17. Mr Sifuna urged that the grant he termed as fictitious was relied on by the respondents in Environment and Land Court Case No. E024 of 2023. He accused the 2<sup>nd</sup> interested party and the respondents of contradicting each other. He accused the court of not hearing his unopposed application for one year and of failing to initiate investigations, which necessitated the filing of the applications.
18. The application was canvassed by way of written and oral submissions. The oral submissions were made on 5<sup>th</sup> February 2025.
19. The submissions of the applicant are dated 24<sup>th</sup> January 2025. The applicants submitted that the judge condoned self-evident malpractices. This, it was averred, was because despite being aware that the cause was struck out on the 25<sup>th</sup> day of April 2023, the court nevertheless allowed fictitious and offensive records to remain in the file. Despite being made aware of the said fact through formal letters dated 15<sup>th</sup> and 28<sup>th</sup> October 2024, the court did nothing and failed to verify the records and instead placed the matter for hearing on 20<sup>th</sup> January 2025. He stated that the judge's conduct could be interpreted as seeking to protect the named judicial officers.
20. The applicant submitted that the judge violated *the Constitution* by exceeding his jurisdiction by ordering the land registrar to attend court and produce rates clearance certificates, survey certificates, completion documents, and stamp duly payment records for Title No MN/III/2900. This, it was urged, was in bad faith. The action also violated Article 162 (2) of *the Constitution* and Section 13 of the Environment and Land Court.



21. The applicant urged that the court violated the Judicial Code of Conduct, principles of state decisis and the Bangalore Principles. This was done by ordering the applicant to produce records to aid the respondents, failing to order internal investigations and permitting fictitious documents to be introduced into the court record. Mr Sifuna submitted that the Judge, by presiding over disputes which were within the jurisdiction of the Environment and Land Court, went against the decision of the Supreme Court of Kenya in Republic vs Karisa Chengo & 2 others [2017]eKLR. He accused the court of being partial and aiding the respondent and delaying the fair trial of the matter.
22. The applicant submitted that the respondents had been boasting that they would use the proceeds of the land sale to procure favourable outcomes. It was urged that the court should distance itself from the said allegations.
23. The applicant, relying on a number of decisions of the courts in Kenya and South Africa, submitted that this court ought to recuse itself from further hearing this matter as he lost confidence in its ability to conduct proceedings impartially and to render a just decision.
24. The advocate for the administrators/respondents did not file written submissions. He, however, made oral submissions. In his oral submission, Mr Lijoodi stated that the High Court wasn't an inferior court. He referred the court to the Case Tracking System (CTS) and, in particular, to paragraph 5 thereof, where it was indicated that the proceedings had been "closed". He averred that the word "closed" did not have the same meaning as "terminated".
25. Counsel submitted that they got the grant in 2017. The matter herein was registered in CTS in 2023. Mr Lijoodi submitted that the applicant reopened the matter by filing the application for the revocation of the grant. He denied that Judges Muriithi and Thande's signatures and handwriting had been forged.
26. On whether this court had exceeded its jurisdiction, it was urged that the land formed part of the estate of the deceased person herein, and as such, this court had jurisdiction.
27. The submissions of the 2<sup>nd</sup> interested party were dated 30<sup>th</sup> January 2025. The 2<sup>nd</sup> interested party, through its counsel, Ms Omollo, identified the sole issue coming up for determination as being whether a case has been made for the recusal of the judge.
28. Counsel submitted that the test to be applied in such matter was the reasonable apprehension of bias test as stated by East Africa Court of Justice in the Attorney General of Kenya vs Peter Anyang' Nyong'o & 10 Others EACJ, Application No 5 of 2007.
29. Counsel accused the applicant of being imaginative in his claims. She urged that a judge could only recuse himself if the allegations were well-founded and to the required standard. Reliance was made to the case of Kalpana H Rawal vs Judicial Service Commission & 2 others [2016]eKLR and the Judicial Service Code of Conduct and Ethics. (Regulations 2020).
30. Ms Omollo urged that Mr Sifuna had failed to provide a valid reason for seeking the judge's recusal and, therefore, that the application was frivolous and lacked merit.
31. I have read the application, the affidavits in support thereof, the documents attached, and the respondents' responses. I have also considered the oral and written submissions of the parties. I must now make my determination.
32. I will begin by first setting out the constitutional and statutory underpinnings of the conduct of judges and thereafter look at the decisions of the courts of records. On the basis of the written law, the decided cases and the facts in issue in this matter, I shall make my finding.



33. In discharging their duties, judges are bound by Articles 73,160 and 232 of *the Constitution* of Kenya. I will briefly set out their provisions below: -

34. Article 73 states that: -

- “(1) Authority assigned to a State officer—
- (a) is a public trust to be exercised in a manner that—
    - (i) is consistent with the purposes and objects of this Constitution;
    - (ii) demonstrates respect for the people;
    - (iii) brings honour to the nation and dignity to the office; and
    - (iv) promotes public confidence in the integrity of the office; and
  - (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.
- (2) The guiding principles of leadership and integrity include—
- (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
  - (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;
  - (c) selfless service based solely on the public interest, demonstrated by —
    - (i) honesty in the execution of public duties; and
    - (ii) the declaration of any personal interest that may conflict with public duties;
  - (d) accountability to the public for decisions and actions; and (e) discipline and commitment in service to the people.

35. Article 160 (1) of *the Constitution* of Kenya states that: -

- “(1) In the exercise of judicial authority, the Judiciary, as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.”

36. The values and principles of public service are set out in Article 232 of *the Constitution* of Kenya, which provides as follows: -

- “(1) The values and principles of public service include—
- (a) high standards of professional ethics;



- (b) efficient, effective and economic use of resources;
  - (c) responsive, prompt, effective, impartial and equitable provision of services; (d) involvement of the people in the process of policy making;
  - (e) accountability for administrative acts;
  - (f) transparency and provision to the public of timely, accurate information;
  - (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions;
  - (h) representation of Kenya's diverse communities; and
    - (i) affording adequate and equal opportunities for appointment, training and advancement at all levels of the public service, of—
      - (i) men and women;
      - (ii) the members of all ethnic groups; and
      - (iii) persons with disabilities.
- (2) The values and principles of public service apply to public service in—
- (a) all State organs in both levels of government; and
  - (b) all State corporations.
- (3) Parliament shall enact legislation to give full effect to this Article.”

37. To ensure that these principles are reflected in the conduct of judges and judicial officers, the Judicial Service Commission has a code of conduct for Judges. The code sets out the situations in which a judge may recuse himself. These are set out in Regulation 21 which states that: -

“ 21.

- (1) A judge may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judge -
  - (a) is a party to the proceedings;
  - (b) was, or is a material witness in the matter in controversy;
  - (c) has personal knowledge of disputed evidentiary facts concerning the proceedings;
  - (d) has actual bias or prejudice concerning a party;
  - (e) has a 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 a counsel for a party in the same matter;
- (g) is precluded from hearing the matter on account of any other sufficient reason; or
- (h) or a member of the judge's family has economic or other interest in the outcome of the matter in question”

38. Conditions under which a judge or a judicial officer may recuse himself Recusal has been the subject of several decisions. I will set out a few below.

39. In the Attorney General of Kenya vs Prof Peer Anyang' Nyong'o & 10 others EACJ Application No 5 of 2017, it was decided as follows: -

“We think that the objective test of “reasonable apprehension of bias” is good law. The test is stated variously, but amounts to this: do the circumstances give rise to a reasonable apprehension, in the view of a reasonable, fairminded and informed member of the public, that the judge did not (will not) apply his mind to the case impartially. Needless to say, a litigant who seeks disqualification of a judge comes to court because of his own perception that there is appearance of bias on the part of the judge. The court, however, has to envisage what would be the perception of a member of the public who is not only reasonable but also fair-minded and informed about all the circumstances of the case would be.”

40. A similar decision was made by the Court of Appeal in Kalpana A Rawal vs Judicial Service Commission & 2 others [2016] eKLR.

41. In the case of R v Jackson Mwalulu & others CA Civil Application No NAI 310 OF 2004 (Unreported), where the Court of Appeal stated 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 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...”

42. In Philip K. Tunoi & another vs Judicial Service Commission & Another CA Civil Application NAI No. 6 of 2016 [2016] eKLR, the Court of Appeal stated that:-

“The question is whether the fair minded and informed observer, having considered the facts, would conclude that was a real possibility that the tribunal was biased.” The same position was taken by the Supreme Court (per Ibrahim J.) in Jasbir Rai and 3 Others v Tarlochan Singh Rai and 4 Others SCK Petition No. 4 of 2012 [2013] eKLR where he observed 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.”

43. Applying the above decisions to this matter a case for the court's recusal been made?



44. Due to the nature of the matter, the court must inspect the record and determine whether the accusations made by the applicant have merit. This is, of course, a delicate task for the judge since he is both the accused and the judge in his own cause.
45. The 1<sup>st</sup> ground is that this court permitted forged documents to remain on record even after it was brought to its attention that the file was closed and that the proceedings therein were forgeries. To establish if this claim is reasonable, I will consider what the record provides.
46. From the court record, the proceeding appears to be fairly regular. The proceedings before the trial court were handwritten. The handwriting appears to be that of Lady Justice M Thande, whose handwriting is reasonably familiar to this judge. The last proceedings before the said judge were on 6<sup>th</sup> March 2017, when the record shows that she allowed the application for confirmation of the grant.
47. The next time the matter had an action was on 25<sup>th</sup> April 2023, when it was before the Registrar Automation. The action taken on the said date was that the file was “closed”. My understanding of the argument of the applicant is that the closure of the matter by the Registrar Automation invalidated all previous proceedings and that by failing to do so, this Court allowed fictitious records to remain in the file.
48. It would appear to me that the closure of the matter was an administrative act on the part of the Registrar Automation, as the grant of representation had been issued and confirmed on 6<sup>th</sup> March 2017. With the confirmation of the grant, the said Registrar Automation had reasonable apprehension that the matter had been concluded. For that reason, she closed the file for administrative reasons so that it would not remain pending and count towards “case backlog”. I take judicial notice of the way the court registries conduct their matters.
49. What would be the effect of the closure of the case? The matter is live before the court as the second limb of the prayers sought by the applicant. It would not, therefore, be right for this court to comment on a matter it may yet be called upon to decide in future.
50. The applicant did not provide evidence of the alleged interference with the court record beyond making his allegations. The allegations are thus unsupported.
51. Flowing from the foregoing it is my view this contention is totally without merit. The entry made on 25<sup>th</sup> April 2023 was an administrative decision, not a judicial one. Its effect was to change the case status from active to closed. It wasn't a merit-based decision. Even if I was wrong, the establishment of what effect the said decision had could only be done upon trial on merits.
52. In any case, the issues raised by the applicant, for example, regarding the conduct of the respondents, are highly contentious. It does not appear to me as being fair or judicious for a decision regarding the propriety of the court records to be made without hearing the parties accused of impropriety or otherwise affected by the decision. This court would be engaging in judicial misconduct if it expunged documents on its own without hearing the parties.
53. Under Article 160 of *the Constitution*, this court is required to act independently. If this court acted on the applicant's letters as proposed by him, it would be acting under his directions contrary to what *the Constitution* provides.
54. The applicant's interest in the estate is a parcel of land he claims to own. The land issue is a cross-cutting matter that the Family Court and the ELC court deal with regularly. I have considered the direction that this court issued. I am not persuaded that the court ignored stare decisis or that it usurped the



jurisdiction of the ELC court. If what the applicant states is taken at its face value, then the court ought not to consider the summons for revocation of grant at all.

55. It must be stated that the orders issued by the court were measured and impartial and were intended to procure a quick resolution of the matter. They were not aimed at aiding any party. In furtherance of this goal, this court fixed the matter for hearing on 20<sup>th</sup> January 2025. The court cannot reasonably be accused of both seeking to delay the case and of fixing the matter for hearing. The delay in hearing the application was a direct result of the conduct of the parties themselves, not that of the court.
56. During the time this matter has been before it, the court restrained itself greatly as both parties sought to draw in the names of public figures. It was for that reason that on 2<sup>nd</sup> December 2024, the court went into a private session after prominent public figures were mentioned. This was to protect the said officials and the dignity of their offices. The electronic recording of the said session will speak for itself as to what was said and by whom.
57. The applicant made allegations of corruption but failed to tender tangible evidence. This is unfortunate.
58. I have examined my conscience in light of the allegations made. Having done so, I do not see how the applicant could reasonably apprehend bias on the part of the court. None of the grounds for recusal in the Code of Conduct apply to me. In my view, the application is totally without merit and must fail.
59. I wish to reassure the parties of my impartiality, faithful adherence to my oath of office and desire to hear and conclude the matter as soon as practicably possible. The court has no predetermined outcome. The decision that is ultimately made will be merit-based, based on my understanding of the facts and the law. The parties will all be accorded reasonable opportunities to present their cases.
60. The upshot of the foregoing is that I find no merit in the application. The application dated 9<sup>th</sup> January 2025 is hereby dismissed. I make no orders as the costs as this is a succession matter.
61. Orders accordingly.

**DATED AND SIGNED AT MOMBASA THIS 2<sup>ND</sup> DAY OF APRIL 2025. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Mr Kinisu, for the Applicant;

Ms Apiyo, holding brief for Ms Omollo, for the 2<sup>nd</sup> Interested Party;

Mr Lijoodi, for the Administrators; and

Arthur - Court Assistant.

