



**Kenyariri & Associates Advocates v Kenyariri (Miscellaneous Application E002 of 2021)
[2025] KEHC 10682 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10682 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E002 OF 2021**

F GIKONYO, J

JULY 3, 2025

BETWEEN

KENYARIRI & ASSOCIATES ADVOCATES DECREE HOLDER

AND

JAMES BICHAGE KENYARIRI JUDGMENT DEBTOR

RULING

1. The decree holder filed the notice of motion dated 30th May 2025, under section 3A of the *Civil Procedure Act*, seeking that Hon. Justice Francis Gikonyo recuse himself from the hearing or handling of this matter.
2. The application is premised on the grounds set out in the body of the application and the supporting affidavit of Dr. Christopher Orina Kenyariri.
3. The main ground is that the decree holder is worried that the judge could only be concerned with the judgment debtor's sentiments and not the decree holder's accrued rights.
4. The applicant contended that the court has reopened a file, handled by Justice Mabeya through his ruling of 5th May 2023. No appeal has been preferred.
5. The decree holder also contended that the court ignored his preliminary objection (PO) dated 29th April 2025 on points of law touching on jurisdiction. He has lost trust in the judge since a court cannot take any step without jurisdiction.
6. The decree holder complained that the judge refused to give directions on its application dated 15th May 2025, informing it that the judgment debtor's application is similar to another one that it had filed earlier with the directions given by the Court of Appeal. He faulted the judge for issuing directions on the judgment debtor's application and electing to proceed with parallel proceedings.



7. The decree holder stated that on 28th May 2025, the judge issued orders on a non-existent application and has ordered the decree holder to respond. It also averred that what it was served with was a certificate of urgency and a supporting affidavit without an application. It claimed that on 27th May 2025, the judge had asked counsel to file afresh what could not open, and it is the said certificate of urgency that was uploaded again. The judge had given 3rd July for a ruling, and now he has given another date of 4th June 2025.

Response

8. In opposition to the application, the judgment debtor filed a replying affidavit sworn on 3rd June 2025. His main argument is that the bare ground of the decree holder's mistrust of the judge does not meet the threshold for such a serious application, which has a negative bearing on the administration of justice and the judiciary.

Analysis and Determination

9. Has the applicant met the threshold for my recusal?
10. The tests for recusal of a judge was discussed by the Court of Appeal in *R v Jackson Mwalulu & Others* CA Civil Application No Nai 310 of 2004 (Unreported), to be:-

“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...”

Reopening the file

11. The applicant faulted the judge for reopening the file after it was closed following the ruling of 5th May 2023. I find no basis for this claim. This matter is currently at the post-judgment stage. Any intervention by a party post judgment will be considered by the court. Access to justice under Article 48 of the *Constitution* requires that no one shall be shut out from the courts, except, in every intervention the court will determine the merits of the intervention. Therefore, the argument that the court cannot issue directions on post judgment applications is most misconceived.
12. Notably, the decree holder has been engaged in attempts to execute the judgment. It served a notice to show cause upon the judgment debtor and, upon his failure to attend, took out warrants of arrest. The judgment debtor filed the notice of motion dated 19th April 2025, which was fixed for directions on 20th May 2025. In response, the decree holder filed the PO dated 29th April 2025.

Application dated 15th May 2025

13. On 15th May 2025, I considered the certificate of urgency in respect of the application by the decree holder of the same date. The matter was then mentioned before me on 20th May 2025. Dr. Kenyariri indicated that there were two applications by the decree holder and the judgment debtor. He raised the issue of whether the interim orders were attainable in view of the pendency of the matter before the Court of Appeal. I then reserved that issue for ruling on 3rd July 2025.
14. From the foregoing, the claims that I did not consider the PO and give directions on the decree holder's application of 15th May 2025 are without basis.



15. The judgment debtor has explained that he filed a certificate of urgency and a supporting affidavit dated 21st May 2025 because of the imminent arrest at the behest of the decree holder. He indicated that he did not file an application since he had already filed the application dated 19th April 2025.
16. Accordingly, the claim on issuing orders on a non-existent application is also baseless.

Parallel proceedings

17. The complaint on issuing of directions on the judgment debtor's application and electing to proceed with parallel proceedings is a contradiction. On the one hand, the decree holder complained that no directions were issued on its application. On the other hand, he faults the court for electing to proceed with parallel proceedings. The record shows that on 20th May 2025, Dr. Kenyariri mentioned that there were two applications pending. The court has acted on the applications filed by either party including the ones by the applicant-not forgetting this application for recusal. A party cannot direct the court on which applications of the opposing side, the court should or should not issue directions. Therefore, the two complaints have no grounding whatsoever.
18. At this juncture, it is important to state that, the law serves legitimate interest of parties rather than their personal desires that the court should go in a particular direction.
19. The court in *Philip K. Tunoi v Judicial Service Commission* [2016] eKLR observed that "...Judges should not recuse themselves on flimsy and baseless allegations."

Disposal

20. In conclusion, the decree holder's application dated 30th May 2025 is without any merit, and is dismissed with costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH TEAMS APPLICATION THIS
3RD DAY OF JULY 2025**

F. GIKONYO M

JUDGE

In the presence of: -

Dr Kenyariri for Decree Holder

No Appearance for Judgment Debtor

Kinyua C/A

