



**Wilken Energy Limited v Civicon Limited & 2 others (Commercial Case E488 of 2023)
[2025] KEHC 10048 (KLR) (Commercial and Tax) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10048 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E488 OF 2023**

**PM MULWA, J
JULY 10, 2025**

BETWEEN

WILKEN ENERGY LIMITED APPLICANT

AND

CIVICON LIMITED 1ST RESPONDENT

MARUBENI CORPORATION 2ND RESPONDENT

KENYA ELECTRICITY GENERATING COMPANY PLC 3RD RESPONDENT

RULING

1. The Plaintiff has moved the court by the Notice of Motion dated 4th April 2024 and seek the following orders:
 - a. Spent
 - b. That Hon. Justice Peter Mulwa be pleased to recuse himself from this matter.
 - c. That this matter be placed before the presiding Judge of the Commercial and Admiralty Division-Milimani High Court, for issuance of further directions on the matter;
 - d. That the costs of this application be provided for.
2. The application is premised on the grounds on its face and is supported by the affidavit of Andrew Lopokoiyit, a director of the Plaintiff company, sworn on 4th April 2024. The core grievance advanced is that this Court has allegedly demonstrated conduct indicative of bias or partiality, thereby warranting recusal.



3. The application is opposed. The 2nd Defendant filed a replying affidavit sworn by Maureen Alosa on 26th July 2024, as well as Grounds of Opposition of even date. The 3rd Defendant has also opposed the application through an affidavit sworn by Mr. Isaac Odhiambo, learned counsel on record.
4. The parties canvassed the application by way of written submissions.
5. The main issue is whether I should recuse myself from dealing with the present matter. The law governing judicial disqualification is settled. The test for determining whether a judge should recuse himself or herself was articulated in *Jan Bonde Nielson v Herman Philipus Steyn & 2 others HC COMM No. 332 of 2010 [2014] eKLR* where the court observed that:

“The appropriate test to be applied in determining an application for disqualification of a Judge from presiding over a suit was laid down by the Court of Appeal in *R v David Makali And Others C.A Criminal Application No. Nai4 AND 5 OF 1995* and reinforced in subsequent cases. See *R v Jackson Mwalulu & Others C.A. Civil Application No Nai310 OF 2004* 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.’...

6. The standards of conduct are enacted in the Judicial Service [Code of Conduct and Ethics] Regulations 2020 dated 26th May 2020. Under Regulation 21 Part II of the said Code of Conduct, a Judge can recuse himself or herself in any of the 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. A member of the Judge’s family has economic or other interest in the outcome of the matter in question.
7. Regulation 9 of the Judiciary Code of Conduct emphasizes the importance of impartiality of a Judge. Sub-regulation [1] thereof 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.



8. The Applicant's claim rests primarily on two episodes:
 - i. That the application dated 6th October 2023 was not certified urgent and no interim relief was granted, and
 - ii. That the general conduct of the Court reflects bias.
9. On the first ground, the record shows that the said application was filed on a Friday and reached this Court after official working hours. The Court addressed the matter on Monday, 9th October 2023, directed service upon the Respondents, and issued timelines for the filing of responses. The matter was then scheduled for mention on 16th October 2023. This sequence of events does not demonstrate bias or dereliction but reflects the operational reality of court processes and administrative timelines. Neither is there evidence to demonstrate that this handling deviated from established judicial norms.
10. The Court in *Kaplana Rawal v Judicial Service Commission & 2 others* [2016] eKLR emphasized that the threshold for recusal is high and must be grounded in specific, substantiated facts that establish a reasonable apprehension of bias. As held in *South African Commercial Catering and Allied Workers Union v Irvin & Johnson Ltd* [2000] ZASCA 102:

“The apprehension of bias must be assessed objectively in the light of the facts and not in the mind of the complainant.”
13. A party's mere dissatisfaction with the manner in which the Court has exercised its discretion or rendered interlocutory directions does not, without more, constitute a ground for recusal. This view was endorsed in *Republic v Independent Electoral and Boundaries Commission & Another ex parte Coalition for Reform and Democracy [CORD] & 2 Others* [2017] eKLR, where the Court cautioned that:

“Judges must not shy away from carrying out their constitutional duty merely because a party perceives bias where there is none.”
11. In the present case, the Applicants have not alleged, let alone proved, any of the grounds listed under Regulation 21 of the Code of Conduct. There is no evidence of actual bias, personal interest, prior involvement, or any other factor that would necessitate recusal under law.
12. The allegations advanced amount to no more than dissatisfaction with the Court's interlocutory directions. Courts have repeatedly cautioned against the misuse of recusal applications as a tactical ploy to delay proceedings or to engage in forum shopping. See *Uhuru Muigai Kenyatta v Nairobi Law Monthly & Another* [2013] eKLR.
13. While the right to a fair hearing is sacrosanct under Article 50 of *the Constitution*, it must be balanced with the principle of judicial duty and the need to uphold public confidence in the judiciary. Judges should not recuse themselves lightly or in the face of unsubstantiated claims, as doing so may undermine judicial independence.
14. In view of the foregoing, the Court is not persuaded that the threshold for recusal has been met. The allegations are unsubstantiated and do not rise to the legal standard necessary to disqualify a judge from presiding over a matter.
15. Accordingly, the Notice of Motion dated 4th April 2024 is hereby dismissed with costs to the Respondents.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI.



THIS 10TH DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Chetambe h/b for Mr. Omiti for Plaintiff/Applicant

Mr. Lawson Ondieki for 2nd Defendant

Mr. Jumba h/b for Mr. Odhiambo for 3rd Defendant

Court Assistant: Carlos

