



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gulbahar v National Hospital Insurance Fund (Civil Case 170 of 2017)  
[2025] KEHC 12563 (KLR) (Civ) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12563 (KLR)

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

**CIVIL  
CIVIL CASE 170 OF 2017**

**RC RUTTO, J**

**SEPTEMBER 9, 2025**

**BETWEEN**

**BULLENT GULBAHAR ..... PLAINTIFF**

**AND**

**NATIONAL HOSPITAL INSURANCE FUND ..... DEFENDANT**

**RULING**

1. Before this Court for determination is a Notice of Motion application dated 27<sup>th</sup> November 2024 by the Plaintiff. The Applicant seeks orders for the Court to recuse itself from hearing the present case as well as any other matter involving the parties herein.
2. The grounds in support of the application are set out in the affidavit sworn by Bulent Gullbahar and are summarized as follows: Between 16<sup>th</sup> July and 1<sup>st</sup> October 2024, the Court repeatedly directed the Defendant and its advocate to produce the National Identification Cards of the Defendant's two witnesses. However, despite what the Plaintiff terms as the Defendant's refusal and prima facie disobedience of the Court's orders, the Court failed to uphold its dignity and integrity by taking appropriate action. Consequently, the Plaintiff filed an application dated 7<sup>th</sup> October 2024 seeking to cite the Defendant for contempt of court. Simultaneously, the Plaintiff filed another application dated 7<sup>th</sup> October 2024, under a Certificate of Urgency, seeking to strike out all pleadings filed by the law firm of Ochieng, Achach & Kaino Advocates on the grounds that the said firm was not properly on record. The Plaintiff states that although the applications were initially assigned to this Court, they were subsequently re-assigned to Hon. Lady Justice Janet Mulwa.
3. The Plaintiff further states that directions were issued (by this Court) for the parties to file and exchange written submissions on the two applications dated 7<sup>th</sup> October 2024, and for parties to appear for highlighting on 28<sup>th</sup> November 2024 alongside the main suit. The Plaintiff thereafter unsuccessfully



sought leave from this Court to appeal, despite his contention that such leave is automatic. The Plaintiff asserts that the said applications raised preliminary issues that should have been prioritized and determined before proceeding with the main suit.

4. The present application for recusal is premised on allegations of bias, lack of independence and incompetence on the Court for specifically, failing to prioritize and determine the Plaintiff's pending applications. The present application under consideration was heard orally on 9<sup>th</sup> December 2024 both parties submitted as below;

#### **Plaintiff's Submissions**

5. The Plaintiff contended that the Court demonstrated bias and a lack of independence and impartiality, during the hearing of the present application. He stated that the Plaintiff objected to the Court's decision to proceed with the hearing despite earlier directions that the application be placed before Hon. Justice Mulwa for further directions. The Plaintiff argued that this abrupt change amounted to an ambush, and that the Defendant ought to have been granted more time to prepare. Consequently, the Plaintiff submitted that the Court's directive to proceed with the hearing violated the Civil Procedure Rules and infringed upon the Plaintiff's constitutional right to a fair hearing.
6. The Plaintiff further submitted that the Defendant's counsel, Mr. Dudi, refused to produce the Defendant's National Identification Card despite repeated directions from the court. The Plaintiff urged that the Court should have taken appropriate action to preserve and uphold its dignity and authority. Additionally, it was submitted that Mr. Dudi is not properly on record in the matter, and that the Court failed to address this issue suo moto. Instead, the court directed the parties to file written submissions. The Plaintiff asserted that these actions reflect a consistent pattern of favoritism by the court towards the Defendant.

#### **Defendant's Submissions**

7. Counsel for the Defendant, Mr. Dudi, cited Rule 5 of the Judicial Code of Conduct, which outlines the principles governing judicial recusal. He also referred to Civil Case No. E169 of 2019, Ojiambo & Co. Advocates v. Wamae & Company Advocates, to emphasize that the threshold for recusal is higher than the proverbial "low-lying fruit". He urged that recusal must be evaluated from the perspective of a reasonable, honest, and objective observer, and must be grounded on credible and sound facts. Counsel further stated that he filed a Notice of Appointment on 24<sup>th</sup> August 2020 via the CTS portal, along with a Memorandum of Appeal dated 7<sup>th</sup> February 2021. Both documents were duly served upon the Defendant's previous advocates. He noted that no objection to his representation had been raised until now.
8. Regarding the allegation of forgery, counsel submitted that the issue stems from a typographical error in an affidavit which was erroneously dated 18<sup>th</sup> September 2024 instead of 7<sup>th</sup> October 2024, the actual date of service. He argued that this discrepancy amounts to a clerical error on the face of the record and does not amount to forgery. Additionally, He noted that the Plaintiff has not denied receiving copies of the Defendant's National Identification Cards. He contended that the present application is devoid objectivity, honesty, and logical reasoning. He argued that the appropriate recourse for the Plaintiff would have been to file an appeal rather than seek recusal of the Court.



## Analysis and Determination

9. Having carefully considered the Plaintiff's application and the oral submissions made by both parties, the central issue for determination is whether the Court should recuse itself from further conduct of this matter.
10. It is well within a litigant's right to bring an application for recusal, and such an application must be determined based on established legal principles. This court notes that recusal applications should not be used to subvert the course of justice or to abuse the Court's process. Accordingly, it is necessary to first set out the history of the matter so as to have the context in which the application was made.
11. On 19<sup>th</sup> June 2024, this matter came up for hearing of the main suit. The Defendant's counsel and witnesses were not present and the Plaintiff informed the Court that the registry had sent an email informing parties of the date. The Plaintiff further stated that he had closed his case and in the absence of the defendant, he prayed that their case be closed and they proceed to file submissions.
12. The Court issued directions accordingly and on 3<sup>rd</sup> July 2024, the Court confirmed that the Plaintiff had filed his submissions. However, on the same date, counsel for the Defendant made an application that the Defendant be allowed an opportunity to present its case on grounds that they had not been served with a hearing notice. Upon hearing the parties and in the interest of justice and the right to a fair trial, the Court permitted the Defendant's case to proceed to hearing. The defence case subsequently proceeded on 16<sup>th</sup> July 2024 and 30<sup>th</sup> July 2024 and directions on filing of submissions taken.
13. On 1<sup>st</sup> October 2024, the Plaintiff informed court that he had filed his submissions. He stated that issue of identification of the Defendant's witnesses remained unresolved since the Defendant's counsel had not shared the identification documents as agreed. The Defendant's counsel notified court that he had shared the identification documents with the Plaintiff's counsel on email. The Court directed the defendant to file an affidavit to proof that he had served the identification documents.
14. The Court also directed that the highlighting of submissions in respect of the main suit would proceed on 9<sup>th</sup> October 2024. On that day, the Plaintiff informed the Court that he had filed two applications under Certificate of Urgency, all dated 7<sup>th</sup> October 2024 one of which was an application for contempt and the other an application seeking to strike out all pleadings and submissions filed by the firm of Ochieng, Achach and Keino Advocates on grounds that they were not properly on record. The Court gave directions on filing of responses to the applications and expressly directed that, for orderly conduct of proceedings, the said applications be canvassed alongside the highlighting of submissions. That the Court would first address the issues raised in the applications as preliminary issues arising in the judgment. These directions were reiterated by the Court on 13<sup>th</sup> November 2024.
15. On 28<sup>th</sup> November 2024, when the matter came up for highlighting of submissions, the Plaintiff informed the Court that he had filed an application for recusal dated 27<sup>th</sup> November 2024 which the had been redirected to Hon. Justice Meoli. Consequently, the Court directed that the parties await directions from Hon. Justice Meoli before this Court could issue any further directions, so as to avoid potential conflict.
16. On 2<sup>nd</sup> December 2024, Hon. Justice Meoli directed that the recusal application dated 27<sup>th</sup> November 2024 be placed before the me for directions. Thereafter, on 9<sup>th</sup> December 2024, the present application was heard orally before me.
17. The law on judicial recusal is well-settled in a wealth of jurisprudence and does not require elaborate justification. The objective test for disqualification on grounds of bias was authoritatively laid down



by the East African Court of Justice in the case of Attorney General of Kenya vs Prof. Anyang Nyong'o & 10 Others (EACJ) Application No. 5 of 2007 where the court held 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 mind of the reasonable, fair-minded and informed member of the public that the judge did not (will not) apply his mind to the case impartially. Needless to say,

- a) The 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.”

18. The test for recusal of a Judge was laid down by the Court of Appeal in the case of R vs. David Makali and Others C.A. Criminal Application No. 4 and 5 of 1995 Nairobi (unreported) as reinforced in R vs. Jackson Mwalulu & Others C.A. Civil Application No. 310 of 2004 Nairobi, 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 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”.

19. In essence, judges should not readily accede to applications for recusal, mindful of their constitutional obligations and oath of office to administer justice to the parties before them. The Court of Appeal of Kenya in Galaxy Paints Company Limited vs Falcon Guards Limited [1999] eKLR stated as follows:

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

20. Having considered the applicable legal principles and the circumstances of this case, I now proceed to apply them to the circumstances of this case. The Plaintiff alleges that the Court’s failure to determine the pending application dated 7<sup>th</sup> October 2024 seeking to cite the Defendant for contempt of court and the failure to address the issue of whether the Defendant’s counsel is properly on record, demonstrates bias or incompetence. However, as outlined earlier, it is evident that directions were issued on these very issues after the matter came before me. Specifically, on 9<sup>th</sup> October 2024 the Court directed that the plaintiff’s applications be addressed through written submissions to be considered alongside those filed in the main suit. The Court further indicated that, it would first determine the preliminary issues raised in the Plaintiff’s applications before rendering itself on the substantive suit. There is no doubt that a finding in favour of the Plaintiff on those preliminary issues would have had a consequential impact on the final judgment.

21. The fact that the Court issued directions that may have caused discomfort and unhappiness to the Plaintiff, without resulting in any actual prejudice does not, in itself, amount to bias. A Judge is not obligated to adopt a party’s preferred approach and dissatisfaction with judicial directions is not a



valid ground for recusal. The grounds advanced in support of the present application do not meet the requisite legal threshold to warrant the disqualification of the Court.

22. In issuing the directions, I took note that the parties had already been and all the witnesses had testified. Counsel had also made submissions. It is therefore premature, in my view, for the applicant to predetermine the Court's decisions both at the preliminary level and at the final instance as to infer bias. It is also not lost to the Court, that considering the stage at which the matter had reached, the Court is inclined towards taking the most favourable approach that appreciates the expeditious disposal of disputes before it, in the overriding objective to render justice. Needless to say, this being a trial court, the rights of the litigants to pursue any appellate process are not extinguished and remain available to be invoked.
23. Accordingly, I find that the application for recusal lacks merit and is hereby dismissed with costs to the defendant.
24. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 9<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Plaintiff

.....Defendant

Selina Court Assistant

