



**Paragon Elctronics Limited v Velos Enterprises Limited (Civil Case 289 of 2009)  
[2024] KEHC 1498 (KLR) (Commercial and Tax) (20 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1498 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 289 OF 2009  
JWW MONG'ARE, J  
FEBRUARY 20, 2024**

**BETWEEN**

**PARAGON ELCTRONICS LIMITED ..... DECREE HOLDER**

**AND**

**VELOS ENTERPRISES LIMITED ..... JUDGMENT DEBTOR**

**RULING**

1. Before the Court is the decree holder's Notice of Motion dated 23<sup>rd</sup> November 2023, seeking that the learned Hon. Lady Justice J.W. Mong'are do recuse herself from further handling, hearing and/or determining this matter and that this matter be remitted to the Principal Judge of the High Court of Kenya or the Presiding Judge of the High Court Commercial & Admiralty Division for assignment to another Judge other than Hon. Lady Justice J.W. Mongare.
2. The application is supported by the affidavit sworn by the decree holder's director, Bulent Gulbahar on 23<sup>rd</sup> November 2023. The grounds are that the Court is biased against the decree holder and/or has a predisposition against the decree holder and/or has been corrupted by the judgment debtor and/or is incompetent; that on 28<sup>th</sup> March 2023, Rameshchandra J. Sheth (Mr. Sheth), the judgment debtor's director, admitted on cross-examination that the sublease was registered on 24<sup>th</sup> July 2008 before entry of judgment by Hon. Ogola J. on 23<sup>rd</sup> October 2015; that however, when the Applicant's counsel asked him which one came first, the Court interjected during the cross examination, urging the decree holder's counsel to move on from that point as he had answered that he had not provided the title as ordered by the Judge correctly.
3. Additionally, the decree holder contends that the handwritten proceedings of the Court of 10<sup>th</sup> November 2023, obtained on 15<sup>th</sup> November 2023, do not accurately reflect the testimony of Mr.



Sheth; that the proceedings omit the witness's admission that he did not issue a title as ordered by Hon. Ogola J., which is key issue in the case.

4. Further, the Applicant contends that on 18<sup>th</sup> July 2023, the Court directed the matter to be heard on 26<sup>th</sup> September 2023, allowing the decree holder to file a further affidavit if necessary and that parties put in their responses and written submissions before then; that however, on 26<sup>th</sup> September 2023, the Court allowed the judgment debtor to submit evidence that was filed on the same morning, going against its own orders and overruling objections from the decree holder; that the certified typed copy of the Court's handwritten proceedings did not adequately reflect what transpired in Court on 26<sup>th</sup> September 2023; that on 13<sup>th</sup> October 2023, the Court claimed to have forgotten the purpose of the hearing, directing the matter to proceed on 27<sup>th</sup> November 2023 and granted leave to the judgment debtor to respond to the decree holder's submission and that the Court's decision to allow the judgment debtor to produce evidence by way of submissions and orally over the bar is without legal basis and constitutes an abuse of office and violation of the Court's judicial duties.
5. The application is opposed by the judgment debtor through a replying affidavit sworn by its director Jatinder Singh Mehta on 30<sup>th</sup> November 2023. The key depositions are that the decree holder's director, Mr. Bulent Gulbahar, ought to be committed to civil jail for making contentious allegations against the Judge; that there is no evidence in support of the allegations that have been presented to the Court; that the application is frivolous and an abuse of Court process and ought to be dismissed with costs; that the application was served upon its advocates on record on Sunday 26<sup>th</sup> November, 2023 at 1:51 pm with the sole aim of vacating the continued hearing slated for 27<sup>th</sup> November, 2023; that the application is a delaying tactic with respect to the judgment debtor's application dated and filed in Court on 15<sup>th</sup> August, 2017 for satisfaction and discharge of the judgment dated 23<sup>rd</sup> October, 2015 that has been pending for over six years; that the delay seeks to prevent the release of Kshs.72,025,746.77/= to the judgment debtor held in a joint account in the names of the decree holder's former advocates and the judgment debtor's advocates; that the judgment debtor is in urgent need of the release of the funds to sustain its business; and that the decree holder has previously filed numerous applications that have served to delay the application for satisfaction including an application for the recusal of Hon. Lady Justice Grace Nzioka.
6. The judgment debtor further asserted that the decree holder has not produced cogent evidence as would demonstrate its perception of bias; that the test for judicial bias is an objective test which the decree holder has failed to meet and that the allegation of incompetence and being corrupted are also not supported by any evidence.
7. The decree holder and the judgment debtor both filed their respective written submissions dated 30<sup>th</sup> November 2023 which I have considered.

### **Analysis and Determination**

8. I have considered the pleadings and the parties' respective submissions. The issue arising for determination is whether I should recuse myself from further handling, hearing and/or determining this matter.
9. The principles for consideration in an application for recusal were set out by the Court in the case of *Jan Bonde Nielson v Herman Philipus Steyn & 2 others* HC COMM No. 332 of 2010 [2014] eKLR, as follows:-

“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 Nai 4 and 5 of 1995 (Unreported), and reinforced in subsequent cases. See *R v Jackson Mwalulu & Others* C.A. 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...”

10. The first ground for my recusal is that the handwritten proceedings of the Court of 10<sup>th</sup> November 2023 do not accurately reflect the testimony of Mr. Sheth as they omit the witness’s admission that he did not issue a title as ordered by Hon. Ogola J., which is key issue in the case.
11. From the decree holder’s contentions, find it necessary to revisit the proceedings. On 28<sup>th</sup> March 2023, the Court noted that according to Mr. Sheth’s testimony, the sublease was registered in 2008 while the judgment of Hon. Ogola J. was delivered on 23<sup>rd</sup> October 2015. This is in tandem with the extract of the transcript for the day’s proceedings which show that the Court noted that Mr. Sheth had admitted that the sublease, registered on 24<sup>th</sup> July 2008 came before the judgment of Hon. Ogola J. of 23<sup>rd</sup> October 2015. Therefore, this leads me to conclude that the contention that the Court’s handwritten proceedings do not accurately reflect the testimony of Mr. Sheth fails.
12. In addition, I note that the decree holder made reference to the alleged handwritten proceedings of 10<sup>th</sup> November 2023 that were allegedly obtained on 15<sup>th</sup> November 2023. However, from the CTS platform, there were no proceedings on 10<sup>th</sup> November 2023, or any between 13<sup>th</sup> October 2023 and 27<sup>th</sup> November 2023. I therefore find that the allegations of bias based on alleged handwritten proceedings of 10<sup>th</sup> November 2023 are baseless.
13. The position in law is that judges should not recuse themselves on flimsy grounds and baseless allegations. This principle was aptly captured by the Court of Appeal in [\*Philip K. Tunoi v Judicial Service Commission\* \[2016\] eKLR](#), as follows:-

“Firstly, it is obvious from the test above that there is no basis for the rather elastic test propounded by Dr. Khaminwa, where a judge must automatically recuse himself or herself upon the making of a mere allegation by any of the parties. On the contrary decisions abound that judges should not recuse themselves on flimsy and baseless allegations.” (Emphasis added)
14. The second ground is that my decisions of 26<sup>th</sup> September 2023, allowing the judgment debtor to submit evidence that was filed on the same morning and to allow the judgment debtor to produce evidence by way of submissions and orally over the bar and of 13<sup>th</sup> October 2023, directing the matter to proceed on 27<sup>th</sup> November 2023 and granted leave to the judgment debtor to respond to the decree holder’s submission, claiming to have forgotten the purpose of the hearing, is without legal basis and constitutes an abuse of office and violation of the Court’s judicial duties.
15. To these allegations, the judgment debtor contended that the decree holder was not truthful as the decree holder itself did not comply with the timelines for filing the further affidavit and submissions before the 26<sup>th</sup> September 2023 and only filed its submissions on 25<sup>th</sup> September 2023 at 3:58pm robbing the judgment debtor sufficient time to respond; that despite late service, the judgment debtor managed to file and serve its submissions on the morning of 26<sup>th</sup> September 2023 and that



the authorities annexed to the judgment debtor's submissions dated 26<sup>th</sup> September, 2023 are not evidence but sources of law together with a joint memorandum by the Ministry of Lands which is an administrative circular that was signed by the President of the Law Society of Kenya hence available to all advocates, including the decree holder's then advocates on record as it is the guide on registration of long term leases created under the land laws.

16. Indeed, the record shows that the decree holder's submissions to its application dated 10<sup>th</sup> July 2023 was filed by AKO Advocates on 25<sup>th</sup> September 2023 at 15:53:58 PM while the judgment debtor's submissions were filed on 26<sup>th</sup> September 2023 at 8:19:58 AM. On 18<sup>th</sup> July 2023, the Court directed parties to file their submissions to the application dated 10<sup>th</sup> July 2023, before 26<sup>th</sup> September 2023. I find that it is not proper for me to comment on the decisions of 13<sup>th</sup> October 2023 and 26<sup>th</sup> September 2023 as the Court cannot sit on appeal on its own decisions.
17. The decree holder has not appealed the Court's decision to allow the judgment debtor's submissions. Importantly, the fact that a party does not agree with the Court's decision is not a good ground for recusal of the Court. In *JKN v HWN* (Civil Appeal Number 40 of 2014) [2019] eKLR, the Court observed that:-

“ 18. The fact that a party or his advocate does not agree with the finding of a court is no good ground for recusal of the judge. Any party who is dissatisfied with the findings of the court has ready remedies through the appellate, review or setting aside mechanisms which are well enshrined in the constitution and relevant statute(s).”

18. On the whole, I am not convinced that any fair minded observer would conclude that I am biased based on the grounds put forth by the decree holder. I am also not persuaded that there is any credible evidence of bias on my part or alleged incompetence or corruption to form a basis of my recusal. It is my considered view that if it was aggrieved or dissatisfied with the rulings made in favour of the judgment debtor, the decree holder ought to have challenged them through an appeal or review.
19. The upshot is that the decree holder's application dated 23<sup>rd</sup> November 2023 is dismissed with costs for want of merit.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2024.**

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**J.W.W. MONG'ARE**

**JUDGE**

In the Presence of:-

1. Mr. Bulent Gulbahar the Applicant (Decree-Holder) - in person
2. Ms. Aurora holding brief for Mr. Oraro SC for the Judgment Debtor the Respondent.
3. Ms. Leyla Mohammed holding brief for Mr. Kiche for the 1<sup>st</sup> Garnishee.
4. Mr. Gakunga for 3<sup>rd</sup> & 7<sup>th</sup> Garnishee.
5. Amos - Court Assistant

