



**Nagnus Aircraft (Africa) Limited & 2 others v Magnus Aircraft ZRT (Civil Suit E043 of 2024)
[2024] KEHC 11089 (KLR) (Commercial and Tax) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E043 OF 2024
PM MULWA, J
SEPTEMBER 19, 2024**

BETWEEN

**NAGNUS AIRCRAFT (AFRICA) LIMITED 1ST PLAINTIFF
CAPTAIN DR MARGARET WANJIKU IKUAH 2ND PLAINTIFF
N3M CONSULTING AND ADVISORY LIMITED 3RD PLAINTIFF
AND
MAGNUS AIRCRAFT ZRT DEFENDANT**

RULING

1. For determination is the defendant's application dated 11th April 2024 which seeks this Court to recuse itself from hearing this matter and to have the file placed before the presiding judge for directions and reallocation to another judge for hearing and disposal. Further the defendant prayed for the above orders to apply mutatis mutandis to HCCOMM E024 of 2024 – *Magnus Aircraft ZRT v Registrar of Companies*.
2. The application was filed pursuant to Articles 2, 3, 10, 20, 25(c), 40, 50(1), 159(2) and 259 of the [Constitution of Kenya](#) 2010, Sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#).
3. The basis of the application was that I granted final orders at an interlocutory stage and due to this the defendant believes that it cannot get justice before this Court.
4. In opposition to the application, the plaintiffs lodged a replying affidavit sworn on 6th May 2024 and 27th May 2024 by the 2nd plaintiff, the director of the 1st and 3rd plaintiffs.
5. The 2nd plaintiff averred that the application falsely alleged that the court granted final orders at an interlocutory stage when the orders granted were temporary in nature given that the 1st plaintiff is a



running company; that the application falsely fails to disclose to this Court that the 2nd plaintiff was the CEO of the 1st plaintiff and the sole signatory to its bank accounts while the defendant was not and that the application failed to disclose to this Court that the defendant had filed a separate suit against the Registrar of Companies in Case No. E024 of 2024 where it was seeking the transfer of the 1st plaintiff's 30,000 shares to itself without notifying the 1st plaintiff.

6. That as the defendant is aggrieved by an order of the Court, its recourse is to file a review application or appeal against the decision but not to attack the judge who has given the order.
7. The defendant filed a supplementary affidavit sworn on 24th May 2024 by its director in response to the plaintiffs' replying affidavit.
8. The defendant's director averred that the deponent of the plaintiffs' replying affidavit is not duly authorized to swear the affidavit on behalf of the 1st plaintiff as the defendant is the majority shareholder with voting rights and reiterated that the 2nd plaintiff on the strength of the interim orders withdrew all the funds from the 1st plaintiff bank account to herself and therefore the 1st plaintiff business has halted and cannot run.

Analysis and determination:

9. The defendant filed written submissions dated 24th April 2024 while the plaintiffs canvassed their arguments through written submissions dated 20th June 2024.
10. The court has considered the pleadings and submissions filed by the parties. This is an application for the recusal of a judge from hearing and determining a matter.
11. The Court of Appeal in *Accredo AG and 3 others v Steffano Ucceli & another* [2018] eKLR held:

“The test for establishing real likelihood of bias has evolved over time from the point where suspicion of bias was sufficient to the reasonable man test, that is, whether a reasonable man taking into account the surrounding circumstances would conclude that there is a real likelihood or reasonable apprehension of bias. This current position was succinctly set out by the House of Lords in *Porter v. Magill* [2002] 1 All ER 465 as follows:

“The question is whether the fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.” (Emphasis added)

12. The appellate court continued:

“It is also instructive to note that the threshold of making a finding to the effect that there is a real likelihood of bias that warrants recusal of a judicial officer is quite high. This is because the oath taken by a judicial officer under the Constitution to render justice and uphold the law whilst being impartial raises the presumption that such an officer will indeed uphold impartiality in carrying out his/her mandate. See this Court's decision in the *Kaplana H. Rawal case*. Consequently, judicial officers ought not to accede to each and every application for recusal especially where the same is not based on reasonable grounds. To do so might encourage litigants to believe that by seeking the disqualification of a judicial officer, they will have their case tried by someone who they think will likely decide the dispute in their favour.”



13. I am guided by the authority above and I take into account the aforementioned principles. In this case, the main ground given in support of the application is that I granted final orders at an interlocutory stage which portrays a bias I have against the defendant.
14. The plaintiffs filed an application dated 2nd February 2024 seeking inter alia a temporary injunction, pending the determination of the application, to restrain the defendant from interfering with the 2nd plaintiff's role as a sole signatory of the 1st plaintiff's bank account held at Bank of Africa Kenya Limited.
15. Upon considering the application, the supporting affidavit of the 2nd defendant and annexures thereto, I granted an interlocutory injunction dated 7th February 2024, pending the determination of the application, restraining the defendant from attempting to remove the 2nd plaintiff as the sole signatory of the 1st plaintiff's bank account. The orders were temporary in nature.
16. It is evident that the defendant is aggrieved by those orders, and in that case they have a right to appeal against it or file a review application. There is no iota of evidence to prove the allegation of bias due to the fact that an interim order was granted upon the court exercising its discretion.
17. This recusal application does not meet the test as laid in the *Accredo AG Case (supra)*. The fact that the orders of 7th February 2024 were contrary to what the defendant hoped does not give rise to the apprehension of bias on the part of this Court.
18. That being said, I find no merit in the defendant's application dated 11th April 2024 and the same is struck out with costs to the plaintiffs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2024.

P. MULWA

JUDGE

In the presence of:-

Mr. Otieno h/b for Mr. Karungo for 1st & 2nd plaintiffs

Mr. Angaya for 3rd plaintiff

Mr. Anyonje for defendant

Court Assistant: Carlos

