



**Mwilu v British Broadcasting Corporation (Civil Case E165 of 2022)  
[2023] KEHC 18784 (KLR) (Civ) (20 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18784 (KLR)

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

**CIVIL**

**CIVIL CASE E165 OF 2022**

**AN ONGERI, J**

**JUNE 20, 2023**

**BETWEEN**

**PHILOMENA MBETE MWILU ..... PLAINTIFF**

**AND**

**BRITISH BROADCASTING CORPORATION ..... RESPONDENT**

**RULING**

1. The plaintiff/applicant made two applications dated 28/5/2023 and 12/6/2023 respectively.
2. The respondent had filed an earlier application dated 12/4/2023 which was seeking to set aside an interlocutory judgment entered herein on 24/11/2022 which application was slated for ruling on 16/6/2023.
3. The applicant in the application dated 28/5/2023 was seeking stay of the ruling slated for 16/6/2023 in respect of the respondent's application dated 12/4/2023. The application dated 28/5/2023 was also seeking recusal of the Judge seized of this case.
4. This court refused to grant the plaintiff's advocate, Mr. Kemboy audience in the application dated 28/5/2023 on the ground that he is contemnor and that he has not complied with directions issued in HCCC 296 of 2016 where this court found him to be in contempt of court.
5. The second application dated 12/6/2023 is filed by a different Advocate for the plaintiff and is seeking leave to appeal against the order of this court issued on 6/6/2023 online in the application dated 28/5/2023 refusing to grant the plaintiff's advocate audience.
6. The respondent did not wish to participate in the two applications dated 28/5/2023 and 12/6/2023. I have perused the said applications and I wish to state as follows;



7. On the issue of recusal, I wish to reiterate what I stated in the case of *Re Estate of Gitere Kabura (Deceased)* (2019) e KLR on the grounds of recusal of a judge as follows;

Grounds For Recusal Of A Judge From A Matter.

Legally a judge can recuse himself or herself in the following circumstances;

1. In matters of conflict of interest.
2. If a judge is biased or seen to favor one party.
3. If a judge handled the matter previously as a lawyer in private practice.
4. If there is ex parte communication between the judge and one of the parties.
5. When a judge predicts that he or she may be impartial in a matter.
6. Under the Duty to sit doctrine, unless a judge is required by law to disqualify himself or herself, he or she must remain on the case.”

8. In the case of *Republic vs IEBC & 3 others exparte Wavinya Ndeti* (2017) e KLR which I also relied on in the Gitere Case (*supra*) the following sentiments were laid down on the issue of recusal of a judge;

“The foundation for the principal underlying recusal of judicial officers was restated by the Supreme Court in *Jasbir Singh Rai & 3 Others vs. Tarlochan Singh Rai & 4 others* Petition No. 4 of 2012 [2013] eKLR as follows:

“Recusal, as a general principle, has been much practised in the history of the East African judiciaries, even though its ethical dimensions have not always been taken into account. The term is thus defined in Black’s Law Dictionary, 8th ed. (2004) [p.1303]: “Removal of oneself as judge or policy maker in a particular matter, [especially] because of a conflict of interest.” From this definition, it is evident that the circumstances calling for recusal, for a Judge, are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised.”

9. I find that there are no grounds seeking recusal other than that this court handled HCCC No.296 06 2016 involving one of the parties in this case.
10. The learned counsel for the plaintiff has no basis for dragging HCCC No. 296 of 2016 into these proceedings since each case is decided on its own merits.
11. Again I rely the Austrian High Court case of *Re J.R.I exparte CIL* (1936) 161 CLR 342, where it was stated as follows;

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



It needs to be said loudly and clearly that the ground of disqualification is a reasonable apprehension that the judicial officer will not decide the case impartially or without prejudice, rather than that he will decide the case adversely to one party.”

12. However, since this court reserved the right to punish the plaintiff’s counsel in HCCC 296 of 2016 for contempt of court, I recuse myself from hearing this case and I refer it to the Presiding Judge of the Civil Division for re-allocation to another Judge.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE, 2023.**

**A. N. ONGERI**

**JUDGE**

In the presence of:

.....for the Plaintiff

.....for the Defendant

