



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC NO.E067 OF 2020**

**ODUOR HAWI AMBALA.....1<sup>ST</sup> PLAINTIFF**

**ODHIAMBO TAABU AMBALA.....2<sup>ND</sup> PLAINTIFF**

**OGOLA KODHEK AMBALA.....3<sup>RD</sup> PLAINTIFF**

**- VERSUS -**

**HADIJA ASIF BUTT.....1<sup>ST</sup> DEFENDANT**

**FAROUK ASIF BUTT.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This is the Notice of Motion dated 9<sup>th</sup> April 2021 brought under order 51 (rule 1) of the Civil Procedure Rules (2010), Section 1A, 1B and 3A of the Civil Procedure Act, Cap 63, Laws of Kenya and all other enabling provisions of the law.

2. It seeks orders:-

**1. That the honourable Lady Justice Loice Komingoi be pleased to recuse and or disqualify herself from conducting further proceedings in this matter.**

**2. That this matter be referred to the honourable Presiding Judge of the Environment and Land Court for further directions.**

**3. That the costs be in the cause.**

3. The grounds are on the face of the application and are set out in paragraphs 1 to 8.

4. The application is supported by the affidavit of Ogola Kodhek Ambala, the 3<sup>rd</sup> Plaintiff herein sworn on the 9<sup>th</sup> April 2021.

5. The application is opposed. There are grounds of opposition filed by the Defendants/Respondents dated 29<sup>th</sup> June 2021.

6. On 30<sup>th</sup> June 2021, the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.

7. The Plaintiffs'/Applicants' submissions are dated 31<sup>st</sup> August 2021 while the Defendants'/Respondents' submissions are dated 20<sup>th</sup> September 2021.

8. It is the Plaintiffs'/Applicants' submissions that they are dissatisfied with the way this court has been giving audience to lawyers purporting to act for the Defendants or holding brief for Ogado & Company Advocates despite the fact no firm of Advocates has ever come on record for the Defendants formally as required by the Civil Procedure Rules.

9. Further that they are dissatisfied in the way in which this court stayed the orders given on 27<sup>th</sup> November 2020 upon considering an application drawn and filed by Advocates who are not on record in this case.

10. It is the Defendants'/Respondents' submissions that an application for recusal of a court/judge must be premised on certain facts that are

sufficient to demonstrate how the applicants' rights to a fair trial and adjudication of the dispute by the court will be affected by the court's conduct or perceived misconduct if at all.

11. I have gone through the affidavit of Ogola Kodhek Ambala and I am unable to find any grounds at all to warrant this court to recuse itself.

12. It is not in dispute that there is a related matter being ELC No 511 of 2018, which relates to the same subject property and the same parties. The said suit was filed earlier than this one. The said suit is pending. One wonders why the Plaintiffs have filed a fresh suit when they could ventilate the issues on ELC No 511 of 2018.

13. The foundations for the principle underlying recusal of judicial officers was restated by the Supreme Court in **Jasbir Singh Rai & 3 Others vs Torlochan Singh Rai & 4 Others Petition No 4 of 2012 [2013] eKLR** as follows:-

**“Recusal, as a general principle, has been much practiced 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, 8<sup>th</sup> Ed. (2004) [P.1303]: “Removal of oneself as judge or policy maker in 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”.**

14. I find that the Plaintiffs/Applicants have failed to demonstrate any open bias against them by this court. It is an attempt to engage in forum shopping.

15. In conclusion, I find no merit in this application and the make the following orders:-

**a. That the Plaintiffs’/Applicant’s application for recusal of the trial court is without merit and the same is dismissed with costs to the Defendants.**

**b. That the matter be placed before the Honourable Presiding Judge (S. Okong’o) on 14<sup>th</sup> December 2021 for reallocation to another Judge.**

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 25<sup>TH</sup> DAY OF NOVEMBER , 2021**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Njoroge Ng’ang’a for the Plaintiffs

Mr. Andati for Mr. Ogado for the Defendants

Steve - Court Assistant