REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

PETITION NO.E002 OF 2021

HON. JAMES WAHOME NDEGWA.....PETITIONER.

VERSUS

HON ZACHARY MWANGI NJERU.....RESPONDENT/1ST CONTEMNOR

HON.EDINALD WAMBUGU KINGOR.....2ND RESPONDENT/2ND CONTEMNOR

THE COUNTY ASSEMBLY OF NYANDARUA.....3RD RESPONDENT

THE GOVERNMENT PRINTER-GOVERNMENT PRESS.....4THRESPONDENT

THE INSPECTOR GENERAL OF POLICE.....5TH RESPONDENT

THE HON. ATTORNEY GENERAL.....6TH RESPONDENT

AND

ELIZABETH WANJIKU MUTHUI.....3RD CONTEMNOR

JOHN DUBE KAMURIA.....4TH CONTEMNOR

BENSON LEPARMORIJO.....5TH CONTEMNOR

CONSOLIDATED WITH CONSTITUTIONAL PETITION NO. E01 OF 2021

BETWEEN

HON. ZACHARY MWANGI NJERU.....PETITIONER/APPLICANT

VERSUS

HON. JAMES NDEGWA WAHOME.....1st RESPONDENT

HON. MR. MUKIRI MUCHIRI.....2ND RESPONDENT

AND

THE COUNTY ASSEMBLY OF NYANDARUA .....1ST INTERESTED PARTY

THE COUNTY GOVERNMENT OF NYANDARUA.....2ND INTERESTED PARTY

RULING

1. The Petitioner/ applicant filed a **Notice of Motion** dated **26th August 2021** under Article 25 and 50 of the Constitution of Kenya and

prayed for the following orders;

a) That the Honourable Hillary Chemitei be pleased to recuse and/or disqualify himself from any further conduct of this matter.

b) That there be an order of stay of proceedings including writing and/or delivery of any rulings or judgements in relation to the subject petition pending hearing and determination of the application.

c) That this matter be placed before any other court of competent jurisdiction, for its just and conclusive determination.

d) That costs of this application be on the cause.

2. The application is premised on supporting affidavit sworn by **Hon. Zachary Mwangi Njeru** and the following grounds;

3. That this court made substantive directions and allocated itself this file oblivious of the fact that Justice Joel Ngugi was seized of the matter and owing to the fact that judicial officers are estopped from making substantial undertakings and/or directions in matters being handled by other judges of similar rank.

4. That the 1st respondent is apprehensive that his right to fair hearing will be prejudiced since this court has demonstrated bias and favourism towards the Petitioner herein to the detriment of the Respondents.

5. When the matter came up for hearing on the 8th day of June 2021 it emerged that the Petitioner and the 3rd Respondent had not filed all it's pleadings and the counsel for the 1st respondent stated that it's application for stay of execution was unopposed. However, this court indulged the petitioner and further gave liberty to the parties herein to file its pleadings.

6. On the 24th day of June 2021, when the instant matter came up for mention to confirm filing of submissions, counsel for the 1st respondent sought the court's indulgence noting that it had been served with the supplementary affidavit of the Petitioner on the 22nd day of June 2021 and submissions by the 3rd Respondent on the evening of the 23rd day of June 2021 and needed time to file a response to the issues raised.

7. That the Court declined the request by the 1st Respondents Advocates without a further thought oblivious of the fact that the 1st Respondent had requested for its 1st adjournment since the commencement of the case and there were exonerating circumstances effectively prejudicing the 1st Respondent who was facing contempt proceedings. In doing so the Court was swayed by the sentiments of the counsels for the Petitioner, 3rd Respondent and Learned Senior Counsel Tom Ojienda.

8. That the Court even dared to entertain the submissions by the Petitioner and 3rd Respondent herein that the submissions and affidavits in response to the issues raised could be done overnight oblivious of the fact that 1st Respondent's Advocate needed to obtain better particulars to adequately represent its client's interests. The Court proceeded to give the 1st Respondent a mere 2 days to file all its documents.

9. On 8th day of July 2021, when the matter came up for mention for directions, Counsel for the 1st Respondent was absent. Despite the existence of two applications pending before the Court filed under Certificate of Urgency, the Honourable court proceeded to give a ruling date against the generally accepted standards of practice. In delivering the ruling, the Court failed to ascertain evidence of an affidavit of service by the Counsel for the Petitioner and/or 3rd Respondent indicating that a copy of a Ruling Notice had been served to all the parties. That in doing so it is apparent that the Court was keen to condemn and affect the rights of the Respondents without according them a right to fair hearing.

10. Further that this court's ruling dated the 22nd day of July 2021 despite making a finding that the 3rd Contemnor herein was held culpable in her capacity as the Acting Clerk of the County Assembly of Nyandarua, the Court ordered that the mace of the County Assembly be handed over to the 'Speaker's duly appointed Clerk being Gideon Mukiri' in total disregard of the orders annexed by the 3rd Contemnor in support of her claim. It is evident herein that the Honourable Judge has already picked a side.

11. That the Honourable Court has allowed the Petitioner herein to abuse the Court process by issuing new orders in favour of the Petitioner arising from the Petitioner's Contempt Application dated the 6th day of May 2021 which had the net effect of curing the defect in the ambiguity of the orders issued by this Honourable Court on the 29th day of April 2021. The orders granted were equally coached in mandatory terms during an interlocutory Application with the sole intention to unfairly favour the Petitioner.

12. That when the Petitioner's Application dated the 27th day of July 2021 and the 1st Respondent's Application dated the 22nd day of July 2021 came up for hearing on the 29th day of July 2021, the Petitioner lamented that the Respondents had continued to disobey the Court orders and even the County Assembly was locked. That counsel for the 1st Respondent in response averred that it had been served with the said Application that morning and had not even read the same and therefore lacked the requisite capacity to comment on the same. This court stated that "you can break the padlocks and access the County Assembly premises if you so wish". In a rejoinder the 1strespondent's Advocate reminded the court that the said sentiments were dangerous and would likely have adverse repercussions including propagating an illegality.

13. That this court's sentiments were in bad taste with the net effect of inciting violence in an already politically polarized environment. That the court through it's utterances has openly affirmed its affiliation with the petitioner. On 29th July 2021, when the court was brought to the

attention of the interested party's pending application for consolidation, the court stated that it will give an appropriate direction when the said application will be dealt with. In so doing the court prejudiced the interested party's right to be heard while giving preferential treatment to the petitioner. It is evident that the Honourable Judge has picked a side hence this court should allow the matter to be heard before an impartial judge.

14. That the petitioner has stated in various forums that he has enormous influence over the decisions of this Court. It is therefore evident that the 1st Respondent has established a reasonable apprehension of bias to warrant grant of the orders sought herein. The 1st respondent is apprehensive that the Court has inadvertently acquired an identifiable interest in the matter and it has ceased from appearing to be reasonable observer to be free from external influences. That it is in the interest of justice that this court does grant the orders the 1st respondent is seeking.

15. **Honourable James Wahome Ndegwa** who is the respondent in this application filed a replying affidavit and averred that the said application and affidavit are not factual, are full of innuendos and are ill intentioned and devoid of any merit and merely meant to delay the conclusion of this matter. He averred that the applicant and his cohorts have vowed that they will never obey court orders which they have termed as mere pieces of paper and further declared that the deponent will never get into the County Assembly building ever again and the application is in perpetration of that criminal disposition.

16. The deponent averred that it was communicated to all the parties that Prof. Justice Ngugi had been taken ill and all the counsels on their own motion and voluntarily requested this court to take up the matter. During all the proceedings before this Court, all the directions taken have been with the consent of counsels for all the parties and the applications herein are an afterthought and in bad taste, dishonest and a blot on the administration of Justice.

17. THAT on 8th June, 2021 none of the parties had filed all their pleadings relating to the applications thereof and the Court directed all the parties to comply within fourteen (14) days of the date thereof and fixed the matter for mention on 24th June, 2021 to confirm such compliance. The assertion by the Applicant that his counsels were only given two (2) days to comply does not arise and is deceitful and in bad faith. The Court was kind enough to give the Applicant a further two (2) days. In seeking for more days to comply with the directions given on 8th June, 2021 the applicant was purely making a vain attempt to continue delaying the conclusion of this matter.

18. The court acted judiciously especially while noting that it had powers to reject any further extension more so in the circumstances of this case. The deponent also disagreed with the applicant's sentiments on adjournment and stated that they have a tendency of filing pleadings in the nights preceding to fix hearings, mentions and /or rulings dates with an aim to forestall the process.

19. He averred that the application for consolidation dated 21st June 2021, was filed purposely to stop the mention for fixing a ruling date for 24th June 2021. To date the said application has never been fixed for hearing which confirms that it was ill intentioned with the sole objective to delay this matter. It was also averred that the court did not fix any matter for ruling on 8th July 2021. The date of the ruling delivered on 22nd July 2021 had been taken in the presence of all the parties and their counsels hence there was no need to serve a ruling notice.

20. It was averred that the court rightly convicted the applicant and fellow contemnors of contempt of court orders which orders have not been complied with to date. The 3rd contemnor was appointed as the Acting Clerk against the Order of Nairobi PPDT Case No. E005 of 2021 and the purported appointment was therefore a nullity in law ab initio as Honourable Reuben Gitau Karanja and Honourable Samuel Rimui Kaiyani had been expressly barred from assuming membership of the County Assembly Service Board (CASB) but as usual the Orders of the Tribunal were ignored, disregarded and rubbished. The Court had on 4th June, 2021 delivered a ruling in ELRC No.007 of 2021 to the effect that all decisions made by the applicant and his purported Board which included the illegal and unlawful appointment of the 3rd Contemnor as the Acting Clerk as illegal, null and void.

21. He averred that by a letter dated 3rd May, 2021, the County Assembly Service Board (CASB) terminated the services of the 3rd Contemnor as the Principal Procedural Clerk Assistant and despite her masquerading as the Acting Clerk she has remained an imposter and a stranger to the Assembly service. The court was therefore justified to order the 3rd contemnor to handover the County Assembly property to Mr. Gideon Mukiri Muchiri.

22. It was averred that this Honourable Court has been very lenient to the applicant and fellow contemnors that they have continuously ignored simple, clear and unequivocal orders of this Court since 29th April 2021 which orders were founded on merit.

23. It was further averred that the purported utterances by the Judge are far-fetched, borne out of desperation and quoted completely out of context and the same are purely meant to annoy and distract the Court from resolving the substratum of the suit herein. In fact, this court disallowed the deponent's oral application for forcible entry into the assembly's building and retorted that court orders must be obeyed.

24. He further averred that the applicant and his contemnors herein have no regard for court orders and the rule of law and have disobeyed several orders of various courts and tribunal including the orders of this court hence the application herein is brought in bad faith and it is only meant to delay the final determination of the deponent's application dated 27th July 2021.The deponent averred that justice delayed is justice denied. The deponent has been denied the right to occupy his space and function optimally which is prejudicial to devolution and the larger interest of the people of Nyandarua County.

25. It was further averred that this court is not partisan as it is in the character of the Applicant to act with total impunity and disregard of the law and to defy the ensuing court orders thereof. The deponent placed reliance in the case of **Fred Matiangi the Cabinet Secretary, Ministry of interior and Coordination of National Government versus Miguna Miguna and 4 others in Civil Application No1 of 2017**, and averred that the applicant should not be heard on his applications or any other issue until the contempt proceedings are concluded or he unconditionally purges the contempt herein to the satisfaction of the court. This court must conclude all pending contempt proceedings

before it can look into any other issues to safeguard its dignity and authority.

26. The deponent urged this court to instruct the Deputy Registrar of this Court to appear at the County Assembly of Nyandarua to oversee the compliance of its orders. This honourable court should also fast track the hearing of the contempt application and commit the Applicant and his co-contemnors to jail. The applicant and his co-authors are the authors of violence at the assembly where the police and their hired goons complement each other to visit violence on anyone.

27. It was averred that if this Court recuses itself from this matter it will be aiding the applicant in his heinous objectives of delaying the expedient conclusion of this matter and further aid him in the continued enjoyment of rights and privileges that are criminally denied from the deponent and other law-abiding citizens. The contempt proceedings should be presided over by the judge whose orders were defied unless very compelling reasons suffice but there is none in this case. It was averred as well that the applicant has not come to court with clean hands, hence this court should not have any place for him nor should a decent society like Kenya which is governed by the rule of law. The deponent seeks that this court does shelf the hearing of this application until the application dated 27th July 2021 is heard and decided. The deponent thus prays that this Honourable Court does eventually dismiss this application which is frivolous, vexatious and a waste of judicial time.

28. The 2nd interested party in its replying affidavit sworn by **Kevin Ikua Ndegwa** associated himself with the sentiments of the 1st respondent and averred that the 1st respondent has already established a reasonable apprehension of bias and it behooves this Honourable Court to allow the matter to be heard by an impartial court.

29. When the matter came up for directions the court ordered the same to be determined by way of written submissions which the parties have complied and they can be summarized as hereunder.

1ST RESPONDENT'S/APPLICANT SUBMISSIONS

30. The 1st respondent placed reliance on the case of **Kalpana H Rawal v Judicial Service Commission & 2 others [2016] eKLR** and submitted that an application for recusal is a right of a party. The 1st respondent submitted that no matter how one looks at it, there can be no justification in any way at all to mitigate the utterances made by the honourable Judge. While the Petitioner contends that the said sentiments were made out of context, one cannot help but wonder the circumstances under which the said utterances can logically be made by the Honourable Judge. The matter was further compounded by the fact that the parties had not been accorded an opportunity to be heard. In fact, at the time the utterances were made counsels had merely been served with a copy of the said Application at 8.35 am a few minutes to the online zoom court session.

31. The Honourable Judge candidly declined the request for the 1st Contemnor and 3rd Contemnor an opportunity to orally make representations despite the fact that the Contemnors herein were facing contempt Applications. In fact, he proceeded to fix the matter for ruling despite the obvious protests from the 1st Respondent and 2nd Interested Party and oblivious of the directions by Honourable Justice Joel Ngugi that the said Application be heard on priority basis. Further, he proceeded to accord the 1st Respondent and 2nd Interested Party three (3) days to put their house in order and respond to the substantive affidavits filed by the 3rd Respondent. In doing so, he effectively repeated the events of the 24th day of June 2021.

32. Despite the Honourable Court being alive to the fact that the 1st Respondent herein has expressed apprehension on whether it will be accorded its right to fair hearing with regard to contempt Application dated the 27th day of July 2021, the Honourable Judge proceeded to fix the said Application for ruling on the 4th day of October 2021. The proper practice would have been to make a proper determination on the application for recusal before making a determination on any of the Applications pending as the same had a bearing on the outcome of the various applications pending.

33. The 1st respondent proceeded to submit that this court has already developed bias and the stalemate and leadership wrangles in Nyandarua county can only be achieved by an independent tribunal. In the likely event that this court does make a determination that an apprehension of bias has not been established, the Court should recuse itself on public interest grounds. See the case of **Marriot Africa International Limited v Margaret Nyakinyua Murigu & 3 others; Ukombozi Holdings Ltd (interested party).**

PETITIONER/ RESPONDENT'S SUBMISSIONS

34. The petitioner submitted that 1st respondent was duly represented by counsel in all appearances and at no given time did he ask Justice Chemitei not to proceed with the matter and adjourn it to the date when Justice Ngugi was to be available. His belated and angry outcry on the issue is just a charade. The 1st respondent is just playing victim as the petitioner was the one disadvantaged when the judge set aside the orders issued on 15/2/2021 which orders had in effect ensured that the petitioner remained in office pending hearing of the application dated 11/2/2021.

35. The judge never allocated himself but rather the file was placed before him as the duty judge since Justice Ngugi had been taken ill and was also scheduled to handle the BBI case. Both parties agreed that Justice Chemitei should proceed with the matter due to uncertainty on when Prof Joel Ngugi was to resume.

36. The petitioner submitted that Justice Charles Kariuki while recusing himself, did not state that it is the petitioner or persons affiliated to him who had reached out to his relatives. The unfounded accusations that the petitioner has influence over the decisions of the Judge are not proved by the 1st respondent. He who alleges must prove. The judge cannot be expected to recuse himself without evidence in support. The date, venue and source of the information have not been disclosed and thus the court should dismiss the same as mere propaganda.

37. The petitioner placed reliance in the cases of **Jasbir Singh Rai & 3 others v Tarlochan Singh Raj & 4 others (2013) eKLR** and the case of **Republic v Raphael Muoki Kalungu (2018) eKLR** and submitted that the applicant has not demonstrated bias or partiality of the Judge but has only picked one or two instances where directions were issued against him by the judge while exercising judicial discretion. The court record will bear us evidence that a reasonable and fair minded man sitting in Court will conclude that the Judge in this matter has been impartial and fair to all parties.

38. The 1st respondent/applicant has already been convicted by this court for contempt. He did not prefer an appeal against the conviction. He is yet to comply with clear, unequivocal orders of 24/4/2021 and 22/7/2021. A second application for contempt is pending for determination and he is hell bent to ensure that the application is not heard by filing numerous frivolous applications including the instant application to bring confusion in the proceedings and intimidate the judge. This has to be brought to stop. Court orders must be obeyed. Judges must be respected. No one is above the law.

39. The 1st respondent and the 2nd interested party intend to hold the Court hostage and stop it from discharging its Constitutional duties through threats and intimidation. The petitioner prays for the Court to stamp its authority and discharge its duties without fear and dismiss the application with costs.

ISSUES FOR DETERMINATION

40. The only issue for determination is whether this court should recuse itself from dealing with the present matter. The decision to apply for recusal of a judge is not a simple matter which a party should prattle upon or just apply. It is a serious matter which must be guided by a conscientious decision being made by the applicant only where cogent evidence is available to support a claim of bias or prejudice on the part of the judge.

41. In **JAN BONDE NIELSON V HERMAN PHILIPUS STEYN & 2 OTHERS HC COMM No. 332 of 2010 [2014] eKLR** the court observed that 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. In **R v JACKSON MWALULU & OTHERS C.A. CIVIL APPLICATION NO NAI 310 OF 2004 (Unreported)** 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…''***

42. That position of the law in Kenya was accordingly guided by the principle set out in **METROPOLITAN PROPERTIES CO., LTD v LANNON (1969) 1 QB 577, [1968] 3 All ER 304, [1968] 3 WLR 694** that: -

> ***''Also in a case where the bias is being alleged against a court or judge it is not the likelihood that the court or judge could or did favour one side at the expense of the other that is important, it is that any person looking at what the court or judge has done, will have the impression in the circumstances of the case, that there was real likelihood of bias''.***

43. In **Philip K. Tunoi & another v Judicial Service Commission & Another CA Civil Application NAI No. 6 of 2016 [2016] eKLR** the Court of Appeal in considering an application for recusal stated: In **Tumaini v. R. (supra)** Mwakasendo J held, rightly in our view, that

> ***"in considering the possibility of bias, it is not the mind of the judge which is considered but the impression given to reasonable people.……***
>
> ***The House of Lords held in R v. Gough [1993] AC 646 that the test to be applied in all cases of apparent bias was the same, whether being applied by the Judge during the trial or by the Court of Appeal when considering the matter on appeal, namely whether in all the circumstances of the case, there appeared to be a real danger of bias, concerning the member of the tribunal in question so that justice required that the decision should not stand.***
>
> ***The test in R v. Gough was subsequently adjusted by the House of Lords in Porter v Magill [2002] 1 All ER 465 when the House of Lords opined that the words "a real danger" in the test served no useful purpose and accordingly held that –***
>
> ***"[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."***

44. The same position was taken by the Supreme Court (per Ibrahim J.) in **Jasbir Rai and 3 Others v Tarlochan Singh Rai and 4 Others SCK Petition No. 4 of 2012 [2013] eKLR** where he observed that, ***"The Court has to address its mind to the question as to whether a reasonable and fair-minded man sitting in Court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant was not possible. If the answer is in the affirmative, disqualification will be inevitable."***

45. Under **Regulation 21 Part II** of the said ***Code of Conduct,*** a Judge can recuse himself or herself in any of the proceedings in which his or her impartiality might reasonably be questioned where the Judge;

> ***(a) Is a party to the proceedings;***

(b) Was, or is a material witness in the matter in controversy;

(c) Has personal knowledge of disputed evidentiary facts concerning the proceedings;

(d) <u>Has actual bias or prejudice concerning a party</u>;

(e) Has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;

(f) Had previously acted as a counsel for a party in the same matter;

(g) Is precluded from hearing the matter on account of any other sufficient reason; or

(h) Or a member of the Judge's family has economic or other interest in the outcome of the matter in question.

46. Regulation 9 of the Judiciary ***Code of Conduct*** emphasizes the importance of impartiality of a **Judge. Regulation 9(1) provides:**

"A Judge shall, at all times, carry out the duties of the office with impartiality and objectively in accordance with Articles 10, 27, 73(2) (b) and 232 of the Constitution and shall not practice favoritism, nepotism, tribalism, cronyism, religious and cultural bias, or engage in corrupt or unethical practices.

47. The applicant herein contended that this court has demonstrated bias and favoritism. The applicant therefore bore the burden of proving that the court was biased and/or prejudiced in its dealings. Unfortunately, the test which has been established in the above authorities has not been met by the applicant. In other words, he has not discharged the said burden of prove.

48. In the instant case, we need to ask ourselves a question; is bias discernible from the material before the Court in the eyes of a right thinking or reasonable person or fair-minded and informed person or observer? The answer is in the negative. The record bears witness that all the parties have been accorded equal right to be heard. The respondents have never complained of being denied their right to be heard since this court took over this matter. It is only after this court found them guilty of disobeying this court's orders that they have opted to circumvent this court's mind in order for them to get away from their own mistakes of non- compliance of court orders.

49. Essentially, what the 1st respondent is doing is an attempt to shop for judges who will hear their cases in the belief that those judges will be favorable to their causes which is against the values, objects and purposes of the Constitution and specifically Articles 10, 50, 159(2) (a), 160 and 259 of the Constitution of Kenya, 2010.The 1st respondent has asserted that the petitioner has stated in various forums that he has enormous influence over the decisions of this court. These sentiments have been made without any iota of evidence. It is trite law that he who alleges must prove.

50. **Section 107 of evidence Act** succinctly states:

"Whosever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

51. Apart from making such serious allegation against the petitioner, the 1st respondent has not supplied any documentary and /or video evidence in support to this court or show how this court has been influenced by the petitioner. Those are just mere allegations that cannot be substantiated.

52. Similarly, the alleged utterances by this court were made in passing when the court learnt that it's orders of 22nd July 2021 had not been complied with. When the counsel for the respondents got concerned, the court assured her that the said statement was an obiter with no binding and carried no weight or at all. The court insisted that parties know the law and they should endeavor to comply with it. The petitioner in his oral application and in his application dated 6th May 2021 had requested the court to allow him to make a forceful entry to the Assembly premises, which request this court failed to allow in its ruling dated 22nd July 2021. Therefore, the far- fetched utterances were made off the record and they did not cause any bias, or prejudice or disfavor to one side and therefore they are baseless, and hold no water.

53. In any case why would one think for a moment that the court would encourage any party to breach the law? Already the court was aware of the orders it had issued and it would be foolhardy to direct the parties to disobey the same be it the applicant or the respondent. It is important that counsels acting for the parties be objective and not sensational. For record therefore the court never directed in any way that the respondent should forcefully gain entry to the assembly premises.

54. At any rate even if the said alleged sentiments were to be taken literally, there is no evidence that the respondents have acted on the same and the assembly premises have been forcefully broken or at all.

55. The court is aware of course of the nature of this case, namely, political in nature. It has generated sufficient heat within the assembly pitting all the parties herein. The court is and must be seen to be an honest arbiter with all the transparency necessary. This court swore to uphold the rule of law without any fear or favour or any form of favoritism. The litigants in my view have been accorded all the opportunities with the court bending backwards to accommodate all the parties including extension of time unilaterally to allow filing of pleadings.

56. The taking over of this matter from Hon. Prof Ngugi was clear as daylight. The court never allocated itself this matter. The honourable judge was having some ill health as well as attending the BBI case in which he was presiding over. All these were within the knowledge of

all the parties including the applicant. None of them protested that this court should not handle the matter.

57. This application in the premises is just an attack upon the integrity of this court and should not be allowed to stand. The facts of this case would not in my view lead a fair-minded and informed observer to conclude that the Judge is biased. Therefore, the facts being pleaded for recusal are not anywhere near satisfaction of the threshold in the above-mentioned authorities, and so nothing precludes the judge from hearing this case.

58. There is no merit in the application and the same is hereby dismissed with costs.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 4TH DAY OF OCTOBER 2021.

H. K. CHEMITEI

JUDGE