



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL APPEAL NO. 181 OF 2019**

**KENYA PETROLEUM REFINERIES LIMITED.....APPELLANT**

**VERSUS**

**1. NGAYAU MUTIA**

**2. CHAI MUTIA.....RESPONDENTS**

**(Being an Appeal from the Ruling of Hon. Mr. Kyambia SPM**

**delivered on 5<sup>th</sup> April, 2019 in CMCC No. 4768 of 2003)**

**1. NGAYAU MUTIA**

**2. CHAI MUTIA.....PLAINTIFFS**

**VERSUS**

**KENYA PETROLEUM REFINERIES LIMITED.....DEFENDANT**

**RULING**

1. This morning when the matter was called out and counsel notified the court that both were ready to proceed with an application for stay pending appeal, the court asked both why they would not consider fast tracking the appeal rather than delay it by pursuing the interlocutory application.

2. While Mr. Kamami indicated willingness to have the appeal heard forthwith, Mr. Tindika, tacitly indicated to court that he was not willing to take that route for reasons that the court had given a curious and unfair order of stay to the appellant against his client.

3. On such concern I did pose a question to both counsel if they still had the faith that I could handle the matter impartially. To that question, Mr. Tindika left it to the courts conscience while Mr. Kamami urged the court to direct that a formal application be made and succinct grounds advanced and justified.

4. I take it that when confronted with an application for recusal the court must balance between the duty to appear impartial and unbiased as against the duty to sit and handle the docket assigned. [\[1\]](#)

5. I am in no doubt in my mind that nothing as at today can cloud my mind and judgment on application for stay and even the appeal itself for I have no personal knowledge nor interest in the matter beyond what is on the record.

6. However, when Mr. Tindika says that the ex-parte order for stay is curious and unfair then I deem it only reasonable that I read that he has no faith in this court. My impartiality having been questioned, even if so very vaguely, I am guided by the words of **Lord Nolan in R Vs Row Street Metropolitan Stipendiary Magistrate; ex Parte Pinochet Ugarte(No 2) [2000]1 A C 6 b to the effect that** *‘where the impartiality of a judge is in question the appearance of the matter is just as important as the reality’*.

7. His belief, which he did not assign to his client, may be very subjective and even spurious, but to obviate an appearance of bias by possible view I may take that I am being vexed and unfairly vilified, I do restrain myself from further dealing with the matter and direct that the file be placed before the presiding judge of the station for purposes of being assigned to another judge.

8. Pending further directions by the presiding judge, the interim orders last extended on the 21/7/2020 are hereby extended.

9. Let the parties appear before the presiding Judge on the 28/9/2020.

Ruling delivered in the online presence of both counsel, Mr. Kamami and Mr. Tindika by **MS Teams**.

**Dated, Signed and Delivered at Mombasa this 1st day of September 2020.**

**P J O OTIENO**

**JUDGE**

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[\[1\]](#) Supreme court of Kenya, in Gladys Boss Shollei vs JSC (2018) eklr, citing with approval, Judicial Continuing Education Workshop: Recusal, Contempt of Court and judicial Ethics by Justice Rolston F Nelson