



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 156 OF 2018**

**LAKEVIEW INVESTMENT LIMITED.....PLAINTIFF**

**VERSUS**

**JENNIFER WAITHIRA NDEGE.....1<sup>ST</sup> DEFENDANT**

**MANWAH BWOSIEMO MAGARA.....2<sup>ND</sup> DEFENDANT**

**AL RUHIA ESTATES LIMITED.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. In the Notice of Motions dated 20<sup>th</sup> February, 2020, the Defendants have prayed for the following reliefs:

- a. The Honourable Justice O. Angote be pleased to recuse himself from hearing this matter.***
- b. The matter be heard and determined by any other Judge as the case may be.***
- c. This matter be transferred to the Chief Magistrate's Court Milimani for hearing and determination thereof.***
- d. Costs of the Application be in the cause.***

2. The Application is supported by the Affidavit of the 2<sup>nd</sup> Defendant who has deposed as follows: that following previous decisions made in this matter and other related matters by this court, he lodged a complaint against the court before the Chief Justice; that there is a pending complaint before the Judicial Service Commission against the Presiding Judge and that it is imperative that this matter be heard by another court.

3. The Plaintiff's advocate filed Grounds of Opposition in which it averred that the current Application is vexatious and an abuse of the process of the court; that the current market value of the suit property far exceeds the jurisdiction of the Chief Magistrate and that evidence of impropriety against the Presiding Judge has not been exhibited by the Defendants to warrant the orders being sought.

4. The Plaintiff averred that the Chief Justice has substantially addressed the complaints raised by the Defendants in his letter dated 10<sup>th</sup> April, 2019 and that the Application should be dismissed. Both advocates relied on the pleadings on record.

5. From the 2<sup>nd</sup> Defendant's Affidavit, the only reason that the 2<sup>nd</sup> Defendant has proffered for my disqualification is "*the previous decisions made in this matter and other related matters*" and that he is aggrieved by the said decisions. According to the Applicant, he has filed an Appeal in respect of the decision that this court made in Machakos ELC No. 210 of 2011.

6. The case of ***Kalpna H. Rawal vs. Judicial Service Commission & 2 Others (2016) eKLR*** emphasized that there must be credibility to the allegations made concerning why an officer sitting in a court or tribunal would be deemed to portray conflict of interest so as to disqualify himself. In the case of ***Attorney General of Kenya vs. Prof. Anyang' Nyong'o & 10 Others, EACJ Appeal No. 5 of 2007***, the East Africa Court of Appeal stated that the court should consider if there are circumstances giving rise to a reasonable apprehension, in the mind of a reasonable, fair minded and informed member of the public that the Judge did not (*will not*) apply his mind to the case impartially.

7. On the issue of recusal of a Judge on the ground that he is biased, the Court of Appeal in ***Kalpna H. Rawal (supra)*** held as follows:

***"An application for recusal of a Judge in which actual bias is established on the part of the Judge hardly poses any difficulties: the Judge must, without more, recuse himself. Such is the situation where a Judge is a party to the suit or has a direct financial***

*or proprietary interest in the outcome of the case. In that scenario bias is presumed to exist and the Judge is automatically disqualified. The challenge however, arises where, like in the present case, the application is founded on appearance of bias attributable to behaviour or conduct of a Judge... It cannot be gainsaid that the Applicant bears the duty of establishing the facts upon which the inference is to be drawn that a fair minded and informed observer will conclude that the Judge is biased. It is not enough to just make a bare allegation. Reasonable grounds must be presented from which an inference of bias may be drawn.”*

8. The allegation by the Applicant that I will be biased because I have made findings against him in interlocutory applications cannot be a ground for my recusal. Indeed, it is trite that the work of a Judge is to make a decision, in which one of the parties will win while the other one will lose. That being the case, the party who is aggrieved can only aver, on Appeal, that the Judge erred in arriving at his decision. A party who loses a case cannot succeed with an argument that he lost his case because the Judge was biased, unless there is good ground, which must be proved, for such an assertion to succeed.

9. Considering that the 2<sup>nd</sup> Defendant’s only ground for applying for my recusal is that I made a decision in this matter and in ELC No. 210 of 2011 which was not in his favour, I find the said reason not to be valid for my recusal. Indeed, the fact that a party has lodged a complaint before the Judicial Service Commission cannot be a factor for the recusal of a Judge.

10. Although the 2<sup>nd</sup> Defendant has stated that this matter should be transferred to the Magistrate’s Court, there is no evidence that has been adduced to show that the value of the suit property, together with any developments thereon, is less than Kshs. 20,000,000.

11. For those reasons, I dismiss with costs the Application dated 20<sup>th</sup> February, 2020.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8<sup>TH</sup> DAY OF MAY, 2020.**

**O.A. ANGOTE**

**JUDGE**