REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL CASE NUMBER 112 OF 2008

ALICE WAMBUI NJOROGE..PLAINTIFF

VERUS

JACKSON KAMAU NDEGWA...DEFENDANT

RULING

1. The application before me is dated 24th November 2016. It is brought by the defendant Jackson Kamau Ndegwa acting in person in this case. It was brought under a certificate of urgency when parties were to take a judgment date after concluding the hearing of the case on the 27th September 2016 and highlighting their respective written submissions. The applicant ably tendered his oral highlights before me.

2. In his application brought under the provisions of **Section 1A and 3A of the Civil Procedure Act** and numerous Articles of the Constitution, the Applicant/Defendant seeks I (Hon. Justice Mulwa J) recuses myself forthwith from hearing any matter involving himself including this case and **HCCC No. 143 of 2011** pending in the court.

He has stated several grounds that I am biased against him in this case and **HCCC No.143 of 2011**, that he wrote a complaint to the Honourable The Chief Justice in **HCCC No.143 of 2011** complaining of the manner the said case was being conducted and stated that I refused to hear his contempt application against the plaintiffs and has locked him from calling witnesses in this case while allowing the plaintiffs to call and recall her witnesses and as a result, he had lost confidence in this court and myself.

3. In his affidavit in support of the application, he has attached letters addressed to the Hon. The Chief Justice in respect of **HCCC No. 134 of 2011** as a basis of his perceived bias that I have refused to hear him on an application for contempt against the plaintiffs.

4. In respect of this case, the Applicant has not stated any single ground or reason for his perceived bias, save to state that I locked out his witnesses from testifying and whose evidence he deemed necessary while allowing the plaintiff leave to call and recall her witnesses over the case and only allowed him 30 minutes to canvass his case.

5. I have perused the entire suit file. The case was filed in June 2008 and has been heard by all the Judges who have been in this station since then.

The plaintiff's evidence was taken before Justice W. Ouko (as he then was) and Justice Wendo J concluded the plaintiffs case on the 21st July 2014.

6. The applicants/defendant's case was heard before me on the 26th September 2015 when the applicant testified. His alleged witnesses had not recorded statements and the court had earlier granted the applicant time to record and file their statements. He failed to do so. This was before the case was placed before me, when he tendered his defence.

His application to file written statements after the plaintiffs case and his own defence were concluded was opposed by Advocates for the plaintiffs. The Court after considering the application to allow the plaintiff's witnesses their statements and testify at the late stage, I disallowed the application as coming too late and upheld the plaintiffs objection on grounds that filing of witness statements after closure of the plaintiffs case would be prejudicial to the plaintiffs who had closed their case, as they would have no chance to get instructions from their clients and cross examine the defendants witnesses on the statements.

7. Upon closure of his case, the applicant filed his written submissions and so did the plaintiffs. On the 27th September 2016, when parties were to highlight their submissions, the applicant told the court that he did not intend to highlight his submissions and a date was given for the parties to take a judgment date on the 27th September 2016.

It is then that the applicant brought the application under certificate of urgency.

8. A careful perusal of the basis of the application is not clear. No grounds have been stated for the perceived bias or misconduct by this court, or the judge.

9. For an applicant to succeed in application for a judge to recuse herself from hearing of a case to succeed, the principles stated in the case **Miller -vs- Miller (1988) e KLR I** and followed in many others and in particular **Nakuru HCCC No. 231 Florence Chalangat Langat -vs- Timoi Farms Estate Ltd & Another (J. Munyao Sila, 21st April 2015)** and quoted from **AG -vs- Prof Anyang Nyong'o & 10 Others EACJ Application No. 5 of 2007,** must be satisfied. The Honourable Judges rendered that:

> ***"We think that the objective test of reasonable apprehension of bias is good law. The law is stated variously, but amount to this: do the circumstances give rise to a reasonable apprehension, in the mind of the reasonable fair minded and informed member of the public that the Judge did not (will not) apply his mind to the case impartially. Needless to say,a litigant who seeks disqualification of a judge comes to court because of his own perception that there is appearance of bias on the part of the judge. The court however has to envisage what would be the perception of a member of the public who is not only reasonable but also fair-minded and informed about all the circumstances of the case."***

10. The applicant in my mind has not pinpointed any likelihood of bias on the part of the Judge court or at all.

He fully participated in the hearing of the plaintiff's case and in his own defence including filing his submissions and highlighting the same without any complaint.

If there was any likelihood of his perceived bias he should have raised it during the hearing instead of bringing the application after closure of the case. This complaint is but a way of delaying delivery of Judgment in the case and to bring it to conclusion.

11. I agree with the plaintiff"s counsel that this is yet another delaying tactic to postpone the judgment so as to further conclusion of the case. The applicant has not stated any one reason or misconduct for which he wants me to recuse myself from delivering judgment in the case. This is an applicant who wants to delay justice yet he has not pointed out any specific prejudice against him in the whole proceedings, either before me or any other judicial officer.

12. For those reasons, I find no reason upon which I may consider recusing myself from preparing and

pronouncing judgment after hearing the case without any issue being raised.

The application is dismissed with costs as meritless. Parties may proceed to take a Judgment date.

It so ordered.

Dated, Signed and Delivered this 13th Day of February 2017

J.N. MULWA

JUDGE