

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
NAIROBI
ELC PETITION NO. E017 OF 2023

ASHOK LABHSHANKER DOSHI 1st
PETITIONER

PRATIBHA ASHOK DOSHI 2nd
PETITIONER

MAGNUM PROPERTIES LIMITED 3rd
PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTION 1st
RESPONDENT

DIRECTORATE OF CRIMINAL
INVESTIGATION..... 2nd
RESPONDENT

INSPECTOR GENERAL,
NATIONAL POLICE SERVICE 3rd
RESPONDENT

CHIEF LAND REGISTRAR 4th
RESPONDENT

ATTORNEY GENERAL 5th
RESPONDENT

CHIEF MAGISTRATE,
MILIMANI LAW COURTS 6th
RESPONDENT

GREEN VIEW LODGE LIMITED 7th
RESPONDENT

RULING

1. Vide a Notice of Motion dated 17th March, 2025 brought pursuant to the provisions of **Articles 48 and 50(1)** of the **Constitution, 2010, Rules 4, 9, 11 and 21 (1) (d)** of the **Judicial Service (Code of Conduct and Ethics) Regulations, 2020**, the Petitioners/Applicants seek the following reliefs:
 - a. *That the Honourable Justice Oscar Amugo Angote recuses and disqualifies himself from further hearing of this petition.*
 - b. *That the file be placed before the Honourable Chief Justice to appoint another Judge to handle the instant petition to the exclusion of the Honourable Justice Oscar Amugo Angote.*
 - c. *That the costs of this Application be costs in the cause.*
2. The Motion is supported by the Affidavit of Ashok Doshi, the 1st Petitioner/Applicant sworn on his behalf and on behalf of the 2nd Petitioner.
3. Mr Ashok deponed that he together with his co-Petitioners filed a Petition dated the 25th April, 2023 wherein they sought *inter alia*, that his arrest and prosecution in **MCCR E257 of 2023 -Republic -vs- Ashok Labhshanker Doshi & Others** was an abuse of the court process, and that their eviction from the subject property was in

violation of their **Article 40** rights. They further sought prerogative orders.

4. Together with the Petition, they filed a Notice of Motion Application seeking conservatory orders pending the hearing and determination of the Petition. In response, the 1st and 7th Respondents filed Preliminary Objections urging that the Petition is *res judicata* and an abuse of the court process.
5. It was deposed by the Applicants that on issue were two Judicial Review Applications, **ELC Misc. App No. 46 of 2020** and **ELC Misc. App No. 66 of 2020**, before Hon. Justice Eboso and Hon. Justice Obaga respectively, as well as **Petition 44 of 2020-Ashok Labshanker Doshi & Another vs Director of Public Prosecutions & 3 others; Greenview Lodge Limited (Interested party) [2021] eKLR** that was before Hon. Justice Ogola.
6. It was deposed that the court made a determination on 5th October, 2023, wherein it found that the objections were unmerited and that the court held that the two Judicial Review applications were never decided on their merit and therefore could not be said to contravene the principle of *res judicata*.
7. As regards Petition 44 of 2020, the court also affirmed that the causes of action therein and in the present Petition were different and the plea of *res judicata* was inapplicable. The court also affirmed that the Petition and Motion did not constitute an abuse of court process.

- 8.** Following this, he deponed, the parties took directions on the prosecution of the application seeking interim reliefs; that the 1st and 7th Respondents filed their respective responses and submissions; that the 7th Respondent's Replying Affidavit did not address the Motion but focused on the Petition and that further still, its submissions were filed late.
- 9.** Mr Ashok deponed that this court made a determination on 31st July, 2024, and to their dismay, the same was a complete 180° turn from the earlier decision; that in a turn from its earlier findings, the court noted that the Petition in issue bears a striking resemblance to the Mombasa Petition, and that they had engaged in filing multiple suits which constituted an abuse of the process of the court.
- 10.** Essentially, Mr Ashok asserts, the court sat on appeal over its own decision and findings *suo moto*, and in effect issued contradictory findings of fact and law within the same suit. Suffice to note, he urged, there was no change in circumstances or introduction of new information or evidence between the 5th October, 2023 when the first ruling was delivered and the 31st July, 2024.
- 11.** According to Mr Ashok, a reasonable fair- minded man, sitting in court and familiar with all the relevant facts in the matter would without a doubt have suspicion that the court has abandoned all objectivity and instead has become a partial arbiter with the anecdotal 'horse in the race'.

- 12.** It was urged that the foregoing, married with the fact that the crux of the Petition is that the 1st and 2nd Respondents have been compromised and weaponized against them in order to aid the 7th Respondent irregularly acquire the suit property in dispute, causes alarm bells to go off.
- 13.** It is his position that the sudden, inexplicable flip leaves room for reasonable assumption that the forces they have been complaining about in their Petition may have got to the court and that in delivering his impugned ruling, the court held that they were yet to establish legitimate rights over the suit property despite the fact that they have, through their pleadings clearly set out their right to the suit property.
- 14.** Mr Ashok states that this court in its earlier ruling acknowledged the existence of the two letters confirming the appropriateness of the receipts indicating payment of stamp duty and stand premium, therefore strengthening their claim, and that contrary to the court's assertion, they clearly presented evidence rebutting the presumption that the 4th Respondent had acted lawfully in cancelling their title.
- 15.** He opines that they are rightfully apprehensive that the positions taken by the court at the interim stage have prematurely predetermined the Petition against them and will deny them the ability and flexibility to prosecute their Petition without prejudice.

- 16.** According to him, their apprehension in this regard is buttressed by the fact that the Respondents are so confident and cocky, and do not deem it necessary to file responses to the Petition. Even if the court determines the Petition in their favour, questions will still persist about the integrity the findings in the ruling of 31st July, 2024.
- 17.** He asserts that it is apparent that the court has a pre-determined position and is therefore incapable of adjudicating the matter impartially and objectively which is in clear violation of **Regulation 9 of the Judicial Service (Code of Conduct and Ethics), Regulations, 2020.**
- 18.** It was deposed that considering that they are in a perilous period where the integrity of the judiciary as an institution is under close scrutiny, the conduct of the court lends credence to the claims that the judiciary may be irredeemably corrupt.
- 19.** He urges that the Petitioners should be accorded a just and fair hearing in accordance with their inalienable fundamental right as enshrined in **Article 50 of the Constitution**, and that in order for the parties to achieve a fair hearing, the court should recuse itself in accordance with **Regulation 21 of the Judicial Service (Code of Conduct and Ethics), Regulations, 2020.**
- 20.** The 2nd -6th Respondents filed Grounds of Opposition dated the 1st July, 2025 premised on the grounds that:

- i. The Petitioners were at liberty to appeal or seek review of the impugned Ruling by Lord Justice Angote on the 31st July, 2024 and not purport to seek for recusal premised on the judge's exercise of discretion in considering an application for conservatory orders.[Patriotic Guard Limited vs James Kipchirchir Sambu[2018]KECA 799(KLR)].***
- ii. The issue of how the Honourable Court exercised its judicial discretion is one of the grounds the Applicant is basing the Application for recusal of the court and the question that arises is whether with the exercise of such discretion the judge can be accused of having exhibited actual bias. Regulation 7(d) of the Judicial Code of Conduct states:***

“A Judge shall exercise judicial authority independently and shall exercise judicial function on the basis of the judge's own assessment of facts of the case, in accordance with a conscientious understanding of the law and without reference to any extraneous influences.”
- iii. The Application is frivolous, an abuse of court process and made mala-fides and is meant for nothing else than to derail the hearing and determination of the Petition.***

- iv. The questioning of the impartiality of Hon Justice Oscar Angote is unreasonable, out of context, irrelevant and not applicable under Rule 5 of the Judicial Service Code of Conduct and Ethics.**
- v. A judge is a public good and is not intended to serve individual's personal interests.**
- vi. The Application filed by the Petitioners/Applicants aim as an assault on the judge's duty to sit and their presumed impartiality under oath of service. As pertains to the import, tenor and implication of the doctrine of the duty of a judge to sit, it suffices to highlight the dictum of the Supreme Court of Kenya in the case of [Gladys Boss Shollei vs Judicial Service Commission & Anor[2018] eKLR].**
- vii. The Application for recusal on the basis of previous decisions is misplaced and the same has no basis in law.[Saad Yusuf Saad v Independent Electoral and Boundaries Commission (IEBC) & 2 others [2017] KEHC 2657 (KLR)].**
- viii. The mischief revealed in this Application is just but styles, tactics and designs to forum shop for a judge of the Petitioners/Applicants' choice.**

- ix. Any party that will be dissatisfied by the decision of this Honourable Court have and reserve their right of appeal at the end.**
- x. No basis has been laid by the Petitioners/Applicants in their Application and the Supporting Affidavit that the Hon Judge is biased. [Gachagua & 5 Others vs Maingi and 80 Others (Consolidated) [2025] KECA 790 KLR 9 May, 2025.**
- xi. The Application is meant to detract the court and presiding judge from discharging his core mandate namely the disposal of matters before him proportionately, justly but without undue delay. [Galaxy Paints Company Limited vs Falcon Guards Limited[1999] eKLR.]**
- xii. The Application dated 17th March, 2025 is therefore marred with mischief, spiteful, malafides and should be dismissed with orders as to costs.**

21. In response to the Motion, the 7th Respondent through its Director, Jennifer Nthenya Wambua, swore a Replying Affidavit on the 14th May, 2025. She deponed that the Motion is unmerited, constitutes gross abuse of court and/or judicial process, is an afterthought, ill-conceived and intended to convolute and delay the hearing and determination of the Petition.

- 22.** According to Ms Wambua, no grounds have been established warranting the judge's recusal and what the Petitioners are engaging in is forum shopping. It was deposed that by the ruling delivered on 31st July 2024, the court gave concise reasons for disallowing the Motion of 25th April, 2023, primarily being the filing of multiplicity of suits by the Petitioners on the same issue, which suits had previously been dismissed by courts including **Mombasa Constitutional Petition No. 44 of 2020**, which was fully heard and determined by a judgment delivered on 28th September, 2021.
- 23.** It was deposed that the 1st and 2nd Petitioners also filed two suits, being **Nairobi Judicial Review Application No. 46 of 2020**, and **Misc Application No. 14 of 2020(JR)** that was subsequently transferred to Nairobi and renamed **Nairobi J.R. no. 66 of 2020**; that vide these suits, the Petitioners sought orders essentially challenging the annulment and cancellation of their title and that the same were dismissed on 17th September, 2020 and 18th February, 2021 respectively.
- 24.** According to the 7th Respondent, after the aforesaid dismissals, the Petitioners made another application in **Nairobi Judicial Review Application No 46 of 2020**, seeking to set aside the dismissal order therein and that the same was dismissed on 2nd November, 2021.
- 25.** It was deposed that arising from the afore cited previous matters filed by the Petitioners, between substantively the

same parties and seeking similar orders as those sought in the present Petition and the disallowed Application, the court properly exercised its discretion in disallowing the Motion for interim reliefs and that the recusal sought is unmerited and is a disguised appeal/collateral challenge to the ruling.

26. Ms Wambua re-stated the Motions and pleadings filed by the parties in the three aforesaid matters stating that it is clear that what the Petitioners are raising herein were similarly raised culminating in the dismissal orders and that the Petitioners have persisted in their pattern of gross abuse of the court through the present Petition.
27. She noted that in any event, the Petitioners filed a Notice of Appeal dated 6th August 2024 evincing their intention to Appeal the ruling of 31st July, 2024 and subsequently filed before the Court of Appeal **Civil Application No. E408 of 2024** seeking *inter-alia*, stay of proceedings in this Petition as well as in **MCCR E257 of 2023**.
28. It was deposed that the Court of Appeal made an order directing that while the proceedings in **MCCR E257 of 2023** shall not be stopped, the 2nd Petitioner shall not be arrested but will instead present herself on a date to be notified by Court for plea taking.
29. She urged that the present Motion is an afterthought coming after the Petitioners failed to secure orders of stay of proceedings in the Court of Appeal and long after the taking of the directions for hearing of this Petition, and

that the Motion has no basis in law and does not meet the threshold to warrant recusal.

- 30.** The Petitioners filed a Further Affidavit on the 4th July, 2025. Mr Doshi, the 1st Petitioner, deponed that vide its response, the 7th Respondent has completely failed to address this court's ruling of 5th October, 2023.

Submissions

- 31.** The Petitioners' Counsel filed submissions on 4th July, 2025. Counsel submitted that the right to a fair hearing is a fundamental right protected under **Article 50(1)** of the **Constitution**, and that pursuant to **Article 159(1)** of the **Constitution**, judicial officers are guided by the principle that justice shall be done to all irrespective of status and the purpose and principles of the Constitution shall be protected and promoted. In undertaking their mandate, it was submitted, judges are required to adhere to certain strict fundamental principles codified under the **Judicial Service (Code of Conduct and Ethics) Regulations, 2020**.

- 32.** According to Counsel, in the circumstances, this court vide its decision of 31st July, 2024 significantly overturned the pronouncements of facts and law that were pronounced in the previous one issued on the 5th October, 2023.

- 33.** This shift, without any basis, is sufficient grounds to call for the disqualification of the judge as expressed in **Mtaani vs Judicial Service Commission & Another(supra)** and meets the objective of the

reasonable apprehension of bias as adopted by the Court of Appeal in **Kalpna H Rawal vs Judicial Service Commission & 2 Others[2016]eKLR.** It was submitted that having established their case, the Petitioner is entitled to costs.

Analysis and Determination

34. Having considered the Motion, responses and submissions, the sole issue for determination is:

I. Whether this court should recuse itself from hearing and determining this Petition?

35. Recusal is defined by the **Black’s Law Dictionary 8th ed. (2004) [p.1303]** as:

“Removal of oneself as judge or policy maker in a particular matter, [especially] because of a conflict of interest.”

36. Judicial recusal safeguards one of the cornerstones of constitutional democracy and the right to a fair hearing enshrined in Article **50(1)** of the **Constitution**.

37. Tied to this is **Article 160** of the **Constitution** which mandates the courts to uphold independence and be free from influence by any party, and **Article 159(2)(a)** which mandates courts to ensure that justice is dispensed to all individuals, regardless of their social status.

38. Read together with **Article 25(c)**, which entrenches the right to a fair trial as a non-derogable right, it becomes clear that impartial adjudication is not merely a procedural

concern but a substantive constitutional imperative. **Regulation 9** of the **Judiciary Code of Conduct** emphasizes the importance of impartiality of a Judge. **Regulation 9(1)** provides as follows:

“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 favouritism, nepotism, tribalism, cronyism, religious and cultural bias, or engage in corrupt or unethical practices.”

39. The said Rule mandates that in so doing, the Judge shall; uphold and apply the law; observe fairness and impartiality; cooperate with other judges in the discharge of judicial duties by ensuring unity of purpose and collegiality; and perform all duties of the judicial office, including administrative duties impartially, competently, diligently, and without bias.

40. As regards recusal, **Rule 21** of the **Judicial Code Service (Code of Conduct) 2020** is instructive. It provides:

“(1) A judge may recuse himself or herself in any 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) has actual bias or prejudice concerning a party
(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."

41. Speaking to this, the Supreme Court in ***Rai & 3 others vs Rai & 4 others (Petition 4 of 2012) [2013] KESC 20 (KLR) (6 February 2013) (Ruling) (with dissent - MK Ibrahim, SCJ)*** noted:

"(6) Recusal, as a general principle, has been much practised 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, h ed. (2004) [p.1303]:"Removal of oneself as judge or policy

maker in a particular matter, [especially] because of a conflict of interest.”

(7)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.

(8)It is an insightful perception in the common law tradition, that the justice of a case does not always rest on the straight lines cut by statutory prescriptions, and the judicial discretion in its delicate process, is critical to equitable outcomes. This is what Sir David Maxwell Fyfe meant when he attributed to Lord Atkin a “constructive intuition which operates after learning and analysis are exhausted” [in G. Lewis, Lord Atkin (London: Butterworths, 1983), p. 166]. It is precisely such delicate elements of judicial fairness that will also feature in the judgment as to whether or not

the recusal of a Judge, particularly in the case of a collegiate Bench, is of any materiality, in a given case.”

42. In *Kibisu vs Republic (Petition 3 of 2014) [2018] KESC 34 (KLR) (28 February 2018) (Ruling)*, the Supreme Court quoted with approval the decision in *Nathan Obwana vs Robert Bisakaya Wanyera & 2 others [2013] eKLR* where the court had stated thus:

“In Kenya the Court of Appeal in the case of Republic v. Mwalulu & 8 Others: [2005] 1 KLR the court did set up the principles on which a judge would disqualify himself from a matter and stated as follows:

1. When the courts are faced with such proceedings for the 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.

2. In such cases the Court must carefully scrutinize the affidavits on either side, remembering that when some litigants lose their case they are unable or unwilling to see the correctness of the verdict and are apt to

attribute that verdict to a bias in the mind of the Judge, Magistrate or Tribunal.

3. The Court dealing with the issue of disqualification is not, indeed it cannot, go into the question of whether the officer is or will be actually biased. All the Court can do is to carefully examine the facts which are alleged to show bias and from those facts draw an inference, as any reasonable and fair-minded person would do, that the judge is biased or is likely to be biased.

4. The single fact that a judge has sat on many cases involving one party cannot be sufficient reason for that judge to disqualify himself. The fact that Tunoi, JA had sat on many cases involving the Goldenberg Affair, without anything more, was absolutely no good reason for him to disqualify himself."

43. The court in that case proceeded to hold that mere apprehension of bias cannot be a ground for recusal. That the allegations of bias must be factual and proved. It cannot be gainsaid that a plea for recusal is a serious matter as it goes against the very core of a judge's duty to sit. Speaking to this, Justice Ibrahim SCJ in ***Shollei & another vs Judicial Service Commission & another (Petition 34 of 2014) [2018] KESC 42 (KLR) (3 July 2018) (Ruling)*** noted:

“The doctrine of the duty of a judge to sit, though not profound in our jurisdiction, every judge has a duty to sit, in a matter which he duly should sit. So that recusal should not be used to cripple a judge from sitting to hear a matter. This duty to sit is buttressed by the fact that every judge takes an oath of office: “to serve impartially; and to protect, administer and defend the Constitution.” It is a doctrine that recognizes that having taken the oath of office, a judge is capable of rising above any prejudices, save for those rare cases when he has to recuse himself. The doctrine also safeguards the parties' right to have their cases heard and determined before a court of law.”

44. The court is so guided.

45. By way of a brief background, the Petitioners instituted this Petition on 25th April, 2023 seeking, *inter-alia*, declarations that the arrest and prosecution of the 1st and 3rd Respondents in **MCCR E257 of 2023** were in violation of their rights as enshrined under **Article 157(11)** of the **Constitution**, abuse of legal processes and breach of their rights to freedom of security. They also sought to have the 1st and 2nd Respondents prohibited from preferring any charges against the 2nd Petitioner.

46. The Petitioners further sought declarations that their eviction from the suit property without an order of the court violated their rights to property, an order of

certiorari to remove and quash the proceedings in **MCCR E257 of 2023**, and prohibition orders restraining the commencement of the trial in **MCCR E257 of 2023** and the preferring of any other charges.

47. They equally sought to have the cancellation of their title quashed and damages for the embarrassment and prejudice caused by their illegal prosecution.
48. Contemporaneously with the Petition, the Petitioners filed a Notice of Motion Application in which they sought conservatory orders staying their prosecution in **MCCR E257 of 2023**, prohibition restraining the harassment and arrest of the 2nd Petitioner on the facts arising from **MCCR E257 of 2023**, an order prohibiting the 7th Respondent from developments on the suit property and the Registrar from making any registration entries thereon.
49. Objections were raised to the Petition and the Motion aforesaid on the basis that the issues raised therein were *res judicata* having been heard and determined by the High Court in **Petition 44 of 2020- Ashok Doshi & Anor vs Director of Public Prosecutions & 3 Others; Greenview Lodge Limited (Interested Party)[2021] eKLR**. Also cited were the cases of **Nairobi Judicial Review No 46 of 2020, Mombasa Misc App No 14 of 2020(J.R)**, also **Nairobi J.R 66 of 2020**. Further that they constitute an abuse of the process of the court.
50. Vide this court's ruling of 5th October, 2023, the Preliminary Objection was dismissed. The court found that

the JR's 46 of 2020 and 66 of 2020 having been dismissed before full hearing could not be said to be *res judicata*. As regards Petition 44 of 2020, it was submitted that the same is equally not *res judicata* as key issues in the present Petition were not determined therein.

- 51.** After the dismissal of the Objections, the Motion of 25th April, 2023 proceeded for hearing. The court found no merit in the same and it was dismissed.
- 52.** The Petitioners allege bias by asserting that the court made contrasting determinations in the decisions of 5th October, 2023 and 31st July, 2024. They assert that the same casts doubt on the impartiality of this court.
- 53.** The impugned decisions arose in two distinct contexts. One, Preliminary Objections grounded on the doctrine of *res judicata* and subsequently on abuse of process, and second, an interlocutory application seeking conservatory orders. In the first ruling, the court addressed whether the matter was barred by *res judicata*, a jurisdictional inquiry directed at the scope and identity of issues previously adjudicated.
- 54.** In contrast, the subsequent ruling concerned whether the discretionary equitable relief by way of conservatory orders ought to issue. That determination turned not on jurisdiction but on the laid-out principles. Without delving further, so as not to descend into re-litigation of issues already determined, it is sufficient to observe that the two applications invited and required distinct legal inquiries,

each governed by its own doctrinal framework and evidentiary considerations.

55. Consequently, a fair-minded and informed observer, apprised of these circumstances, would not perceive bias but rather the application of distinct legal standards. The allegation of bias is therefore without merit, the divergence in outcome being no more than the ordinary and lawful exercise of judicial discretion. The court, therefore, finds that the right to a fair hearing under Article 50 of the Constitution remains safeguarded, and the plea for recusal cannot be sustained.

56. In any event, the Petitioner has lodged an appeal in respect to the Ruling of this court. That is as it ought to be. The Court of Appeal will determine the propriety of the said Ruling.

57. In the end, the court makes the following final determination:

- i. The Motion dated 17th March, 2025 is found to be unmerited and is hereby dismissed.**
- ii. Costs shall abide the Petition.**

Dated, signed and delivered virtually in Nairobi this 23rd day of October, 2025

O. A. Angote
Judge

In the presence of;

Mr. Shikanda for Petitioner

Mr. Allan Kamau for 2nd – 6th Respondents

Mr. Githinji for 7th Respondent

Court Assistant: Tracy