



Tome v Bubgoma County Assembly Service Board (CASB) & 2 others (Civil Application E110 of 2025) [2025] KECA 1743 (KLR) (21 October 2025) (Ruling)

Neutral citation: [2025] KECA 1743 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION E110 OF 2025
MSA MAKHANDIA, JA
OCTOBER 21, 2025**

BETWEEN

FRANCIS SIMIYU TOME APPLICANT

AND

BUBGOMA COUNTY ASSEMBLY SERVICE BOARD (CASB) 1ST RESPONDENT

SPEAKER OF THE BUNGOMA CASB 2ND RESPONDENT

CLERK OF THE BUNGOMA CASB 3RD RESPONDENT

RULING

1. The applicant herein filed this application seeking leave to appeal to the Supreme Court under Article 163(4) (a) and (b) of *akn ke act 2010 constitution the Constitution*, which was accompanied by a certificate of urgency. As is the practice of this Court, it was immediately placed before a Single Judge, Omondi, JA, to consider whether the application meets the threshold for certification as urgent. After due consideration of the application, Omondi, JA declined to certify it as urgent. This outcome was formally communicated to the applicant. In response, the applicant on 30th July, 2025, and pursuant to Rule 55(2) (d) of this Court's Rules, made an informal request for review of that decision by a full bench of the Court.
2. The request was placed before me for consideration. Having in mind the purport of Rule 48(5) of this Court's Rules, I deemed it unnecessary that a full bench should be constituted to hear and review of the order of Omondi JA. Instead, I directed that the application be placed before Omondi, JA for interpartes hearing on the question of urgency.
3. On 25th July, 2025, the file was again placed before Omondi, JA, who this time around recused herself from presiding over the matter on account of the applicant's complaints lodged with me dated 23rd July, 2025, regarding her dealing with his application, and also made reference to the impugned judgment in



- which the bench consisted of Omondi, Tuiyott & Kimaru, JJA. In the judge's view, since the applicant had reasonable suspicion of bias on her part, it was only fair and reasonable that she recuses herself.
4. The matter was once again placed before me for directions, whereupon I then directed that the application be placed before the next Duty Judge, being Kimaru, JA. However, Kimaru, JA informally informed me that since the applicant had filed a complaint with the Judicial Service Commission against him regarding how the aforesaid bench dealt with appeal, he would be uncomfortable sitting on the application.
 5. This is how now this application has found its way before me. In the light of the foregoing, and this being a matter that is ordinarily handled by a Single Judge of this Court, and to obviate the need for the application to be transmitted to the President of the Court to empanel a Single Judge to hear the application, and invoking Article 159 of *akn ke act 2010 constitution the Constitution of Kenya* as well as Sections 3A&B of the *akn ke act 1977 15 Appellate Jurisdiction Act*, I think I have the jurisdiction to entertain the application since I will not be doing so as an appeal from the impugned order of Omondi, JA.
 6. Directions had been given to all the parties to this application by Deputy Registrar of this Court on 16th October, 2025, if the email on record is anything to go by, that the interpartes hearing on the question of urgency only will be disposed of by way of written submissions. That there shall be therefore no appearance of counsel or parties in court or virtually through our video link.
 7. Only the applicant has complied with the above directions. He has filed written submissions in support of the question of urgency. The respondent though served, has neither filed any papers in response to the application nor written submissions on the question.
 8. In the premises, what the applicant has averred, deposed and or submitted to has not been controverted, rebutted or challenged. It means, it is true. I would accordingly certify the application as urgent and direct that it be listed for interpartes hearing on priority basis.
 9. I make no order as to costs.

DATED AND DELIVERED AT KISUMU THIS 21ST DAY OF OCTOBER, 2025.

ASIKE-MAKHANDIA

..... JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

Deputy Registrar

