



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

[CONSTITUTION AND HUMAN RIGHTS DIVISION]

PETITION NO. 7 OF 2017

IN THE MATTER OF ARTICLE 3(1), 10, 19, 20, 22, 23, 24 AND 35(2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF NATIONAL LAND COMMISSION ACT, 2012

AND

IN THE MATTER OF THE LAND REGISTRATION ACT, 2012

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE 10, 75 AND 232 OF THE CONSTITUTION OF KENYA

BETWEEN

JAPHETH KIPKEMBOI MAGUT.....PETITIONER

VERSUS

NATIONAL LAND COMMISSION.....RESPONDENT

AND

KESTEM COMPANY LIMITED.....INTENDED INTERESTED PARTY

RULING

Mr. Mutahi, learned counsel for the interested party has brought this oral application claiming that he has been instructed by his client Stephen Kiplating Metto to request the court to recuse itself. The reason being that the interested party believes that he would not get justice given the 2 rulings that the court has made in the matter. According to the interested party, the court breached Article 168 of the Constitution and interested party has subsequently filed a petition with the Judicial Service Commission against me to be removed as a Judge. On the basis that the interested party has lost faith in this court and has accused the court of breach of Article 168 of the Constitution of Kenya as the court has not been able to deliver justice. The counsel to the interested party showed the court a copy of the petition filed on 4.3.2018.

Mr. Mbugua learned counsel for the petitioner responds that application to have the court recuse itself has not been made in good faith. The party applying has been on active participation in the court. The fact that reasons are advanced from the bar, it is difficult to respond. According to Mr. Mbugua, the complaint with the Judicial Service Commission is not before the court. He submits that a party who has exercised his right of appeal to say that he has lost faith in the court border. on contempt. He urges the court to find that there is no application before court.

I have considered the oral application by Mr. Mutahi, learned counsel for the interested party and the reply by Mr. Mbugua, learned counsel

for the petitioner and do find that the application does not meet the grounds for recusal and that as a Judge, I have a duty to sit in the cases assigned to me and may only recuse myself to hear a matter for extremely good reasons such as conflict of interest.

It is trite law that where grounds of recusal do not exist in fact or in law, the court ought to reject an application for recusal to pre-empt parties from forum shopping and delay in hearing of a matter.

However, the interested party has commenced the process of my removal as a Judge under Article 168 of the Constitution of Kenya in respect to the rulings I delivered related to this matter.

Article 168 of the Constitution of Kenya concerns the removal of a Judge from office. The removal may be instituted by the Judicial Service Commission or petition by a person to the Judicial Service Commission if satisfied that the petition is merited, the Judicial Service Commission sends the petition to the President of the Republic of Kenya. Within 14 days after receiving the petition, the President must suspend the Judge from Office and appoint a Tribunal.

This begs the question, should this court recuse itself because a petition has been filed before the Judicial Service Commission? I have been shown a copy of the Petition which is pending before the Judicial Service Commission and I do not take it lightly.

I do not know how the Judicial Service Commission will treat the petition. If the petition is forwarded to the President to appoint a Tribunal to investigate me, I will be suspended.

Though in this application, the Judicial Service Commission has not made a decision, it will be prudent that I recuse myself in this matter because the process of my removal under Article 168 of the Constitution has been commenced by the interested party and the petition before the Judicial Service Commission revolves on the matters in dispute in this Constitution Petition. I do hereby recuse myself from hearing this petition. Orders accordingly.

Dated and delivered at Eldoret this 6th day of March, 2019.

A. OMBWAYO

JUDGE