



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Njenga (Commercial Petition E013 of 2023)
[2025] KEHC 15117 (KLR) (Commercial and Tax) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL PETITION E013 OF 2023**

MN MWANGI, J

OCTOBER 24, 2025

BETWEEN

JOYCE WANJIRU KAMAU PETITIONER

AND

ALLEN KARANJA NJENGA RESPONDENT

RULING

1. The application before me is the one dated 7th October 2024 brought under the provisions of Articles 50(1) and 159(2)(a), (b), (d) and (e), 23(3)(c) and 48 of *the Constitution* of Kenya, 2010, Sections 1A, 1B and 3B of the *Civil Procedure Act*, Order 40 Rules 1 and 2 of the Civil Procedure Rules, 2010, the inherent jurisdiction of the Court and all other enabling provisions of the law.
2. The respondent/applicant herein, seeks the following orders-
 1. Spent;
 2. Spent;
 3. That the Honourable Lady Justice Njoki Mwangi be pleased to recuse herself or disqualify herself from hearing and determining this matter;
 4. That this matter be placed before any Judge in Nairobi in the Commercial & Tax Division for hearing and determination;
 5. That the orders issued by Honourable Lady Justice Mwangi on 12th April 2024 and 30th September 2024 be set aside and/or vacated;
 6. That the applicant's application dated 14th June 2024 be heard on merit (sic); and



7. That the costs of this application be in the cause.
3. The application is anchored on the grounds in support of it, and on an affidavit sworn on 7th October 2024 by Mr. Allen Karanja Njenga, the applicant herein.
4. The applicant contended that in a Ruling delivered by me on 12th April 2024, I made final orders at the interim, which essentially determined the Petition as a whole, which means that there is nothing left to be determined in the Petition.
5. The applicant averred that I declined to grant him an order for stay of execution without any justifiable cause despite granting him leave to appeal.
6. He deposed that in my orders of 12th April 2024, I technically directed that the matter be mentioned before the Presiding Judge for re-allocation despite making orders that were final, and that again on 30th September 2024, I presided and issued orders in the matter that I had directed to be re-allocated to another Judge.
7. The applicant averred that in my Ruling delivered on 12th April 2024, I entirely ignored and disregarded the legal and pertinent questions raised in his Preliminary Objection and replying affidavit. That being aggrieved by the said Ruling, he filed a Notice of Appeal and an Appeal to the Court of Appeal, which is pending determination with overwhelming chances of success.
8. The applicant averred that on 29th April 2024, he filed Memorandum of Appeal and thereafter, he filed an application dated 14th June 2024 under certificate of urgency, seeking orders for stay of execution and that Hon. Justice Mabeya granted orders for stay of execution of my Ruling delivered on 12th April 2024 and directed that the matter be mentioned for directions on 30th September 2024.
9. That on the said date, I declined to extend the stay of extension orders issued on 14th June 2024, which orders I discharged and that I directed parties to file submissions thereby determining the matter despite having ordered the same to be re-allocated to a different Judge on 12th April 2024.
10. The applicant contended that I discharged the stay of execution orders on 30th September 2024 when the application dated 14th June 2024 was listed for mention for directions and not for hearing, without a substantive application seeking the discharge and for the orders to be vacated. The applicant further contended that the discharge of stay of execution will render both his application dated 14th June 2024 and the Appeal nugatory, as the orders for stay of execution are not in place and will only be an exercise in futility.
11. The applicant averred that if his application dated 14th June 2024 will be successful upon its hearing and determination, whereas the stay of execution orders issued on 14th June 2024 remain discharged, the successful outcome will only serve an academic exercise, as the petitioner will have proceeded with execution which will be prejudicial to him as the respondent has issued a notice of arrest against him.
12. The applicant expressed the view that I have demonstrated outright bias against him and he is apprehensive that he will not get justice before me because of having discharged the stay of execution orders, which gives rise to suspicion that I will not be impartial in the hearing and determination of the suit herein. He deposed that my disqualification in this matter is of fundamental importance for justice to be done and to be seen to have been done.
13. The instant application is opposed by the respondent herein, Joyce Wanjiru Kamau, vide her replying affidavit sworn on 4th November 2024. She stated that in this instance, there is no objective basis upon which a reasonable, informed and fair minded observer, having considered all the facts, would be



- persuaded that there exists a real possibility of bias or partiality on my part. She averred that I am under no duty to recuse myself based on the speculative or subject apprehension of bias by the applicant.
14. The respondent deposed that the decision not to extend the interim orders of initially issued by Hon. Justice Mabeya was well within my discretion and for justifiable reasons after the applicant failed to file submissions to his application dated 14th June 2024 as directed by Hon. Justice Mabeya's Orders of 19th June 2024.
 15. The respondent averred that the applicant did not warrant the equitable order for extension of the interim Orders, which were intended to automatically elapse on 30th September 2024 when the matter came up before me. The respondent stated that I rightfully exercised my discretion to vacate the said Orders due to the applicant's non-compliance.
 16. She deposed that Judges must sit on cases assigned to them, and having taken an oath to administer justice impartially, without fear, favour or prejudice, I am bound to uphold principles of fairness, integrity and adherence to the law. She urged me to consider my duty to provide an unbiased and just determination, untainted by any external influence or undue persuasion as presented by the applicant.
 17. She contended that the applicant has not demonstrated that this application is motivated by anything other than dissatisfaction with the Ruling of 12th April 2014. She stated that dissatisfaction with the Court's Ruling does not constitute the basis for seeking recusal of a Judge. She deposed that established legal channels exist for challenging Court decisions and should Courts recuse themselves simply for rendering unfavourable decisions, it would undermine the judicial system's integrity and allow litigants to 'Judge-shop' by choosing which Judges they want to hear their cases.
 18. She also deposed that the applicant has yet to comply with my Orders of 12th April 2024 and it is untenable for him to seek recusal while acting in defiance and disobedience of the said Orders. She expressed the view that the applicant's conduct demonstrates an attempt to forum shop and delay proceedings through filing incessant applications, all of which serve to hinder the petitioner's case. She urged me not to condone such conduct and address the applicant's tactics, which reflect bad litigation practices geared to frustrating the judicial process.
 19. The respondent stated that it is instructive that the applicant has not yet filed any substantive response to her Petition and cannot be heard to allege judicial bias. She averred that the application for my recusal is unmerited and aimed at delaying and/or frustrating the hearing of the main Petition, and that there is no valid basis shown to question the impartiality or integrity of the Presiding Judge.
 20. The respondent further averred that Judges should resist recusal unless compelling reasons exist, but no such reasons have been shown in this case. She prayed for the applicant's application dated 7th October 2024 to be dismissed with costs.
 21. Alongside the replying affidavit, the respondent filed grounds of opposition dated 1st November 2024 to the effect that-
 - i. The application has no merit, is a waste of judicial time and resources, is an abuse of the Court process and ought to be dismissed pronto;
 - ii. The applicant has failed to justify the application for recusal of Hon. Lady Justice Njoki Mwangi as prescribed under Regulations 21; and
 - iii. There is a legal presumption that Judicial Officers act impartially, as affirmed in *Nairobi Water Conservation & Pipeline Corporation v Consulting Engineers & Planners Limited* [2021]



eKLR. The applicant has not provided cogent evidence to rebut the presumption and has failed to meet the high threshold for establishing a “real danger of bias”.

22. The application herein was canvassed by way of written submissions. The applicant’s submissions were filed on 13th December 2024 by the law firm of Katunga Mbuvi & Co. Advocates. The respondent’s submissions were filed on 27th January 2025 by Jane Gachugia & Associates Advocates.
23. There is no need for me to reiterate the averments contained in the applicant’s affidavit which have been reiterated in his written submissions. The applicant’s learned Counsel, Mr. Katunga Mbuvi, submitted that while conducting its judicial duties a Court is required to do so with impartiality as per the code of conduct and standards of conduct enacted in the Judicial Service (Code of Conduct and Ethics) Regulations, 2020 dated 26th May 2020, where under Regulation 21 Part II, a Judge can recuse himself or herself in any proceedings in which his or her impartiality might be reasonably questioned. He also cited the provisions of Regulation 5, 9 and 21 of the said Code of Conduct & Ethics.
24. On the standard and need to have an impartial body in dispensing justice, he cited the case of Jasbir Rai & 3 others SCK Petition No.4 of 2012 [2013] eKLR.
25. Mr. Mbuvi contended that the manner in which I conducted the proceedings and the matter as a whole goes against the provisions of Articles 50 and 25 of *the Constitution* of Kenya, which enshrines the right to a fair trial as a universal fundamental right that shall not be limited. He also contended that I have openly demonstrated bias when discharging orders for stay of execution without a substantive application seeking to set aside or vacate the orders, and in exhibiting leniency towards accepting informal requests from the respondent, thereby negatively impacting the applicant’s right to fair trial.
26. He submitted that in my Ruling of 12th April 2024, I failed to address issues of law raised by the applicant, which went to the crux of the matter, and the subsequent Order of 30th September 2024.
27. Counsel also cited the case of Hon. (Lady) Justice Kplana H. Rawal v Judicial Service Commission & 2 others, Civil Appeal 11 of 2016 and the decision in the case of Republic v IEBC Nairobi High Court Judicial Review Division MISC. APPL, No. 648 of 2016, to bolster his submissions.
28. He stated that the applicant does not believe that he will for the reasons deposed to in his affidavit which are as per the true record of the Court get a fair hearing before me as in dispensing substantive justice, as the process needs to be above board without any shred of bias. Counsel relied on the case of Dari Limited & 5 others v East Africa Development Bank & 2 others Nairobi High Court Commercial Cause No. 6469 of 2019.
29. He submitted that the legal and evidentiary burden in the application has been discharged and in my consciousness, I should reinstate and extend the Orders for stay of execution, vacate the Orders of 12th April 2024 and 30th September 2024, recuse myself or disqualify myself and have the matter placed before the Presiding Judge for allocation before any other Judge for hearing and determination.
30. Mrs Okulo, learned Counsel for the respondent submitted that following my Ruling of 12th April 2024, the applicant on 30th April 2024 lodged an Appeal together with an application for stay of execution, but the Court of Appeal declined to grant a stay of execution and the Appeal has not been prosecuted to date.
31. Counsel stated that on 14th June 2024, the applicant applied for stay of execution of the Orders in this matter, which was granted by Hon. Judge Mabeya on the same day. That on 30th September 2024, when the matter came for mention before me, I declined to extend the said Orders and it is on the said basis of discharge of the said Orders that the applicant has filed the present application.



32. Mrs Okulo contended that the instant application has no merits, and it is a waste of judicial time and resources, and an abuse of the Court process as the applicant has not demonstrated that the application is based on justifiable grounds for my recusal, other than dissatisfaction with the Ruling given on 30th September 2024, which he appealed against in the Court of Appeal and the exercise of the Court's discretion by vacating the stay Orders.
33. Counsel asserted that it is clear from the text of the Orders issued by Hon. Justice Mabeya, that they were to elapse on 30th September 2024, and that in discharging the said Orders, I was only restating the Orders by the Hon. Justice Mabeya. Further, that the applicant had not complied with the directions of Hon. Justice Mabeya concerning the filing of submissions, and that I fairly exercised my discretion.
34. Counsel cited the case of the Teachers Service Commission v Kenya Union of Teachers & 2 others [2013] eKLR, where the Court stated that a Court Order is not a mere suggestion or an opinion or a point of view, but a directive that is issued after much thought and with circumspection, and it must be complied with.
35. Mrs Okulo contended that the allegations of bias on my part have not been supported by any cogent evidence or grounds, as being dissatisfied with the Court's finding does not justify an application for recusal. She stated that according to Rule 21 of the Judicial Service (Code of Conduct and Ethics) Regulations, a Judge may recuse himself/herself in any proceedings in which his or her impartiality might be reasonably be questioned.
36. She submitted that there is no evidence that I am guilty of any of the acts set out in the said Code of Conduct & Ethics or broken any rules of impartiality.
37. She stated that in seeking the recusal of a Judicial Officer, the applicant must prove that there is a reasonable apprehension that the Judicial Officer will not decide the case impartially or without prejudice. She cited the case of President of the Republic of South Africa vs The South African Rugby Football Union & others case CCT 16/98, and the decision in the case of Philip K. Tunoi & another v The Judicial Service Commission & another [2016] eKLR.
38. Counsel submitted that the applicant has failed to provide any substantive basis to demonstrate that I acted in a manner suggestive of bias and stated that the allegations are based on subjective perceptions and lack any factual basis and it is clear that the applicant is forum shopping. Mrs Okulo relied on the case of Galaxy Paints company Limited v Falcon Guards Limited (1999) KLR, to support her submissions.
39. Counsel prayed for the applicant's application to be dismissed with costs as a Judge does not have to disqualify himself or herself merely because one party has stated that in his opinion, that he will not get a fair opinion, or that such party feels that the Judge will be impartial or prejudiced.

Analysis And Determination

40. I have considered the application dated 7th October, 2024 and the affidavit in support thereof. I have also read the replying affidavit and the grounds of opposition filed by the respondent as well as the written submissions filed by the parties' Advocates. The issues for determination are if I should recuse myself from this matter and if I should reinstate the Orders issued by Judge Mabeya on 19th June 2024.
41. To set the record straight, although the applicant has all along indicated that the Orders by Hon. Justice Mabeya were granted on 14th June 2024, from the record available on the CTS, the Orders for the application dated 14th June 2024 were granted on 19th June 2024 by the said Judge.



42. The applicant's bone of contention is that I issued final orders in a Notice of Motion application dated 30th August 2023 that had been filed alongside the Petition filed by the Petitioner/respondent herein.
43. The other reasons given by the applicant as to why I should recuse myself is that in the said application, I failed to consider the averments in the replying affidavit by the applicant herein and his written submissions. I however note that the applicant filed an Appeal against my Ruling of 12th April 2024 arising from the application dated 30th August 2023.
44. From the outset, I must state that I cannot revisit the Ruling that I delivered on 12th April 2024 as the reasons for my decision are contained in the said Ruling. Further, the Court of Appeal is now seized with the jurisdiction of determining if I issued final Orders in the application dated 30th August 2023, or if the Orders I granted were not as per the respondent's prayers. The said Court will also determine if in the said Ruling, I considered the averments and submissions by the applicant herein in my decision.
45. As such, the issues raised by the applicant herein from the said Ruling are therefore not open for discussion before me to prove bias in decision making as the Court of Appeal has not pronounced itself on the applicant's Appeal.
46. The other ground upon which I have been requested to recuse myself is that on 30th September 2024, I vacated the Orders issued on 19th June 2024 by Judge Mabeya after I had given directions for this matter to be re-allocated to another Judge. It is further claimed that I discharged the said Orders when I had not been moved by any party to do so, and by doing so, I exhibited bias against the applicant herein.
47. Under Regulation 21 Part II of the Judicial Service (Code of Conduct and Ethics) Regulations 2020, a Judge can recuse himself or herself in any of the 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. Has 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. A member of the Judge's family has economic or other interest in the outcome of the matter in question.
48. Going back to the proceedings of 12th April 2024, and reproducing them here verbatim, I gave the following directions-
1. Pretrial directions before the Deputy Registrar on 20.5.2024;
 2. Mention on 24.6.2024 before the Presiding Judge for re-allocation to one of the Judges who will be appointed as this Court was appointed to a Tribunal which will be taking part of its time from Court."



49. On 20th May 2024, the parties' Advocates appeared before Hon. Adisa, Deputy Registrar, who listed the matter for mention on 24th June 2024. Nothing seems to have happened on the said date as there are no proceedings on record for the said date.
50. It is however evident that the Presiding Judge of the Commercial & Tax Division did not re-allocate this matter to another Judge, as he directed that the matter be mentioned before me on 30th September 2024, which was done.
51. On the said date, Mr. Mbuvi for the applicant herein indicated that they were in the process of filing written submissions. He prayed for extension of time. The prayer for extension of interim orders was however opposed by Ms Githaiga who was holding brief for Mrs Okulo for the respondent herein.
52. Having heard the representations made by both Advocates, I gave the following directions which I reproduce verbatim –
- “I note that on 19th June 2024 Judge A. Mabeya issued stay of execution until today. Stay of execution pending interpartes hearing is given at the discretion of the Court. Since the said orders granted by Mabeya Judge were to last until today yet the respondent/applicant has not complied with the directions given on 19th June 2024 as to the filing of written submissions. I decline to extend the Orders for stay of execution. This means that the Ruling of 12th April 2024 has to be complied with in the interim by the respondent/applicant.”
53. The Orders that I am alleged to have discharged on 30th September 2024 were issued on 19th June 2024 by Hon. Justice Mabeya. They read as follows –
- “This Matter coming up on 14th June 2024 on the Notice of Motion dated 14th June 2024 before Honourable Justice A. Mabeya and upon reading the supporting affidavit thereto, It is hereby Ordered:
1. That the application be served and be responded to within 14 days for directions on 30th September 2024 before Mwangi J.
 2. That the parties do exchange submissions within 30 days after the response on a 15 day basis beginning with the applicant.
 3. That in the meantime there shall be a stay of execution till then.” (Emphasis added).
54. Contrary to the applicant's claim that I discharged Hon. Judge A. Mabeya's Orders, that is not the case. The said Orders elapsed at the stroke of midnight on 30th September 2024 when I declined to extend the Orders for stay of execution for non-compliance with the directions issued by Hon. Justice Mabeya. The term “discharge” appears nowhere in the Court proceedings of 30th September 2024. Further, the said term can only be used to refer to something that is in force, or in existence. Failure to extend exparte orders cannot be used in the context that the applicant herein has attempted to do, as that would mean that I expressly vacated Orders that were already in force. In my considered view, declining to extend exparte orders that were in any event due to expire on 30th September 2024 cannot be equated to the said Orders being discharged.
55. Furthermore, Section 1A(3) of the *Civil Procedure Act* is clear that a party to Civil Proceedings or an Advocate for such a party is under a duty to assist the Court to further the overriding objective of the



Act and to that effect, to participate in the processes of the Court and comply with the directions and the orders of the Court.

56. The applicant and his Advocate failed to give heed to the above provisions of the law. As I stated on 30th September 2025, extension of *ex parte* Orders is at the discretion of the Court and having failed to comply, I declined to extend the *ex parte* Orders. Since the applicant was dissatisfied with my non-extension of the said Orders, his recourse lay in the Court of Appeal and not in an application for my recusal.
57. The criteria to be applied in a case where recusal of a Judge is sought on the ground of likely bias was set out in the case of *Kalpna H. Rawal v Judicial Service Commission & 2 others* (supra), where the Court of Appeal adopted the test of “Whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the Judge would be biased.”
58. The above test was also the one which was applied by the East African Court of Justice in the case of *Attorney General of Kenya v Prof. Anyong Nyong'o & 10 others* EACJ Application No. 5 of 2007, where the Court stated thus–

We think the objective that of “reasonable apprehension of bias” is good law. The test is stated variously but amounts to this: do the circumstances give rise to a reasonable apprehension, in the mind of a fair minded 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 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 the public who is not only reasonable but also fair minded and informed about the circumstances of the case.

59. In this matter, I am also guided by the decision rendered in the case of *Kaplan & Stratton v L.Z. Engineering & 2 others* [2002] eKLR, where the Court stated thus–

Although it is important that Justice must be seen to be done, it is equally important that Judicial Officers discharge their duty to sit and do not by acceding too readily to suggestions of appearance of bias encourage parties to believe that by seeking disqualification of a Judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.

60. In the circumstances of this case, the applicant has fallen short of establishing a perception of bias on my part against him as per the objective test laid out in the case of *Jasbir Singh Rai & 3 others v Tarochan Singh Rai & 4 others* (supra) cited by his Counsel, where the Supreme Court of Kenya stated the following on the issue of recusal of a Judge –

According to the definition of Black’s Law Dictionary, it was evident that the circumstances calling for recusal of a Judge were by no means cast in stone. The perception of fairness of conviction of moral authority to hear the matter was the proper test of whether or not the non-participation of the judicial officer was called for. The objective view in the recusal of a judicial officer was that –

- a. Justice as between the parties be uncompromised,
- b. The due process of law be realized and be seen to have had its rule and lastly,



- c. The profile of the rule of law in the matter in question be seen to have remain uncompromised.

61. I do agree with the respondent's Counsel that the applicant herein has not given sufficient reason for me to recuse myself from this matter. Dissatisfaction of my Ruling of 12th April 2024 cannot be a ground for recusal. Allocation of the case file to another Judge due to another assignment that I had been tasked with, fell under the jurisdiction of the Presiding Judge, Commercial & Tax Division who is seized of the duty of allocation and re-allocation of case files. Since the Presiding Judge expressly and specifically ordered for the matter to be mentioned on 30th September 2024 before me, the case file was properly listed before me on the said date.
62. Needless to say, litigants should learn to take their loses gracefully without having to file all manner of false allegations against Courts assigned to hear their cases with a view of having Judges or Judicial Officers recuse themselves so that their cases can be re-allocated to other Judges/Judicial Officers as the applicant herein is trying to do, in the hope of getting favourable decisions.
63. The upshot is that the application dated 7th October 2024 is unmerited. It is hereby dismissed with costs to the petitioner/respondent.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI on this 24th day of October 2025. Ruling delivered through Microsoft Teams Online Platform.

NJOKI MWANGI

JUDGE

In the presence of:-

Mr. Katunga Mbuvi for the respondent/applicant

Ms Ngunyi holding brief for Mrs Okulo for the petitioner/respondent

Ms B. Wokabi - Court Assistant.

NJOKI MWANGI, J.

