



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 530 OF 2017

RHODA TIPIS (suing as the legal rep of the estate

of Justus Kantet Ole Tipis).....PLAINTIFF

-VERSUS-

LEMARIA OLE KARIA.....1ST DEFENDANT

RAPHAEL PATITA PARLEON.....2ND DEFENDANT

LEMELE GROUP RANCH.....3RD DEFENDANT

RULING

The Application before me is the Plaintiffs/Applicants Notice of Motion dated 5th October, 2018 which was brought under Section 3A of the Civil Procedure Act and Articles 50(1) and 159 (2) of the Constitution of Kenya in which the Applicants seek my disqualification and/or recusal on the basis that the court had demonstrated bias in another matter that is, Narok Environment and Land Court Suit No. 12 of 2018 and that there is a pending complaint before the Judicial Service Commission and that they may be prejudiced in the circumstances and be subjected to bias.

The Application was opposed by the 2nd and 3rd Respondents. The 1st Respondent averred that the Application is made in bad faith and that the Judge was never shown any bias in the matter as alluded and that the Applicants intention was to denial the proceedings since the matter has been in court for 19 years.

The 3rd Respondent in his opposition to the ground stated that the suit relating to the complaint against the Judge is a wholly different matter and it has no connection to the suit before the court and that the alleged impartiality has not been raised in the matter and that the Applicants are engaged in forum shopping because the Applicants had asked another Judge in the matter herein previously to disqualify himself.

The 3rd Respondent further stated that the grounds upon which a Judge may be asked to recuse himself is a matter such as interest, background and personal knowledge and comments and conduct during the proceeding and he averred that the Applicants have not demonstrated any justification based on the aforesaid grounds.

I have read the Application before me and oral submissions made by Mr. Njagi advocate and Mr. Maina Ngaruiya advocate for the Applicants and the Respondents respectively and the issue for determination before me is whether I should recuse myself in the instant case on account of a complaint that arose in another matter.

Mr. Njagi for the Applicants stated that Justice must be rooted in confidence and where a litigant is afraid of bias, the court ought to deal with his/her consensus.

From the submissions made on behalf of the Applicants, it is clear that because they have a pending complaint they may not be able to get justice and that bias may be demonstrated against them.

From the facts of the case even though the Applicants have not stated that I have shown bias against them in the instant case it is just simple apprehension which I feel is well founded. The Applicants have exercised a right accorded to them by the Constitution of Kenya and I am also bound by the same Constitution in which I derive my power and authority and it is thus my view that where Justice is concerned it is paramount that the same must be done transparently.

In the circumstances, I will recuse myself from further hearing and conduct of the proceeding and I order that this suit be transferred to Nakuru Environment and Land Court for hearing and determination.

DATED, SIGNED and DELIVERED in open court at NAROK on this 5TH day of MARCH, 2019

Mohammed Noor Kullow

Judge

5/3/19

In the presence of:-

CA:Chuma

Mr Njagi for the Plaintiffs/Applicants

N/A for the Respondents