



**Kiunga v Nduma (Environment and Land Case 13 of 2020)  
[2025] KEELC 7936 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7936 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND CASE 13 OF 2020  
AK BOR, J  
NOVEMBER 13, 2025**

**BETWEEN**

**NICKSON MUTINDA KIUNGA ..... PLAINTIFF**

**AND**

**NGURU NDUMA ..... DEFENDANT**

**RULING**

1. Through the application dated 7/7/2025, the Plaintiff sought my recusal from further conduct and proceedings in this matter and for the file to be placed before the Presiding Judge for reallocation or referred to the Honourable Chief Justice for reassignment. The second limb of the prayers sought to arrest and stay delivery of the ruling that was scheduled for delivery on 14/7/2025 in respect of the Plaintiff's application dated 15/5/2025. The second prayer was overtaken by events since this court delivered its ruling 14/7/2025.
2. What falls for determination in this ruling therefore is the issue of my recusal from further conduct and proceedings in this matter. The application was made on the grounds that the plaintiff's claim had remained unresolved for over five years due to a multiplicity of applications filed by the defendant's wife challenging his mental acuity and capacity. The Defendant died on 14/7/2023. The Plaintiff contended that this fact was brought to the attention of the court on 24/10/2023. That on 15/1/2024 the defence was granted leave by the court to substitute the defendant with his wife upon obtaining grant of representation ad litem and that that leave was extended on 14/3/2024, 6/6/2024 and 31/10/2024 by my predecessor, the Honourable Mr. Justice Kaniaru.
3. It was contended that upon my taking over conduct of the matter I foreclosed and shut out any submissions on the part of the Plaintiff and that I dismissed the Plaintiff's argument that they believed that they were granted leave by Hon. Kaniaru and that time had been enlarged by the court.



4. The Plaintiff urged that he was apprehensive that he was apprehensive that the course taken by this court undermined confidence in its impartiality and was apprehensive that he will suffer bias and prejudice for reasons unknown to him.
5. The court directed parties to file submissions. Counsel who appeared for the defence argued orally on 9/10/2025 that the instant application could not be sustained because there was no suit and that one cannot mount an application without a suit. He neither filed a response to the application nor did he file written submissions on the application for recusal.
6. The Plaintiff filed written submissions dated 14/8/2025 together with authorities.
7. The Plaintiff also filed an application dated 12/8/2025 seeking to set aside the orders made by this court on 3/4/2025 which dismissed the suit on account of abatement and for the revival of the suit.
8. The issue for determination is whether I should recuse myself from further conduct and proceedings in this matter and direct that the file be placed before the Presiding Judge for reallocation or refer the file to the Honourable Chief Justice for reassignment as the Plaintiff seeks.
9. The Defendant died on 14/7/2023. The suit abated a year after his death. There is therefore no suit before this court that I can recuse myself from hearing.
10. This court clarified in its ruling of 14/7/2025 that the Honourable Mr. Justice Kaniaru had not granted the Plaintiff leave to substitute the dead defendant in 2024 as the Plaintiff believed.
11. The court declines to grant the orders sought in the application dated 7/7/2025. The court makes no orders as to costs.

**DELIVERED VIRTUALLY AT EMBU THIS 13<sup>TH</sup> DAY OF NOVEMBER 2025.**

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Samson Masila for the Plaintiff

No appearance for the Respondent

Diana Kemboi- Court Assistant

