



**Sherali (Suing as a legal representative of the Estate of Hussein Sherali Jivraj alias Husein Sherali alias Husseinali Esmail Sheral Jivraj - Deceased) v Esmail & another (Land Case E055 of 2024) [2025] KEELC 7721 (KLR) (6 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7721 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
LAND CASE E055 OF 2024  
YM ANGIMA, J  
NOVEMBER 6, 2025**

**BETWEEN**

**IMRAN HUSSEIN ALI SHERALI (SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF HUSSEIN SHERALI JIVRAJ ALIAS HUSEIN SHERALI ALIAS HUSSEINALI ESMAIL SHERAL JIVRAJ - DECEASED) ..... PLAINTIFF**

**AND**

**ROSHANALI SHERALI ESMAIL ..... 1<sup>ST</sup> DEFENDANT**

**MENKAR LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The material on record shows that this suit is part heard before Hon. Justice N. Matheka. The plaintiff closed his case on 24.11.2024 and the 2<sup>nd</sup> defendant was partly heard in its defence. However, by the time the suit came up for further defence hearing on 10.02.2025 Justice Matheka had already been transferred to another station.
2. The record further shows that on 10.02.2025 directions were given to the effect that the suit shall proceed for further hearing from where it had reached before Justice Matheka. The parties were also directed to file properly indexed and paginated trial bundles within 30 days. The suit was later on fixed for hearing on 12.06.2025.
3. However, before the date scheduled for hearing the plaintiff filed a notice of motion dated 07.05.2025 seeking recusal of the judge from hearing the suit on the basis of alleged bias. The plaintiff contended that the judge appeared to openly favour the 1<sup>st</sup> defendant who is his uncle. The plaintiff was aggrieved by the court's refusal to strike out the 1<sup>st</sup> defendant's documents which were filed late and out of time on or about 05.02.2025. The plaintiff was also aggrieved by the court's failure to strike out the additional documents which were filed by the 1<sup>st</sup> defendant on 25.04.2025 without leave of the court



4. The 1<sup>st</sup> defendant filed a replying affidavit sworn on 20.05.2025 in opposition to the application whereas the 2<sup>nd</sup> defendant filed grounds of opposition dated 06.05.2025. The defendants contended that the plaintiff had not demonstrated any genuine grounds for recusal of the judge. The 1<sup>st</sup> defendant contended that the plaintiff was also granted leave to file documents in rebuttal and even to re-open his case and tender additional evidence.
5. When directions were given on the hearing of the said application it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the plaintiff filed written submissions dated 30.06.2025 whereas the 1<sup>st</sup> defendant's submissions were dated 04.07.2025. However, the 2<sup>nd</sup> defendant did not file any submissions.
6. The court would have been inclined to consider the plaintiff's application for recusal on merit had the plaintiff not made two scandalous allegations against the Judge. First, the plaintiff alleged, or at least insinuated, that his advocate was unable to obtain transcripts of the virtual court sessions of 20.02.2025 and 28.04.2025 because the judge had somehow interfered with the virtual system. Second, that the judge had "explicitly" violated the Judicial Service (Code of Conduct and Ethics) 2020.
7. The court is of the view that those scandalous and libellous allegations have created a toxic environment in which a fair and impartial hearing cannot possibly be achieved. The court takes the view that justice must not only be done but must also be seen to have been done. The plaintiff somehow believes that the judge loves his uncle so much while he hates him in equal measure. It seems that no amount of persuasion can placate the plaintiff's fears that he cannot have a fair trial against his uncle before this court.
8. Although the court has a duty to sit and adjudicate and should not easily recuse itself without a solid basis, it must be appreciated that the judiciary exercises delegated authority in order to serve the people of Kenya. As a result, the judge hereby recuses himself from handling this matter. The suit shall consequently be mentioned on 17.02.2026 before the Presiding Judge of the Environment and Land Court at Mombasa for re-allocation. Each party to bear its own costs.

Orders accordingly.

**RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

.....

**Y. M. ANGIMA**

**JUDGE**

In the presence

Gillian – Court Assistant

Mr. Oichoe for the plaintiff

Ms. Grace Okumu for the 1<sup>st</sup> defendant

Ms. Kivuva for the 2<sup>nd</sup> defendant

