



**King'au v Shaba Trustees Limited & 5 others (Environment and Land Petition E080 of 2025) [2025] KEELC 8129 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8129 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND PETITION E080 OF 2025**

**CG MBOGO, J**

**NOVEMBER 25, 2025**

**IN THE MATTER OF: ARTICLES 10, 19, 20, 21(1) AND 22(1), 23(1) AND (3) & 165(3) OF THE CONSTITUTION OF KENYA, 2010**

**-AND-**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 40 AS READ WITH 60(1) (B), 62(1)(E), 64 AND 260 AND 47(1) OF THE CONSTITUTION OF KENYA, 2010**

**-AND-**

**IN THE MATTER OF: SECTION 23 & 24 OF THE REGISTRATION OF TITLES ACT (CHAPTER 281 OF THE LAWS OF KENYA) NOW REPEALED AND TRANSITIONED AS SECTION 24, 25 AND 26 OF THE LAND REGISTRATION ACT (NO. 3 OF 2012) AND IN THE MATTER OF LAND REFERENCE**

**AND**

**IN THE MATTER OF: THE LAND REGISTRATION ACT (NO. 3 OF 2012)**

**AND**

**IN THE MATTER OF: UNCONSTITUTIONAL AND ILLEGAL ALLOTMENT OF TITLE NUMBER LR 209/9968 (IR 85847/1) IN THE NAME OF SHABA TRUSTEES LIMITED**

**BETWEEN**

**ROSE NJOKI KING'AU ..... PETITIONER**

**AND**

**SHABA TRUSTEES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**



**SAMMY SILAS KOMEN MWAITA ..... 5<sup>TH</sup> RESPONDENT**

**BRIAN KIPTOO KIPLAGAT ..... 6<sup>TH</sup> RESPONDENT**

## **RULING**

1. On 18<sup>th</sup> November, 2025, Ms. Awuor, the learned counsel for the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents informed the court that there is a conspiracy in this matter for the reason that the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents who were also parties in Petition number 57 of 2025 withdrew the said petition on grounds of biasness of this court and miscarriage of justice. The learned counsel requested that the court recuses itself from this matter, and that the file be taken to the Principal Judge for re-allocation.
2. In response, Mr. Allan kamau, the learned counsel for the 3<sup>rd</sup> and 4<sup>th</sup> respondent submitted that the petitioner in this matter was not a party to ELCLPET No. E057 of 2025, and that when they appeared before court on 6<sup>th</sup> November, 2025, Ms. Awuor indicated to the court that she had filed a notice of withdrawal of the suit in respect of Petition number E057 of 2025. The learned counsel submitted that the petitioner had liberty to withdraw the petition, and that they could not oppose the same as it was their cause. Further, that the instant petition was filed through the firm of Triple O.K LLP where he is not an employee. He submitted that where a learned counsel makes a suggestion that there was conspiracy in the matter, the said submissions have no basis.
3. Mr. Kamau further submitted that an application has been made from the bar calling on the court to recuse itself and the matter be re-allocated to another Judge, and that the same should have been made through a formal application and a basis laid so that all the other parties can respond to the issues raised. He submitted that where one petition is withdrawn and there is one before court, it cannot amount to an abuse of the process of the court.
4. On the question of the referenced matter and the court of appeal decision, the learned counsel submitted that this court will be called upon to consider them and pronounce itself one way or the other.
5. Mr. Okoth, the learned counsel for the petitioner submitted that the 5<sup>th</sup> and 6<sup>th</sup> respondents have been elusive and that their physical address is difficult to locate, and that because of their pending criminal case, they contacted the DCI who provided their mobile phone numbers. The learned counsel further submitted Mr. Havi, the learned counsel is a stranger to this petition, and that he cannot hijack the proceedings and direct a Judicial Officer to wash his hands off the matter.
6. It was further submitted that Ms. Awuor was not decrying material non-disclosure of certain facts, and that once the petition is before court, the court should determine it unless the Petitioner decides to withdraw. The learned counsel submitted that there can be no injustice for the respondents to impute improper motive whereas the Petition has not been heard. Further, that it is not for Mr. Havi to decide which matters a Judicial Officer ought to hear and which matters he ought to wash off his hands. Further, that it is not the counsel to impute improper motive on a Judge who has a duty to sit and adjudicate over matters brought to him by the disputants. Whereupon counsel seeks that a Judicial Officer or Judge recuses himself, that ought to be made through a formal application. The learned counsel noted great exception to Mr. Havi's conduct before this court, and submitted that if there is a recusal application, it should be formally filed.
7. In rejoinder, Ms. Awuor reiterated that the court recuses itself and the matter be re-allocated to a different court where the preliminary objection will be prosecuted from. Further, that in her



introduction, she indicated that she appears alongside her Seniors Mr. Wanyanga and Mr. Nelson Havi, and in that case, Mr. Nelson Havi is rightfully before the court.

8. I have considered the oral application made by the learned counsel for the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents, as well as the submissions made by the learned counsel for the petitioner and the 3<sup>rd</sup> and 4<sup>th</sup> respondents. In my view, there are two issues for determination as listed below: -
  1. Whether Mr. Nelson Havi has the right of audience to address the court; and
  2. Whether the court should recuse itself.
9. On the first issue, Ms Awuor informed the court that she was acting alongside Mr. Wanyanga and Mr Havi, learned counsel in this matter. It is trite law that an application either oral or formal application filed/ made by an advocate not properly on record is incompetent and defective ab initio. From the court record and according to the CTS, Wanyanga & Co. Advocates filed its notice of appointment of advocates dated 17<sup>th</sup> November, 2025. On the same date the firm of Awuor & Company Advocates also filed their notice of appointment of Advocates dated 17<sup>th</sup> November, 2025. From the record, the law firms properly on record and who have the capacity to address the court on behalf of the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents are as described above. This means that Ms. Awuor and Mr. Wanyanga are properly before the court. The law as provided under Order 9 Rule 7 of the Civil Procedure Rules is clear that a party who has been sued and intends to appoint an advocate should give notice of the said appointment of Advocates. Mr. Havi purported to address court without being properly on record, and in that case, his submissions are defective and incompetent.
10. On the second issue, it is not in doubt that this matter was first before the court on 15<sup>th</sup> September, 2025 when the court considered the ex parte application filed by the petitioner. This court gave directions including the date slated for the inter-partes hearing of the application which was on 18<sup>th</sup> November, 2025. From the record, it is clear that parties appeared before the court for the first time on 18<sup>th</sup> October, 2025. The learned counsel for the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents requested the court to recuse itself citing bias.
11. Regulation 21 of the Judicial Service Code of Conduct and Ethics Regulation of 2020 states as follows:-
  - “ 1. A judge may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judge— Recusal.
    - 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. had 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



