

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
HCF P&A CSE No. 525 of 2012
IN THE ESTATE OF ISAIAH EMURIA SINGA (DECEASED)**

ETYANG OMUNYINI.....PETITIONER

VERSUS

JOSEPHAT DOE OKIRIA.....OBJECTOR

RULING

BACKGROUND

1. On 23.9.2025 the 1st objector Josephat Doe Okiria made an oral application for the recusal of myself and I duly ruled on it and declined that invitation and directed partners to highlight their submissions to the 1st objector's application dated 23.11.2024. The 1st objector then opted to remain mute of malice while Mr Kituyi for the Petitioner proceeded to highlight submissions. I then reserved the ruling for 17.12.2025.

APPLICATION

2. Subsequent thereto, the 1st objector filed a notice of motion dated 3.11.2025 wherein he craved for the following orders: -
 1. Spent
 2. **That the honorable trial court Honorable Lady Justice M.S. Shariff the trial Judge herein to recuse herself from handling and/or writing ruling on the 17th day of December 2025 and this matter be directed to be handled by another competent Judge for being biased and lack of trust in the instant court.**

- 3. That this honorable court upon granting prayer (b) above this honorable court be pleased to review and or vacate the proceedings held on 23rd day of September 2025 and allow proceedings and the complain at Judicial service commission.**
- 4. That any other relief this honorable court shall be deemed fit and just grant.**

3. The application is supported by the affidavit of Joseph Doe Okiria sworn on 3.11.2025. This gist of the application is that I should recuse myself on grounds of conflict of interest. Further that the 1st objector has duly lodged a complaint against me before the Judicial Service Commission and that I should vacate the proceedings of the 23rd September 2025 and await the determination of the compliant as lodged before the Judicial Service Commission.
4. The application was resisted by Petitioner vide a replying affidavit sworn by Etyang Singa Omunyiri on 11.11.2025.
5. The Petitioner depose that the 1st objector is a busy body and a stranger to the estate as he is a supposed purchaser and not a beneficiary of the estate of the deceased.
6. The Petitioner states that the 1st objector's application is premised on petty and laughable reasons and that the 1st objector has sensed defeat of his objection hence his attempt to forum shop. Further that the allegation of bias on the part of the Judge has no merit.
7. I note from the record that the 1st objector filed what he titled as a replying affidavit in respect of Replying Affidavit dated 11.11.2025, without leave of court and I hereby strike it out.

8. This application was canvassed by way of written submissions. The 1st objector duly filed his submissions dated 14.11.2025. He submits that this court is conflicted due to the pendency of a complaint No. 146 of 2025 that he has lodged before the Judicial Service Commission. Further that the Judge exhibited bias in her ruling against his oral application for her recusal of the Judge. Moreover, the Applicant submits that he had remained mute on 23.9.2025 due to intimidation by the Judge.
9. The Petitioner opted to rely on his affidavit in reply and did not file any submissions.

ANALYSIS AND DETERMINATION

10. I have duly considered the application in support thereof, the enclosures attached thereto and the replying affidavit and the issues that emerge for determination are whether: -
 - 1) I Justice Mwanaisa S Shariff ought to recuse myself.
 - 2) Whether I should vacate and/or set aside the proceedings of 23.9.2025.
11. On the issue of recusal, I already rendered myself on 23.9.2025. I am thus functus officio and the 1st objector ought to have lodged an appeal against my said ruling in the event that he felt aggrieved by the same.
12. On whether I ought to set aside and/or review the proceedings of the 23.9.2025 I do find that no material has been placed before this court to warrant a review.
13. The instructive order 45 of the Civil Procedure Rules provides as follows:-

An aggrieved person may apply for a review based on the discovery of new and important evidence not available despite due diligence, a mistake apparent on the face of the record, or any other sufficient reason. The application must be made without unreasonable delay.

14. The Applicant has not adduced any evidence of discovery of new and important matter of evidence which after exercise of due diligence was not within his knowledge or could not be produced at that time neither has demonstrated that there was some mistake or error apparent on the face of the record or that there exist any sufficient reasons for a review. The fact that the 1st Objector has lodged a complaint against the trial Judge is not a sufficient reason for a review. This court has to weigh and balance the interest of the 1st objector viz a vis those of the beneficiaries of the estate of the deceased given that the 1st objector has no consanguine relation with the deceased.
14. I do note that the 1st Objector has used such unpalatable words against the trial Judge; he has used the analogy of the hyena and the sheep in reference to the judge; this court will not be intimidated by either the complaint nor the unsavory language of the 1st Objector, but will at all times discharge its duties diligently, impartially and without fear or favour.
15. On the balance I do find that for reasons stated hereinabove, this application is devoid of merit and I hereby dismiss it with costs to the Petitioner which costs shall be taxed accordingly.

Delivered, signed, and dated at Bungoma this 24th day of November, 2025.

MWANAISHA S. SHARIFF
JUDGE