

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT KIAMBU**

SUCCESSION CAUSE NO. E032 OF 2022

**IN THE MATTER OF THE ESTATE OF MICHAEL NDING'URI
MWANIKI (DECEASED)**

EPHANTUS MUIRURI NDINGURI.....APPLICANT

VS

**ANNE WAMBUI NDINGURI.....1ST
RESPONDENT**

**PETER NJOGU MUCHAMI.....2ND
RESPONDENT**

RULING

1. This ruling arises out of an application filed by one of the Applicant herein; the application is a Notice of Motion and is dated the 2/05/2025 and is filed under the provisions of Article 50 of the Constitution of Kenya 2010, Sections 1A,1B, and 3A of the Civil Procedure Act, Order 51 of the Civil Procedure Code and all other enabling provisions of the law; the Applicant seeks the following orders;

- i) That the application be certified as urgent.*
- ii) That the Hon. Lady Justice A. Mshila, do recuse herself from any further conduct of this matter and the file be placed for re-allocation.*

iii) That the costs of this application be costs be provided for.

2. The application was supported by the Affidavit of the Applicant sworn on 2nd May, 2024, and predicated on the grounds on face of the application; the gist of the averments in the affidavit was that the trial judge herein was not impartial to the Applicant at the hearing of the Originating Summons dated 22/10/2022 and did not accord the Applicant a fair hearing; and he cited the provisions of Article 50(1) of the Constitution 2010; and he urged the court to grant the orders prayed for a transfer of the matter for hearing before another judge because there was a perception of bias on the part of the trial judge;
3. The application was strongly opposed by Counsel acting for the Respondent herein; who correctly pointed out that at the hearing of Originating Summons the Applicant had been granted great leverage by the trial court and had made lengthy pleadings and submissions challenging the application for exhumation of the deceased's body. The instant application was an attempt by the Applicant to delay and to scuttle the final determination of the matter so as to bring the court into disrepute;
4. Counsel prayed that the application be dismissed with costs;

ISSUES FOR DETERMINATION

5. The sole issue found for determination is whether this court should recuse itself from handling this matter;

ANALYSIS

6. The manner in which this instant application was brought, a reasonable person observing and following the events of the hearing would not be wrong in presuming a sense of entitlement, intimidation and premeditation;
7. The reasons proffered by the applicant are not likely to lead any reasonable observer who followed the proceedings on 16th July, 2025 to presume that the impartiality and independence of the court to have been imperiled or irredeemably compromised solely for the reasons advanced by the Applicant in her instant application;
8. This Court states emphatically that it has a duty to determine matters placed before it and the parties herein are not at liberty to choose the judge who will hear their succession matters; and also requesting for the recusal of a judge should not be taken lightly particularly in instances where a party only wants to cause a delay in its just determination; and a delay in disposition of cases does not augur well with the public and it also erodes public confidence in the courts.
9. Recusal is a matter for the court to exercise its discretion; This Court after having considered all the facts categorically states that it has no personal interest in the matter and that it has not been impartial or biased in any way against the party seeking the recusal and was at all times able to determine this matter

objectively while maintaining impartiality, transparency and fair-mindedness;

10. For the reasons stated above and to uphold the confidence in the integrity of process this Court the will non-the-less exercise its discretion and recuse itself;
11. Mention before Court 2 Hon. Lady Justice Chepkwony for directions on hearing and disposal of this case.
12. The Applicant is hereby condemned to pay the Respondents in this instance, costs of this application.

It is so ordered.

**DATED, SIGNED AND DELIVERED via TEAMS AT KIAMBU
THIS 28TH DAY OF NOVEMBER, 2025.**

**A. MSHILA
JUDGE**

In the presence of;

Sanja - Court Assistant

Amondi -h/b for Senior Counsel Ngatia - For the Applicant

Ombongi -h/b for Dr. Kamotho - For the Respondents