

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 1673 OF 2015**  
**IN THE ESTATE OF TIMOTHY MWANDI MUUMBO**

**RULING**

**INTRODUCTION**

1. The Application dated 17<sup>th</sup> June 2025 was triggered by ruling delivered by this Court on 29<sup>th</sup> May 2025. The Application is presented under Articles 40, 47, 160 (5) of the Constitution of Kenya; Sections 45, 47 of the Succession Act and Rule 49 of the Probate and Administration Rules. The application is supported by the affidavit of Carolyn Kalunde Muumbo sworn on 17<sup>th</sup> June 2025 and seeks the following orders-

1. Spent
2. THAT this Honourable Court be pleased to grant leave to the applicants to include and / or enjoin the Ethics and Anti-Corruption Commission (EACC) as an interested party in this matter.
3. That once leave is granted Ethics & Anti-Corruption Commission (EACC) be cited as an interested party in this matter.
4. THAT, the judge Lady Justice Patriciah Mande Nyaundi do recuse herself from the conduct of this cause.
5. THAT, the Costs of this application be in the Cause.

2. The applicant avers that the ruling delivered on 29<sup>th</sup> May 2025 was an illegal ruling as it was delivered in the absence

of the parties. The applicant takes issue with the fact that the ruling addressed two applications and contends that the outcome of the ruling has adverse consequences for the estate. She charges that the Court acted 'wilfully, maliciously and out of ignorance' and the judge 'abused her office' in contravention of the provisions of Article 160(5). She states that the Ethics and Anti-Corruption commission should be joined in this matter so as to investigate me.

3. She describes me as being adamant to proceed with the hearing of the cause yet I have displayed negative bias and prejudice against the applicants. She has a pending complaint before JSC with regard to my earlier ruling.
4. Johnstone Kassim Muumbo has sworn an affidavit in opposition on 23<sup>rd</sup> July 2025. Mwinzi Muumbo and Billy Mbuvi Muumbo have sworn affidavit in opposition on 8<sup>th</sup> November 2025.
5. The Applicant has sworn a further affidavit in response to the affidavit sworn by Billy Mbuvi Muumbo and Mwinzi Muumbo and states that the same were filed out of time and therefore she is prejudiced as she would need time to file a response. In the affidavit she confirms that her compliant

against me is now proceeding as Petition Number 43 of 2025 before the Judicial Service Commission.

6. She has also sworn a further supplementary affidavit in response to the affidavit sworn by Billy Mbuvi Muumbo and Mwinzi Muumbo, in which she avers that the same is defective as it is sworn by a Mwindi Mwandi Muumbo who is a stranger to the matter.
7. The Application proceeded by way of written submissions.
8. The Applicants submissions are dated 6<sup>th</sup> October 2025. She gives a chronology of the events as relates to the hearing of the matter. She takes issue with the choice of phrase by the Court in ruling of 29<sup>th</sup> May 2025 and charges that the same was actuated by malice and characterises me as cruel.
9. Johnstone Kassim Muumbo's submissions are dated 20<sup>th</sup> September 2025. The issues framed for determination are-
  1. Whether the Ethics and Anti-Corruption Commission should be joined as an interested party in these proceedings
  2. Whether the Lady justice Patricia Mande Nyaundi should recuse herself from the conduct of this case.
10. On the 1<sup>st</sup> issue, it is submitted that the application to join the EACC must fail on both the necessity test and the proper parties test and reference made to the decisions in

the case of **East African Cables Manufacturing Company Limited v Independent Electoral and Boundaries Commission ( IEBC) & 3 Others [2023] eKLR ( Constitutional Petition E013 of 2023, High Court at Nairobi); Okumu v Agricultural Development Corporation (2025) KEELC 451 (KLR) and Njoki Ndungu v Judicial Service Commission 2 Others; Council of the Law Society of Kenya ( Interested Party) [2020] eKLR ( Constitutional petition No. 106 of 2020) ( High Court at Nairobi, 14<sup>th</sup> May 2020).**

11. On the 2<sup>nd</sup> issue as to whether I should recuse myself, it is submitted that the applicant has not met the legal threshold. Reference is made to the Court of Appeal decision in **Philip K. Tunoi & Another v Judicial Service Commission & Anor CA Civil Application NAI No. 6 of 2016 [2016] eKLR; Re Estate of Fai Amario Omar alias Peter Gilbert Njoroge Nganga ( Succession Cause 354 of 2010); Re Estate of Daniel Muinde Kitua ( Succession Cause E021 OF 2022) and in the Estate of George M'mboroki Meru HCSC No. 357 of 20024 and Rev. Madara Evans Okanga Dondo v Housing Finance**

**Ltd [2005] KEHC 506 (KLR)** on the Court's inherent powers to do justice.

12. The submissions of Billy Mbuvi Muumbo and Mwinzi Muumbo are dated 8<sup>th</sup> September 2025. It is submitted that the application is *res judicata* and therefore ought to be struck out. The decision in **Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] KECA 477 (KLR)** is cited as authority on the need to have closure and finality in litigation and a bar to vexatious litigation.

13. On the 2<sup>nd</sup> issue it is submitted that if EACC is being onboarded so as to investigate corruption allegations against the Judge, then the probate court is not the forum and reference made to the decision in **Re Estate of Mbai Wainaina (Deceased) [2015] eKLR** on the limits of the jurisdiction of the Probate Court and **Estate of Stone Kakhuli Muinde (deceased) [2016] eKLR** on the non-contentious nature of probate proceedings. It is further submitted that the applicant lacks locus to seek joinder of EACC and that EACC are best placed to seek their own joinder.

## **ANALYSIS AND DETERMINATION**

14. Having regard to the pleadings and submissions the issues for determination are

1. Whether the Application has merit

2. Who should pay costs

15. The first prayer that the applicant seeks is the joinder of EACC as an interested party. This request is motivated by the applicant's charge of corruption against me. Applications of this nature are a reminder that upon taking the Oath to the office of a Judge, I immediately discard my thin skin and must approach every case with the patience and wisdom of King Solomon as recorded in 1 Kings 3:16-28.

16. The application herein as I appreciate, asks me to install the EACC in these proceedings so that they watch over me now that the applicant has formed the view that the rulings rendered herein by me could only be actuated by corruption. The English vocabulary which is our medium of communication in formal settings has many words to describe this kind of application. I will go with unfounded and an affront to my independence and the independence of the judiciary as encapsulated under Article 160 of the Constitution.

17. The claims of corruption are unsubstantiated, the applicant seems to suggest that when the court rules against her, it is because the Court is corrupt. The Court is her arena for victory, she merely shows up to pick her reward. Her case is without contest.

18. If she is truly persuaded by her charge of corruption before me, she is at liberty to make a formal complaint before the Ethics and Anti-Corruption Commission, they have the mandate to investigate without being a party to these proceedings which are solely concerned with distributing the free estate of the deceased to his rightful beneficiaries.

19. I have no hesitation in dismissing this limb of the application.

20. The 2<sup>nd</sup> limb is that I should recuse myself. It is submitted by Billy Mbuvi and Mwinzi Muumbo that the application is *res judicata*. The applicant says it is not *res judicata* because it seeks my recusal based on a subsequent ruling. Making this application even more offensive than one that is *res judicata*, as this application is vexatious.

21. Vexatious litigation is the bane of our justice system. Of essence it lacks merit, serves no legitimate purpose and is

intended to harass, intimidate and even bully the parties or as in this instance the Court.

22. The applicant's grievance is that I was wrong on the law.

She does not as is required under the law make any attempt to establish bias. Bias is defined in the **Black's Law Dictionary** as an inclination; prejudice or predilection. It may manifest in two forms; actual or perceived. Actual bias is defined as genuine prejudice that a judge, juror, witness, or other person has against some person or relevant subject. Perceived (or implied) bias is defined as prejudice that is inferred from the experiences or relationships of a judge, juror, witness, or other person.

23. Regulation 21 of the Judicial Service (Code of Conduct and Ethics) Regulations 2020 largely replicates from the Bangalore Principles. It provides as follow

**21. (1) A judge may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judge**

**(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 reason;**
- (h) or a member of the judge's family has economic or other interest in the outcome of the matter in question.**

24. No attempt has been made to lay before me a basis upon which she considers that I am biased. Her primary issue is that she considers it possible I may not be a suitable person to hold the office of a Judge...Well, until my employer decides on that question one way or another I do have a duty to sit.

25. In the case of **Prayosha Ventures Limited vs NIC Bank Ltd & Others (2020) eKLR** the Court (Hon. Omondi, J - as she then was) dismissed a recusal application and found thus: -

**It is not lost to me that the issue of recusal was spontaneously announced once I declined to extend the orders, and there should be no pretence by Mr. Lagat that the Interested Party instructed him to apply for my recusal... I have no lien over the matter, and would be more than willing to have this matter taken over by another judicial officer, except that the manner in which the recusal is sought reeks of mala fides clothed with sharp practice, outright bullying and intimidation. That where a litigant does not call the tune and pay the piper, then the bias flag is waved all over. Indeed, for good measure, Dr Kiprono reminded this Court that his client would be considering presenting a complaint to the Judicial Service Commission over my conduct in this matter. If that was not intended to scare the daylights out of me, then I do not know why the**

**name of my employer was being invoked at that point.**

35. Similarly, in **Dobbs v Tridios Bank NV (2005) EWCA 468** the Court cautioned itself as follows with respect to the antics of a certain Mr. Dobbs:

**... But it is important for a Judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If Judges were to recuse themselves whenever a litigant - whether it be a represented litigant or a litigant in person - criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select Judges to hear their cases simply by criticizing all the Judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a Judge felt obliged to recuse himself simply because he had been criticized - whether that criticism was justified or not. That would apply, not only to the individual Judge, but to all Judges in this court; if the criticism is indeed that there is no Judge of this court who can give Mr. Dobbs a fair hearing because he is criticizing the system generally. Mr. Dobbs' appeal could never be heard.**

26. In the end this application must fail in its entirety. I find the words of Hon. Sifuna J in **Board of Management Kenya Hospital Association t/a The Nairobi Hospital & another v Chief Executive Officer Kenya Hospital Association & 2 others [2025] KEHC 13318 (KLR)** apt, he stated-

**In rejecting a recusal Application in Tuff Bitumen Ltd v. SBM Bank (K) Limited & Another [2023] KEHC 3198 (KLR), I observed that some recusal applications are made in the hope that they will tarnish the Judge's reputation, as well as cause him**

**or her psychological, mental and emotional pain, regardless of whether the application succeeds or not. This is one such application.**

27. In conclusion, these are the orders of the Court

1. The Application is dismissed, no order as to costs
2. The matter to proceed to further hearing of the Objection proceedings

It is so ordered.

**SIGNED DATED AND DELIVERED IN VIRTUAL COURT  
THIS 4<sup>TH</sup> DAY OF DECEMBER, 2025.**

**P.M NYAUNDI  
HIGH COURT JUDGE**

**In the presence of:**

Fardosa Court Assistant

Ms. Muigai for Alex & Carolyne Muumbo for Applicants

Lusyola holding brief for Oronga for Respondents

Nabende for Interested Party

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