



# THE JUDICIARY



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT NAROK**  
**ELC CONSTITUTIONAL PETITION NO. E001 OF 2024**

**IN THE MATTER OF: ARTICLES 1,2,3,10,19,20,21,22,23**  
**(30),35,40,43,47, (10,50,73,75,165)30 AND**  
**258,259,48,50,60 AND 232 OF THE CONSTITUTION OF**  
**KENYA**

**AND**

**IN THE MATTER OF SUPREMACY OF THE CONSTITUTION**  
**PURSUANT TO ARTICLE 2 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF CONTRAVENTION AND THREATENED**  
**CONTRAVENTION OF FUNDAMENTAL RIGHTS AND**  
**FREEDOMS UNDER ARTICLE 20,27,28,40,50 AND 174& 53**  
**OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ILLEGAL AND UNLAWFUL DEPRIVATION**  
**OF PROPERTY RIGHTS BY THE RESPONDENTS**

**AND**

**IN THE MATTER OF DEFENCE OF THE CONSTITUTION**  
**UNDER ARTICLE 3(1) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF INTERPRETATION, ENFORCEMENT AND**  
**PROTECTION OF THE BILL OF RIGHTS UNDER ARTICLE**  
**19,20,22,23,24,165,258 AND 259 OF THE CONSTITUTION**

**BETWEEN**

KIRIGA			OLE
MATIBE.....	PETITIONER/RESPONDENT		
<b>VERSUS</b>			
TUKERO	OLE	MURUNYA.....	1 <sup>ST</sup>
RESPONDENT/APPLICANT			
KEMET	ENE	MURUNYA.....	2 <sup>ND</sup>
RESPONDENT/APPLICANT			
SAITAGA	OLE	NANGARI.....	3 <sup>RD</sup>
RESPONDENT/APPLICANT			
KOIRESOI		BWATIKA.....	4 <sup>TH</sup>
RESPONDENT/APPLICANT			
KANTAI		MAKO.....	5 <sup>TH</sup>
RESPONDENT/APPLICANT			
DISTRICT	SURVEYOR.....		6 <sup>TH</sup>
RESPONDENT			
DISTRICT	LAND	REGISTRAR.....	7 <sup>TH</sup>
RESPONDENT			

**RULING**

1. By a Notice of Motion application dated **24<sup>th</sup> July 2025**, brought under **Section 5 of the Judicature Act and Rules 81.4 and 81.10 of Part 81 of the Civil Procedure (Amendment No. 2) Rules, 2012 of England and Wales**, the Petitioner/Applicant have sought for the various orders; and at this stage he prayed for **prayer No. 3** which reads as follows;

***i) That this Honourable Court be pleased to recuse itself;***

2. The application was premised on the grounds that as this Court found and held in its ruling of **5<sup>th</sup> June, 2025**, the Respondents herein who had been aggrieved by the orders

that they have disobeyed, made on **3<sup>rd</sup> May, 2024**, applied for those orders to be discharged, but the application was refused by court (constituted differently) on **29<sup>th</sup> October 2024**.

3. The Applicant deponed that that following the dismissal on **5<sup>th</sup> June, 2025** of his Application for Respondents committal to jail for disobeying the **Court orders**, which orders were given on **3<sup>rd</sup> May 2024**, the Respondents have felt emboldened to disobey those orders, whose setting aside was declined by this Court **on 29<sup>th</sup> October, 2024**; that the actions of the Respondents are based on the wrong and dangerous view that a party against whom orders have been made are at liberty to take the law into his/her hands as the Respondents have done; and that following the said dismissal on **5<sup>th</sup> June 2025**, of the earlier application, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have engaged in a series of contempt of court activities, taking the forms of placing a road barrier on the part of the road adjoining the Petitioner's property **Cis Mara/Oletukat/674**, and are grazing about **50 heads** of cattle and 30 goats each, thus disobeying the following orders granted by the court on **3<sup>rd</sup> May, 2024**.
4. Further, that through their actions, the 1st and 2nd Respondents have undermined the authority of this Court by acting as if court orders do not mean a thing to the persons against whom they have been made; that the Respondents are in essence mocking this Honourable Court; and as long as

it is in force, an order like the one issued on **3<sup>rd</sup> May, 2024**, must be obeyed on its terms.

5. The Applicant averred that in its ruling herein delivered on **5<sup>th</sup> June, 2025**, this Court found as a fact that the Respondents are aware of the above-mentioned orders; in paragraphs 10 and 11 of the ruling, it is stated as follows: *“11. It is evident that the Respondents were aware of these orders, because after the issuance of the same, the 1<sup>st</sup> to 5<sup>th</sup> Respondents sought to have them set aside vide their application dated 22<sup>nd</sup> May 2024, which application was disallowed on **29<sup>th</sup> November 2024**. Therefore, it is obvious that the Respondents were aware of the said court orders and they had no options but to obey them.”*;
  
6. In his verifying affidavit the Petitioner/Applicant averred that this court without jurisdiction, **reopened** and **reviewed** and **watered down** the Orders which were made on **5<sup>th</sup> May 2024**, by raising the issue as to when the 7<sup>th</sup> Respondent cancelled his title despite the fact that the cancellation is dated **14<sup>th</sup> January 2025**. The Petitioner/Applicant further stated that the pretext which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents may be having are the observations of this court of **5<sup>th</sup> June, 2025**.
  
7. The Petitioner/Applicant sought the recusal of the **presiding judge**, alleging **bias** and **improper review** of previous orders. He argues that the judge exceeded her jurisdiction by

reviewing and effectively vacating orders issued by another judge, creating a perception of partiality.

8. The Respondents opposed the application and filed their Replying Affidavit dated **9<sup>th</sup> October 2025**, and averred that there is no evidence in the applicant's Affidavit whatsoever, attesting those circumstances exist that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have disobeyed court orders and deprived the Applicant of parcel of land **No. Cis-Mara/Oletukat/674**, which parcel does not exist.
9. The Respondents also argued that the Petitioner/Applicant has failed to provide specific evidence of **bias**, and that the **recusal** application is baseless. They emphasized that **Judicial officers** are expected to perform their duties impartially and resist external pressures.
10. The Application was canvassed by way of written submissions. In his submissions the Petitioner/Applicant, **Kiriga Ole Matipe**, submitted on his application for judicial recusal, enforcement of court orders, and contempt proceedings against the Respondents. He alleged **bias** on the part of the **presiding judge**, claiming that the judge **improperly reviewed** and **vacated orders** issued by another judge, creating a perception of partiality.
11. It was the Applicant submissions that there are circumstances that appear to likely undermine this court's **impartiality** in determining the Applicant's suit and pending

application. The applicant submitted that this court acted in **excess of jurisdiction** on **5<sup>th</sup> June 2025**, by reviewing the earlier orders issued by the court virtually vacating them.

12. Further, that the perceptions which emerged and appeared to inform the actions of the Respondents are that the previous Judge was wrong in issuing the orders which he did, and further that the 7<sup>th</sup> Respondent can, in law and without giving the registered proprietor a chance to be heard, cancel a title deed as he purported to do on **14<sup>th</sup> January, 2025**.
13. Further, that although the court pointed out that cancellation might have taken place and that the 7<sup>th</sup> Respondent has power, after cancelling a title to issue titles over a proprietor's land, the Petitioner/Applicant submitted that the perception is that the Petition has been tried and judgment given in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. Reliance was sought in the legal precedents such as **Kenya Hotel Properties Limited v Attorney General & 5 Others (Petition 16 of 2020)** and **Kaplan & Stratton v L.Z. Engineering Construction Limited & 2 Others [2000] eKLR**.
14. The Petitioner/Applicant further submitted that **Article 50** of the **Constitution** guarantees everyone enjoyment of a right to a fair hearing by an independent and impartial tribunal and the Petitioner's complaint is that this guarantee has now been eroded. Reliance was also sought in the case of **Philip**

***K. Tunoi & another vs Judicial Service Commission & another [2016] eklr.***

15. As pertains to costs, the Petitioner/Applicant submitted that costs are awarded at the discretion of the court and whilst the court has an absolute and unfettered discretion to award or not to award costs, that discretion must be exercised judicially. He relied in the cases of ***Jasbir /Singh Rai and 3 others vs Tariochan Singh Rai and 4 others [2014] eklr and Republic vs Communication Authority of Kenya & another ex-parte Legal Advice Centre aka Kituo cha Sheria [2015] eklr.***
16. In conclusion the Petitioner/Applicant urged the court to allow the prayer ***for its recusal*** and order that the pending applications and substantive suit be heard by another court other than itself.
17. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents, ***Tukero Ole Murunya and Kemet Ene Murunya***, submitted in opposition to the Petitioner's application for recusal of the presiding Judge enforcement of court orders, and contempt proceedings. It was their submissions that the Petitioner's claims are unsubstantiated and lack merit, emphasizing that the disputed land parcel, ***CISMARA/OLETUKAT/674***, does not exist in the land registry or on the ground.
18. They argued that the Petitioner/Applicant fraudulently created parcel ***No 674***, by amalgamating portions of their

legally owned parcels, **CISMARA/OLETUKAT/337** and **338**. The Respondents maintained that the title to parcel **No. 674** was cancelled by the District Land Registrar through Kenya Gazette **Notice No. 10273** issued on **4<sup>th</sup> August 2023**, and that they are the rightful owners of parcels **No. 337 and 338**, which were re-issued to them after the cancellation.

19. In their submissions the Respondents raised the following issues for determination;

- i. Whether the accusation of wilful and deliberate disobedience of court orders of 3<sup>rd</sup> May, 2024 was proved?***
- ii. Whether the application for recusal of presiding judge is merited?***
- iii. Whether the alleged photographs are admissible in law?***

20. Regarding the contempt allegations, the Respondents denied wilful disobedience of court orders issued on **3<sup>rd</sup> May 2024**, which prohibited them from **accessing** or **utilizing** land parcel No.**674**. They argued that their activities are confined to land parcels **No. 337 and 338**, which they legally own, and that the Petitioner has failed to prove beyond reasonable doubt that they violated the court orders.

21. The Respondents emphasized that contempt proceedings are **quasi-criminal** in nature and require a high standard of proof, citing cases such as **Sam Nyamweya & 3 Others v**

***Kenya Premier League Limited & 2 Others [2015] eKLR and Mutitika v Baharini Farm Limited (1985) KLR 229.***

22. The Respondents also challenged the admissibility of the petitioner's photographic evidence, arguing that it fails to meet the legal standards under **Sections 106** and **106(B)** of the **Evidence Act**, as it lacks a certificate of authenticity and other required details.
23. On the issue of judicial recusal, the Respondents argued that the Petitioner/Applicant has not provided sufficient evidence to demonstrate **bias** or **partiality** on the part of the presiding judge. They further argued that the Petitioner's application is baseless and amounts to forum shopping.
24. The Respondents referenced legal precedents, including **Philip Chepkwony v Benjamin Tarus & 4 Others [2019] eKLR** and **County Assembly of Kisumu & 2 Others v Kisumu County Assembly Service Board & 6 Others [2015] eKLR**, to support their position that judicial recusal requires a reasonable apprehension of bias, which the petitioner has failed to establish.
25. The Respondents also relied on the case of the **East African Court of Justice in Attorney General of Kenya vs Anyang Nyong'o's App. No. 5 Ref No. 1 of 2006** while citing with approval the **South African Case of Republic & 2 others vs South African Rugby Football Union & 3 others (case CCT 16/98)**. Also reliance was also sought in

the case of ***Alliance Media Kenya Limited vs Monier 2000 Limited & another [2007] eklr.***

26. The Respondents concluded by requesting the court to dismiss the petitioner's application in its entirety, arguing that it is ***unmerited*** and based on ***unsubstantiated*** claims. They emphasized the importance of procedural fairness, the high standard of proof required for contempt proceedings, and the need to uphold the integrity of the judicial process.
27. The court has considered the instant Application for recusal, the submissions in support, and against the said Application, the relevant law, the cited authorities and finds as follows;
28. The background that has brought about this Application for recusal is the Ruling delivered by this court on ***5<sup>th</sup> June 2025***, wherein the Petitioner/ Applicant had sought for committal to civil jail of the Respondents herein for failure to obey court orders.
29. After consideration of the argument in favour of the said Application and against, and the cited authorities, the court dismissed the Petitioner's Application, and urged the parties to refrain from filing numerous interlocutory Applications, and prepare the main Petition for hearing, so that the contested issues can be resolved once and for all.

30. The Petitioner was aggrieved by the above referred Ruling, and filed a **Notice to Appeal**, against the said Ruling, which Notice was served to the other parties and filed in court.
31. Further, the Petitioner/Applicant filed a **Notice of Motion** dated **18<sup>th</sup> June 2025**, wherein he sought leave to file an appeal against the Ruling of this court dated **5<sup>th</sup> June 2025**. The said application was given a hearing date of **30<sup>th</sup> June 2025**. On the date of the hearing the Application was not opposed, and leave to Appeal was granted on **30<sup>th</sup> June 2025**. The parties were given a date for Pre-trial conference before the Deputy Registrar for **9<sup>th</sup> July 2025**.
32. However, on **24<sup>th</sup> July 2025** the Petitioner/Applicant filed the instant Application wherein apart from asking the court to recuse itself, he also sought for orders that the court do declare that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were aware of the court order of **3<sup>rd</sup> may 2024**, which they have disobeyed, and are thus in contempt of court.
33. The Petitioner also sought for restraining orders, and committal to jail of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for contempt of court. However, the Petitioner/Applicant chose to deal with **prayer No. 3** for recusal without directions of the court. The court had directed that all the prayers sought be canvassed through written submissions, but not only **prayer No.3**.
34. Be that as it may, **prayer No.3** is a request for this court to recusal itself on the ground that through its ruling of **5<sup>th</sup> June**

**2025**, there is perception that the court reviewed an earlier order of the court, and exceeded its jurisdiction, was biased and that action showed partiality. From the grounds set out, it is clear that the Petitioner/Applicant was aggrieved by the decision of the court, in its Ruling of 5<sup>th</sup> June 2025, and his recourse lies in the Court of Appeal.

35. The Petitioner/Applicant filed a **Notice of Appeal**, and applied for leave to file an Appeal out of court, which leave was granted. What is not clear is whether the Petitioner/Applicant filed the actual Appeal or not. But on the turn of event, he filed another Application dated **24<sup>th</sup> July 2025**, urging the court to declare that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are in contempt of court orders.
36. Together with the above sought order, he urged this court to recuse itself. Recusal of a judge or judicial officer handling a matter has been litigated and severally determined by courts in this country and other jurisdictions.
37. In the case of **Jasbir Singh Rai & 3 Others Vs. Tarlochan Singh Rai & 4 Others Petition No. 4 of 2012 [2013] ECLR**, the court held as follows:

***“The term is thus defined in Black’s Law Dictionary, 8th ed. (2004) [p.1303] as: “Removal of oneself as judge or policy maker in a particular matter, [especially] because of a conflict of interest.” From this definition, it is evident that the circumstances calling for recusal, for a Judge,***

***are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised."***

**38. Regulation 21 of the Judicial Service (Code of Conduct and Ethics) Regulations 2020 which largely replicates from the Bangalore Principles provides as follows:**

- "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."***

39. It is evident that a judge may recuse himself/herself from hearing a matter, or a party may request recusal, if there are reasonable grounds to question the judge's impartiality in the matter. However, the standard that is applied is whether a "*fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased*". If according to the party, the decision of the judge was wrong. The recourse is not to ask the judge to recuse himself, but to appeal against that decision. The Petitioner herein filed a Notice of Appeal in preparation of filing on Appeal at the Court Appeal
40. It is trite that Judges have a duty to hear cases unless there are compelling reasons for recusal. Further a judge should not recuse himself if no other judge can handle the case, like in a one judge station, unless the party seeking for recusal has meet the standard for grant of such an order. The doctrine of necessity sets in Recusal of a judge is not appropriate if the request is based on ***unfounded allegations***, forum shopping, or is intended as a delay tactic. Recusal must be based on specific grounds, and not mere speculations.

41. Having set the tone as above, it is evident that recusal of judges or judicial officers is not a matter that should be handled carelessly and at the whims of an applicant, since it goes against the very core of the duty to sit. The allegations aimed at dislodging the judge from hearing a matter goes against the oath of office of the judge or judicial officer to act **impartially** and **without bias** or **ill-will**. Thus, the onus is on the party alleging **bias, partiality, misconduct** or other **grounds** for **recusal** to go beyond mere imaginations, feelings, perceptions and avail cogent evidence warranting recusal.

42. In the case of ***Gladys Boss Shollei v Judicial Service Commission & Another, Petition No. 34 of 2014; [2018] eKLR***, the court held as follows;

***“Tied to the constitutional argument above, is the doctrine of the duty of a judge to sit. Though not profound in our jurisdiction, every judge has a duty to sit, in a matter which he duly should sit. So that recusal should not be used to cripple a judge from sitting to hear a matter. This duty to sit is buttressed by the fact that every judge takes an oath of office: “to serve impartially; and to protect, administer and defend the Constitution.” It is a doctrine that recognizes that having taken the oath of office, a judge is capable of rising above any prejudices, save for those rare cases when he has to***

***recuse himself. The doctrine also safeguards the parties' right to have their cases heard and determined before a court of law."***

43. However, this duty to sit may be impugned in some instances. But the said impingement must be objective and cogent. In the case of ***Jasbir Singh Rai v. Talochan Singh Rai( supra)***, the court held;

***"From this definition, it is evident that the circumstances calling for recusal, for a Judge, are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised."***

44. In the case of ***Republic v Speaker of the Senate & another Ex parte Afrison Export Import Limited & another [2018] eKLR***, the court observed as follows;

***"The principle upon which the bias rule has been founded in modern times can be traced to Lord Hewart's famous statement that***

***“justice should not only be done, but be seen to be done.” [44] On this view, appearances are important. Justice should not only be fair; it should appear to be fair. Lord Hewart's statement signalled the rise of the modern concern with the possible apprehension that courts or quasi-judicial bodies might not appear to be entirely impartial, rather than the narrower problem that they might in fact not be impartial. The importance of the appearance of impartiality has become increasingly linked to public confidence in the courts and the other forms of decision-making to which the bias rule applies. [45] This rationale of the bias rule also aligns with the objective test by which it is now governed because the mythical fair minded and informed observer, whose opinion governs the bias rule, is clearly a member of the general public.”***

45. The Petitioner /Applicant has alleged that from the Ruling of this court delivered on **5<sup>th</sup> June 2025**, the court made a final determination, by holding that the 7<sup>th</sup> Respondent has powers to **cancel** titles, and he was apprehensive that the court may not depart from that holding in the main Petition. That is a perception, because in its Ruling, the court had held that the **onus** of proving contempt of court is a higher one given that one's liberty was at stake.

46. The court will rely on the decision of ***The New Zealand Supreme Court held, in Saxmere Company Ltd-vs-Wool Board Disestablishment Company Ltd [2009] NZSC 72, [2010] 1 NZLR 35***, where the court held;

**“The standard for recusal [on grounds of bias] is one of “real” and not remote possibility”, rather than probability. The test is a two-stage one. The judge must consider:**

***i) First, what it is that might possibly lead to a reasonable apprehension by a fully informed observer that the judge might decide the case other than on its merits; and***

***ii) Second, whether there is a “logical and sufficient connection” between those circumstances and that apprehension.”***

47. Bearing in mind the above holding, the court finds that the issue of ***logical*** and ***sufficient*** connection to apprehension, allegedly borne by the Applicant and the fact that courts have recognized presumption that Judges and judicial officers are impartial in adjudicating disputes. However, justice is between parties, and the judge or judicial officer is never the one on trial. It is trite that justice should not only be done, but be seen to be done. The parties to the suit are the ones who have a calling or expectation to see that justice has been done.

48. The Petitioner/Applicant has not cogently brought out the issues that would make him have perception that this court is **biased**, or justice will done be done once the matter is presided over by the said court.
49. This is a one judge station, and the court would be tempted to decline this Application for recusal. However, bearing in mind that justice is for the parties, and given that this court carried its duty in delivering it ruling of **5<sup>th</sup> June 2025**, without any bias or partiality, but since the Petitioner/Applicant is apprehensive that the court will not be impartial in hearing the application dated **24<sup>th</sup> July 2025**, which seeks the same prayers as the one sought in the dismissed application, this court finds it prudent to recuse itself, if the said recusal will pave way for justice to be seen to be done.
50. For the above reasons, this court proceeds to **recuse itself** and this matter will be transferred to another ELC Station for hearing and determination of the instant Application dated **24<sup>th</sup> July 2025** and the main Petition.
51. Consequently, this matter and file will be referred to the **Presiding Judge** of the **Environment and Land Court** sitting in Milimani Environment and Land Court to allocate the suit to another Judge. The court recuses itself !!

***It is so ordered.***

***Dated, signed and delivered virtually at Narok this 11<sup>th</sup> day of December 2025.***

***L. Gacheru  
Judge***

***Delivered online in the presence of***

***Elijah Meyoki - Court Assistant***

***Dr. Gibson Kamau Kuria - Petitioner/Applicant***

***Mr. Kipila holding brief for Mr. Kamwaro for 1<sup>st</sup> to 4<sup>th</sup> Respondents***

***N/A for 5<sup>th</sup> Respondent***

***N/A for 6<sup>th</sup> Respondent***

***N/A for 7<sup>th</sup> Respondent.***

***L. Gacheru  
Judge***