

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL REVISION NO. E242 OF 2025

DIRECTOR OF PUBLIC PROSECUTIONS.....
.....APPLICANT

VERSUS

SHAILESH KUMAR RAI.....1ST
RESPONDENT
RANJEETA PANDAY RAI.....2ND
RESPONDENT
ISAAC IKUA KIHARA.....3RD
RESPONDENT
CHRIS OYUNGE ONTITA.....4TH
RESPONDENT
ROSALIA BLOOMS LIMITED.....5TH
RESPONDENT

AND

RIYAZ PUNJANI.....INTERESTED
PARTY

RULING.

1. For determination before this Court is an application for revision arising from the ruling delivered by Hon. P. K. Mutai (PM) in Criminal Case No. MCCE/E604 of 2024 before the Chief Magistrate's Court at Milimani. The application was filed during the High Court vacation under certificate of urgency. By consent, the parties agreed to proceed with the matter before this court.
2. Directions were issued and the matter set down for hearing and the matter reserved for ruling. It however became apparent that I do not wish to proceed with the determination of the application. This position necessitates consideration of the applicable legal framework on recusal of a judicial officer.

3. The governing provision is section 47 of the Judicial Service (Code of Conduct and Ethics) Regulations, 2020, which provides as follows:

47.(1) A judicial officer may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judicial officer —

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

(2) Recusal by a judicial officer shall be based on specific grounds to be recorded in writing as part of the proceedings.

(3) A judicial officer may not recuse himself or herself if —

(a) no other judicial officer can deal with the case; or

(b) because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

4. The principle underpinning recusal has also been considered by the superior courts. In **Jasbir Singh Rai & 3 Others Vs. Tarlochan Singh Rai & 4 Others, Petition No. 4 of 2012 [2013] eKLR**, the Supreme Court stated 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.”

5. From the foregoing statutory and judicial guidance, it is clear that recusal is not limited to rigid or pre-defined circumstances. The main consideration is whether a reasonable and informed observer, apprised of the relevant facts, might question the impartiality of the judicial officer. The emphasis is not only on the actuality of bias, but equally on the perception of fairness and the confidence of the parties and the public in the administration of justice.
6. In the present matter, while the parties were ready to proceed and submissions have been placed before the Court, I am of the considered view that proceeding further would not be appropriate in light of personal considerations that fall within the scope of “**any other sufficient reason**” as contemplated under section 47(1)(g) of the Judicial Service (Code of Conduct and Ethics) Regulations, 2020. These reasons, though personal, are sufficient to raise a reasonable apprehension regarding my continued participation in the matter.
7. I am also satisfied that this is not a situation contemplated under section 47(3) of the Regulations. There is no demonstration that no other judicial officer can deal with the case, nor has it been shown that recusal would occasion urgent circumstances likely to result in a serious miscarriage of justice. The interests of justice are therefore better served by non-participation.
8. In keeping with the constitutional duty to uphold the integrity of the judicial process, and guided by the law and binding precedent cited above, it is imperative that justice is not only done, but is seen to be done.

9. Consequently, and for the reasons stated, I hereby recuse myself from further conduct and determination of this application for personal reasons. The file shall be placed before the Presiding Judge Milimani High Court for appropriate directions on re-allocation.

Orders accordingly.

**Ruling dated and delivered virtually this 10th day of
February 2026**

**D. KAVEDZA
JUDGE**

ORIGINAL