

REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT
NAIROBI
CAUSE NO. E175 OF 2021

DR. MARGARET MIGIRO & 15 OTHERS
.....**CLAIMANTS**

VERSUS

THE REGISTERED TRUSTEES
NATIONAL COUNCIL OF CHURCHES OF KENYA.....1ST
RESPONDENT
JUMUIA HOSPITALS LIMITED.....2ND
RESPONDENT

RULING

- 1.** Before Court is the Claimants' Motion application dated 12th December, 2025, brought pursuant to Articles 22, 25, 48, 50 (1) and 159 (2) (a), (b), (d) and (e) of the Constitution of Kenya, seeking orders THAT:-
 - a) The Hon. Lady Justice Christine Noontatua Baari be pleased to recuse herself from this matter forthwith.
 - b) The Court file in respect of the cause herein be placed before the Presiding Judge of the Employment & Labour Relations Court for urgent directions on further proceedings.
 - c) Such further or other consequential orders that the Honourable Court may deem just to grant.
 - d) Costs of this application be awarded to the Claimants.

2. The Motion is supported by the grounds on the face thereof and the affidavit of **Alfred Mutwiri Njeru**, the 10th Claimant/Applicant herein, sworn on 12th December, 2025.
3. The Claimants challenge the judgment of this Court, delivered on 30th October 2025, particularly paragraph 65, where the Court held that the Claimants had not prayed for compensation. The Claimants contend this finding is erroneous because prayer (c) in their Joint Memorandum of Claim dated 16th February 2021 expressly sought compensation for unlawful and unfair redundancy. They further argue that the Judge ignored additional key prayers, including claims for withheld salaries and the issuance of compliant Certificates of Service.
4. The Claimants state that although the Court found that the Respondents failed to follow mandatory redundancy procedures and that the redundancy was unjustified, the Judge declined to award meaningful compensation, which they view as a deliberate failure to discharge the Court's fundamental duty to grant appropriate remedies in unfair termination claims.
5. The Claimants assert that the decision demonstrates insensitivity, possible bias, and a lack of impartiality, particularly given the long pendency of the matter since 2021. The Claimants express loss of confidence in the Judge's ability to fairly determine the remaining issues and

believe there is a likelihood of bias unless she recuses herself.

- 6.** The Claimants aver that as a result, they have filed a formal complaint before the Judicial Service Commission, alleging collusion, incompetence, and deliberate frustration of their right to meaningful compensation.
- 7.** The Claimants/Applicants state that they reasonably apprehend bias on the part of the Judge, arguing that she has demonstrated manifest prejudice against them. They contend that, given the sensitivity of the matter, she is unlikely to determine their pending application with the required impartiality, and that they risk suffering irreparable harm if the orders sought are not granted.
- 8.** Finally, the Claimants/Applicants submit that it is fair and just for the Judge to recuse herself from the matter so that it may be heard by an impartial court, thereby safeguarding the integrity of the proceedings and restoring public confidence in the administration of justice.
- 9.** The Respondents opposed the Motion vide a Replying affidavit sworn by Edith Njeri on 27th January, 2026. The deponent states that from advised by her Advocates, Rule 74(2) of the Employment and Labour Relations Court (Procedure) Rules provides that an application for review of a decree or order of the Court under sub-rule (1) shall be made to the Judge who passed the decree or made the order

sought to be reviewed, or to any other Judge if that Judge is not attached to the Court station.

- 10.** The Respondents aver that the legal provision for recusal of a Judge or Judicial Officer is guided by Regulation 21 of the Judicial Service (Code of Conduct and Ethics) Regulations, 2020, hence recusal by a Judge should be based on specific grounds to be recorded in writing as part of the proceedings.
- 11.** They state further that it is trite law that a Judge will only recuse himself or herself if, and only if, the recusal is based on specific grounds that are actual and have been proven to the required standard, and mere accusations and/or speculation do not suffice. The Respondents state that a litigant cannot use a petition before the Judicial Service Commission (JSC) to engineer the transfer of a file and force the recusal of a Judge who, inter alia, has a constitutional duty to sit, hear, and determine a matter to its finality.
- 12.** It is their assertion that the JSC process is separate and distinct from judicial proceedings, and its pendency does not affect the Judge's authority to continue sitting, unless and until the Judge is lawfully suspended. The Respondents maintain that substituting a Judge to re-consider the merits of a decision in the guise of correcting "an error apparent on the face of the record" would amount to an appeal in disguise, and clearly demonstrates forum shopping and an attempt to improperly influence the judicial process.

- 13.** The Respondents state that the Applicant's application for recusal is premised solely on a hunch and dissatisfaction with the Judgment delivered by this Honourable Court on 30th October 2025, and not on any lawful, factual, or objective basis demonstrating bias, prejudice, or reasonable apprehension thereof. They aver that no evidence has been tendered by the Applicants herein to establish any personal interest, prejudice, or reasonable apprehension of bias on the part of the Honourable Judge.
- 14.** It is their position that an application for review must, save for exceptional circumstances not demonstrated herein, be heard by the same Judge who rendered the decision sought to be reviewed. They state that the Honourable Judge conducted the proceedings herein with utmost impartiality, professionalism, and in strict adherence to the law and the evidence placed before the Court.
- 15.** The Respondents argue that allowing the application would set a dangerous precedent whereby litigants could choose their preferred Judges by merely expressing dissatisfaction with judicial outcomes.
- 16.** It is their prayer that, in the interest of justice, fairness, and the integrity of the court process, the application for recusal be dismissed with costs.
- 17.** Parties urged the application by way of written submissions, which have been duly considered.

Determination

- 18.** The sole issue for determination herein is whether the Claimants/Applicants have established sufficient legal grounds to warrant my recusal from further handling of this matter.
- 19.** An application for recusal is premised on Article 50 (1) of the Constitution of Kenya, 2010, which entitles every person the right to have any dispute that can be resolved by the application of the law, decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body. Such an application calls into question the fairness of a Judge who has sworn to do justice impartially and in accordance with the Constitution and the law.
- 20.** As a general rule, a party seeking recusal must provide cogent, factual, and objective evidence that reasonably supports an apprehension of bias. In ***Raila Odinga & Others v IEBC & Others***, the Supreme Court emphasized that a judge must recuse himself or herself where there is a reasonable apprehension of bias, but cautioned that the test is objective and not based on the subjective feelings of a litigant.
- 21.** The East Africa Court of Justice explained the objective test in ***Attorney General of Kenya v Prof Anyang' Nyong'o & 10 Others EACJ Application No. 5 of 2007*** in the following words:-

“We think that the objective test of “reasonable apprehension of bias” is good law. The test is stated variously, but amounts to this: do the circumstances give rise to a reasonable apprehension, in the mind of the reasonable, fair minded and informed member of the public that the judge did not (will not) apply his mind to the case impartially. Needless to say,

(a) a litigant who seeks disqualification of a judge comes to court because of his own perception that there is appearance of bias on the part of the judge. The court however, has to envisage what would be the perception of a member of the public who is not only reasonable but also fair minded and informed about all the circumstances of the case.”

22. Further in ***Kaplana H. Rawal v Judicial Service Commission & 2 Others (2016) eKLR***, the Court of Appeal held that recusal must be founded on cogent evidence demonstrating a reasonable apprehension of bias, not on generalized allegations.

23. It is also now trite law that an adverse finding, even if erroneous, does not amount to bias. In ***Jasbir Singh Rai & 3 Others v Tarlochan Singh Rai & 4 Others (2013) KESC 20 (KLR)***, the Supreme Court held that previous

adverse rulings or strong judicial language do not, without more, establish bias, and that dissatisfaction with a judgment is a matter for appeal, and not recusal.

- 24.** In the instant case, the Claimants/Applicants allege that the judge showed bias for declining to award compensation, ignoring certain prayers made by the Applicants, and for deciding against their preferred outcome. Under Regulation 21 of the Judicial Service (Code of Conduct and Ethics) Regulations, mere dissatisfaction with the outcome of a judgment does not justify recusal. The courts have repeatedly held that loss at trial, or disagreement with judicial reasoning, does not constitute bias.
- 25.** Further, the Claimants/Applicants herein have not led any evidence to show personal interest, relationship, extraneous influence, or improper conduct on the part of this Court, and no statement or conduct demonstrating prejudice has been cited.
- 26.** The Claimants/Applicants have also sought to rely on a complaint their counsel filed with the Judicial Service Commission to justify the recusal of this Court. The filing of a complaint before JSC does not automatically disqualify a Judge from continuing to preside over a matter. In the ***Kaplana H. Rawal case (supra)***, the Court underscored that disciplinary processes are distinct from adjudicative functions.

- 27.** In my view, a litigant cannot invoke a JSC complaint as a tactical device to compel recusal or forum shop for a different court to handle a matter, as such a complaint does not, in law, disqualify the Judge. In ***Mary Wangui Karanja & another v Rhoda Wairimu Karanja & another (2017) eKLR***, it was held that a recusal application based on procedural timing and tactical complaints will fail on the basis that it does not meet the threshold of objective apprehension of bias.
- 28.** Further, and as correctly submitted by the Respondents, Rule 74(2) of the Employment and Labour Relations Court (Procedure) Rules requires that an application for review be made before the judge who delivered the impugned decision unless that judge is no longer attached to the station. Permitting recusal in circumstances where a party is dissatisfied with findings would defeat this procedural framework.
- 29.** In my view, the apprehension of bias in the instant suit, is founded solely on dissatisfaction with the outcome of the case. If indeed the Court erred in failing to address a pleaded prayer, the proper remedy lies in Review under Rule 74 of the ELRC (Procedure) Rules or Appeal. Recusal is not a substitute for appellate redress.
- 30.** I therefore find and hold that the Applicants have neither demonstrated actual bias nor established reasonable apprehension of bias as to warrant this Court's recusal from handling this matter. In any event, the suit herein was

already heard and determined and what remains is solely an application for review on account of possible errors on the part of the court, and which falls squarely within the mandate of this court.

- 31.** The Notice of Motion dated 12th December 2025 is devoid of merit and is for dismissal. It is hereby dismissed with no orders on costs.
- 32.** Parties to set down the review application for hearing on priority basis.
- 33.** It is so ordered.

SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 20TH DAY OF FEBRUARY, 2026.

**C. N. BAARI
JUDGE**

Appearance:

Mr. Midenga present for the Claimants/Applicants

Ms. Kagendo h/b for Mr. Gitonga for the Respondents

Ms. Esther -C/A