

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KITALE**  
**ELC NO. 79 OF 2015**

**PENROSE** **SHELASALA**  
**NAMISI-----PLAINTIFF**

**-VERSUS-**

**THE COUNTY GOVERNMENT OF**  
**TRANS NZOIA-----**  
**1<sup>ST</sup> DEFENDANT**  
**COUNTY PUBLIC SERVICE BOARD OF**  
**TRANS NZOIA-----**  
**2<sup>ND</sup> DEFENDANT**  
**RATILAL GOSAR GODHIA-----3<sup>RD</sup>**  
**DEFENDANT**  
**VIPUL RATILAL-----**  
**4<sup>TH</sup> DEFENDANT**  
**AVIR KANTI SHAH-----5<sup>TH</sup>**  
**DEFENDANT**  
**BENJAMIN NYAMUMBO OONGE-----6<sup>TH</sup>**  
**DEFENDANT**

**RULING**

1. The 4<sup>th</sup> defendant, by an application dated **11/11/2025**, seeks a stay of proceedings, and for the court to recuse or disqualify itself from hearing the suit and to place it before any other court with jurisdiction to hear it. The reasons are contained on the face of the application and in a supporting affidavit sworn by Vipul Ratilal Dodhia on **11/11/2025**.

2. The applicant deposes that the trial court made disparaging remarks concerning the subject matter, knowing too well it is bound by the decision of superior courts on the doctrine of *stare decisis*, as per the attached consent at the Court of Appeal attached as **VRD-(1)**.
3. The applicant deposes that efforts by his advocate on the effect of the consent to the suit, the court showed open annoyance and gave him an intimidating, long stare, and also said that his lawyer was treading on dangerous grounds, remarks which he found very intimidating and disparaging in nature. The applicant deposes that these sentiments by the court supported the plaintiff's case and placed the judge in a compromising position devoid of judicial independence, as they eroded the appearance of impartiality and public confidence in the administration of justice.
4. The applicant deposes that the said remarks were aimed at embarrassing or humiliating him as he waited to testify. The applicant deposes that the court has, on numerous instances, made mocking remarks and or comments against his character, thus making it very hard for him to appear in the

court and has lost confidence in the court. For instance, the applicant deposes that on **24/10/2025**, he had a different matter, namely **Kitale ELC No. 74 of 2018**, where he was labelled as a “crook” in front of other consumers of justice, litigants, and advocates alike.

5. The applicant deposes that from the way the judge has been conducting the matter, the directions he will take in his judgment if he proceeds to hear the matter and render the judgment are already known and are just a matter of time.
6. The applicant deposes that the sentiments of the court clearly show that he supports the plaintiff’s case, and these happenings have pushed him to believe that the court has already taken a position in the matter, yet justice must not only be done but must be seen to be done.
7. The application is also supported by the replying affidavit of Karani O. Aggrey, Advocate, sworn on **2/12/2025**. He depones without stating who has instructed him that his clients, the 1<sup>st</sup> and 2<sup>nd</sup> defendants, take issue with the utterances made by the court, more or less condemning the defendants, for suggesting that the plaintiff is being deprived of her property even before the defendants tender their evidence.

- 8.** The deponent deposes that the utterances lead to an impression that the court has already made up its mind and concluded the matter in favour of the plaintiff. The deponent deposes that after **16/7/2025**, within the precincts of the court, he met the overjoyed plaintiff bragging of winning the case by all means.
- 9.** Further, the deponent deposes that the plaintiff, in her testimony at the witness stand, exhibited extreme arrogance to counsel for the 3<sup>rd</sup> defendant and himself, which included making unfounded claims meant to cast aspersion and demeaning utterances, which the court seemed to give a lot of consideration and treated as true, thus castigating him in open court.
- 10.** The deponent deposes that the plaintiff went ahead to state and affirm that she had the means and ways to access the court, and even assured him of a positive outcome. The deponent deposes that the plaintiff's confidence and conduct resulted in the "deal or assurances" the plaintiff had in the court, and painted a plaintiff so confident of prior knowledge of the outcome of the case. The deponent deposes that the conduct of the court points to actual bias or prejudice in favour of the plaintiff, contrary to the principle of perceived

fairness as was decided in **Jasbir Singh Rai & Others -vs- Tarlochan Singh Rai & Others [2013] eKLR.**

**11.** The deponent deposes that the conduct of the plaintiff and the court speaks the same language, and that it is not in dispute that the judge's personal interests conflict or appear in conflict with his official duties. The deponent deposes that the applicant's application should be allowed to ensure the maintenance by judicial officers of the integrity and independence of judicial service; otherwise, there will be no prejudice occasioned to either party. Strangely, the deponent ends the affidavit by swearing that the application dated **14/5/2024** be allowed with costs.

**12.** The application is opposed by the plaintiff/respondent, through grounds of objection dated **19/11/2025** that:

**(1)** This application is frivolous, vexatious, and an abuse of the process of the court, only intended to delay the hearing of this suit.

**(2)** The application is made and filed belatedly and very close to the hearing date **13/11/2025**, only two days away from the further hearing date, which hearing date was taken by consent of all parties on **16/7/2025**.

- (3)** The applicant appears to bring the application on a false claim of urgency, since there is clearly no urgency, as the events he is trying to complain of were allegedly done in court on **16/7/2025**, and his urgent application is dated **11/11/2025**, over three months after the matter last came before the court on **16/7/2025**. The urgency is therefore mere imagination.
- (4)** The applicant is trying to take all parties in court by surprise and claiming urgency, which does not exist, in an effort to try and get surprise *exparte* orders, to delay the further hearing of the suit.
- (5)** The applicant's claim is clearly frivolous in that it is intended to delay the hearing of this suit, which is an ulterior motive on the part of the applicant.
- (6)** The reasons averred to in the annexed affidavit alleging bias appear to be false, in paragraphs **3, 4, 5, 7, 8, and 11**, the judge had only taken over the hearing of this case after a different judge, Dr. Nyagaka, had been transferred from Kitale and that was his first hearing of the case after coming in from another station and so where the bias coming from over a new suit he was not aware of, is lacking.
- (7)** The applicant Vipul Ratial Dodhia who swore this affidavit has even breached **Order 1 Rule 13(2)** of the Civil Procedure Rules, and sworn an affidavit for other parties in the suit

namely 3<sup>rd</sup> and 5<sup>th</sup> applicants, without filing an authority in writing to act on their behalf, as required by the Civil Procedure Rules and therefore his affidavit is defective and that the same be struck out and this application also be struck out.

- (8)** This application is filed late, in a hurry, and is defective in material and in particulars regarding the plaintiff/respondent, which is an unknown party brought into this suit known as “Penrose Shilasala Wafula”, whereas the proper plaintiff/respondent, in all documents filed in court is known as “Penrose Shilasala Namisi”, and for this reason the application dated **11/11/2025** should be struck out because it is against an unknown person and therefore defective.
- (9)** The applicant alleges to have lost a different case before the Judge. Nonetheless, an application for recusal and disqualification of a judge is a serious matter and must be on reasonable grounds and on evidence showing that there is a possibility of bias by a judge. In this particular case the deponent alleging in paragraph **11** of his affidavit that he had a different matter before the same judge (**Kitale ELC No. 74 of 2019; Pascal Wafula -vs- Ronald Walubengo & 5 Others**), “and the Judge labeled me a crook in front of other consumers of justice” is wrong, unreasonable and has no bearing on the case before the court where the parties are different and have

nothing to do with **Kitale ELC No. 74 of 2019**.

**(10)** The applicant Vipul Ratilal Dodhia has tried to explain the doctrine of “stare decisis” in paragraph **6** of his affidavit, a legal matter that he cannot properly understand as a layman, but which is better left to his counsel in these proceedings.

**(11)** That on the whole, this application is vexatious and only intended to try and shop for a judge favourable to the applicant, and the same should be refused and disallowed, and the case be allowed to proceed without unnecessary and frivolous applications.

**13.** The respondent relies on written submissions dated **27/11/2025**. It is submitted that this matter came up on **16/7/2025**, after which, by consent parties took a hearing date; otherwise, the application is brought on ulterior motives, intended to facilitate the applicant to choose a judge of their liking after delaying the hearing date.

**14.** The respondent submits that the applicant relies on irrelevant matters or circumstances with no basis. Reliance is placed on **Philomena Mbeti -vs- British Broadcasting Corporation, Nairobi Civil Case No. E165 of 2022**.

**15.** The plaintiff submits that the applicant has not met the grounds which for recusal, since there are no

reasonable grounds offered, save for a suspicion that the court might be biased, yet no testimony has been given to that effect, more so when the defence is yet to start their case, their witness statements are recorded and that it is too early to allege bias and that the court has so far decided nothing, making the application premature, and vexatious.

- 16.** This court became seized of the matter on **20/1/2025**. Parties were granted time to comply with **Order 11** of the Civil Procedure Rules and appear on **5/3/2025**. On **5/3/2025**, parties told the court that they were ready to take a hearing date. By consent, they agreed to have the matter heard on **16/7/2025**. Again, by consent, on **16/7/2025**, the parties agreed to have the matter start *de novo*, since the plaintiff had testified on **17/4/2023**.
- 17.** PW1, an Executive Officer from Eldoret Law Courts, took the witness stand and was cross-examined by the defendants' counsel. PW2 took the witness stand, and the defendants opted not to cross-examine him.
- 18.** The plaintiff took the witness stand as PW3 and was extensively cross-examined by Mr. Karani, Songole, and Mr. Gemenet, advocates for the defendants. After that, Mr. Onyinkwa, advocate, applied for an

adjournment to call a remaining witness. The court granted the last adjournment to the plaintiff with a further hearing on **3/11/2025**. On the eve of the hearing, the instant application was filed.

**19.** Judicial recusal refers to the withdrawal of a judicial officer from ongoing proceedings. Recusal is a matter of discretion. The law relating to recusal is governed by **Rule 21** of the Judicial Service Code of Conduct & Ethics Regulations **2020**. The grounds include:

- (a) Personal bias concerning a party or advocate.*
- (b) Where the judicial officer has acted as an advocate of a party to the suit.*
- (c) Close relationship of party before the court.*
- (d) If the judge or spouse has a financial interest in the case. See **Republic -vs- Jackson Mwalulu & Others Civil Appeal No. 310 of 2004** and **P.K. Tonui & Another -vs- Judicial Service Commission & Another [2016] eKLR.***

**20. Rule 9 (1)** of the Code provides that a judge shall at all material times carry out his duties of the office with impartiality and objectively, in accordance with **Articles 10, 27, 73(2) (b) and 23** of the Constitution, and shall not practice favoritism,

nepotism, tribalism, cronyism, cultural bias, or engage in corruption and or unethical practices.

- 21.** In *Jasbir Singh Rai & Others -vs- Tarlochan Singh Rai* (*supra*), the court held that the grounds for recusal include perception of bias. The applicant herein says that he has lost in a previous suit before this court and that the court made some disparaging remarks, which have embarrassed or intimidated him, both in this matter and in the previous matter.
- 22.** The applicant has not cited the words which the court used in this matter, nor has he attached the proceedings and judgment on the previous suit(s). From the court record, on the three instances, the court has handled this matter, there is no evidence that any of the defendants and their counsels on record objected to or raised an objection to the manner the proceedings were being handled, and or sought for it to go on record that the court was either intruding into their line of cross-examination, or representation of the defendants' defence, while the plaintiff and her witnesses were testifying.
- 23.** Equally, the court record does not show that the defendants made an application that the court was not supposed to hear this matter, in view of a stay of proceedings by the Court of Appeal, or out of a

judgment of a Court of Appeal, which had effectively rendered the proceedings herein either academic or settled the matter altogether.

**24.** Further, there is no evidence that the applicants and any of the defendants sought by way of a formal application to have the suit dismissed or struck out in view of a consent order or judgment at the Court of Appeal.

**25.** From the record of this suit, there is no evidence that the court ignored a binding order of the Court of Appeal stopping it from hearing this matter. The court therefore finds no basis for the assertion that the applicant's counsel was not allowed to explain the significance of the Court of Appeal consent. In any event, the full settlement agreement at the Court of Appeal, if at all it was made an order of the court, was not shared with this court and its significance to the suit raised by the defendants.

**26.** In **Charity Muthoni Gitahi -vs- Joseph Gichaga Gitahi [2017] eKLR**, the court termed an application for recusal as a necessary evil which, on one hand, questions the fairness of a judge, who has sworn to do justice impartially, in accordance with the Constitution, without any fear, favour, bias, affection, ill will, prejudice, political, relying or other influence, and on the other hand, where while he is

also too human, yet the Constitution guarantees the litigant a fair hearing, by an independent and an impartial judge.

**27.** The law is that where there are reasonable basis for requesting a judge to recuse himself, the application has to be made, regardless of how unpleasant it may be. At the same time, a judge has a duty to sit in a matter in which he should sit.

**28.** In **Gladys Shollei -vs- Judicial Service Commission [2018] eKLR**, the court warned that a recusal application should not be used to crippled a judge from sitting to hear a matter, for every judge takes an oath to hear matters impartially, and to protect, administer, and defend the Constitution.

**29.** Having taken an oath of office, the court said that a judge is expected to be capable of rising above any prejudice and to safeguard the rights of the parties. Therefore, when an application for recusal is made, the court has to exercise judicial discretion on whether or not to recuse itself, taking into consideration its duty to sit in a case where it is not obliged to recuse itself. A court of law should not succumb to threats and intimidation by parties.

**30.** In **Dobbs -vs- Triodos Bank NV | [2005] EWCA Civ 468**, it was observed that if judges were to recuse themselves whenever a litigant criticized

them, we would reach a situation in which litigants would select by simply criticizing all the judges, that they did not want to hear their matter, by producing a situation for a judge to feel obliged to recuse themselves, whether the criticism is justified or not.

- 31.** In this application, the applicant alleges actual or real likelihood of bias. The test that the applicant must meet is what the court set in ***Rai -vs- Rai*** (*supra*), namely, apprehension of bias, in a reasonable, objective, and informed perspective.
- 32.** There is no authority attached to swear the affidavit on behalf of the rest of the defendants. Learned counsel Mr. Karani Grey does not state that he has instructions from the client, the County Government of Trans-Nzoia, and that the County Public Service Board has instructed or authorized him to swear the affidavit, and expressed their fear or apprehension of bias. A case belongs to a litigant. Binding a client without instructions on a matter of this nature, where the right to a fair hearing belongs to them and not their lawyer, is key.
- 33.** Equally, for the 4<sup>th</sup> defendant to purport to represent the rest of the defendants without their instructions or authority to do so weakens the probative value of his affidavit. The test is that of a reasonable, objective, and informed person based

on the correct facts, who could reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of a case. It is a mind open to persuasion by the evidence available.

**34.** In the **President of the Republic of South Africa and Others -vs- South African Rugby Football Union and Others (1999)**, the court said that the reasonableness of the apprehension must be assessed in the light of the oath of office taken by the judge, to administer justice without fear or favour and their ability to carry out the oath by reasons of their training and experience. The court said that it must be assumed that judges can disabuse their minds of any irrelevant personal beliefs or predispositions, taking into account the duty to sit.

**35.** In **Attorney General -vs- Professor Nyong'o & Others EACJ Appl. No. 5 of 2007**, the court held that the test is the mind of a reasonable, fair-minded, and informed member of the public, that the judge did not or will not apply his mind in the case impartially. In **Rai -vs- Rai** (*supra*), the court held that the person is an independent observer sitting in court and knowing all the referenced suit,

that he could have a reasonable suspicion that a fair trial for the applicant was not possible.

- 36.** Looking at the suit before me, the plaintiffs have yet to close their case. The defendants are yet to offer their testimony. The court is bound by its oath to safeguard all the rights of parties, even as they go through the trial. The court has to be in charge of the trial, including safeguarding the rights of all parties and witnesses during examination in chief, cross-examination, and re-examination.
- 37.** This suit has been in court for the last **10** years. It is already a backlog. It is expected that parties and their advocates abide by the rules of trial and assist the court in achieving its objectives under **Article 159** of the Constitution and the Civil Procedure Act. It is in the interest of justice to be expeditiously resolved, impartially and fairly, through the application of substantive and procedural law.
- 38.** Factual basis for recusal from the lenses of a reasonable observer apprised of the facts to demonstrate the possibility of real or actual bias is what the applicant has to surmount. In **Attorney General -vs- Professor Nyong'o** (*supra*), the court said that an applicant who seeks disqualification of a judge comes to court because of his own perception that there is apprehension of

bias on the part of a judge, but 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.

**39.** In **Rawal -vs- Judicial Service Commission [2016] KECA 534 [KLR]**, the court held that the test is what an informed person would realistically and practically view of the matter, realistically and practically, and having thought of the matter would conclude. The court said that the jurisprudence indicates that a real likelihood or probability must be demonstrated and that a mere suspicion is not enough. Recusal application must be based on facts beyond speculation, peradventure, conjecture, and sheer paranoia.

**40.** In **Tuff Bitumen Limited -vs- SBM Bank (Kenya) Limited & another [2023] KEHC 3198 (KLR)**, the court abhorred the improper habit of parties and their advocates of filing a recusal application with ulterior motives of facilitating the choice of a judicial officer to hear their matter, but not in the interest of justice.

**41.** In my considered view, the applicant has purported to introduce other matters not before this court and which the court is aware are before the Court of

Appeal. The court takes judicial notice that soon after this application, the applicant and his advocate successfully defended another suit, but did not, in view of the cited case, apply for recusal.

**42.** As held in **Philomena Mbetse -vs- British Broadcasting Corporation** (*supra*), each case is decided on its own merits based on the facts, evidence, and the law. The court is there for each party to present their evidence in line with the law and to rest assured that the court will determine the suit based on facts, evidence, and the law without more. The court took an oath to do justice without fear or favour, ill will, prejudice, or influence from parties and other considerations. There would be prejudice if the court were to recuse itself and forward the file elsewhere, yet it has a duty to sit.

**43.** The upshot is that I find the application lacking merit. It is dismissed with costs.

**44.** Orders accordingly.

**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **4<sup>th</sup>** day of **March 2026**.

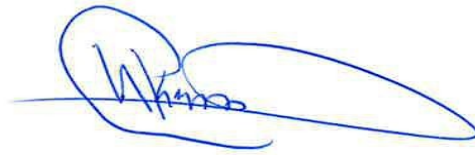
**In the presence of:**

Court Assistant - Dennis

Songole for the 3<sup>rd</sup> - 5<sup>th</sup> defendants present

Nyabuto for Onyinkwa for the plaintiff present

Karani for the 1<sup>st</sup> and 2<sup>nd</sup> defendants present  
E.M. for the 6<sup>th</sup> defendant present

A handwritten signature in blue ink, appearing to read 'C.K. Nzili', with a large, sweeping flourish extending to the right.

**HON. C.K. NZILI  
JUDGE, ELC KITALE.**