REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAKURU
ELC NO. E001 OF 2025

RICHARD KIPNG'ENO LANGAT
& 142 OTHERS……..……...PLAINTIFF/APPLICANTS
VERSUS
EGERTON UNIVERSITY……..……...1ST DEFENDANT
CHIEF LAND REGISTRAR.……....2ND DEFENDANT
NAKURU LANDS REGISTRAR……...…
3RD DEFENDANT
COUNTY SURVEYOR,
NAKURU COUNTY……..……..4TH DEFENDANT
NAKURU COUNTY
GOVERNMENT……..……5TH DEFENDANT
HON. ATTORNEY GENERAL……..……6TH DEFENDANT

RULING

1. This ruling is in respect of the application dated 11th June, 2025 by the Plaintiff/Applicants seeking the following orders:

    a) ***Spent.***
    b) ***THAT the Honourable trial judge be pleased to recuse herself from the conduct of this matter.***
    c) ***THAT the Honourable trial judge be pleased to order that the matter be heard and determined in a different and/or another court in the division.***
    d) ***THAT the costs of this application be provided for.***

2. The application is grounded on the supporting affidavit of Richard Kipngeno Langat the 1st Applicant who deponed that the instant matter

having been filed was allocated to ELC 2 for hearing and determination of the application dated 16th January, 2025.

3. The Applicant further deponed that the ruling of the application was scheduled for 26th June, 2025, but they discovered that the presiding Judge is a relative of Dr. Odeny Cyprian Agumba who is a lecturer at the 1st Defendant's institution.

4. It was his disposition that the continued dealing with the matter by the Judge would be detrimental to the Applicants' right to a fair hearing and urged the court to allow the application for recusal.

APPLICANTS' SUBMISSIONS

5. It was counsel's submission that the Honourable Judge recuses herself from the matter on the grounds of real or perceived bias, and relied on Article 50 of the Constitution and Regulation 2(1) of the Judicial Code of Conduct and Ethics under the Judicial Service (Code of Conduct and Ethics) Regulations, 2020.

6. Counsel further relied on the cases of Philip **K. Tunoi & Another v Judicial Service Commission & Another [2016] eKLR, Judges and Magistrates Vetting Board & 2 others v Centre for Human Rights and Democracy & 11 Others [20l4] eKLR, Kalpana H. Rawal v Judicial Service Commission & others [2016] eKLR,** and **In Republic v MwaIuIu & Others [2000] 1 KLR 557.**

7. It was counsel's submission that the Applicant had filed a critical application dated 16th January 2024, and that the familial or close relationship between the Honourable Judge and an employee of the 1st Defendant creates a legitimate and reasonable apprehension that the Judge may be directly or indirectly conflicted or influenced.

8. According to Mr. Bosire, the Applicants are apprehensive that they may suffer irreparable prejudice and loss of confidence in the integrity of the proceedings, particularly where public institutions are involved and judicial neutrality is paramount, and urged the court to allow the application for recusal as prayed.

ANALYSIS AND DETERMINATION

9. The main issue for determination is whether the Applicants have met the threshold for an application for recusal to hear and determine this matter.

10. In the **Supreme Court of Kenya case** of **Gladys Boss Sholei-versus-the Judicial Service Commission and Another (2018) eKLR** cited with authority the case of **Simonson –Versus-General Motor Corporation USDCP 425 RSupp574,578(1978),** the court stated that:

> ***"Recusal and reassignment is not a matter to be lightly undertaken by a Distinct Judge, while in proper cases, we have a duty to recuse ourselves, in case such as the one before us, we have concomitant obligation not to recuse ourselves; absent valid reasons for recusal their remains what has been termed as a "duty to sit".***

From the above it is clear that the requirements of independence and impartiality of judge must be counterbalanced by the judge's duty to sit where no grounds of disqualification exists in fact or in law as the duty in itself helps to protect the independence of our courts against manouvering by parties hoping to improve their chances of having a matter determined by a particular Judge as to gain forensic and strategic advantage through delay and interpretation of proceedings as was pointed by the supreme court in the holding by the Newzeland Court of Appeal in Mnir-versus-Commissioner of Inland Revenue(2007)3NZLR 495."

11. Similarly in the case of **National Water Conservation and Pipeline Corporation v. Runji & Partners Consulting Engineers and Planners Limited [2021] eKLR** the Court stated as follows:

> ***"I cannot think of a more eloquent exposition of the law on recusal of judicial officers than the succinct exposition proffered by the Constitutional Court of South Africa* in President of the Republic of South Africa and Others v South African Rugby Football Union and Others** *which indisputably articulated the proper approach as follows: -*
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> ***"... The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the Judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the apprehension must be assessed in the light of the oath of office***

taken by the Judges to administer justice without fear or favour; and their ability to carry out that oath by reason of their training and experience. It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves. At the same time, it must never be forgotten that an impartial Judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of the litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial."

12. An application for recusal of a Judge or Judicial Officer from hearing a case cannot be made on imagined or flimsy reasons of perceived bias. An Applicant must not use an application for recusal as an avenue for forum shopping of a perceived preferred court to hear and determine his/her case.

13. The reasons given by the Applicant for the recusal of this court is that one Dr. Odeny Cyprian Agumba works as a Lecturer at Egerton University, which is one of the Respondents. This is far-fetched, as even if the court is related to the said person, the Applicant must prove the connection between Dr. Cyprian Odeny with the court case. Does it mean that the court will not handle any case that emanates from Egerton University because it has a relation who works in the said institution? The person in question is neither the Vice Chancellor nor in any management position.

14. The Court of Appeal in the case of **Kalpana H. Rawal V Judicial Service Commission & 2 Others [2016] eKLR,** held as follows:

> ***"Before we consider the merits of the application, however there are a few issues raised by the parties that we must dispose of. Firstly, it is obvious from the test above that there is no basis for the rather elastic test propounded by Dr. Khaminwa, where a judge must automatically disqualify himself or herself upon the making of a bare allegation by any of the parties. We have not come across any authority in support of the proposition and Dr. Khaminwa did not cite any. On the contrary decisions abound that judges should not recuse themselves on flimsy and baseless allegations."***

15. It would be a travesty of justice if the court were to allow applications for recusal on flimsy and baseless allegations. This would hinder the administration of justice. There are situations where the court can on its own volition, recuse itself where there is a conflict of interest and where a party has presented good reasons of reasonable apprehension of bias. Mere allegations without tangible evidence are not enough for a Judge or a Judicial Officer to recuse themselves in a case.

16. In the case of Attorney **General of Kenya Vs. Professor Anyang' Nyong'o & to 10 Others EACJ Application No. 5 of 2007,** the Court held that:

> ***"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 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."

17. I have considered the application, the submissions by counsel and, find that the application lacks merit and is therefore dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 10TH DAY OF MARCH 2026.

M. A. ODENY
JUDGE