



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
CIVIL SUIT NO. 352 OF 2016

BETWEEN

ANNE WANGECI T/A

SCHOFIELD AND ASSOCIATES PLAINTIFF/APPLICANT

VERSUS

HOOMAN EHASNI 1ST
DEFENDANT

PALM VALLEY DEVELOPMENT LIMITED 2ND DEFENDANT

RULING

Introduction and Background

1. By way of an application dated 16th October 2025, the plaintiff seeks the recusal of this Court on the allegation that it has conducted itself in a manner suggestive of alignment with the defendants. The applicant further contends that the Court has carried itself in a manner that creates the impression that the outcome of the matter was predetermined, particularly by granting leave to the defendants to

amend their pleadings notwithstanding the existence of a prior Ruling delivered on 17th November 2023. On this basis, the applicant imputes bias and lack of impartiality against the Court.

2. The application is supported by the affidavit of **Anne Wange Schofield**, sworn contemporaneously. It is opposed through a replying affidavit sworn by **Hooman Ehsani** on 15th January 2026. I have carefully considered the pleadings, affidavits, and submissions filed by both parties.

Analysis and Determination

3. The central issue for determination is whether the conduct of this Court has given rise to a reasonable apprehension of bias, or whether there exists evidence of actual prejudice against the applicant.
4. The jurisprudence on judicial bias is well settled. In **Attorney General of Kenya V Professor Anyang' Nyong'o & to 10 Others, EACJ Application No. 5 of 2007** the Court expressed the test for bias as follows:

***“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 ...’

5. This principle was reaffirmed in **Philip K. Tunoi & Another V Judicial Service Commission & Another, (2016)**, where the Court of Appeal emphasized that the test is that of a fair-minded and informed observer, adopting a balanced approach, neither complacent nor unduly suspicious, in determining whether there exists a real possibility of bias. For the avoidance of doubt, the Court of Appeal stated:

“In determining the existence or otherwise of bias, the test to be applied is that of a fair minded and informed observer who will adopt a balance approach and will neither be complacent nor be unduly

sensitive or suspicious in determining whether or suspicious in determining whether or not there is real possibility of bias.”

6. The applicant’s grievance arises from this Court’s Ruling of 17th November 2023, wherein a preliminary objection raised by the defendants was upheld. The Court found that it lacked jurisdiction to entertain the application dated 17th July 2023, as the matter was already the subject of litigation before the Court of Appeal. That determination was grounded in observations made in **Anne Wangeci Schofield T/A Schofield & Associates V Ehsani & Another, Civil Application E032 of 2022**, where the appellate Court held that the intended appeal was arguable as follows:

“In our view the appeal is arguable. This Court will determine, inter alia, whether the trial Court erred in failing to consider and determine the fact that the 2nd respondent was a limited liability company and the 1st respondent had to file the board resolution authorizing him to

prosecute the suit in accordance with the law. An arguable point is not necessarily one that must succeed, but merely one that is deserving of consideration by the Court. Without saying more lest we embarrass the bench that will be seized of the main appeal, we are satisfied that the intended appeal is arguable.

7. It is trite law that where a litigant is dissatisfied with a judicial finding, the proper recourse lies either in review or appeal, as provided for under the law. The mere fact that a party is aggrieved by the outcome of a judicial determination cannot, without more, constitute evidence of bias. As was stated in **President of the Republic of South Africa and Others V South African Rugby Football Union and Others, CCT16/98B**, the failure of a litigant's case is not, in itself, a ground for imputing partiality to the Court.
8. I have considered the averments made by the applicant regarding the conduct of this matter. The applicant has not demonstrated any conduct,

statement, or extraneous factor that would lead a reasonable and informed observer to conclude that this Court has predetermined the matter or is incapable of impartial adjudication. The allegations of bias are therefore unsubstantiated and rest solely on dissatisfaction with the Court's prior rulings.

Disposition

a. The application for recusal is devoid of merit and is accordingly dismissed, with no order as to costs.

b. That said, and in order to dispel any lingering perception of partiality and to reaffirm the integrity of these proceedings, I direct that this matter be mentioned before the Presiding Judge of the Commercial and Tax Division at the earliest opportunity, for reallocation to another Judge.

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 6TH DAY OF MARCH 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Ms Muthoni HB for Ms Anne Wangechi

Ms Buluma HB for Mr Mutua for the 1st defendant

Court Assistant: Lillian

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