



**Saida & another v Mwfue (Environment and Land Appeal E004 of 2023)
[2026] KEELC 1124 (KLR) (Environment and Land) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1124 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E004 OF 2023
EK WABWOTO, J
FEBRUARY 26, 2026**

BETWEEN

SHARIFF MWANAISHA SAIDA 1ST APPLICANT

BENSON MWAKINA 2ND APPLICANT

AND

HELLEN TALU MWAFUE RESPONDENT

RULING

1. The Applicants herein have called upon this court to recuse itself from hearing and determining this matter, Voi ELCEP JR No. E001 of 2025 Benson Mlambo Mwakina vs Community Land Registrar & Others and all Kishamba B Group Ranch matters. This is vide the application dated 27th November 2025 which application is premised on the grounds on its face and also the Affidavits sworn by Benson Mlambo Mwakina on 27th November 2025 and Mwanaisha Saida Shariff on 23rd January 2026.
2. It is the Applicants case that the court lacks impartiality to hear and determine the suit for the reasons that this court in a different matter being Voi ELCLC No. E004 of 2024 John Kivure & Others =Versus= Kishamba 'B' Group Ranch & Others delivered its judgment on 25th September 2025 upon which the Judge made remarks concerning the 1st Applicant that she had been fraudulently allocated land without being heard or accorded an opportunity to be heard and this violated her rights.
3. It was also their case that this Court made a decision in its judgment delivered on 25th September 2025 on extraneous matters and as such it cannot be impartial in determining the dispute between the parties herein and other disputes relating to Kishamba B Group Ranch.
4. The application was opposed by the Respondent and pursuant to the directions issued by the Court it was directed that the same be canvassed by way of written submissions. The Respondent filed written



submissions dated 24th January 2026 but none had been filed by the Applicants despite being granted an opportunity to do so.

5. The Respondent submitted that she was not a party to the other suit and the allegations made by the Applicants are speculative and outrageous in nature. The same cannot amount to biasness.
6. Citing the cases of DPP =Versus= Charles Kiprotich Tanui & 2 Others (2024) eKLR and Janmohamed & 2 Others =Versus= Chelugui & Another (2022) KECA 720 (KLR) it was argued that the Applicants have not met the threshold for this court to recuse itself and mere determination of a previous matter against a party cannot be a ground for disqualification by the Court. The Court was urged to dismiss the application with costs of Kshs. 20,000/=
7. As earlier stated the Applicants did not file any written submissions despite being granted an opportunity to do so. That notwithstanding this court is still obligated to consider the application and affidavits filed in rendering its decision.
8. Having considered the application, responses and written submissions filed by the Respondent, the sole issue for determination is whether this Court should recuse itself from hearing and determining this matter, Voi ELCEP JR No. E001 of 2025 Benson Mlambo Mwakina vs Community Land Registrar & Others and all Kishamba B matters.
9. Judicial recusal safeguards one of the cornerstones of constitutional democracy and the right to a fair hearing enshrined in Article 50(1) of *the Constitution*.
10. Tied to this is Article 160 of *the Constitution* which mandates the courts to uphold independence and be free from influence by any party, and Article 159(2)(a) of *the Constitution* which mandates courts to ensure that justice is dispensed to all individuals, regardless of their social status.
11. Read together with Article 25(c), which entrenches the right to a fair trial as a non-derogable right, it becomes clear that impartial adjudication is not merely a procedural concern but a substantive constitutional imperative. Regulation 9 of the Judiciary Code of Conduct emphasizes the importance of impartiality of a Judge. Regulation 9(1) provides as follows:

“A Judge shall at all times, carry out the duties of the office with impartiality and objectively in accordance with Articles 10, 27, 73(2)(b) and 232 of *the Constitution* and shall not practice favouritism, nepotism, tribalism, cronyism, religious and cultural bias, or engage in corrupt or unethical practices.”
12. The said Rule mandates that in so doing, the Judge shall; uphold and apply the law; observe fairness and impartiality; cooperate with other judges in the discharge of judicial duties by ensuring unity of purpose and collegiality; and perform all duties of the judicial office, including administrative duties impartially, competently, diligently, and without bias.
13. As regards recusal, the law relating to recusal is governed by Rule 5 of the Judicial Service Code of Conduct & Ethics Regulations 2020. The grounds under which a judge may recuse himself are:
 - (a) Personal bias concerning a party or advocate.
 - (b) Where the judicial officer had acted as an advocate for a party in the suit.
 - (c) Close relation with a party before court.
 - (d) If the Judge or spouse has a financial interest in the case.



14. In the instant application, the Applicants base their case on a previous decision made by this Court as a ground for recusal in this matter, Voi ELCEP JR No. E001 of 2025 Benson Mlambo Mwakina vs Community Land Registrar & Others and other Kishamba B Group Ranch matters. Litigants cannot demand recusal merely because a judge previously decided an issue against their interest. Recusal on such grounds would allow forum shopping and interfere with judicial independence. Further being guided by the various authorities cited herein, it is worth nothing that Courts have held that the mere fact that a Judge has made previous unfavourable orders against a party is not a ground of recusal.
15. In the case of *Locabail (UK) Ltd =Versus= Bayfield Properties Ltd (2000) 1 All ER 65*, the Court of Appeal in the UK which consolidated several applications for permission to appeal on grounds of judicial bias held that prior decisions made by a Judge alone does not automatically amount to a ground for recusal. The said decision was also applied locally in several cases including the cases of *Doshi & 2 Others =Versus= Director of Public Prosecution & 6 Others (2025) KEELC 7298 (KLR)* and *DPP =Versus= Charles Kiprotich Tanui & 2 Others (2024) eKLR*.
16. Judges have a duty to sit and should not accede to suggestions of appearance of bias or encourage parties to believe that by seeking a disqualification they will have their case tried by someone thought to be more likely to decide the case in their favour.
17. Having considered the application, the Applicants allegations of bias are without merit. The threshold has not been met. The Applicants right to a fair hearing under Article 50 of *the Constitution* remains safeguarded and the plea for recusal cannot be sustained. In any event the 2nd Applicant has lodged an appeal against the decision of this Court delivered in Voi ELCLC Case No. 4 of 2024 John Kivure & Others vs Kishamba B Group Ranch & Others. That is at it ought to be and the Court of Appeal will have a determination on the said matter. The application therefore fails.
18. In respect to costs, it is noteworthy that an application for recusal is usually made against the court and no party deserves to bear the costs of the same. In the circumstances, each party shall bear own costs of the application.
19. In the end, this Court makes the following orders: -
 - i. The application dated 27th day of November 2025 is unmerited and the same is hereby dismissed.
 - ii. Each party to bear own costs.

DATED, SIGNED AND DELIVERED IN VIRTUALLY AT VOI THIS 26TH DAY OF FEBRUARY, 2026.

E. K. WABWOTO

JUDGE

In the presence of: -

N/A for Applicants.

Mr. Mwzighe for Respondent.

Court Assistant: Mary Ngoira.

