

REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT KILGORIS
ELCL (OS) E010 OF 2025

JAMES KAYIONI KAIKAI.....
.....APPLICANT

VERSUS

DANIEL LEURU KALASINGA.....
RESPONDENT

RULING

1. This Ruling relates to two applications, the first application dated 2nd of July 2025, where the Applicant sought issuance of Status quo orders in respect of the Respondent in respect of Transmara/Olomismis/1329 while the 2nd application dated 23rd October 2025 seeks recusal of the court.
2. The court shall first determine the recusal application since by its very nature, the outcome shall determine whether the court shall proceed to hear and determine the injunction.
3. The Applicant in both cases is a prose litigant; while the Respondent is represented by Mr. Ochwangi Learned counsel.
4. The grounds in support of the recusal application.
 - (i) That on 6th October 2025, the trial judge pronounced in open that the Applicant will not win the (O.S) before him even before hearing the suit on its merit, and the Applicant should be ready to pay costs of every matter he files before him, as his matter will be dismissed within costs.
 - (ii) That the Judge demanded to know the persons who accompanied the Applicant into court premises their relationship to the Applicant and the purposes of them being in in court, which action was in bad taste; and went to question my affidavit of

service, prepared and sworn by a licensed court process server, who has been serving documents on my behalf since 2023 without anyone complaining about it.

(iii) That the Honourable Judge engaged in subversion of justice through commenting intimidating, and threatening the Applicant contrary to Article 75 of the constitution and Regulation 18 of Code of Conduct and Ethics.

(iv) That the Judge wanted to know who draft the Applicant's pleadings yet pleadings were in order and properly filed in court and had intentionally dismissed an application to remit the Bill of costs to the Deputy Registrar in ELC Petition No.E004/2024, and refused to grant a stay of execution of costs noting that costs is a positive order hence the actions were punitive, and the ruling was meant to silence the Applicant and his co-petitioner from accessing justice, as he claimed that they were to blame themselves for not hiring an Advocate, and that the Applicant's matter have been dismissed not on merits but because the Applicant is acting in person thus treating the Applicant inhumanly and in a degrading manner, consequence thereof the Applicant toes have been stepped on by the trial Judge.

5. The Applicant was further supported by the affidavit of the Applicant who reiterates the grounds in support of the application with a whopping 50 paragraphs affidavit.

6. In Response to the application the Respondent, filed grounds of opposition dated 17th December 2025 in which the Respondent averred that the

(i) Application was misconceived, incompetent, bad in law and legally untenable, for it had not satisfied the requisite conditions to warrant granting of the orders herein.

- (ii) Meant to circumvent and/or defeat cause of justice, and did not disclose any reasonable cause of action whatsoever; hence it was an abuse of the due process and lacked merit.
7. In Response to these grounds of opposition, the applicant filed a Notice of Preliminary Objection which the court shall not dwell on the ground thereof.
8. The court directed filing of submissions in respect of the application and the court has taken into consideration the said submissions.
9. The Applicant placed reliance on the decision in the case of Kenya Hotel Properties Limited Vs Attorney General and another (2016) KEHC 6631 KLR To buttress the point and urged the court to allow the application for recusal.
10. The Respondents on their part placed reliance on the decision in Town Brown Limited Versus A.G, Dari Limited Versus East Africa Development Bank.
11. They argued the court to dismiss the application.
12. A brief background ought to be given so as to give context to the issues giving rise to the application.
13. As noted earlier in the ruling, the Applicant herein is a prose litigant who was the Unsuccessful Petitioner/Litigant in Kilgoris ELC Petition No. E004 of 2024, which this court found to be *Resjudicata*, the issues therein having previously been heard and determine in thus the petition was struck out; with costs.
14. The Respondent in the Petition filed a Bill of costs which was taxed, and the Applicant herein filed a reference out of time which reference was struck out vide the Ruling dated 11TH June 2025 the court in a general caution to prose litigants observed at paragraphs 8 and 9 thereof as follows:

“8. In passing by, the court wishes to caution litigants like the Petitioners/Applicants herein who opt to act in person to do so by themselves but not to seek services of fellow lay people to draft for them court proceedings as was obviously the case herein, since the

results is that pleadings and/or submissions which are not coherent will be filed and they would still be fleeced of their money and the emerging trend offends the provisions of the Advocates Act.

9.The Petitioners/Applicants have no one else to blame but themselves, as the Application dated 21.11.2024 together with the Preliminary Objection are both hereby dismissed for being abuse of court process with costs.”

15. Additionally and in respect of this matter the court on 15.9.2025 directed the Applicant to appear in physically in court as he appeared to having been coached in the virtually session and when he appeared the court sought to find out who drew his pleadings and served the same as it had observed in the former matter alluded at paragraph 13 and 14 above that he had instructed a fellow lay person to prepare the pleadings once again and the court thus issued directions on filing of submissions in respect of the second application herein.

16. It is in respect of the observation made in the other suit and reproduced above as well as the courts observation at paragraph 16 above that seem to have irked the Applicant as they form part of his grounds in support of the Application and submissions in this Application for recusal.

Issues for determination

17. Having perused the Application and the submissions the sole issue for determination is whether the application is merited and in deciding the said issue the court shall determine whether the threshold for recusal has been met.

Analysis and determination

18. The basis of the Application for recusal is the courts informal inquiries and observation made in respect of this matter and the previous matter as alluded to in the foregoing paragraphs. And the test for recusal in such an Application was addressed by Onguto J (as he then was) in the Kenya Properties Limited vs the Attorney General &

4others 2016 eKLR where the court observed as follows at paragraph 7 of the ruling.

“7. Observations made by presiding judicial officers if they reveal a particular mind-set will create justifiable perceptions of bias. If such observations are limited to basic routine inquiries or touch on the ordinary case management strategies adopted or to be adopted or even on the merit of the applicant’s case then, bias ought not to be imputed. I do not subscribe to the faculty that a judicial officer ought to be a mute listener. He should not maintain a stony silence out of fear of an application for his recusal. He should be able to genuinely but reservedly engage counsel or the parties. However, such inquiries or observations made in the course of or before commencement of the hearing should not leave behind an air of predetermination or prejudgment of the pending or continuing dispute.”

19. In the previous matter whose of the ruling forms grounds in respect of the application for recusal, the observations were made as general remarks and the caution was for the general public and not the Applicant specifically and they reflected the general principles of the law with regard to costs following the event and bias cannot be imputed on the said observations, while the inquiry as to whether this particular applicant as a prose litigant had drafted the pleadings himself or had been assisted by another lay person was made pursuant to the concern the court had in respect of the issues it had earlier observed that the Applicant appeared to be coached in the virtual session on 15.9.2025 and in that case bias or prejudice cannot be inferred.
20. Should I be wrong on the above test, which I am not, I shall now subject the application to the general test for an application for recusal on grounds of bias and/or prejudice being the objective test

as was stated by the Supreme court in Jasbir Singh Rai and others vs Tarclochan Singh Rai 2013 eKLR , where the court held *inter alia* **“the test for establishing a judges impartiality is the perception of a reasonable person, this being a well informed , thoughtful observer “who understands all the facts” ,” and who has “examined the record and the law” and thus ‘unsubstantiated suspicion of personal bias or prejudice’ will not suffice.”**

21. The Applicant is merely apprehensive that the court is bias but his application has not met the objective test in light of the background given herein and the grounds in support of the Application and the same lacks merit.
22. The court shall now dwell with the second application which essentially was filed first but could not be determined in view of the recusal application, having found no basis to recuse myself I shall now determine the application seeking maintenance of status quo orders, which application is based on grounds that the Respondent has threatened to evict the Applicant yet the applicant has been in actual , physical and continuous occupation of the suit property for about 15 years.
23. The grounds in support of the Application are reiterated in the supporting affidavit and has annexed a copy of the title in the name of the Respondent and photographs of cows and crops.
24. the Application is opposed, the Respondent has filed a replying affidavit and which depones of previous suits over the suit property between himself and the Applicant and has annexed a copy of a decree in Kilgoris PMCC no 21 of 2018 where a permanent injunction was issued against the Applicant as well as eviction orders all issued on 19th November 2019, a copy of a judgment in respect of the an appeal against the decree issued in Kilgoris case no. 21of 2018 in which the Applicant was the Appellant and the Appeal was dismissed on 8th of March 2023 by Washe J and the trial court decree was upheld,

a copy of charge sheet in which the Applicant was charged in a criminal case before Kilgoris court.

Issue or Determination

25. The Application proceeded by way o written submissions which the court has noted and the only issue for determination is whether the Application is merited.

Analysis and Determination

26. While the Originating Summons has not been determined as it is still live the courts notes two previous litigations over this suit property as deponed in the replying affidavit which relate to the same suit property as well as the issue of illegal grazing Charges over the suit property, and since there are eviction orders already issued by a court of concurrent jurisdiction when it affirmed the judgment of the trial court, the maintenance of status quo orders herein will essentially be a stay of execution of those orders yet there is no pending appeal against that judgment before the court of appeal . Consequently, ordering a maintenance of status quo herein will effectively be staying the judgment of a court of concurrent jurisdiction delivered 3 years ago and where no Appeal exists thus, I respectfully decline to issue the orders sought in the Application dated 2nd of July 2025.

Disposition

27. Accordingly, the applications dated 2nd July 2025 and 23rd October 2025 for reasons advanced herein are dismissed with costs to the Respondents.

Dated at Kilgoris this 16th day of March, 2026

Hon. M.N. Mwanyale
Judge

In the presence of

Sandra/ Clara

Mr. Ochwangi for the Respondent

James Kaikai prose Applicant