



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. E229 OF 2022

HUSSEIN AHMED FARAH.....1ST
PLAINTIFF

HUSSEIN UNSUR MOHAMED.....2ND
PLAINTIFF

=VERSUS=

YUSUF ABDI ADAN1ST
DEFENDANT

MOHAMED ABDIKADIR2ND
DEFENDANT

RULING

1. Before me for determination is the Notice of Motion dated 16th February 2026 brought under Articles 47 (1), 50 (1), 159 (2) and 160 (1), of the Constitution, Sections 1 and 3 of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules, Sections 3 and 12 of the Fair Administrative Action Act 2015 and Section 3 of the Judicature Act in which the 1st Defendant seeks the following orders:

a. THAT the Honourable Trial Judge in this matter be obligated to disqualify and/or recuse herself from further hearing the above matter.

b. THAT any other order which the Honourable Court may deem fit and just to grant in the circumstances.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Yusuf Abdi Adan sworn on even date.

THE APPLICANT'S CASE

3. The Applicant averred that he has lost confidence in the trial Court and no longer believes he would get a fair hearing before the current Judge. He asserted that his apprehension of bias arose from the events that occurred on 27th January 2026 and subsequently on 5th February 2026, which, in his view, demonstrated a lack of impartiality by the Court, prompting him to file this application for recusal.
4. He stated that on 27th January, 2026, the Court adjourned the trial after he filed an application for a stay of proceedings pending appeal. At that point, the Plaintiffs' Counsel requested the Court to order the 1st Defendant to refund the travel expenses the Plaintiffs incurred for traveling from Dubai and Zambia to attend Court. According to the Applicant, the Plaintiffs' Counsel did not initially disclose the amount claimed, and the Court did not inquire about the exact figure or require proof of the expenses. When his Counsel requested that the Plaintiffs provide supporting documents such as airline tickets, visas, and passport entries, the Court directed Counsel to coordinate with the Plaintiffs' advocates to supply those documents.

5. He explained that a few days later, the Plaintiffs only provided handwritten receipts and an unsigned pro forma invoice, which, in his view, did not constitute credible proof of international travel expenses. He argued that the Plaintiffs were attempting to recover more than USD 10,000, equivalent to over Kshs. 1,000,000/=, based on questionable documents.
6. He stated that to verify the alleged travel, he filed a Notice of Motion dated 30th January 2026 seeking summons to compel the attendance of the Director of Immigration and other relevant officials to confirm whether the Plaintiffs had travelled to the specified destinations, as well as the attendance of the persons who issued the receipts relied upon by the Plaintiffs. The application was filed under a certificate of urgency, and the trial Judge directed that the Court would issue directions on 5th February 2026.
7. He further stated that the Court had earlier scheduled a mention on 2nd February, 2026, to confirm compliance with the payment of travel expenses. He argued that the Court should have first scrutinized and verified the Plaintiffs' claims before requiring him to reimburse the said expenses. He contended that the Court's failure to verify the claim indicated favoritism towards the Plaintiffs.
8. He stated that when the matter was scheduled for mention on 5th February, 2026, regarding his application, the trial judge noted that the application was premature and did not direct the Plaintiffs to respond. According to the Applicant, the Court's refusal to hear or determine the application effectively shielded the Plaintiffs from scrutiny

regarding the authenticity of the travel documents thereby violating his right to be heard.

9. Based on these events, the 1st Defendant asserted that the trial Court's demonstrated bias and procedural unfairness. He stated that the Court was assisting the Plaintiffs to extract from him an unverified amount exceeding Kshs. 1,000,000/=for travel expenses. The 1st Defendant is apprehensive that he will not get a fair trial before the present Court and urged the Judge to recuse herself from further hearing the matter in the interest of justice.

THE 1ST PLAINTIFF'S CASE

10. The 1st Plaintiff filed a replying affidavit sworn on 11th March 2026 in opposition to the application. He argued that the application lacks merit and does not meet the legal threshold for disqualifying a judge. He stated that the Applicant has failed to present any substantial or objective evidence capable of establishing a reasonable apprehension of bias but instead filed the application in bad faith with the intention of delaying the proceedings.
11. He stated that the history of the matter demonstrated a consistent pattern of obstruction by the 1st Defendant, who had filed multiple applications and complaints aimed at delaying the hearing of the suit. He pointed out that between January and February 2026, the 1st Defendant filed several applications and even lodged a complaint with the Principal Judge, conduct he characterized as an abuse of the Court process intended to stall the trial.

12. He stated that the current application is part of a broader pattern whereby the 1st Defendant repeatedly seeks judges' recusal whenever a ruling or judgment is about to be issued. For instance, he explained that a similar application had been filed against Hon. Lady Justice Lucy Mbugua after she had concluded the hearing and was preparing to deliver her judgment, leading to the proceedings being set aside and the matter commencing de novo. He also mentioned that recusal motions had been filed against other judges handling related matters between the parties.
13. Regarding the dispute over travel expenses, he stated that they had provided the requested documents, including boarding passes, electronic air tickets, accommodation receipts, and had even invited the 1st Defendant's Counsel to inspect the original documents and passports for verification. He argued that the Court did not order the 1st Defendant to pay USD 10,000 as claimed but only ordered reimbursement for the Plaintiffs' travel and accommodation expenses.
14. He asserted that the 1st Defendant deliberately employed a strategy of delay by repeatedly filing interlocutory applications and technical objections aimed at obstructing the Plaintiffs' claim and preventing the case from being decided on its merits. He argued that the recusal application is a tactic to derail the proceedings and avoid resolving the case.
15. Consequently, the 1st Plaintiff urged the Court to find that the application for recusal is an abuse of the Court process

and to dismiss it so the case could proceed to hearing and be determined on its merits.

THE 2ND DEFENDANT'S CASE

16. The 2nd Defendant filed Grounds of Opposition dated 11th March 2026 in opposition to the application. He contended that the application does not disclose any bias or a likelihood of bias against the trial Judge.
17. It was also argued that the order requiring the 1st Defendant to reimburse the Plaintiffs' travel and accommodation expenses was issued after the 1st Defendant requested an adjournment of the hearing. According to the 2nd Defendant, the Court did not specify the exact amount payable, as the costs would be determined once the Plaintiffs provided the necessary receipts to the 1st Defendant.
18. The 2nd Defendant also asserted that the 1st Defendant neither appealed nor sought a review of the Court's orders.
19. He argued that the present application is an abuse of the Court process intended to waste judicial time.

THE 2ND DEFENDANT'S SUBMISSIONS

20. The Second Defendant filed his submissions dated 11th March 2026.
21. On behalf of the 2nd Respondent, Counsel submitted that the Court record shows that the matter had been scheduled for a three-day hearing commencing on 27th January 2026; however, the hearing did not proceed after

the 1st Defendant applied for an adjournment on the grounds that he had filed an application seeking a stay of proceedings pending an appeal against the ruling delivered on 25th June 2025.

22. Counsel further submitted that the order for the refund of costs arose from an adjournment sought by the 1st Defendant and was therefore a proper exercise of the Court's discretion. According to Counsel, the Court did not determine the amount payable, as the issue of quantification was left to the Plaintiffs and the 1st Defendant upon presenting the relevant receipts. Counsel contended that under the circumstances, the Court could not reasonably be accused of bias because it was not involved in verifying or computing the amounts.
23. Counsel submitted that the 1st Defendant had not demonstrated that the trial Judge improperly exercised her discretion or that the order of 27th January 2026 was motivated by bias. It was further contended that the 1st Defendant's application dated 30th January 2026 was deemed premature for reasons recorded by the Court.
24. Counsel emphasized that the 1st Defendant had neither appealed nor sought a review of the orders of 27th January 2026 but instead filed the present recusal application while a ruling on the 2nd Defendant's contempt application against him was still pending before the Court.
25. Counsel further submitted that this was not the first instance in which the 1st Defendant had sought the recusal of a judge in this matter, citing a previous application against Lady Justice Lucy Mbugua following her issuance

of directions in the case. According to Counsel, dissatisfaction with judicial orders does not constitute a valid ground for recusal.

26. To support his submissions, Counsel relied on **Ashok LabshankerDoshi v Central Bank of Kenya [2023] KEHC 24096 (KLR)**, which emphasized that recusal must be based on cogent evidence demonstrating bias and not on attempts by litigants to forum shop or intimidate the court.
27. Counsel further referred to this Court's earlier ruling of 25th June 2025, where the Court noted that the 1st Defendant's conduct contributed to the delay, contrary to the principle in **Article 159(2)(b)** of the **Constitution** that justice shall not be delayed.
28. Based on the foregoing, Counsel urged the Court to dismiss the application for recusal and proceed to determine the 1st Defendant's application for stay of proceedings and the 2nd Defendant's application for contempt of Court.

ANALYSIS AND DETERMINATION

29. Having considered the application, the responses, and the 2nd Defendant's submissions, the only issue for determination is whether the 1st Defendant has established sufficient grounds to justify recusal of this court.
30. **Black's Law Dictionary, 8th Edition (2004)** defines recusal as the removal of oneself as a judge or decision

maker in a particular matter, especially on account of a conflict of interest.

31. The law on recusal is well established. In **Kalpana H. Rawal v Judicial Service Commission & 2 others**, the Court held that the test is whether a reasonable person sitting in court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant is not possible.
32. Similarly, in **Porter v Magil**, the House of Lords stated that the question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias.
33. It is trite law that an apprehension of bias must be reasonable, objective, and based on cogent evidence and not on mere suspicion or dissatisfaction with the Court's directions.
34. The applicable legal framework is outlined in **Rule 21(1)** of the **Judicial Service (Code of Conduct and Ethics) Regulations 2020**, which specifies the circumstances under which a judge may recuse himself or herself from proceedings as follows:

(1) A judge may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned, where the judge—

- i. is a party to the proceedings;***
- ii. was, or is, a material witness in the matter in controversy;***

- iii. has personal knowledge of disputed evidentiary facts concerning the proceedings;***
- iv. has actual bias or prejudice concerning a party;***
- v. has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;***
- vi. had previously acted as counsel for a party in the same matter;***
- vii. is precluded from hearing the matter on account of any other sufficient reason; or***
- viii. or a member of the judge's family has economic or other interest in the outcome of the matter in question.***

35. The purpose of recusal was articulated by the Supreme Court in **Jasbir Singh Rai & 3 Others v. Tarlochan Singh Rai & 4 Others [2013] eKLR**, as being to ensure that justice between the parties is not compromised, that due process is observed and seen to be observed, and that the integrity of the rule of law is maintained.

36. In that decision, the Supreme Court outlined the applicable test for recusal as follows:

“[T]he test for establishing a Judge’s 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.”

37. The Supreme Court in **Kibisu v Republic [2018] KESC 34 (KLR)** reaffirmed the principles earlier stated in **Republic v Mwalulu & 8 Others [2005] 1 KLR** and subsequently cited by the Court of Appeal in **Nathan Obwana v Robert Bisakaya Wanyera & 2 Others [2013] eKLR**. In those decisions, the Courts emphasized that:

i. When the courts are faced with such proceedings for the disqualification of a judge, it is necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the public at large a reasonable doubt about the fairness of the administration of justice. The test is objective and the facts constituting bias must be specifically alleged and established.

ii. In such cases the Court must carefully scrutinize the affidavits on either side,, remembering that when some litigants lose their case they are unable or unwilling to see the correctness of the verdict and are apt to attribute that verdict to a bias in the mind of the Judge, Magistrate or Tribunal.

iii. The Court dealing with the issue of disqualification is not, indeed it cannot, go into the question of whether the officer is or will be actually biased. All the Court can do is to carefully examine the facts which are alleged to show bias and from those facts draw an inference, as any reasonable and fair-minded person would do, that the judge is biased or is likely to be biased.

iv. The single fact that a judge has sat on many cases involving one party cannot be sufficient reason for that judge to disqualify himself. The fact that Tunoi, JA had sat on many cases involving the Goldenberg Affair, without anything more, was absolutely no good reason for him to disqualify himself.

38. The 1st Defendant's application for recusal is based on allegations regarding the orders issued on 27th January, 2026, and the subsequent mention on 5th February, 2026, which he claims demonstrated bias and a lack of impartiality. In summary, the 1st Defendant asserts that the Court improperly directed him to reimburse the Plaintiffs' travel and accommodation expenses incurred in attending Court from Dubai and Zambia without first verifying the authenticity of the supporting documents.
39. He further argued that when he filed an application dated 30th January 2026 seeking a summons to compel the

Director of Immigration, amongst others, to verify the alleged travel, the Court declined to hear the application and considered it premature. According to the 1st Defendant, these actions showed that the Court was shielding the Plaintiffs from scrutiny and, therefore, exhibited bias against him.

40. The question that arises is whether these allegations, viewed objectively, meet the legal threshold for recusal as outlined in the authorities cited above.
41. The applicable test, as outlined by the Supreme Court in **Jasbir Singh Rai & 3 Others vs Tarlochan Singh Rai & 4 Others [2013] eKLR** and reaffirmed in **Kibisu v Republic [2018] KESC 34 (KLR)**, is whether a fair minded and informed observer, having considered all the relevant facts, would conclude that there exists a real possibility that the Court is biased. The test is therefore objective. It is not based on a litigant's subjective apprehension but on the perceptions that a reasonable and informed member of the public would perceive in the circumstances.
42. Applying that test to the facts before this Court, it is clear that the basis of the 1st Defendant's complaint arises from judicial directions issued by the Court during the management of the proceedings. The order for reimbursement of travel and accommodation expenses was issued after the hearing scheduled for 27th January 2026, which did not proceed following an adjournment requested by the 1st Defendant. The Court did not

determine the amount payable but left it to be determined upon presentation of the relevant receipts.

43. The record further shows that the 1st Defendant subsequently filed an application dated 30th January 2026 seeking summons to verify the travel documents relied upon by the Plaintiffs. The Court directed that the application be served upon the Respondents and scheduled the matter for directions. When the matter came up for directions on 5th February 2026, the Court noted that the 1st Defendant was challenging the authenticity of the documents submitted by the Plaintiffs in support of travel expenses. The Court further noted that the 1st Defendant had not presented any material indicating any efforts, if any, undertaken to dispute or contradict the evidence of travel. The Court was not under any obligation to assist a litigant in gathering evidence. The Court held that the burden of proof lies with the Applicant and, in the absence of such proof, found that the application was premature and tantamount to inviting the Court into the arena of litigation. That finding was well grounded in law and was within the Court's discretion. The burden of proof lies with the parties, and the Court cannot assume the role of an investigator. The Applicant's dissatisfaction with the directions cannot, by any stretch, be elevated into proof of bias. The 1st Defendant was directed to comply with the court's orders. This Court notes that the directions issued fall within the realm of case management and are intended to facilitate the just, expeditious, and efficient disposal of the suit. As correctly

noted by the Plaintiffs and the 2nd Defendant, the Court did not quantify or determine the amount payable as travel expenses.

44. In this Court's view, disagreement with a judicial decision or dissatisfaction with directions issued by the Court in managing proceedings does not, on its own, constitute evidence of bias. As noted in the authorities cited above, allegations of bias must be supported by specific and cogent facts demonstrating that the Court's impartiality may reasonably be questioned.
45. In the present case, the 1st Defendant has not demonstrated that the Court has any personal interest in the matter, any relationship with the parties, or any extraneous consideration that would influence the determination of the dispute. The complaint raised by the 1st Defendant mainly challenges the legality of the Court's procedural orders.
46. Even if the Applicant was aggrieved by the directions issued regarding that application, the law provides appropriate remedies, including review and appeal. Recusal is not a substitute for those remedies.
47. The totality of the Applicant's complaints reveals a pattern of dissatisfaction with the Court's ruling rather than any objective demonstration of bias.
48. In the circumstances, a fair-minded and informed observer, apprised of the facts of this case, would not reasonably conclude that there exists a real possibility that the Court is biased or unable to determine the matter impartially. Rather, the issues raised by the 1st Defendant

relate to dissatisfaction with case management decisions, which are matters that may properly be addressed through review or appeal, and not through an application for recusal.

49. Consequently, I find that the Applicant has failed to meet the threshold for recusal. The application is devoid of merit and is hereby dismissed with costs.

50. Notwithstanding the preceding findings that the Applicant has not met the threshold for recusal, I will recuse myself from further handling this matter due to personal reasons. This decision is not based on the merits of the application, which I have found to be unsubstantiated.

**RULING SIGNED, DATED, AND DELIVERED VIA
MICROSOFT TEAMS THIS 24TH DAY OF MARCH 2026.**

.....
HON. T. MURIGI

JUDGE

IN THE PRESENCE OF:

Sagana for the Plaintiffs

Maosa for the 1st Defendant/Applicant

Murithi for the 2nd Defendant

Vena- Court Assistant