REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS, NAIROBI

ELC NO E584 OF 2025

RANFORD HOLDINGS COMPANY LIMITED……PLAINTIFF /RESPONDENT

-VERSUS-

PARESHA LALIT KANA…… DEFENDANT/APPLICANT

RULING

Introduction

1. The matter is in relation to land parcels no 1870/1/620 formerly (1870/1/451) and LR 1870/1/621 (formerly 1870/1/452)
2. There is an application dated 3rd February 2026 and seeks the dismissal of the suit on the grounds of res judicata to ELC 574 of 2017.
3. The application also seeks the recusal of Hon Justice Mohammed Kullow from any further conduct and proceedings in this matter, that the file be placed before the Presiding Judge for re-allocation to another judge.
4. The application is supported on grounds raised in the supporting affidavit of the defendant as follows
    a) That the judge issued ex parte orders contrary to the legal provisions to the plaintiff which orders were not favourable to

the defendant and further the orders were for a long duration of time denying the defendant the chance to be heard

b) That the judge failed to consider the documentary evidence table by the defendant before giving the orders

c) That the judge failed to take into account decree in ELC 574 of 2017 which makes this matter res judicata.

Respondent's /plaintiff's response

5. The plaintiff opposed the application in a replying affidavit sworn by Noor Haji Ali on the 13th February 2026.He deponed that the mere fact that the judge had granted ex parte orders not favourable to the applicant did not constitute for reasons for recusal
6. He further deponed that an application for recusal needs to take into consideration the provisions of the judicial service (code of conduct ethics) regulations 2020 and by virtue of that the defendant had not raises any legally sustainable ground to warrant the recusal application.
7. On the issue of res judicata the respondent deponed that the Plaintiff in ELC 574 of 2017 was a different party from the plaintiff herein and the applicant had not proved or shown any correlation between the two entities

The application was canvassed by way of written submissions with the applicant filing submissions on the 9th March 2026 whereas the respondent/plaintiff filed its submissions on the 19th March 2026.

Applicant's submissions.

8. The applicant submitted that the judge in this case had demonstrated biasness in issuing order not favourable without paying due regard to the provisions of the law and extending the same orders. They relied on the case of **Mohan Galot & 7 others Vs Inspector general of National Police Service & 4 others, Galot Limited & 3 others (interested parties) (2021) eKLR**
That having established biasness this was in line with regulation 21 of the Judicial service (code of conduct ethics) regulations 2020
In support of the argument of the doctrine of res judicata, counsel submitted that the court was in the know of the decree issued in ELC 574 of 2017 yet proceeded to entertain the suit despite res judicata going into the issue of jurisdiction of the court.

Respondent's/Plaintiff's submissions

The Plaintiff reiterated the contents of its replying affidavit.
To back his argument on the issue of res judicata, the plaintiff relied on the case of Mwikali **& another v Mutungi & 3 others (Civil Appeal 189 of 2019)[2026] KECA 231 (KLR)**and on the issue of the recusal of the judge, counsel relied on the case of **Kamau & another v Kingdom Bank Limited (Civil Suit E001 of 2022) [2025] KEHC 2545 (KLR) (27 February 2025)**

Analysis and Determination

9. The 1st issue for determination will be whether the suit is res judicata to ELC 574 of 2017 as res judicata goes into the issue of jurisdiction and if this court is found to be without the jurisdiction it downs its

tools. Res judicata is anchored Section 7 of the Civil Procedure Act which reads; -

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

The doctrine of res judicata is founded on public policy and is aimed at achieving two objectives namely; that there must be finality to litigation and the individual should not be harassed twice with the same account of litigation. In considering whether an issue is Res Judicata the court considers;

a) Whether the issue was directly and substantially in issue in the former Suit
b) Whether suit was between the same parties or parties claiming under them.
c) The parties were litigating under the same title.
d) The issues were heard and finally determined in the former suit.
e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue was raised.

This is the first time the respondent is appearing as a litigant in relation to the suit property. The applicant has not substantiated any relationship as between any of the parties in ELC 574 of 2017 and the respondent herein and as such the requirement that the parties litigating should be the same as parties in the former suit fails.

Furthermore, there applicant has not attached the pleadings in the said case for this court to be able to compare the facts and issues presented in the case with the facts and issues in this case to be able to ascertain whether the respondent herein was directly affected by the outcome of the judgement being relied as such this suit cannot be said to be Res Judicata. This argument thus falls and this leaves the court with the jurisdiction to determine this matter.

10. Moving on to the main issue whether I should recuse myself from dealing with the present matter and other references involving the parties herein.

The principles governing recusal in this jurisdiction are not well settled. In ***Jan Bonde Nielson v Herman Philipus Steyn & 2 others*** **HCC COMM 332 of 2010 [2014] eklr** the court observed that: *The appropriate test to be applied in determining an application for disqualification of a Judge from presiding over a suit was laid down by the Court of Appeal in* **R v David Makali and others C.A criminal application No Nai 4 and 5 of 1995 (unreported),** *and reinforced in subsequent cases. In* **R v Jackson Mwalulu & Others C.A. Civil Application NO Nai 310 of 2004**

(Unreported) where the Court of Appeal stated that:*"...When courts are faced with such proceedings for 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...''*

In ***Philip K. Tunoi & another v Judicial Service Commission & Another*** **CA Civil Application NAI No. 6 of 2016 [2016] eKLR** the Court of Appeal adopted the test for recusal propounded by the House of Lords in ***Porter v Magill*** **[2002] 1 All ER 465**, where it stated that, *"The question is whether the fair minded and informed observer, having considered the facts, would conclude that was a real possibility that the tribunal was biased." The same position was taken by the Supreme Court (per Ibrahim J.) in* ***Jasbir Rai and 3 Others v Tarlochan Singh Rai and 4 Others SCK Petition No. 4 of 2012 [2013] eKLR*** *where he observed that, "The Court has to address its mind to the question as to whether a reasonable and fair-minded man sitting in Court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant was not possible. If the answer is in the affirmative, disqualification will be inevitable."*

The principles in the cases cited buttress the standards of conduct enacted in the ***Judicial Service (Code of Conduct and Ethics)***

Regulations 2020 dated 26th May 2020. Under **Regulation 21 Part II** of the said ***Code of Conduct,*** a Judge can recuse himself or herself in any of the proceedings in which his or her impartiality might reasonably be questioned where the Judge;

(a) Is a party to the proceedings;

(b) *Was, or is a material witness in the matter in controversy;*

(c) *Has personal knowledge of disputed evidentiary facts concerning the proceedings;*

(d) *Has actual bias or prejudice concerning a party;*

(e) *Has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;*

(f) *Had previously acted as a counsel for a party in the same matter;*

(g) *Is precluded from hearing the matter on account of any other sufficient reason; or*

(h) *Or a member of the Judge's family has economic or other interest in the outcome of the matter in question.*

Regulation 9 of the Judiciary ***Code of Conduct*** emphasizes the importance of impartiality of a Judge. Regulation 9(1) provides: *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.*

11. Turning to the facts of the case, there are two grounds for recusal which I shall now consider. The first ground for recusal by the defendant is that I issued ex parte orders that were not favourable to the applicant and extended the same for 6 months which orders were not in line with provisions of the law. This the applicant indicates was an act of biasness.

It goes without saying that in a court of law not all the parties do get favourable orders now imagine if all parties to a suit that have orders against them were to file recusal applications. This would totally amount to abuse of the court's processes and a waste of time because there are other avenues to air such frustrations such as application for review and appeal. Further, merely because I made a decision not favourable to the applicant, does not automatically form a basis for recusal. It would be improper for me sit out on hearing the suit based on the above ground. The court in **Dobbs v Tridios Bank NV (2005) EWCA 468** cautioned itself as follows with respect to the antics of a certain Mr. Dobbs:"... *But it is important for a Judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If Judges were to recuse themselves whenever a litigant – whether it be a represented litigant or a litigant in person – criticised them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select Judges to hear their cases simply by criticizing all the Judges that they did not want to hear their cases. It would be easy for a litigant to produce a*

situation in which a Judge felt obliged to recuse himself simply because he had been criticized – whether that criticism was justified or not. That would apply, not only to the individual Judge, but to all Judges in this court; if the criticism is indeed that there is no Judge of this court who can give Mr. Dobbs a fair hearing because he is criticizing the system generally. Mr. Dobbs' appeal could never be heard.

12. Ultimately, the question for consideration is whether a person having knowledge of the fact I heard the application ex parte and gave orders against the applicant would think that I am biased in this case. I think not. The said application date 19th November 2025 from which the ex parte orders emanate sought for injunctive orders and in the alternative status quo orders. The court declined to grant injunctive orders as the applicant was yet to be served by way of substituted service but gave status quo orders which orders are meant to preserve the subject property. The orders were not only favourable to the respondent but to the applicant as well as the suit property would not be interfered pending the determination of the application inter partes.

The critical ingredients of an application for recusal are evidence of actual bias or perceived bias. These have not been demonstrated by the applicant in evidence. The applicant has mainly relied on the fact that the orders were issued ex parte and nothing else substantial

Final disposition

In view of the above I make the following order

i. The Notice of Motion dated 3/2/2026 is not merited in terms of prayers 1 and 2.

ii. That I will render a separate ruling with regard to prayer No. 5 on Notice.

It is so ordered.

DATED, **SIGNED** and **DELIVERED** virtually at **NAIROBI** on this **23rd** day of

March, 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Were ..... for the Defendant/Applicant

Mr. Bosire ..... for the Plaintiff/Respondent

Philomena W. Court Assistant