

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU

ELC OS. E007 OF 2021

ALEXANDER NGANGA GACHUNGU &

23

OTHERS.....PLAINTIFFS

VERSUS

DANIEL

NGANGA.....1ST DEFENDANT

JANE WANGARI KIBE

(Sued as the Legal Representative of the Estate of

NAOMI WANJIRU KAMANDE (Deceased).....2ND

DEFENDANT

RULING

1. Before me is the plaintiffs' notice of motion application dated 16.7.2025 seeking orders for my recusal in this matter. The application is premised on grounds on the face of the application and the supporting affidavit of the 1st applicant. He depones that the Judge has conducted

the matter unfairly, committing wrongs of commissions and omissions, citing the date of 26.5.2025 when the plaintiffs and their advocate were apparently treated with hostility by this court. He avers that the judge was harsh to him during cross-examination and acts like one who is under a bribe.

2. The application was opposed by the 1st defendant through his replying affidavit dated 29.7.2025 where he contends that the applicants have made blanket allegations with no specifications, and the scheme is to forum shop. He prays for the dismissal of the application.
3. From the rival arguments, should this court recuse itself in this matter? In the case of **Lawrence Kinyua Muvai v Nyariginu Farmers Co. Ltd & another [2019] eKLR**, the court stated thus;

“The test for recusal of a Judge was laid down by the Court of Appeal in the case of R VS. David Makali C.A. Criminal Application No. 4 and 5 of 1995 Nairobi (unreported) and Others as reinforced in R Vs. Jackson

Mwalulu & Others Civil Application No. 310 of 2004 Nairobi , where the Court of Appeal stated that; C.A “when courts are faced with such proceedings for disqualification of a judge, it is necessary to consider whether there is 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”. **Emphasize added.**

- 4.** The records indicate that I took over this matter for the first time on 24.2.2025, a date when the case was scheduled for hearing. It was adjourned on the basis that the defence counsel had lost a brother. The court gave the defence a last adjournment and rescheduled the matter to 26.3.2025. This time round, (the 26.3.2025), plaintiffs’ counsel applied for adjournment on the basis

that he was sick. The court again allowed the adjournment, marking it as a last adjournment and the matter was rescheduled to 26.5.2025, of which the parties were ready to proceed. The court conducted case management before trial and then the 1st witness of the plaintiff was put to the stand and was cross examined by the defence counsel. He was only stood down after his counsel stated that they did not have the defence trial bundle dated 25.7.2024.

5. From the aforementioned proceedings, there is no evidence to indicate that the applicants counsel raised any concerns regarding the prosecution of the case, and the said counsel has not sworn any affidavit to that effect.

6. In **National Oil Corporation of Kenya v Real Energy Limited [2017] eKLR**, it was stated 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”.

7. In the case at hand, the applicant simply made blanket allegations against the trial judge without substantiating those allegations. In the circumstances, the application dated 26.5.2025 is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NYAHURURU
THIS 16th DAY OF APRIL 2026 THROUGH MICROSOFT
TEAMS.**

**LUCY N. MBUGUA
JUDGE**

In the presence of:

Bedan/Vanessa - Court Assistants

Gachichio for Plaintiffs

Kamanga for Defendants