



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CIVIL SUIT NO. 1549 OF 2013

SULEIMAN MURUNGA.....PLAINTIFF

VERSUS

NILESTAR HOLDINGS LIMITED.....1ST DEFENDANT

GREEN VALLEY LIMITED.....2ND DEFENDANT

CHIEF LANDS REGISTRAR.....3RD DEFENDANT

NATIONAL LAND COMMISSION.....4TH DEFENDANT

THE ATTORNEY GENERAL.....5TH DEFENDANT

RULING

1. Through the application dated 10/4/2018 the 2nd Defendant seeks my recusal from further hearing this suit and all the applications; and that the file be forwarded to the Presiding Judge, Environment and Land Division for further directions. The grounds for recusal set out in the application are that: -

- a. When the application dated 5/3/2018 came up for hearing on 9/4/2018, I conducted myself in a biased manner by intimidating the advocate for the 1st and 2nd Defendants by insinuating to personally hold them liable for any actions of their clients;
- b. I intimidated the newly appointed advocates when the application came up for hearing at 2 p.m. despite their Notice of Appointment of Advocates dated 9/4/2018 being on record;
- c. I ordered the advocates for the 1st and 2nd Defendants to preside over their clients to surrender vacant possession of the Suit Property within 4 and 1/2 hours otherwise I would sentence them to a jail of term of 6 months for contempt of court;
- d. On 9/4/2018 I portrayed outright that I was convinced that the 1st and 2nd Defendants are in contempt of court yet the application for contempt of court had not been heard;
- e. The 2nd Defendant is apprehensive that I am biased against it and it will not be afforded a fair hearing in the application dated 3/3/2018 and the suit;
- f. By ordering the Defendants directors to appear before court at 2 p.m. for sentencing if they would have not purged the alleged contempt shows bias and contravenes Section 29 of the Contempt of Court Act No. 46 of 2016;
- g. I was biased by my deliberate failure to appreciate the legal regime governing contempt of court and the rules thus compromising the Constitutional mandate of safeguarding the purpose and principles of the Constitution and the law;
- h. The court exhibited biasness by failing to appreciate the legal regime governing the granting and the validity of injunctions thus precipitating an abuse of the court process by attempting to enforce invalid court orders;
- i. I exhibited biasness by failing to appreciate the legal regime governing the granting of interlocutory injunctions by entertaining multiple applications by the Plaintiff and granting *ex-parte* orders;

j. I demonstrated a clear bias by failing to balance between the 1st and the 2nd Defendants' right to a fair hearing wedded with overriding interest of the suit hearing and the private interest of the Plaintiff;

k. My failure to apply the law as outlined under Article 10 and 50 (1) of the Constitution and Section 29 of the Contempt of Court Act demonstrated conduct that gives rise to a suspicion of my impartiality in the eyes of a reasonable person.

2. The 2nd Defendant argues that a reasonable and fair minded man sitting in court and knowing all the relevant facts in this suit will have a reasonable suspicion that a fair trial for the Defendant is not possible. The application is supported by the affidavit of Margaret Wairimu Magugu sworn on 9/4/2018 and her further affidavit sworn on 23/4/2018. The court notes that the signatures of the deponent in these affidavits are not similar.

3. The 2nd Defendant's director depones that the Judge intimidated the advocates of the 1st and 2nd Defendants by insinuating to personally hold them liable for the Defendant's action and that the court demanded and recorded the advocates identity card numbers. She depones that the 2nd Defendant's advocates were denied audience despite being on record. She further depones that the 2nd Defendant's right to a fair hearing is not guaranteed and that the court has already convicted it before hearing it.

4. She also depones that the Judge portrayed biasness by failing to appreciate the legal regime governing the contempt of court proceedings thus compromising the constitutional principles of fair hearing and natural justice. Further that the court exhibited biasness by failing to appreciate the legal regime governing the grant and validity of injunctions. The director of the 2nd Defendant depones to these facts based on advice given to her by the 2nd Defendant's advocates on record.

5. In the further affidavit, the 2nd Defendant's director swears that she is aware that the substantive suit revolves around ownership and possession between the Plaintiff and the 1st and 2nd Defendants. The court ordered that the Plaintiff be reinstated in the suit premises on 9/4/2018 in compliance with court orders issued on 22/12/2016 by Lady Justice Gacheru. The director states that this order was not sought by any party to these proceedings and the Judge went on a frolic of her own and that she is not aware of any orders issued on 22/12/2016 by Justice Gacheru.

6. The director avers that the Judge has already determined the mode of punishing the two directors of the 1st and 2nd Defendants by committal to civil jail for a pre-determined hearing without hearing their defence and mitigation.

7. Mr. Kago representing the 2nd Defendant urged four grounds in support of the application, which are: -

- i. Apparent bias
- ii. Failure to understand the law
- iii. Court order dated 22/12/2016 and
- iv. Orders issued on 9/4/2018

8. He submitted that the 2nd Defendant is apprehensive that it shall not get a fair hearing in accordance with Article 50 (2) of the Constitution read with Article 25 which sets out the fundamental rights that cannot be limited; one of which is the right to a fair hearing. He stated that the 2nd Defendant's advocate Mr. Amos Ogutu Wandago appeared in court on 9/4/2018 when the court directed Mr. Wandago and his client to reinstate the Plaintiff in the suit premises in compliance with the orders of Lady Justice Gacheru issued on 22/12/2016; and that this order was not premised on any application.

9. He urged that prayer number 4 in the application dated 5/3/2018 sought to have the 2nd Defendant punished for disobeying the orders of 14/7/2014 which were extended by consent of parties on 15/12/2016. Counsel argued that the 2nd Defendant cannot be punished for disobeying court orders which are alien to it.

10. He further argued that the order given by the court on 9/4/2018 can be taken to be a notice to show cause and that the court has already predetermined to jail the directors of the 1st and 2nd Defendants for six months without affording them an opportunity to defend themselves and mitigate.

11. He submitted that the Contempt of Court Act sets the maximum punishment for a contemnor at imprisonment for 6 months and that the order issued on 9/4/2018 flies in the face of Article 50(2)(b) of the Constitution which would avail a party the least severe punishment known to law at the time of conviction. Thus the court order extinguished the 2nd Defendant's other forms of punishment under the Contempt of Court Act including a maximum fine of Kshs. 200,000/=.

12. Mr. Kago also argued that under the Contempt of Court Act the court has no powers to order the 2nd Defendant to reinstate the Plaintiff in the suit premises with respect to the application dated 5/3/2018 and that the order was therefore *per in curium*. Counsel urged that by ordering the Defendant to surrender possession, the court entered the arena of the dispute and took a side which makes the 2nd Defendant apprehensive that it will not get substantive justice.

13. The other ground urged is that the court is not well conversant with the Contempt of Court Act hence the 2nd Defendant will not get a fair hearing. The advocate concluded his submissions by stating that when an issue of bias is raised, it is not the court being safeguarded but the

reasonable man and that justice is rooted in confidence and the confidence is destroyed when right minded people go away thinking that the judge is biased.

14. Mr. Mbutia counsel for the 4th Defendant stated that the 4th Defendant was not taking a position in this application since it was not represented in court on 9/4/2018 when the matter came up and it would therefore be dishonest to comment on proceedings that the 4th Defendant did not participate in. Counsel for the 1st Defendant and the Proposed Interested Party supported the 2nd Defendant's application.

15. Mr. Amolo, counsel for the Plaintiff initially stated that his client was not taking a position since the application was between the court and Mr. Kago's client. When Mr. Kago concluded making these submissions, Mr. Amolo sought the court's indulgence to respond on the grounds that Mr. Kago had submitted beyond the scope of his application for the recusal of the judge; raised matters that were not in the affidavits; and that he also made comments and submissions which were not borne by the court's record.

16. Mr. Amolo stated that they came to court on 9/4/2018 to deal with his application dated 5/3/2018 for contempt of court. He referred the court to page 58 of his application which had an extract of the order made by the consent of the parties on 15/12/2016 which order was binding upon Mr. Kago's client. He submitted that Mr. Kago cannot state that his client was not aware of the order yet it was entered into by their advocate.

17. He further stated that Mr. Kago was not in court on 9/4/2018 and that the order of 9/4/2018 was premised on the application of 5/3/2018. Prayer number 1 of that application asked the 2nd Defendant to purge the contempt and if there is no compliance then they should show cause. He urged that this is the process followed to allow a contemnor to show reasons why he should not be found in contempt but it is not for committal at this stage.

18. Mr. Amolo submitted that the 2nd Defendant's apprehension is unreasonable and that the court should only recuse itself if it is persuaded that a party has reasonable apprehension. He submitted that Mr. Kago's client misapprehended what the order required and that the court can order reinstatement of a party to the suit premises. He pointed out that on 9/4/2015 the court asked Ms. Mpoza the effect of the order of the Honourable Mr. Orenge (Senior Resident Magistrate) and that Ms. Mpoza reluctantly stated that it had been vacated and conceded that it was not correct to evict the Plaintiff on the basis of an order from a Magistrate yet there was a consent order in this court barring the eviction of the Plaintiff. He submitted that a court has power to order a party to surrender possession.

19. He stated that in his many years of practice he had never heard of a judge being asked to recuse herself for making a decision that is *per in curium*. The remedy is to go on appeal or seek to review such an order. He submitted that no good reason had been given for the recusal of the court and that the 2nd Defendant had not demonstrated bias on the part of this court. He concluded his submissions by stating that the present application is designed to deprive the Plaintiff of his rights under the consent order to take possession of the premises.

20. Mr. Kago objected to Mr. Amolo's submissions on the basis that he had earlier indicated that he would not respond to the application. He asked the court to put it on record that the court did not entertain his objection until Mr. Amolo finished making his submissions. The court recorded this.

21. Ms. Mpoza who supported the application for recusal urged the court to look at the decision in **Philip K. Tunoi and Another v Judicial Service Commission & Another** [2016] eKLR in which the court mentioned the test that was previously applied in cases of apparent bias, which was whether in all the circumstances of the case there appeared to be a real danger of bias concerning the member of the tribunal so that justice required that the decision should not stand. The court stated that in determining the existence or otherwise of bias, the test to be applied is that of a fair minded and informed observer who will adopt a balanced approach and will neither be complacent nor be unduly sensitive or suspicious in determining whether or not there is a real possibility of bias.

22. It is useful to set out the background and facts of this case. The Plaintiff and the 1st and 2nd Defendants entered into a consent on 15/12/2016 before Lady Justice Gacheru the effect of which compromised the application dated 28/7/2016; and allowed parties to file their pleadings as the National Land Commission and Attorney General were joined as parties to the proceedings.

23. Order No. 5 of that consent stated that the Plaintiff's Notice of Motion dated 18/10/2016 was compromised on terms that the prayer to commit the Defendants for disobedience of the court order were abandoned and the 1st and 2nd Defendants were restrained by an order of injunction from levying distress, or evicting the Plaintiff, or in any manner interfering with the Plaintiff's quiet occupation of the suit premises pending the hearing and determination of the suit. The formal order was extracted and issued by the court on 22/12/2016.

24. On 23/2/2018 the 1st and 2nd Defendants filed **Milimani Chief Magistrates Court Civil Case No. 1111 of 2018** against Millennium Plastics [2008] Limited, Ruakeva Enterprise Limited, Simmers Nairobi AGG and Suleiman Murunga trading as Simmers Bar and Restaurant. The Honourable Mr. Orenge, Senior Resident Magistrate, in the presence of the Plaintiff's advocate and in the absence of the Defendants; issued an order of eviction against the Defendants requiring them to vacate the premises on L.R. No. Nairobi/209/918 pending the hearing and determination of that suit. The order of eviction was to be executed by Siuma Auctioneers and to be supervised by the OCS Central Police Station.

25. Pursuant to these orders, the Plaintiff in this suit was evicted on 2/3/2018 by the auctioneers with the assistance of armed police officers.

26. On 12/3/2008 the Honourable Mr. Orenge Senior Resident Magistrate gave another order through which the orders he made on 23/2/2018 were vacated and or set aside.

27. This court took note of the two orders issued by the Honourable Mr. Orenge Senior Resident Magistrate when the application dated 5/3/2018 came up for hearing on 21/3/2018. The court noted that it was in the interest of justice to preserve the Suit Property pending hearing and determination of the suit. The court restrained the Defendant from developing or dealing with the Suit Property until 9/4/2018 when

further orders would be made.

28. On 9/4/2018 when the application dated 5/3/2018 came up for hearing, Mr. Amolo appeared for the Plaintiff while Ms. Mpoza and Mr. Wandago appeared for the 1st and 2nd Defendants respectively, Mr. Masore Nyang'au went on record as one of the contemnors named in the application. Mr. Wandago informed the court that he had not filed the 2nd Defendant's replying affidavit since his client who is hypertensive was unwell and had been placed on bed rest. He stated that he was unable to discuss the issue with his client and that he had a medical report. He sought to file his response in two weeks' time when his client's condition improved.

29. Mr. Amolo opposed the application for adjournment saying he was ready to argue the application dated 5/3/2018 and that Mr. Wandago's client could be given time later to respond on prayer number 4. The court noted that the Plaintiff had filed three applications dated 21/3/2018, 3/4/2018 and 4/4/2018. Mr. Amolo explained that the nature of the business in the matter demanded that they file all the applications on record.

30. Ms. Mpoza informed the court that she was not ready to proceed as she needed to seek instructions from her client who is domiciled in the United States of America. She stated that the Plaintiff had been evicted following a court order issued when a different firm of advocates represented the 2nd Defendant in the proceedings before the Magistrate's Court which issued the *ex parte* eviction order. She stated that she had not seen a copy of the court order issued by the Honourable Magistrate.

31. Mr. Masore Nyang'au informed the court that he had filed a replying affidavit to the application dated 5/3/2018 which named him as a contemnor. He claimed that he was not aware of the orders issued by the Environment and Land Court in 2016 and that when he learnt of the orders, he sought to withdraw from acting for the 1st and 2nd Defendants in the suit before the Magistrate's court and that his application for withdrawal was allowed.

32. In his Replying Affidavit filed in court on 4/4/2018, Mr. Nyang'au depones that he first came to know of the 1st and 2nd Defendants in mid-February 2018 when he was instructed to institute eviction proceedings against the companies which were tenants in premises along Kenyatta Avenue. He avers that he was informed that there were no cases pending over the suit premises involving the same parties. He was not present when the eviction was carried out following the orders issued by the Honourable Magistrate based on the suit he had filed on behalf of the 1st and 2nd Defendants. He stated that he became aware of this suit on 7/3/2018 when he read in the *Daily Nation* that he had been sued in connection with the disobedience of court orders issued by the Environment and Land Court.

33. The court directed Ms. Mpoza and Mr. Wandago to appear at 2 p.m. and confirm that the Plaintiff had been reinstated in the suit premises in compliance with the court orders issued by Lady Justice Gacheru on 22/12/2016. If there was no compliance, the Advocates were to present two directors of the 1st and 2nd Defendants to show cause why they should not be committed to civil jail for 6 months for wilfully disobeying the court order issued on 22/12/2016.

34. When Mr. Amolo, Ms. Mpoza and Mr. Wandago appeared before court on 9/4/2018 at 2.30 p.m. representing the Plaintiff, 1st Defendant and 2nd Defendant respectively, Ms. Mpoza confirmed to court that there was a court order issued on 22/12/2016 by Lady Justice Gacheru whose effect was to restrain the 1st Defendant from evicting the Plaintiff. She confirmed that the order was still in force and that the 1st Defendant was aware of that order. She reiterated that she did not represent the 1st Defendant in the matter before the Magistrate's court. She also stated that her client did not give instructions to Mr. Masore Nyang'au to act for it in the matter before the Magistrate's court. She stated that her client who is in California was not aware of the Magistrate's court matter. She sought time to seek clear instructions from her client and file a response within 14 days.

35. Mr. Wandago, counsel for the 2nd Defendant confirmed that the 1st and 2nd Defendants owned the Suit Property jointly. He sought 24 hours to give the 2nd Defendant an opportunity to purge the contempt failing which the court could issue orders. Counsel for the Plaintiff, Mr. Amolo confirmed that they had had a meeting earlier in the morning. He was agreeable to Mr. Wandago being given an opportunity to purge the contempt and if they did not do so then the court would issue further orders. By then the Notice of Appointment for Mr. Kago to represent the 2nd Defendant alongside Mr. Wandago had not been placed in the court file and Mr. Wandago addressed the court on behalf of the 2nd Defendant.

36. The court granted the 1st and 2nd Defendants an opportunity to purge the contempt by restoring the Plaintiff to the suit premises by 3 p.m. on 10/4/2018. The 1st and 2nd Defendants were directed to file their responses to the application dated 5/3/2018 by 10 a.m. on 10/4/2018 and thereafter serve the Plaintiff.

37. On 10/4/2018 Mr. Amolo appeared for the Plaintiff while Ms. Mpoza and Mr. Wandago appeared for the 1st and 2nd Defendants respectively. Mr. Havi and Mr. Okatch appeared for a company known as Pimp My Ride East Africa, the Proposed Interested Party which had entered into a lease with the 1st and 2nd Defendants over the Suit Property herein. Mr. Kago informed the court that the firm of Ndegwa and Ndegwa Advocates had filed a Notice of Appointment of Advocates confirming that he was to appear with Mr. Wandago for the 2nd Defendant. The court clarified that the Notice of Appointment of Advocates filed by Mr. Kago was not part of the court record when the matter came up on 9/4/2018.

38. Mr. Kago informed the court that he had filed a Notice of Change of Advocates to come on record for the 2nd Defendant in place of Okong'o and Wandago Advocates. Mr. Wandago confirmed that Mr. Kago was taking over the matter and would represent the 2nd Defendant alone. Mr. Kago sought directions on the application which he had filed dated 10/4/2018. The court informed him that having just filed the application the court was yet to look at it before it could give directions on its hearing.

39. Mr. Havi stated that an application dated 9/4/2018 had been filed seeking to join an interested party to the suit. He stated that the

Proposed Interested Party was currently in occupation of the Suit Property having entered into a lease with the 1st and 2nd Defendants. He stated that the orders granted by the court on 9/4/2018 impacted on the issue of possession to the extent that it required the reinstatement of the Plaintiff to the Suit Property which implied that the Proposed Interested Party would have to be evicted from the premises if the orders for reinstatement were made.

40. The court notes that the 1st and 2nd Defendants through their agent Dream Haven Properties Limited entered into a lease dated 6/3/2018 with Pimp My Ride East Africa Limited for a term of 5 years commencing on 6/3/2018.

41. The issue for determination is whether the 2nd Defendant has established bias on the part of the court for the court to grant the orders it seeks for recusal of the Judge.

42. The Plaintiff's application dated 5/3/2018 which came up for hearing on 9/4/2018 sought the following prayers: -

a. A mandatory injunction be granted to the Plaintiff reinstating possession of the property known as L. R. No. 209/918 Simmers Restaurant, Kenyatta Avenue, Nairobi to the Plaintiff applicant pending the hearing and determination of that application;

b. A mandatory injunction be granted to the Plaintiff reinstating possession of the property known as L. R. No. 209/918 Simmers Restaurant, Kenyatta Avenue, Nairobi to the Plaintiff applicant pending the hearing and determination of the suit; and

c. That the directors of the 1st Defendant namely Madatali Abraham, Jamilleh Ebrahim and Jalaledin Ebrahim, together with the directors of the 2nd Defendant namely Margaret Wairimu Magugu and Kinyanjui Magugu and one Gibson Muchiri Ndungu and Leo Masore Nyangau, Advocate be detained in prison for a period not exceeding six (6) months for reasons of disobeying and being in contempt of the orders of this Honourable Court made on 14th July, 2014 as extended by the consent of the parties on 15th December, 2016.

43. The application dated 5/3/2018 sought a mandatory injunction to reinstate the Plaintiff to the property known as L. R. No. 209/918 Simmers Restaurant, Kenyatta Avenue, Nairobi pending the hearing and determination of that application and the suit. It also sought committal of the 1st and 2nd Defendants directors together with Mr. Leo Masore Nyangau, Advocate to civil jail for contempt of court.

44. The court can issue a mandatory injunction in certain circumstances. In the case of **Joseph D. K. Kimani t/a as Pyramid Auctioneers & Another V. Simon Chege Kamangu** (2016) eKLR, the court observed that a mandatory injunction can be granted on an interlocutory application as well as at the hearing. The court stated that a mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstance, only in clear cases where the court thinks that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could easily be remitted or where the Defendant had attempted to steal a match on the Plaintiff. Before granting a mandatory injunction the court has to have a high assurance that at the trial it would appear that the injunction had rightly been granted.

45. Section 29 of the Contempt of Court Act which Mr. Kago relied on provides for the punishment of a person who was in charge and responsible for a company which is guilty of contempt of court in respect of any undertaking given to a court by the company. Such a person would not be liable for punishment if he proves to the court's satisfaction that the contempt was committed without his knowledge or that he exercised due diligence to prevent its commission. Where the company commits contempt of court and it is proved that it was with the consent or connivance of a director or officer of the company, the director or officer shall be deemed to be guilty of the contempt and may be committed to civil jail and in addition fined a sum not exceeding Kshs. 200,000/=.

46. Section 5 of the Contempt of Court Act grants superior courts power to punish for contempt of court while Section 7 provides that an offence of contempt of court shall be tried summarily and the court shall keep a record of the proceedings. The Plaintiff's application seeking to have the 1st and 2nd Defendants' directors found to be in contempt of court has not been heard.

47. When a judge makes a mistake of law or fact that is apparent on the face of the record, the recourse for the party aggrieved by the mistake is to seek review of the order or appeal against that order. Such a mistake or failure to understand the law cannot amount to bias against the aggrieved party. To err is human. Being human, judges do err.

48. Bias is defined in the 10th Edition of *Black's Law Dictionary* as a mental inclination, or tendency, or prejudice or predilection. Actual bias is defined as genuine prejudice that a Judge or other person has against some person. Judicial bias is defined as a Judge's bias towards one or more of the parties to a case over which the Judge presides. Further, judicial bias is usually not enough to disqualify a Judge from presiding over a case unless the Judge's bias is personal or based on some extra-judicial reason. The dictionary defines the "*bias rule*" as a principle of procedural fairness requiring a decision maker not to be personally biased and not to appear to a reasonable, informed, detached observer to be prejudiced in anyway in legal proceedings or in dealing with some matter in the course of making a decision. A decision maker's bias may arise from pecuniary or proprietary interest, from prior or existing associations, from extraneous information, from contact or from some other circumstances.

49. In **Barnaba Kipsongok Tenai V. Republic** [2014] eKLR the court referred to the case of **Jasbir Singh Rai & 3 others V. Tarolchan Singh Rai and 4 others** [2013] eKLR where the court stated that the "*Perception of fairness of conviction, of moral authority to hear the matter, is a proper test of whether or not the participation of the judicial officer is called for*". The court is required 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.

50. The Canadian Supreme Court in **R. V S. [R.D.]** [1977] 3 S.C. R 484 expounded on the test to be applied where bias is alleged as follows:-

“The apprehension of bias must be a reasonable one held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. The test is what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. This test contains a two-fold objective element: the person considering the alleged bias must be reasonable and the apprehension of bias itself must also be reasonable in the circumstances of the case. Further the reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and appraised also of the fact that impartiality is one of the duties the judges swear to uphold. The reasonable person should also be taken to be aware of the social reality that forms the background to a particular case, such as societal awareness and acknowledgement of the prevalence of racism or gender bias in a particular community. The jurisprudence indicates that a real likelihood or probability of bias must be demonstrated and that a mere suspicion is not enough. The existence of a reasonable apprehension of bias depends entirely on the facts. The threshold for such a finding is high and the onus of demonstrating bias lies with the person who is alleging its existence.”

51. The court has considered the application for recusal and the submissions of counsels. The apprehension of bias must be a reasonable one held by reasonable and right-minded persons. The test is, what would an informed person conclude, viewing the matter realistically and practically, and having thought the matter through? Both the person considering the alleged bias and the apprehension of bias must be reasonable in the circumstances of the case.

52. Applying this test, the court is of the view that the apprehension of bias by the 2nd Defendant is not one that would be held by reasonable and right-minded persons in light of the facts of this case set out above. An informed person viewing the matter realistically and practically and having thought the matter through would not conclude that the 2nd Defendant’s apprehension of bias is reasonable.

53. The court declines to allow the application for recusal.

Dated and delivered at Nairobi this 30th day of April 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Amolo for the Plaintiff

Ms. Mpoza for the 1st Defendant

Mr. Kago for the 2nd Defendant/Applicant

Mr. Havi and Mr. Okatch for the Proposed Interested Party

Mr. Wahome holding brief for Mr. Mbutia for the 3rd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the 4th Defendant