



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO. 1314 OF 2016**

**DIAMOND TRUST BANK LIMITED.....PLAINTIFF**

**VERSUS**

**WARDPA HOLDINGS LIMITED.....1<sup>ST</sup> DEFENDANT**

**EDWARD NJUGUNA KANG'ETHE.....2<sup>ND</sup> DEFENDANT**

**GLADYS NJERI KANG'ETHE.....3<sup>RD</sup> DEFENDANT**

**GEORGE JAMES KIRERU KANG'ETHE.....4<sup>TH</sup> DEFENDANT**

**PATRICK KANG'ETHE NJUGUNA.....5<sup>TH</sup> DEFENDANT**

**MARGARET WAMBUI KANG'ETHE.....6<sup>TH</sup> DEFENDANT**

**CHIEF LAND REGISTRAR.....7<sup>TH</sup> DEFENDANT**

**RULING**

What I have before me is an application by the 5<sup>th</sup> Defendant brought by way of Notice of Motion dated 3<sup>rd</sup> March, 2017. In the application, the applicant has sought an order that I recuse myself from handling this matter and transfer it to another judge. The application is brought on the ground that the applicant is apprehensive that if the matter proceeds before me, he will not be accorded a fair trial. The applicant has contended that before my appointment as a judge, I was working in the firm of Anjarwalla and Khanna Advocates in Mombasa which firm used to act for the plaintiff herein. The applicant has contended that my interaction with the plaintiff during my tenure in the firm Anjarwalla and Khanna Advocates has rendered me incapable of dealing with this suit impartially. The applicant has contended that I have been acting in this matter partially in favour of the plaintiff on account of the alleged past relationship with the plaintiff.

The application is opposed by the plaintiff through a replying affidavit sworn by Lwanga Mwangi on 6<sup>th</sup> July, 2017. The Plaintiff has contended that the application has no merit and that the applicant is only a disgruntled litigant who is dissatisfied with some of the decisions that have been made by the court. The application was argued before me on 9<sup>th</sup> October, 2017. I have considered the application together with the affidavit filed in support thereof. I have also considered the plaintiff's affidavit in opposition to the application. Finally, I have considered the submissions of counsel. I am in agreement with the plaintiff that the 5<sup>th</sup> defendant's application has no merit. It is true that I was a partner in the firm of Anjarwalla & Khanna Advocates before I was appointed a judge. It is also true that at one time the firm of Anjarwalla and Khanna Advocates acted for the plaintiff. To the best of my recollection, Anjarwalla & Khanna Advocates acted for the plaintiff several years ago and were not acting for the plaintiff as at the time I left the firm over 5 years ago. Any interaction that I may have had with the plaintiff then cannot in any way affect my judgment in this case.

The law on recusal of a judge is now settled. In the case of Attorney General of the Republic of Kenya vs. Anyang' Nyong'o & Others, East African Court of Justice at Arusha, Application No. 5 of 2006, arising from Reference Number 1 of 2006, the court held among others that:

*“Where a judge is not a party and does not have a relevant interest in the subject matter or outcome of the suit, a judge is only disqualified if there is a likelihood or apprehension of bias arising from such circumstances as the relationship with one party or perceived views on the subject matter in dispute. The disqualification is not presumed like in the case of automatic disqualification. The applicant must establish that bias is not a mere figment of his imagination.”*

In the case of Kaplan & Stratton vs. L. Z Engineering Construction Limited & 2 Others [2000] eKLR, the court stated as follows:

*“Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.”*

The applicant has not demonstrated that I have acted partially in this matter and that I am biased against him. All the orders that I gave in this matter were well considered and the applicant was at liberty to appeal against the same to the Court of Appeal if he was dissatisfied with the same instead of antagonizing the court.

For the foregoing reasons, I find the Notice of Motion application dated 3<sup>rd</sup> March, 2018 without merit. However, due to the applicant's apprehension that my interaction with the plaintiff several years ago may influence, my judgment against him, I will on that basis alone, recuse myself from handling this matter. I therefore make the following orders:

1. I recuse myself from hearing this suit.
2. The matter shall be mentioned before Eboso J. on 31<sup>st</sup> May, 2018 for directions on the pending applications.
3. The costs shall be in the cause.

**Delivered and Dated at Nairobi this 11<sup>th</sup> Day of May 2018**

**S. OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of:**

No appearance for Plaintiff

Ms. Apolot holding brief for Mr. Gikandi for 5<sup>th</sup> Defendant

No appearance for the alleged Contemnor

Catherine Court Assistant