



**Winchester Ventures Kenya Co. Ltd v Pearl of Riverside Garden Limited & 2 others (Environment and Land Appeal E006 of 2023) [2024] KEELC 1611 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1611 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E006 OF 2023  
EK WABWOTO, J  
MARCH 20, 2024**

**BETWEEN**

**WINCHESTER VENTURES KENYA CO. LTD ..... APPLICANT**

**AND**

**PEARL OF RIVERSIDE GARDEN LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**BHAVESH HARILAL GOHL ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY .... 3<sup>RD</sup>  
RESPONDENT**

**RULING**

1. This ruling is made pursuant to an oral application made by the 2<sup>nd</sup> Respondent herein seeking the recusal of this court from hearing this Appeal. Learned Counsel Mr. Muchiri for the 2<sup>nd</sup> Respondent referred to the affidavit dated 17<sup>th</sup> February, 2024 and submitted that this court delivered a judgement in Milimani ECLA No. E071 of 2022 Pearl of Riverside Garden Limited versus Winchester Ventures Co. (K) Ltd and Another where this court dismissed the Appeal with cost. Winchester Ventures Kenya Co. Limited the Applicant herein filed an appeal in Milimani ELCA No. E071 of 2022 upon which an objection was raised and the court instead of striking out the appeal directed the Deputy Registrar to open a new file number ELC EPA No. E006 of 2023 and further directed each party to bear own cost. It was argued that the exercise to grant cost to Winchester Ventures Kenya Limited in the matter that they had won and to decline an award of cost where they had lost showed a lack of consistency.  
  
The 2<sup>nd</sup> Respondent also urged the court to recuse itself from the matter for the reasons that the Judge previously worked at the 3<sup>rd</sup> Respondent -NEMA before joining the bench and was likely to be biased in matters filed against it.
2. The application was opposed by the Appellant. Learned Counsel Mr. Mango argued that the application was based on mere apprehension and that the same did not meet the threshold for recusal.



On issue of costs as previously dealt with, it was argued that the same is always awarded based on the discretion of the court. It was also argued that if the 2<sup>nd</sup> Respondent was aggrieved by any decision made by the court he had a right to appeal and in the instant matter the 2<sup>nd</sup> Respondent had not exercised its right of appeal.

3. The 2<sup>nd</sup> Respondent has sought the recusal of this court from hearing the pending Appeal filed herein. Judicial recusal is the withdrawal of a judicial officer from ongoing proceeding. It cannot be on the basis of a litigant's mere apprehension rather than actual bias.
4. Be it as it may, the application herein is considered moot in view of the fact that this court is on transfer and whichever way the court rules on the application it will not be able to proceed with this Appeal to its logical conclusion.
5. In view of the foregoing this court issues the following orders: -
  - i. This Appeal shall be heard by another court.
  - ii. This matter shall be mentioned before the Presiding Judge, Environment and Planning Division on 15<sup>th</sup> April, 2024 for further directions.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF MARCH, 2024.**

**E.K. WABWOTO**

**JUDGE**

In the presence of:-

Ms. Jeruto h/b for Mr. Otieno for Appellant.

Mr. Muchiri for the 2<sup>nd</sup> Respondent.

N/A for the other parties.

