



**King'uri v Unaitas Sacco Society Limited (Employment and Labour Relations Cause E019 of 2022) [2025] KEELRC 1900 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1900 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
EMPLOYMENT AND LABOUR RELATIONS CAUSE E019 OF 2022**

**DKN MARETE, J**

**JUNE 25, 2025**

**BETWEEN**

**DAVID NDIRANGU KING'URI ..... CLAIMANT**

**AND**

**UNAITAS SACCO SOCIETY LIMITED ..... RESPONDENT**

**RULING**

1. This is an application by the Respondent/Applicant dated 19th December, 2024 seeking inter alia a recusal of this court and a re-allocation of the matter to another court.
2. The Claimant/Respondent opposes the application through a through a Replying Affidavit sworn on 30th January 2025.
3. The dispute arises from an employment claim filed by the Claimant against the Respondent. On 3rd December 2024 during a mention to confirm compliance with pre-trial directed the court directed that the matter proceed by way of written submissions. This was in the presence and involvement of the parties' advocates who were present in court. Later, and in the course of a mention for confirmation of compliance, the Respondent objected, insisting on a viva voce hearing with a view to cross-examining the Claimant. This was opposed by the Claimant/Respondent on grounds that at the time of the original directions of court, all parties were present and there was no objection. The court therefore maintained its directions despite their protest. This prompted the Respondent to file the present application for recusal, alleging bias and partiality.
4. The Respondent's application is grounded on Article 50 of the *Constitution* and the Judicial Service Code of Conduct and argues that the court's insistence on written submissions, despite their request for oral evidence, demonstrates bias. They employ the authority of *Tunoi & Another v Judicial Service Commission & Another* [2016] KECA 530 (KLR) which adopted the test in *Porter v Magill* [2002]



- 1 All ER 465, setting out the test of requirement of a "real possibility" of bias as perceived by a fair-minded observer as a criterion for recusal.
5. The Respondent further sought to buttress a case by relying on authority of *Tatu City Limited & Another v Taijbee Bhalla Advocates LLP* [2022] KEHC 11916 (KLR) where the court emphasized that parties have the right to determine the mode of hearing. They contend that the court's refusal to allow oral evidence coupled with the alleged ambush of a hearing date on 17th December 2024 created a reasonable apprehension of bias.
  6. The Claimant/Respondent opposed the application, arguing that the Respondent failed to meet the legal threshold for recusal. On this he sought to rely on authorities of *Jan Bonde Nielsen v Herman Philipus Steyn & 2 Others* [2014] eKLR and *R v David Makali & Others* (unreported) which provide that recusal requires proof of actual or apparent bias which the Respondent/Applicant had not established.
  7. The Claimant also referenced on *Galaxy Paints Company Limited v Falcon Guards Limited* [1999] eKLR, where the Court of Appeal cautioned against judges recusing themselves on flimsy grounds as this could encourage forum shopping amongst other malevolence by parties to litigation. They dismissed the Respondent's allegations as speculative and an abuse of court process aimed at delaying the trial and eventual justice.
  8. The sole issue for determination is whether the Respondent has demonstrated sufficient grounds for the recusal of this court from these proceedings.
  9. The principles governing recusal are well-settled. In *Attorney General of Kenya v Prof. Anyang Nyong'o & 10 Others* (EACJ Application No. 5 of 2007), the court held that the test is whether a reasonable, fair-minded observer would perceive a real possibility of bias. Similarly, in *Kalpana H. Rawal v Judicial Service Commission & 2 Others* [2016] eKLR, the Supreme Court emphasized that bare allegations of bias are insufficient; the facts must be specifically alleged and proved.
  10. In this case, the Respondent's grievance stems from the court's procedural decision to proceed by written submissions. However, as held in *Mount Wekesa v Mount Kenya University* [2022] KEELRC 777 (KLR), while parties may prefer a particular mode of hearing, the court retains discretion to determine the most efficient and fair approach. The Respondent's dissatisfaction with this discretion does not equate to bias. In any event, the Applicant was involved and present during the determination and issue of the directive to proceed by written submission. This was on 3rd December, 2024 where the Respondent was represented by a Miss Aguti holding brief for Mr. Wasike for the Respondent during the mention of the matter.
  11. The Respondent's allegation of an "ambush" hearing date on 17th December 2024 is also unsubstantiated. The record shows the date was communicated through the court's case tracking system and the Respondent's advocates participated fully in the proceedings. In all, the Respondent has failed to demonstrate any actual or apparent bias warranting recusal.
  12. I am therefore inclined to dismiss the application and award the following reliefs and directions;
    - i. This court's directions on the mode of disposal of the claim made on 3<sup>rd</sup> December, 2024 stand.
    - ii. The Respondent/Applicant is awarded fourteen (14) days to make, file and serve her written submission on the claim.
    - iii. Mention on 15th July, 2025 for confirmation of compliance and directions of this court.
    - iv. The costs of this application shall be borne by the Respondent/Applicant.



**DELIVERED, DATED AND SIGNED THIS 25<sup>TH</sup> DAY OF JUNE 2025.**

**D. K. NJAGI MARETE**

**JUDGE**

Appearances:

Miss Aguti holding brief for Wasike instructed by KWEW Advocates LLP for the Respondent/Applicant.

Miss Kimani instructed by Kiman Kagweima & Company Advocates for the Claimant/Respondent.

