



**Onyango v Governor, County Government of Homa Bay & 2 others; Public Service Commission & 2 others (Interested Parties) (Miscellaneous Application E016 of 2023) [2023] KEELRC 1348 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1348 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
MISCELLANEOUS APPLICATION E016 OF 2023**

**S RADIDO, J**

**MAY 30, 2023**

**BETWEEN**

**DENNIS OCHIENG ONYANGO ..... APPLICANT**

**AND**

**GOVERNOR, COUNTY GOVERNMENT OF HOMA BAY .... 1<sup>ST</sup> RESPONDENT**

**COUNTY PUBLIC SERVICE BOARD, HOMA BAY COUNTY .... 2<sup>ND</sup>  
RESPONDENT**

**COUNTY ASSEMBLY OF HOMA BAY ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**PUBLIC SERVICE COMMISSION ..... INTERESTED PARTY**

**FREDRICK ODHIAMBO OREGO ..... INTERESTED PARTY**

**HON ATTORNEY GENERAL ..... INTERESTED PARTY**

**RULING**

1. Dennis Ochieng Onyango (the applicant) approached the Court under a certificate of urgency on 18 May 2023 seeking several interim injunctive reliefs.
2. Since both Judges at the station were away, the application was placed before the Principal Judge who was on relief duty at the station.
3. The Principal Judge certified the application urgent, and also granted an order of status quo pending inter-partes hearing on 25 May 2023.



4. When the parties appeared before me for the inter-partes hearing, the applicant applied for leave to file a further affidavit to reply to affidavits by the Respondents.
5. The court granted the leave and directed the applicant to file and serve the further affidavit before end of 29 May 2023. The applicant did not file the further affidavit.
6. The court further directed the parties to make oral submissions today, 30 May 2023.
7. When the application was called out today for the oral submissions, the applicant made an oral application, urging the court to recuse itself.
8. The main reason advanced by the applicant for the application was that the court had made an obiter remarks in a judgment delivered in Kisumu Petition No. E034 of 2022, Dennis Ochieng Onyango v Governor, County of Homa Bay & Ors, which in the view of the applicant led to an inference that the court would not have a partial mind in determining the instant application.
9. The respondents and Interested Parties who were present opposed the oral application on the grounds that the applicant had failed to raise the concerns at the first instance when the parties appeared before the court on 25 May 2023, and that no sufficient basis had been laid for the recusal application.
10. In a brief rejoinder, the applicant asserted that he had not processed the significance of the obiter remarks in relation to the instant application when he appeared in court on 25 April 2023.
11. The basic principles guiding recusal are well known.
12. In *R v Sussex Justices ex p McCarthy* (1924) 1 KB 256, it was stated:  
a court or tribunal hearing a case must be impartial and that justice should not only be done, but should manifestly and undoubtedly be seen to be done.
13. Implicit in the principle are the concerns of bias against a party or advocate in the proceedings, and the likelihood of bias in the eyes or mind of the fair-minded man.
14. The recusal of a judge or judicial officer is not a light matter. It should be raised at the earliest opportunity when a party reasonably believes that grounds for recusal exist.
15. The application should also be factually and well grounded.
16. The applicant has had 5 days to consider whether grounds existed to doubt or question the court's impartiality. Regrettably, he has not filed any formal application or any affidavit attesting to the grounds for doubting the court's impartiality.
17. The oral application, the court finds does not meet the threshold for the recusal.
18. However, not to be seen to be standing in the applicant's quest for justice, the court makes the following orders:
  - i. The court recuses itself from further hearing this application.
  - ii. The application be placed before Hon Lady Justice Baari on 19 June 2023 for further directions.
19. Costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 30<sup>TH</sup> DAY OF MAY 2023.**



**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For applicant Dennis Onyango & Associates

For 1<sup>st</sup> – 2<sup>nd</sup> Respondents Otieno, Yogo, Ojuro & Co. Advocates

For 3<sup>rd</sup> Respondent Okongo Wandago & Co. Advocates

For 2<sup>nd</sup> Interested Party Oregu & Odhiambo Advocates

Court Assistant Chrispo Aura

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