



**Universities Academic Staff Union v University of Nairobi; Ouma (Interested Party)  
(Cause E700 of 2023) [2023] KEELRC 2213 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2213 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E700 OF 2023  
JK GAKERI, J  
SEPTEMBER 26, 2023**

**BETWEEN**  
**UNIVERSITIES ACADEMIC STAFF UNION ..... CLAIMANT**  
**AND**  
**UNIVERSITY OF NAIROBI ..... RESPONDENT**  
**AND**  
**BRIAN OUMA ..... INTERESTED PARTY**

**RULING**

1. The instant suit was filed on August 30, 2023 under Certificate of Urgency and directions were given that service be effected and the file placed before the trial court on September 20, 2023.
2. When the matter was placed before me for inter partes hearing on September 20, 2023, I was surprised to learn that the parties are persons I have associated with for a long time and are well known to me.
3. As neither the respondent nor the Interested Party had responded, I directed that they do so within 10 days and the file be placed before the Acting Principal Judge on October 4, 2023 for re-allocation as I informed the counsels present that I would disqualify myself from hearing and determining the suit.
4. As decipherable from the foregoing, the suo motu disqualification or recusal is actuated by the reality that I was a long serving Senior Lecturer at the respondent's Faculty of Law until fairly recently and the position accorded me an opportunity to interact with the respondent's management and colleagues serving the institution.
5. While being a member of staff perse is not a strong ground for disqualification, it is significant to underscore the fact that I was an active member of the Universities Academic Staff Union (UASU), University of Nairobi, Chapter for the entire duration of employment by the Respondent and my views were often sought on various issues affecting the union.



6. Finally, prior to appointment as a judge of the Employment and Labour Relations Court on June 3, 2021, and while serving at the Council of Legal Education, I had interactions with the management of the Respondent severally and many of them are known to me.
7. From the foregoing, it is evident that the likelihood of being seen as biased or partial in my determination, irrespective of the outcome would be difficult to rule out.
8. The instant recusal is intended to obviate such perception by counsels or their clients or both and is necessary to protect the independence of the court.
9. The foregoing is consistent with the overarching principle that just must not only be done but manifestly and undoubtedly be seen to be done as held in *R v Sussex Justices ex parte McCarthy* (1924) 1 KB 256.
10. Similarly, the foregoing in my view meets the threshold of reasonable apprehension of bias.
11. I am further guided by the sentiments of the Court of Appeal in *Kalpana H. Rawal v Judicial Service Commission & 2 others* (2016) eKLR citing the East Africa Court of Justice in *Attorney General of Kenya v Anyang Nyong'o* Appeal No. 5 Ref No. 1 of 2006 as follows;

“We think the objection test of “reasonable apprehension” is good law. The test is stated variously but amounts to this: do the circumstances give rise to a reasonable apprehension in the mind of the reasonable fair minded and informed member of the public and the judge did not (will not) apply his mind impartially needless to say.”
12. This principle was explained by the Supreme Court of Canada in *R v S.C.R.D* (1977) 3 SCR 484 as follows;

“The question is whether the fair minded and informed observer having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”
13. For the foregoing reasons, I am persuaded that right thing to do in the circumstances of this case is to recuse myself from hearing and determining the suit herein.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2023**

**DR. JACOB GAKERI**

**JUDGE**

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.



Dr. Jacob Gakeri

Judge

