



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**PETITION NO 112 OF 2016**

**KENYA COUNCIL OF EMPLOYMENT**

**AND MIGRATION AGENCIES.....1<sup>ST</sup> PETITIONER**

**JANE KERUBO MOGIRE.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**TEACHERS SERVICE COMMISSION.....1<sup>ST</sup> RESPONDENT**

**NANCY NJERI MACHARIA.....2<sup>ND</sup> RESPONDENT**

**PAUL ONGERA ONSONGO.....3<sup>RD</sup> RESPONDENT**

**JANE KERUBO MOGIRE**

**OF MASABO PRIMARY SCHOOL TSC No xxxxxx.....4<sup>TH</sup> RESPONDENT**

**HON ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. I first handled this matter in 2016 and on 21<sup>st</sup> April 2017, I delivered a ruling in an interlocutory application. Thereafter, I left Nairobi Station in January 2018 and the matter was taken over by my successor, **O.N Makau J.**
2. As fate would have it, I came back to Nairobi in September 2021 and took over from **O.N Makau J.** This matter is part of what I took over from my brother Judge.
3. On 30<sup>th</sup> September 2021, the matter came up for mention before me with Mr. Rakoro appearing for the 2<sup>nd</sup> Petitioner and Mr. Mulaku for the 1<sup>st</sup> Respondent. There was no appearance for the 1<sup>st</sup> Petitioner. Counsel appearing on that date sought time to file their submissions on the main Petition. The Court was informed that the 1<sup>st</sup> Petitioner had already filed its submissions.
4. I directed the 1<sup>st</sup> Respondent to file and serve its submissions by close of business on 30<sup>th</sup> September 2021. I also allowed the Petitioners to file supplementary submissions within seven (7) days and set down the matter for further mention on 19<sup>th</sup> October 2021.
5. On 19<sup>th</sup> October 2021, Mr. Evans Akuma, appearing for the 1<sup>st</sup> Petitioner informed the Court that he had filed an application for my recusal. It is that application which is the subject of this ruling.
6. The 1<sup>st</sup> Respondent opposed the application by a Replying Affidavit sworn by Patrick Mulaku, Advocate on 25<sup>th</sup> October 2021.
7. Recusal of a Judge or Judicial Officer ought to be on the basis of some verifiable reason drawn from an objective criterion. Indeed, it is a form of misconduct to walk out of proceedings without such justifiable cause.
8. In its written submissions, the 1<sup>st</sup> Petitioner cited the decision in **Republic v Independent Electoral & Boundaries Commission &**

*another Ex Parte Coalition for Reform and Democracy (CORD) [2017] eKLR* where **Odunga J** held that a party cannot successfully pursue an application for recusal on the basis of what they perceive as the probable outcome of a case.

9. In its application, the 1<sup>st</sup> Petitioner makes a litany of accusations against me ranging from re-opening litigation and sitting on appeal over decisions of my predecessor to outright misconduct on my part. The only thing I will say regarding these accusations, which quite unfortunately have taken the character of a personal attack against me, is that they are untrue, unsupported and unverified. They cannot therefore be the basis for my recusal.

10. However, being a conveyor of justice, I have gone through the record to check whether there may be an objective ground for my recusal beyond the unfounded allegations made by the 1<sup>st</sup> Petitioner.

11. In my ruling delivered on 21<sup>st</sup> April 2017, I stated the following:

***“In my estimation, the 2<sup>nd</sup> Petitioner’s complaint, which in my view was administrative has been addressed. There is therefore no dispute pending before the Court.”***

12. Having found that there was no dispute at the interlocutory stage, the 1<sup>st</sup> Petitioner could well argue that I had determined the main Petition. This, I think, would be a valid ground for me to recuse myself from handling this matter any further.

13. I therefore direct that the file be placed before the Principal Judge of the Court for further directions.

14. The costs of this application will be in the Petition.

15. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 9<sup>TH</sup> DAY OF DECEMBER 2021**

**LINNET NDOLO**

**JUDGE**

**APPEARANCE:**

**MR. EVANS AKUMA FOR THE 1ST PETITIONER**

**MR. MULAKU FOR THE 1ST RESPONDENT**