

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

SUIT NO. 475 OF 2017

HEZRON MWAMBIA KARONG'A.....CLAIMANT

VERSUS

THARAKA NITHI COUNTY GOVERNMENT.....1ST RESPONDENT

THARAKA NITHI COUNTY

PUBLIC SERVICE BOARD.....2ND RESPONDENT

RULING

1. The grouse before me by Senior Counsel Dr. Kamau Kuria is that I refused to give him precedence and hence the Respondent is not confident I will not be biased. He submitted that he had instructions to make an application for the recusal of the court as the refusal to give him precedence as required order LN 147/14 & Rule 19 of the Senior Counsel Conferment and Privileges Amendment Rules 2014 was evidence of bias against Senior Counsel. He stated that he had sat for 2 hours and all the while the court had only handled matters of junior Counsels.

2. Mr. Warutere for the Claimants in the cases 457 of 2017, 475 of 2017, 484 of 2017, 506 of 2017, 337 of 2017, 423 of 2017 and 476 of 2017 submitted that the matters were scheduled to proceed and that the court should give directions to meet the ends of justice. He stated that if the cases do not proceed his clients will suffer prejudice. He posit that there would be a chance for Senior Counsel to ventilate his concerns and raise a formal application which should not result in any adjournment.

3. In his reply Dr. Kuria assured his colleague that he was anxious to resolve the matters and wished to point out there is an application to convict the 122nd Claimant for contempt of court for setting out to try the South through Meru FM. He urged that the court reuses itself and sends the file to the nearest court.

4. The application to reuse is made in light and the fact that I refused for good order and taking charge of the case load today to give Dr. Kamau Kuria SC precedence in having his cases called first. The Advocates (Senior Counsel Conferment and Privileges) (Amendment) Rules 2014 are a set of Rules promulgated by the Law Society of Kenya. These rules prescribe inter alia the manner of dress of Senior Counsel and the right to sit within the bar and at the front bench. The person “upon whom such rank is bestowed shall enjoy the privilege of how his matters mentioned first when appearing in court or in a Tribunal. [Rule 19(a)] emphasis supplied. This does not mean that it is a right to which the Senior Counsel can demand. Courts are independent, the third Arm of Government. Judicial Officers exercise discretion when handling cases and in this case no matter was heard before Senior Counsel save for the mentions that I went through to settle the cause list. There was in my view no time for the Respondents Tharaka Nithi County Government or Tharaka Nithi Public Service Board to give instructions for my refusal. It seems this is an application brought by Dr. Kuria because he feels slighted for not been called upon to deal with his matters first. The court had 57 mentions, submissions, 2 applications and 7 hearings listed. There was no way order would have been maintained had the court begun nit picking files to satisfy the cravings of Dr. Kuria. The cases that are now affected by the Ruling are no closer to resolution as a result of his antics before court today. Instead they have been delayed further to allow for the ventilation of their grouse. A reasonable person perceiving the conduct of the court today would

agree that the threshold in **Shilenje v. Republic** was not met. Not an iota of the grounds for apprehension of bias has been shown. To borrow the words of Mr. Kariuki who is for the *ex-parte* applicant in JR 3 of 2017, Dr. Kuria has misapprehended the privilege to be a right. There is no grounds for invocation of Article 50 of the Constitution as there is no preference given to any party before me. Dr. Kuria has appeared before this court for the last 6 years or so and has never been given precedence. It is amazing that he requires it as of right because he is Senior Counsel. In the final analysis I decline the invitation to reuse myself as there is absolutely no basis for me to do so.

It is so ordered.

Dated and delivered at Nyeri this 25th day of January 2018

Nzioki wa Makau

JUDGE