



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

MISC. APPLICATION NO. 3 OF 2017 (J.R.)

IN THE MATTER OF AN APPLICATION BY KENNETH NTWIGA

KANGA

FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

ORDERS OF CERTIORARI AND MANDAMUS

AND

IN THE MATTER OF SECTION 58(1) (C) AND SECTION

58(5) OF THE COUNTY GOVERNMENTS ACT

AND

IN THE MATTER OF ARTICLE 20, 22(1), 27, 28, 29,

41 AND 47 CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES 2010

AND

IN THE MATTER OF THE LAW REFORM ACT, CAP. 26 LAWS OF KENYA

AND

REPUBLIC.....APPLICANT

VERSUS

THE COUNTY SECRETARY COUNTY

GOVERNMENT OF THARAKA NITHI.....1ST RESPONDENT

COUNTY GOVERNMENT

OF THARAKA NITHI.....2ND RESPONDENT

EX PARTE KENNETH NTWIGA KANGA

RULING

1. The application for recusal was made on file 457 of 2017 and during his submissions Dr. Kuria mentioned this file. He asked for the court to recuse itself for not giving him as Senior Counsel Precedence over the rest of the advocates in court. The arguments advanced are reduced into some degree of consistency in the Cause 457 of 2017 Ruling delivered shortly before this.

2. I will note that Mr. Kariuki in opposing the application for my recusal submitted that a privilege is not a right and that the Court had been fair in taking charge of matters before it and mentioned the causes for purposes of settling the cause list and that no person had been given a hearing before Dr. Kuria. He submitted that no bias has been shown and that in his view the application for recusal should be rejected as it had no basis.

3. Dr. Kuria in his reply stated that the Court can only take charge within the law and not outside it. He said that he was in the Court of Appeal yesterday and was given precedence and that he should have been accorded similar treatment in my court.

4. Whereas there is the role of Senior Counsel and certain privileges ascribed to the members on the role, it is clear that the title of Senior Counsel is not intended to usurp the role of courts in settling lists or disputes of cases. The Judiciary is independent and is not under the direction of any arm of Government and most definitely not from the Law Society of Kenya. In my considered view, the Rules under the Advocates Act do not reduce the power of courts to render justice. There is no litigant before me who is grater than any other. They are all equal in the eyes of the law and I decline the invitation to raise some litigants merely because they retain counsel with the title S.C. I decline to accede to the request to recuse myself as there is no basis whatsoever for such recusal.

It is so ordered.

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

Nzioki wa Makau

JUDGE