



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 665 OF 2014**

**PHILIP THUKU RUKWARO**

**CLAIMANT**

v

**COUNTY GOVERNMENT OF**

**NYANDARUA**

**1<sup>ST</sup> RESPONDENT**

**NYANDARUA COUNTY PUBLIC**

**SERVICE BOARD**

**2<sup>ND</sup> RESPONDENT**

**RULING NO. 2**

1. On 1 April 2016, the Court delivered a ruling rejecting an application by the Claimant seeking an injunctive relief restraining the Respondents from recruiting persons into their Finance and Tourism Departments.
2. In the same ruling, the Court gave directions that the Cause be heard on a priority basis and with the parties' agreement, hearing was scheduled for 19 July 2016.
3. However on 19 July 2016, the Claimant informed the Court that the parties wanted to explore out of court settlement and the Court granted the request with mention set for 27 July 2016 to report back.
4. No agreement was reached and the Claimant sought a hearing date which the Court fixed for 17 October 2016. The Cause unfortunately could not be reached.
5. On 15 March 2017, the Claimant filed a motion seeking
  1. THAT this honourable court recuses and disqualifies itself from further handling this matter.
  2. THAT this honourable court finds it fair and justiable to transfer this cause to another court of competent jurisdiction for hearing and final disposal. 3. THAT costs of this application be provided for.
6. The Respondents filed a replying affidavit on 20 April 2017 opposing the application and arguments were taken on 20 September 2017, when the parties indicated they would rely on the papers filed.
7. The grounds relied on by the Claimant for seeking recusal of this Court are that this Court had pronounced itself in Nakuru Cause No. 669 of 2017, *Mathew Njoroge Ngugi v County Government of*

*Nyandarua & Ar* where similar facts and legal questions arose and therefore there was likelihood of prejudice.

8. In opposing the application, the Respondents asserted that the parties in Nakuru Cause No. 669 of 2014, *Mathew Njoroge Ngugi v County Government of Nyandarua & Ar* were not the same; that no question of conflict of interest on the part of the Court had been raised; that there was no demonstration of breach of Claimant's constitutional rights or likelihood of real danger of bias.

9. The Respondents also suggested that the Claimant was forum shopping in order to get a favourable finding, the cause of action in Nakuru Cause No. 669 of 2014 having been found without merit.

10. The legal principles applicable to recusal of a judicial officer are replete in the law books and the Respondent filed 2 authorities from our jurisdiction.

11. The Court will refer to 2 decisions from comparable jurisdictions.

12. In *Attorney General of Kenya v. Peter Anyang Nyong'o & Others*, East African Court of Justice Application No. 5 of 2007 (Ref. No. 1 of 2006), the Court opined thus

**There are two categories of scenarios. In the first, where it is established that the judge is a party to the cause or has relevant interest in its subject matter and outcome, the judge is automatically disqualified from hearing the cause...**

**In the second category, where the judge is not a party and does not have a relevant interest in the subject matter or outcome of the suit, a judge is only disqualified if there is likelihood or apprehension of bias arising from such circumstances or relationship with one party or preconceived views on the subject matter in dispute. The disqualification is not presumed like in the case of automatic disqualification. The applicant must establish that bias is not a mere figment of his imagination**

13. **On the test for recusal, the House of Lords in *Porter v Magill* (2002) 1 All ER 465** held that –

*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*

14. The Claimant's grouse with the Court in the instant case is that the Court had pronounced itself in an earlier case where the facts and legal issues for determination were similar and that an appeal had been preferred.

15. The question is whether the Claimant has satisfied the legal test.

16. For one, the Claimant has not demonstrated that indeed an appeal was preferred to the Court of Appeal from the judgment in Nakuru Cause No. 669 of 2014.

17. Two, the Claimant has not presented any material upon which an informed and fair minded person would infer real possibility of bias or apprehend bias on the part of this Court merely because of its rendition in the earlier Cause.

18. This Court would have thought that it would be more prudent for one judicial mind to determine cases where the facts and legal issue were similar instead of diffusing them to different judicial officers.

19. In the view of the Court, the application by the Claimant lacks merit and it is dismissed with costs to the Respondents.

**Delivered, dated and signed in Nakuru on this 6<sup>th</sup> day of November 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant            Mr. Musembi instructed by Wambua Musembi & Co. Advocates

For Respondents        Mr. Kanyi instructed by Kanyi Ngure & Co. Advocates

Court Assistants        Nixon/Martin