



**Mutwol v Mutwol & 4 others (Environment & Land Case 37 of 2020)  
[2024] KEELC 14135 (KLR) (11 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 14135 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT & LAND CASE 37 OF 2020  
FO NYAGAKA, J  
DECEMBER 11, 2024**

**BETWEEN**

**PHYLIS JEROTICH MUTWOL ..... PLAINTIFF**

**AND**

**EMMY JEPKEMOI MUTWOL ..... 1<sup>ST</sup> DEFENDANT**

**AGRICULTURAL FINANCE CORPORATION ..... 2<sup>ND</sup> DEFENDANT**

**COUNTY LAND REGISTRAR, TRANS-NZOIA COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**SARAH CHEPTENGENY BUSIENEI ..... 4<sup>TH</sup> DEFENDANT**

**MESHACK KIMUTAI KETER ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

**Introduction**

1. An application for recusal is not an affront to the judge and so this Court takes the instant one as such.
2. The plaintiff in the case alleged that the trial judge had conducted himself as if he was “the alpha and Omega” (sic) in the proceedings and therefore had a premeditated and predetermined outcome in the matter. How can the judge be so foolish? How can I equate himself to the King and the Maker of the universe? How can I, a finite human being, as judge compare myself to whether by vain human imagination or actions with (for anyone who believes in the Holy Bible) my Mighty Lord and Savior in Reve 1:18 and 22:13 that “I am the Alpha and Omega, the First and the Last.” By comparing myself with the Great Judge of the universe as stated in Isaiah 33: 22 and the King of Kings as stated in Revelation 17:14 and 19:16 that “I am the Alpha and Omega” would be putting myself in the very position that Satan himself, who was then Lucifer, did when he said to himself, as stated in Isaiah 14:14, “I will be like the Most High.” How sad a day that would be if that happened! If I did so, I would be



like the unfaithful and wicked servant who the Master put in charge of others and when the Master delayed, he said to himself, “my master is delaying” and he began to beat others (Mathew 24:48-51).

3. I want to state plainly, clearly and succinctly for the whole world to know: “as surely as the Lord Jesus Christ remains to be my Saviour and Lord, I will remain faithful to Him, my Oath of Office and the People of Kenya, and any other that I may be called upon to serve.” If anyone comes for justice in Court I serve, one singular assurance to him or her is that he will get justice in the fullest based on the law, facts and my knowledge of the law both in letter and practice thereof to the best of my ability as given by the Almighty. The reason is simple: the parties herein and even learned counsel need to know that before the Judge herein was appointed to the office he is now holding, one of trust whose principles are articulated under Article 232 and as envisioned in the Holy Bible in Leviticus 19:15 where it is written, “You shall do no injustice in court. You shall not be partial to the poor or defer to the great, but in righteousness shall you judge your neighbor”, he was God fearing and he lived and still lives to ever know that he ought to be faithful first to God and His children and all the laws made/enacted. Therefore, he is alive to the fact that even after he ceases to be a Judge in this world, there is a judgment that is waiting as is given in 1 Corinthians 5: 10 where the Bible says that “For we must all appear before the judgment seat of Christ, so that each of us may receive what is due us for the things done while in the body, whether good or bad.”
4. The fine understanding of the bedrock of the impartiality of the learned judge herein as summarized so far means that all his life as Judge, he has done his best to be faithful to his Master God and to the Oath of Office that he took as he humanly possible can. This is because he swore to do so, and it is the right thing to do. Thus, when a party or anyone accuses him of things he has not done or a mind he does not have, he is greatly disappointed. Nevertheless, or however, he prays for the forgiveness of those who do so because they do not know what they are doing. Thus, he continues to carry out his duties while leaving those people he has prayed for or the false accusers to the Great God who judges both in the open and in secret, and He commands us as follows, “Thou shalt not bear false witness against thy neighbor” (Exodus 20: 15). In any event, what is Kshs. 5, 000, 000/= or even a billion or more compared to eternal life? Of what value is such a sum compared to this life which was bought neither with perishable silver nor gold but the precious blood of Christ (1 Peter 1: 18)? For, “What shall it profit a man (this judge or a judge or judicial officer), if he shall gain the whole world, and lose his own soul?” (Mark 8: 36). That said, let me consider the merits of the instant Application.
5. By a Notice of Motion dated 22<sup>nd</sup> November, 2024 the Plaintiff moved this Court seeking a number of prayers. She brought the application under Articles 48, 50(1) and 159 of *the Constitution* of Kenya, Sections 1A, 1B, 3A, 3B and 63(e) of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya, Orders 42 Rule 6 and 51 Rule 1 of the Civil Procedure Rules 2010 and all enabling provisions of the law. She prayed for the following orders: -
  1. ...spent
  2. ...spent
  3. The honorable Justice Dr. iur Fred Nyagaka does recuse himself from the matter and the matter be placed before the judge for further directions.
  4. The court file be placed before the Judicial Service Commission for investigation into the possible cross misconduct by the Honourable Justice Dr. iur Fred Nyagaka and appropriate action.
  5. Cost of the application is awarded to the Plaintiff/Applicant.



6. The application was based on numerous grounds, twenty-two (22) in number. The grounds were that the matter progressed very well before the previous judge, Hon. Justice Mwangi Njoroge. The Applicant started feeling discrimination and mistreatment when the matter was taken over by the Honourable Justice Dr. iur Fred Nyagaka albeit subtly at the initial stages. The discrimination and unfair treatment became explicit when the judge suo moto proceeded to discharge orders issued by Hon. Justice Mwangi, without regard to concurrence of jurisdiction exercised by the two judicial officers. The discharge of the orders was a veiled message to the applicant that a new sheriff had taken over now and he was the alpha and omega in the suit, and everything done by the previous judge was nonsensical and nonbinding.
7. Subsequently, the learned judge adopted a contemptuous and deprecating attitude towards the applicant and her counsel, pointing to his partiality contrary to the well-set Bangalore Principles of Judicial Conduct.
8. Further, that the judge failed to protect the plaintiff and the counsel from harassment during the proceedings despite the same being brought to his attention numerous times. The judge levied punitive costs on the Plaintiff on 8<sup>th</sup> November 2024 despite the adjournment having been sought on the grounds of indisposition of counsel and the same having been communicated prior to the date of hearing. The judge has been more than willing to grant adjournments at the instance of some of the defendants without similar punitive conditions. The judge has continuously consulted (sic) the proceedings in a manner demonstrative of a judicial officer hell-bent to skew the court proceedings in favour of certain parties. He fixed the matter for hearing without going through the motions of a Pre-trial Conference thereby denying the parties an opportunity to raise any objections to production of contentious documents. The decision not to conduct effective Pre-trial Conference has turned out to have been premeditated and predetermined to facilitate admissibility of some fraudulently acquired evidence as gleaned from the proceedings of 30<sup>th</sup> October 2024 and the ruling delivered on 6<sup>th</sup> November 2024.
9. Again, that the judge initially directed one of the witnesses, Honorable Justice Charles Yano to be summoned to court as the last witness in view of the conflicting agreements allegedly prepared by him. Interestingly and in a strange twist of events the judge does not want the maker of the contentious agreements to attend court presumably due to the potential impact of his evidence on some of the defendants' cases. The judge is determined to frustrate the Plaintiff's case as can be gleaned from the deliberate decision to manipulate the court proceedings and backdate the ruling delivered on 6<sup>th</sup> November 2024 and backdating it with the sole aim of frustrating the plaintiff's ability to launch an appeal against the glaringly unfair and unjust decision.
10. Additionally, that the judge had already conceptualized and fashioned a predetermined and premeditated decision over the matter and the proceedings are merely choreographed to suit the decision of the judge. The plaintiff does not trust that justice will be done in the instant case, noting the desire by the judge to frustrate the prosecution of her case to suit some ulterior motives. It was evident that there was a pact between the judge and some of the defendants to skew the proceedings towards grabbing of the suit land which would occasion irreparable harm. In a blatant disregard of the plaintiff's right enshrined under Article 50 of *the Constitution*, the Judge ignored the applicant's application dated 19<sup>th</sup> November 2024 despite persistent pleas by the plaintiff's counsel for consideration of the implications of the proceedings taken on 20<sup>th</sup> November and 21<sup>st</sup> November, 2024.
11. Moreover, that any further proceedings presided over by the Judge would deprive the applicant of her fundamental right to a fair hearing which cannot be adequately compensated. Thus, there is a need for urgent intervention. The integrity and dignity of the judiciary and the entire judicial system will



be impeached if the honourable judge is allowed to proceed with the matter after such a defilement of the seat of justice. It is trite that justice should not only be done but it must be seen to be done hence the need to redeem the proceedings in the instant matter from the current mistrial and place them on a tangent of justice.

12. The application was supported by the Affidavit of the plaintiff which she swore on 22<sup>nd</sup> November 2024. She repeated the contents of the grounds in support of the application, but in deposition form. In support of her deposition, she stated the record bore the trace of discrimination by the act of the learned Judge discharging suo motto the orders of his predecessor Judge. She referred to the Court Proceedings (although she did not specify the date). Additionally, regarding averment about the Judge levying punitive costs on 8<sup>th</sup> November 2024, she added that the learned Judge was willing to adjourn the matter at the instance of some of the defendants (although she did not name who), without punitive costs being ordered. She referred the Court to the record (unspecified as stated above). Lastly, regarding the Ruling Delivered on 6<sup>th</sup> November 2024, alleged to be backdated, she also referred to the court record.
13. The defendants opposed the application. The 1<sup>st</sup> and 5<sup>th</sup> Defendants swore an Affidavits in response on 28<sup>th</sup> November 2024. They filed them on 29<sup>th</sup> November 2024. The 1<sup>st</sup> Defendant deposed that the Court had not in any way mistreated or discriminated against the plaintiff. There was no progress made in the hearing of the matter between 2020 when it was filed until this year, when the hearing commenced. That was long after the Honorable Justice Mwangi had been transferred from Kitale station. Then the learned Judge against whom the orders are sought discharged the Orders of injunction pursuant to Order 42 Rule 6 of the Civil Procedure Rules (sic) which stipulates the lifespan of an interim injunction and the same was not done suo motto as the Court was moved to discharge them. The discharge was done in compliance with the law and had nothing to do with whether or not the jurisdiction of the court was the same as that of the predecessor. She added that an interim injunction was only valid for a year unless extended on valid grounds.
14. Further, the judge had never behaved in a manner suggestive that he was the alpha and omega, nor was the discharge of the orders issued previously meant to convey a message that the acts of the previous Judge were nonsensical or nonbinding. Even then the decision of a judge with concurrent jurisdiction was not binding on another. The judge had neither adopted a contemptuous nor deprecating attitude towards the Plaintiff or her counsel. Rather, the judge had acted impartially and fairly towards the parties, despite the Plaintiff's counsel's conduct which was wanting and unacceptable, as demonstrated through two instances. The first one was when learned counsel decided to give priority to matters in a subordinate court to those of the instant one. Second, when learned counsel decided to log out of the court while the case was going on.
15. The 1<sup>st</sup> Defendant added that nobody had harassed the Plaintiff or her counsel in the course of the proceedings. The judge had not demonstrated favouritism to any of the parties. The plaintiff was allowed to raise objections to the production of documents by the 1<sup>st</sup> Defendants at the hearing. The Defendants were also allowed to respond to the production of a photocopy of a document. The honorable court rendered its decision on it. There was no evidence tendered in court to the effect that any document produced by the first defendant was fraudulently acquired. The court had never directed that the honourable Justice Charles Yano must testify. The judge had not expressed any desire to have any witness testify in the matter as the same was squarely an issue left to the parties to decide on. The parties exercised that opportunity. Nobody stopped the Plaintiff from calling the honorable Justice Yano as her witness, but she chose not to do it. She could not shift blame to the judge. In any event, the said Justice Yano had never recorded a statement as a witness for the plaintiff.



16. Further, contrary to the applicant's allegations as to which the ruling was delivered, it was clearly captured in all the pages of the Ruling and the date appearing at the end page was a typographical error which had since been rectified in the presence of the Defendants and in absence of the Plaintiff who despite being notified to log in to the Court session for the same did not, for reasons well known to learned counsel. The plaintiff's counsel had a condescending attitude towards the court and other parties in the suit.
17. The learned Judge had not in any way manipulated the proceedings herein. He had done nothing to warrant the accusations leveled against him. The parameters to be met for recusal to succeed did not obtain. Further, there was no pact between the deponent and the court to skew the proceedings in favour of the deponent. The land in question rightfully belonged to the 5<sup>th</sup> Defendant and if there was any grabbing of the same, it would not be by anybody but the plaintiff. The plaintiff stood to suffer no harm if the matter was handled to its logical conclusion.
18. Further, the judge had not in any way frustrated the prosecution of the case, contrary to the allegations by the plaintiff who was bent on doing so. The plaintiff was accorded a hearing as per Article 50 of *the Constitution*. When she was satisfied that she had tendered the evidence necessary for her case she voluntarily closed it without any prompting. No fundamental rights and freedoms of the plaintiff had been violated or risked violation. The seat of justice had not been defiled. The costs awarded to the deponent and her co-defendants were justified and reasonable. Mere apprehensions and general accusations could not be a basis for seeking the recusal of a judge.
19. The 5<sup>th</sup> defendant swore an Affidavit which was basically a repetition of the deposition of the 1<sup>st</sup> Defendant. Therefore, in the interest of saving judicial time, this Court will not repeat them. It will only add to the content of the depositions not included from the 1<sup>st</sup> Defendant's.
20. At paragraph 20 of the Replying Affidavit the 5<sup>th</sup> Defendants referred to proceedings before the Honourable Dennis Mikoyani, Chief Magistrate, on 20<sup>th</sup> November 2024. He attached screenshots which showed the Plaintiff's Advocate proceeding with a hearing before the said honorable Chief Magistrate when he had logged out from this honorable court session while this case was going on. He marked the screenshot as MKK 1.
21. Also, at paragraph 21, he attached a screenshot of messages sent to the plaintiff's counsel by Mr. Momanyi, his learned counsel, requesting the Plaintiff's counsel to log into the court session on 11<sup>th</sup> November, 2021 and 20<sup>th</sup> November, 2021 and his reply thereto. He marked them as MKK 2, 3 and 4.
22. At paragraph 22 he referred to messages exchanged between the Plaintiff's counsel and Mr. Momanyi, counsel for the 5<sup>th</sup> Defendant (deponent), on 7<sup>th</sup> November, 2024. He marked them as MKK 5.
23. Thereafter, the 5<sup>th</sup> Defendant deposed further that it was clear that the Plaintiff had been, by all means, trying to frustrate the hearing and expeditious conclusion of this matter to the detriment of justice. Further, he had never met the honorable judge, nor had he ever entertained the thought of approaching the judge with a view to having him compromised. He repeated that he was the sole owner of the suit parcel of land, having acquired it procedurally and regularly through a purchase from the first defendant who was the sole owner. The land had never belonged to the plaintiff in any way and the Plaintiff was intent on forum shopping after the hearing had been concluded and the matter ought to await judgment.
24. The 3<sup>rd</sup> Defendant opposed the application by way of grounds of opposition dated 6<sup>th</sup> December, 2024. They were that the application was frivolous, mischievous and an abuse of the process of the court, devoid of any merits and ought to be struck out in limine. The application was outrightly



contemptuous and an eyesore, instituted in bad faith and a veiled attack on the independence and integrity of the court. The Applicant sought to pass her failures in managing the pretrial and trial processes, including the summons of witnesses to the court. The Application was orchestrated to tarnish the reputation of court and or coerce the Court to acceding to the applicant's intention to unreasonably protract their suit. The application was without merit as there was no evidence of conflict of interest, bias or lack of impartiality demonstrated by the applicant or at all. The Applicant's lack of diligence in managing and prosecuting her case and her overall displeasure, whim or unfounded apprehensions did not suffice the recusal of the court.

25. The application was disposed of written submissions. The Applicant filed hers dated 10<sup>th</sup> November, 2024 in which she first summarized the basis of the Application by giving an introduction thereto and a summary of the facts as she gave them in the body. She basically reiterated the contents of the application save that she added, at paragraph six of the submissions that she had from reliable sources information that the judge had received a sum of Kenya Shillings 5, 000, 0000/= from the Defendants to compromise him into delivering a judgment in her favor. She summed up that point by arguing that that together with the braggadocio by the 1<sup>st</sup> and 5<sup>th</sup> defendants that they had a judge in their pocket and had won the case before conclusion of the hearing pointed to a possible breach of integrity by the judge that divested him of the necessary trust to fairly adjudicate the matter. She argued that the 1<sup>st</sup> and 5<sup>th</sup> defendants had not denied the allegation of payment of a bribe.
26. She then set forth the issue for determination, being, whether the application satisfied the threshold for recusal of a judge. She argued that the Application met it. She relied on a number of cases whose relevant parts she cited. These were Phillip K. Tonui v The Judicial Service Commission and Another [2016] eKLR; Republic v Export Processing Zones Authority & 2 Others; London Distillers (K) Ltd & 3 Others (Interested Parties) Ex Parte Erdermann Property Limited [2020] eKLR; Republic v. Speaker of the Senate & Another Es Parte Afrison Export Import & Another [2018] eKLR.
27. The 1<sup>st</sup> and 5<sup>th</sup> defendants argued, in their submissions, that the Court ought to consider whether the application should succeed if it satisfied the parameters set out in the case of Nairobi Water Conservation and Pipeline Corporation v Runji & Partners Consulting Engineers and Planners Limited [2021] eKLR; and also the case of G. Waithana and Company Advocates v. Peter Mwangi Kariuki [2020] eKLR; Metropolitan (Fgc) Ltd v Lannon & Others [1969] 1 QB 577; and lastly, Galaxy Paints Co. Ltd v Falcon Guards Ltd [1999] eKLR.
28. The 3<sup>rd</sup> Defendant started its submissions by relying on the case of Porter versus Magill [2002] AER 465 where the Court 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.
29. It then submitted that Rule 5 of the Judicial Code of Conduct sets out the grounds upon which a person may request a judge or judicial officer to recuse himself. The person must demonstrate the judge's personal bias concerning the applicant or his advocate and, personal bias could be demonstrated when a judge comments on a matter before it is heard as was stated in the case of Kenya Hotel Proprietary Limited Versus The AG and OthERS (sic). He went on to submit that the applicant did not demonstrate bias or that the judge made any comments that could be construed as biased against the Plaintiff or her advocate.
30. Further, the complaint in grounds in support of the application and the affidavit did not show any bias by the trial judge. About the step by the judge to discharge orders suo moto, he submitted that the Court merely exercised its judicial function and if the applicant had felt aggrieved by the directions, she should have filed an application to set aside the order or appeal against it. To him that did not constitute bias.



31. Regarding the second complaint that the judge adopted a contemptuous and deprecating attitude to the applicant and her counsel, he submitted that no evidence had ever been filed or demonstrated that that took place. Therefore, the Plaintiff's arguments fell short of being sound and contingent. The allegations were not capable of being substantiated. About the complaint that the judge failed to protect her and learning to counsel from consistent and persistent harassment he submitted that the contention was salacious and not capable of being substantiated as no particulars of harassment had been given regarding who did what, when, how and where.
32. About the fourth complaint that the court had granted punitive orders on 8<sup>th</sup> November, 2024 it contended that the plaintiff did not appear on the material date or even send a representative to hold his brief. The court was left with no option but to grant the request by the defendants for costs. In any event, if the Plaintiff was dissatisfied with the directions, she should have applied for review or appealed against it. Regarding the 5<sup>th</sup> complaint, the judge was willing to grant management and the instance of the defendant but not the plaintiff argued that there was no evidence to that effect. In any event the grant of adjournments was a matter of exercise of judicial discretion based on the circumstances presented by the parties to the court. That did not demonstrate any bias.
33. Regarding the matter being fixed by the judge before pre-trial conference being conducted, the third defendant submitted that the court could not descend into the arena of deciding how the plaintiff should proceed with her case. Otherwise, the judge would be partial. Regarding the attendance of Justice Charles Yano as a witness, it argued that it was not the duty of the court to summon witnesses unless moved by a party. The Plaintiff did not do so hence such a failure by the Plaintiff was actually an indication of lack of diligence on her part.
34. Turning to the Ruling complained about, the 3<sup>rd</sup> Defendant submitted that the court had admitted the inadvertent error, but the date of delivery was indicated on each page thereof. Upon discovery of the error, it was corrected under Section 100 of the Civil Procedure in the presence of the parties and the corrected version of the sent to all parties. Lastly, it contended that no one ever raised any objection to the Plaintiff's right to appeal against the ruling. Thus, the application was outrightly contemptuous and a veiled attack against the independence and integrity of the Court. He urged that the Court should adopt the doctrine of the duty to sit since there were no compelling reasons for it not to do so. Further, the 3<sup>rd</sup> Defendant had a right to be heard and the matter to proceed by being given a date for the filing of submissions.

### **Issue, Analysis and Determination**

35. The court has considered the application, the law and the submissions by the rival parties. The court considers the following issues for determination:
  1. Whether the prayer for placement of the file before the Judicial Service Commission is merited,
  2. What is recusal?
  3. What is the history of recusal?
  4. Whether the Application is merited,
  5. Who to bear the costs of the Application.
36. This Court now determines the issues in the sequence they appear.



## 1. Whether the prayer for placement of the file before the Judicial Service Commission is merited

37. While the learned Judge herein does not have any reason to fear an investigation over the wild and ridiculous allegation of possible gross conduct being carried out regarding his service and actions in this matter because he has not done anything to warrant it, it is worth noting that this subtle claim was raised by the Plaintiff in submissions. The Plaintiff purported to raise a claim through submissions at paragraph ix on page 5 that she had information that the learned Judge had received from the Defendants (sic) (not specified) a sum (specified) to compromise him to deliver a judgment in her favour. Further, the 1<sup>st</sup> and 5<sup>th</sup> Defendants had braggadocio that they had the judge in their pocket and won the case before conclusion hence there was possible breach of integrity by the Judge. A further interesting submission by her was that the 1<sup>st</sup> and 5<sup>th</sup> Defendants had not denied the allegation of payment of a bribe.
38. First, it is trite law that submissions do not constitute any party's pleadings or evidence. This was emphasized in DANIEL TOROITICH ARAP MOI V MWANGI STEPHEN MURIITHI & ANOTHER [2014] EKLK, where their Lordships of the Court of Appeal had this to say:
- “Submissions cannot take the place of evidence. The 1st respondent had failed to prove his claim by evidence. What appeared in submissions could not come to his aid. Such a course only militates against the law, and we are unable to countenance it. Submissions are generally parties’ “marketing language,” each side endeavoring to convince the court that its case is the better one. Submissions, we reiterate, do not constitute evidence at all. Indeed, there are many cases decided without hearing submissions but based only on evidence presented.”
39. Turning to the submissions by learned counsel for the Plaintiff, I have carefully analyzed the Application. There is nowhere in the grounds in support of the Application or in the deposition by way of the Supporting Affidavit sworn on 22<sup>nd</sup> November, 2024 the Applicant raised the issue submitted on about a bribe as to give the parties an opportunity to answer the false and malicious claim. It is therefore clear, based on the wisdom of the Court of Appeal in the above-cited decision, that the Applicant cannot trudge outside of the depositions and grounds by way of submissions. If the Applicant wished the Respondents to answer to the wild claim that she made she ought to have raised through a disposition or a ground in support of the application. The Plaintiff has subtly and stealthily sneaked the false claim into the submissions as make anyone and everyone who may read the summary of her submissions to believe that indeed the unfounded allegations were not responded to. She could not raise it by way of submissions and expect the parties to respond to it through submissions which are not a pleading or evidence. Thus, her submission that the issue had not been responded to is farfetched and misplaced.
40. This now turns me to the prayer that the file be placed before the Judicial Service Commission (JSC) for investigation misconduct. It is worth noting that the procedure for investigation and disciplinary action by the JSC against a judge is well laid down in *the Constitution*, specifically Article 168(2). It stipulates that such a process may be initiated only by the JSC on its own motion or on a petition of any person to the Commission (emphasis mine, by way of underline).
41. The Applicant who claims that *the Constitution* has been violated cannot lead the learned judge to violate the same by misleading him to make such an order. She herself seems to be the one, either by design or misapprehension of the law, bent on violating *the Constitution* through moving the Court for such an order. She is represented by an able learned counsel and a leader of many a counsel currently. When the Plaintiff and counsel make such a move and pray that the Court issues such an order, one is left to wonder whether it was not aimed at intimidation and blackmailing the Judge. Therefore, the



prayer about placement of the file before the Judicial Service Commission is not merited. It is frivolous. It is dismissed.

### 1. What is recusal?

42. The definite starting point is that a judge should not recuse himself or herself simply because a litigant has wished him/her to do so. The reason for recusal must be objective and based on the real apprehension and evidence that there is a likelihood of the administration of justice being hampered. In *Dobbs v Tridios Bank NV* [2005] EWCA 468, it was held:

“... But it is important for a judge to resist the temptation to recuse himself simply because it would be more comfortable to do so. The reason is this. If judges were to recuse themselves whenever a litigant- whether it be a represented litigant or a litigant in person- criticized them (which sometimes happens not infrequently) we would soon reach the position in which litigants were able to select judges to hear their cases simply by criticizing all the judges that they did not want to hear their cases. It would be easy for a litigant to produce a situation in which a judge felt obliged to recuse himself simply because he had been criticized-- whether that criticism was justified or not. That would apply, not only to the individual judge, but to all judges in this court; if the criticism is indeed that there is no judge of this court who can give Mr. Dobbs a fair hearing because he is criticizing the system generally. Mr. Dobbs' appeal could never be heard.”

### 3. What is the history of recusal?

43. I now turn to the third issue which is the definition and history of recusal. Recusal of a judge is not new in legal practice. It has been in existence since courts were established. It can be traced indirectly to the times of the Common Law and its contention for space with the Court of Chancery. Litigants at that time often complained and accused judges of the Common Law as having been rigid and therefore not flexing decisions in their favour and therefore complained to the King for him to look at the conduct of judges and perhaps give another person to relook at the decisions of the judges. Then were born the Principles of Equity.
44. Thus, among the first cases that dealt with recusal in the history of litigation was the locus classicus of *R v Sussex Justices, Ex Parte McCarthy* ([1924] 1 KB 256, [1923] All ER Rep 233). It addressed the impartiality and recusal of judges and established the famous legal principle that the mere appearance of bias is sufficient to overturn a judicial decision. It thus, established the all-time enduring principle that "Not only must Justice be done; it must also be seen to be done."
45. Definitions abound. In Kenya, in *Jasbir Singh Rai & 3 Others Vs. Tarlochan Singh Rai & 4 Others* Petition No. 4 of 2012 [2013] EKLK as follows:

“The term is thus defined in *Black's Law Dictionary*, 8th ed. (2004) [p.1303] as: “Removal of oneself as judge or policy maker in a particular matter, [especially] because of a conflict of interest.” From this definition, it is evident that the circumstances calling for recusal, for a Judge, are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised.”



#### 4. Whether the Application is merited

46. As stated above I have considered the submissions of the parties and the law. In this Country where forum shopping is not uncommon in courts and where it has now become commonplace for judges and judicial officers to be ‘crucified’ in the alter of the public day-in-day-out through unsubstantiated claims bias or corruption or partiality court must be very careful and guard against shallow unsupported allegations. For instance, allegations of corruption are such a serious indictment on one’s character and moral probity that they must not only be proven but it be done to the required standard because it is an allegation of criminal conduct. These claims, including any that are for recusal of a judge or judicial officer should be established beyond peradventure in order for them to hold sway. The rebuttable presumption is that the Judge or Judicial officer is fair and impartial in all circumstances. This view is supported by the South African decision in *President of the Republic of South Africa vs. The South African Rugby Football Union* [supra] where the Court held as follow:

“In applying the test for recusal, courts have recognized a presumption that judicial officers are impartial in adjudicating disputes. This is based on the recognition that legal training and experience prepare judges for the often-difficult task of fairly determining where the truth may lie in a welter of contradictory evidence...”

47. Additionally, Cory J in *R. vs. S. (R.D.)* [1977] 3 SCR 484 stated:

“Courts have rightly recognized that there is a presumption that judges will carry out their oath of office.....This is one of the reasons why the threshold for a successful allegation of perceived judicial bias is high. However, despite this high threshold, the presumption can be displaced with cogent evidence’ that demonstrates that something the judge has done gives rise to a reasonable apprehension of bias.”

48. Therefore, in *Nathan Obwana v. Robert Bisakaya Wanyera & 2 others* [2013] eKLR, the learned judge held:

“When the courts are faced with such proceedings for the disqualification of a judge, it is necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the public at large a reasonable doubt about the fairness of the administration of justice. The test is objective and the facts constituting bias must be specifically alleged and established.”

49. Also, in the case of *Republic Vs. David Makali & 3 Others*, Criminal Application Nos. Nai 4 & 5 of 1994 (unreported) Per TUNOI JA summarized the legal position on recusal in Kenya as follows:

“That being the position as I see it when the courts, in this country are faced with such proceedings as these, [i.e. proceedings for the disqualification of a judge] it is necessary to consider whether there is a reasonable ground for assuming the possibility of a bias and whether it is likely to produce in the minds of the public at large a reasonable doubt about the fairness of the administration of justice. The test is objective and the facts constituting bias must be specifically alleged and established. It is my view that where any such allegation is made, the court must carefully scrutinize the affidavits on either side, remembering that when some litigants lose their cases before a court or quasi-judicial tribunal, they are unable or unwilling to see the correctness of the verdict and are apt to attribute that verdict to a bias in the mind of the Judge, Magistrate or Tribunal.”



50. Additionally, in *Porter v. Magill* [2002] 1 All ER 465 when the House of Lords in opined that the words “a real danger” in the test served no useful purpose and accordingly held that:
- “[T]he 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.”
51. Also, in *Philip K. Tunoi & Another v Judicial Service Commission & Another* [2016] eKLR,
- “In determining the existence or otherwise of bias, the test to be applied is that of a fair-minded and informed observer who will adopt a balanced approach and will neither be complacent nor be unduly sensitive or suspicious in determining whether or not there is a real possibility of bias.”
52. The New Zealand Supreme Court held, in *Saxmere Company Ltd-vs- Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35, thus;
- “The standard for recusal [on grounds of bias] is one of “real and not remote possibility”, rather than probability. The test is a two-stage one. The judge must consider:
- i. First, what it is that might possibly lead to a reasonable apprehension by a fully informed observer that the judge might decide the case other than on its merits; and
  - ii. Second, whether there is a “logical and sufficient connection” between those circumstances and that apprehension.”
53. Thus, recusal of judges or judicial officers is not a matter to be handled carelessly and at the whims of an applicant since it goes against the very core of the duty to sit. The allegations aimed at dislodging the judge from sitting also against the oath of office of the judge or judicial officer to act impartially and without bias or ill-will. Thus, the onus is on the party alleging bias, partiality, misconduct or other ground for recusal to go beyond mere imaginations, feelings, perceptions and the like and avail cogent evidence warranting recusal. In as much as judges and judicial officers must remain steadfast and singular to the course of justice, for we all must at one time appear before the righteous judge of the universe for our judgment, in the same manner as all parties who appear before them need fairness in the way their matters are, judges and judicial officers too expect that to be to them: they are human.
54. Thus, in *Gladys Boss Shollei v Judicial Service Commission & Another*, Petition No. 34 of 2014; [2018] eKLR (Justice Ibrahim, SCJ) made this point in his concurring opinion at paragraph 25:
- “Tied to the constitutional argument above, is the doctrine of the duty of a judge to sit. Though not profound in our jurisdiction, every judge has a duty to sit, in a matter which he duly should sit. So that recusal should not be used to cripple a judge from sitting to hear a matter. This duty to sit is buttressed by the fact that every judge takes an oath of office: “to serve impartially; and to protect, administer and defend *the Constitution*.” It is a doctrine that recognizes that having taken the oath of office, a judge is capable of rising above any prejudices, save for those rare cases when he has to recuse himself. The doctrine also safeguards the parties' right to have their cases heard and determined before a court of law.”



55. Thus, the duty to sit may be impugned in many instances. But it must be objective and cogent. In *Jasbir Singh Rai v. Talochan Singh Rai*:

“From this definition, it is evident that the circumstances calling for recusal, for a Judge, are by no means cast in stone. Perception of fairness, of conviction, of moral authority to hear the matter, is the proper test of whether or not the non-participation of the judicial officer is called for. The object in view, in the recusal of a judicial officer, is that justice as between the parties be uncompromised; that the due process of law be realized, and be seen to have had its role; that the profile of the rule of law in the matter in question, be seen to have remained uncompromised.”

56. Further, Justice Ibrahim JSC stated in the matter (*Jasbir Rai (supra)*) as follows:

“The Test Lord Justice Edmund Davis in *Metropolitan Properties Co. (FGC) Ltd. Vs Lannon* [1969] 1 QB 577 stated that disqualification was imperative even in the absence of a real likelihood of bias if a reasonable man would reasonably suspect bias. Acker LJ in *R vs Liverpool City Justices, ex parte Topping* [1983] 1 WLR 119 elaborated on the test applicable. The Court has to address its mind to the question as to whether a reasonable and fair-minded man sitting in Court and knowing all the relevant facts would have a reasonable suspicion that a fair trial for the applicant was not possible. If the answer is in the affirmative, disqualification will be inevitable”.

57. Indeed, the circumstances are wide and various. Each case must be looked at against on its facts. Thus, in the *President of the Republic of South Africa vs. The South African Rugby Football Union & Others* Case CCT 16/98, the Court had this to say:

“At the very outset we wish to acknowledge that a litigant and her or his counsel who find it necessary to apply for the recusal of a judicial officer has an unenviable task and the propriety of their motives should not lightly be questioned. Where the grounds are reasonable it is counsel's duty to advance the grounds without fear. On the part of the judge whose recusal is sought there should be a full appreciation of the admonition that she or he should not be unduly sensitive and ought not to regard an application for his [or her] recusal as a personal affront...A cornerstone of any fair and just legal system is the impartial adjudication of disputes which come before the courts and other tribunals”

58. Also, in *Republic v Speaker of the Senate & another Ex parte Afrison Export Import Limited & another* [2018] eKLR:

“The principle upon which the bias rule has been founded in modern times can be traced to Lord Hewart's famous statement that “justice should not only be done, but be seen to be done.”[44] On this view, appearances are important. Justice should not only be fair, it should appear to be fair. Lord Hewart's statement signaled the rise of the modern concern with the possible apprehension that courts or quasi-judicial bodies might not appear to be entirely impartial, rather than the narrower problem that they might in fact not be impartial. The importance of the appearance of impartiality has become increasingly linked to public confidence in the courts and the other forms of decision-making to which the bias rule applies.[45] This rationale of the bias rule also aligns with the objective test by which it is now governed because the mythical fair minded and informed observer, whose opinion governs the bias rule, is clearly a member of the general public.”



59. Bias is defined in the Black's Law Dictionary as an inclination; prejudice or predilection. It may manifest in two forms; actual or perceived. Actual bias is defined as genuine prejudice that a judge, juror, witness, or other person has against some person or relevant subject. Perceived (or implied) bias is defined as prejudice that is inferred from the experiences or relationships of a judge, juror, witness, or other person.
60. In Kenya, Regulation 21 of the Judicial Service (Code of Conduct and Ethics) Regulations 2020 largely replicates from the Bangalore Principles. It provides as follows:
- “ 21. A judge may recuse himself or herself in any proceedings in which his or her
- (1) impartiality might reasonably be questioned where the judge
- (a) is a party to the proceedings;
- (b) was, or is a material witness in the matter in controversy;
- (c) has personal knowledge of disputed evidentiary facts concerning the proceedings;
- (d) has actual bias or prejudice concerning a party;
- (e) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;
- (f) had previously acted as a counsel for a party in the same matter;
- (g) is precluded from hearing the matter on account of any other sufficient reason;
- (h) or a member of the judge's family has economic or other interest in the outcome of the matter in question.”
61. As a parting shot, on the grounds listed in the above provisions, the Court notes that the Judge is versed in Bangalore Principles of Judicial Conduct (2002) ([https://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf) which espouse six (6) values, and he has adhered to them always. The Plaintiff in this matter has the onus of proving one or two or all of the grounds listed above. What it means is that whichever allegation she has against the Judge ought to fall under one or the heads above and be proven to be indeed so.
62. When the above provisions and principles in the decisions cited are compared with the facts of the instant application a clear pattern of divergence emerges. The plaintiff accused the judge of being discriminative and biased. She supports her allegation with the contention that when the Judge took over the matter, he saw himself as the alpha and omega. This Court has stated that he cannot compare himself with Lord Jesus Christ, the Lord and Judge of the universe. But in the context the Plaintiff used the phrase she implied that when the judge took over the matter he basically acted as though he was the only one who had a say in everything in this matter. She gave the example of the judge discharging the orders issued by Hon. Justice Mwangi. However, when the matter came before me and the orders were discharged, the position is that the matter came before me it was basically over two years since



the orders were made. The orders were given on 26/01/2021. They were indicated as discharged on 07/07/2023, two and half years after the issuance of the orders.

63. Order 40 Rule 6 of the Civil Procedure Rules provides that an injunction once issued, it lasts for only twelve months, unless the orders are extended by the court and reasons thereof indicated. It provides:

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.”

64. If the learned Judge under reference in the instant application had discharged the orders before the lapse of the twelve months, he could have been on the wrong. But the facts borne by the record show that by the time the Judge exercised discretion to indicate that the injunction had lapsed, it indeed had lapsed long before because after 12 months from the 26<sup>th</sup> January, 2021 they ceased to exist. The court record does not bear any information that the orders were extended by the court or an extension sought by anyone. As a fact, the learned judge only reminded the parties of the obvious position of the record as provided by law. Even if the position would have been different, the Judge considered the matter before him and the facts of the circumstances that there was delay, in fact deliberate delay by the Plaintiff, to indicate that the orders were discharged. This is because the matter had come up several times before and the Plaintiff never proceeded. Come the day the judge indicated about the discharge of the orders, the 1<sup>st</sup> and 5<sup>th</sup> Defendant had put a spirited argument to dismiss the suit for want of prosecution because she and the learned counsel were absent, and the one who held brief for her counsel only indicated (without specifics) that he was attending to a sick relative. There was no explanation why then even the Plaintiff was absent until the Court inquired as to why and counsel holding brief stated that the instructed counsel advised her not to attend Court.
65. Thus, faced with the need to determine the prayer for dismissal of the suit, the learned Judge was too lenient for her and considerate and spared the suit from the same. He only then indicated that the orders (which had basically lapsed one and half years earlier) were discharged. This was to cajole the parties from slumber and laxity, and make the matter move forward. The Court wonders aloud how it ‘alhad’ and ‘omgad’ therein.
66. The other argument was that the judge had failed to protect the plaintiff and her counsel from harassment. The judge wishes to indicate here clearly and plainly, even as submitted by both sets of defendants who opposed the application, that he has never been informed of any form of harassment of anybody by anyone in this matter, let alone being informed of any harassment and not acting on it, unless it is in the mind of the Plaintiff. In any event the court record shows that nobody has ever harassed anyone in the Court. Luckily there were more than three counsel appearing, always, on the one side vis-a-vis the Plaintiff’s and all bear witness that no one has ever harassed the Plaintiff or her counsel or indicated anything about harassment of the Plaintiff or counsel. Thus, those two do not form the basis for arguing that the judge was discriminative.
67. The other complaint was that the judge directed Justice Charles Yano would be as called last witness, yet he now did not wish him to be called. The record does not bear anything of that sort. What the court indicated to the parties when an objection to the production of a copy of an alleged agreement was sought to be produced by the plaintiff was that the maker of the document, which was marked, a document which was a copy, would be called since it was marked for identification. The Plaintiff did not herself call that maker. Then, when learned counsel for the 1<sup>st</sup> and 5<sup>th</sup> Defendants indicated that they would call the maker of a similar document, it was not up to the Court to compel them to call the maker if at all they did not intend to call him. This was because when the court made a ruling



- of 6<sup>th</sup> November, 2024 on the objection raised regarding the maker of a similar document but in the original, the Court considered the law as it was, specifically Section 35 of the *Evidence Act*, and made a reasoned ruling and which the parties if dissatisfied with it should have appealed against it. The Court was satisfied that it did the right thing since the maker of the document was present and willing to testify on the contents of the same, and the document was in the original, unlike the one which the Plaintiff sought to produce earlier.
68. The other complaint was that the judge had backdated the ruling of 6<sup>th</sup> November, 2024 to deny the Plaintiff a chance to be heard on appeal. The proceedings over the ruling were taken on 30<sup>th</sup> October, 2024 and the ruling was delivered on 6<sup>th</sup> November, 2024. Learned counsel for the Plaintiff did not attend but the date was taken by consent. The delivery was made, and it was via the Teams Platform which automatically records proceedings. The ruling was delivered and copies sent to each of the parties herein. At the bottom of each page the date of delivery is indicated, and it was the right one. Only the dating of the last page at the place of date of delivery that a typographical error was made and when the plaintiff informed the court that there was an error, the learned judge looked at the court record and only two days later called on all parties to log into the court session about the issue. The Plaintiff's counsel, though informed of the same, did not log in. When the Court inquired of all parties whether they had an issue with the correction of the error under the "slip rule", all stated that they did not. The error was corrected and the correct version once more emailed to all parties, including the plaintiff's counsel. It was also uploaded. Again, the ruling referred to the date of 10<sup>th</sup> July, 2024. Thus, even if the Judge wanted to be malicious or to deprive the Plaintiff of the right to appeal, would he have been so foolish as to backdate the ruling to a date way before even the arguments or objection had been made? This Court thinks otherwise. Be that as it may, by the time this allegation was being made, the Plaintiff and all counsel had received the corrected version of the ruling. In my humble view, therefore, the Plaintiff has ulterior motives in making and insisting on this incorrect version of events.
69. Regarding the complaint that the learned judge ignored her application for stay of the proceedings and proceeded with the hearing on 20<sup>th</sup> November, 2024 and the 21<sup>st</sup>. The Application was filed on 19<sup>th</sup> November, 2024 in the evening. It was not brought to the attention of the Court until the afternoon of 20<sup>th</sup> November, 2024 at 2:00 PM when the hearing was to proceed. The Court, nevertheless, waited for the parties to log into the session. When the proceedings started at 2:05 PM, an Associate, Ms. Chelogoi, from the Plaintiff's counsel's law firm was present. She asked the Court to place aside the matter for one hour while the counsel Mr. Kenei handled a matter before the Chief Magistrate court in Eldoret. The Court indicated that it would not be possible. However, the Court was willing to indulge learned counsel and gave him 20 minutes to log in. Before the end of the 20 minutes, learned counsel Mr. Kenei logged in and indicated that the court would proceed.
70. The Court then began with dealing with the instant application given that it was alive to the fact that if the Application was merited, it would stay the proceedings pending the hearing and determination of the application. An issue arose as to the payment of the costs ordered on 8<sup>th</sup> November, 2024 and the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants' counsel insisted that the Plaintiff did not have audience for non-payment of the same before the hearing. Learned counsel for the Plaintiff claimed that he had not been served with the order of the Court while learned counsel for the 1<sup>st</sup> and 5<sup>th</sup> Defendants insisted that he had served and had even filed an Affidavit of Service.
71. The Court called on the Court Assistant to check in the CTS whether an Affidavit of Service had been served and if so whether it confirmed the service. When the Court Assistant began reading the Affidavit which confirmed that indeed he had been served and even acknowledged service by a text, counsel logged out of the proceedings. He proceeded to go for a hearing before Hon. Mikoyani CM, while leaving this Court waiting. Even then the Associate, Ms. Chelogoi remained logged in the session



but muted despite the court prompting her all the time to address it for almost 30 minutes after Mr. Kenei logged out. It was strange for counsel to just be in the course session without addressing it. Even when the Court thought that it was a system error that he logged out and therefore the Court would indulge him, it was confirmed by both the 1<sup>st</sup> Defendant's counsel and the 3<sup>rd</sup> Defendant's counsel that indeed he was in his feet proceeding with a matter before Hon. Mikoyan CM, in Eldoret. He texted one counsel that he was logging in while in reality he was proceeding before the lower court. It therefore is clear that the Plaintiff herself, through learned counsel, abandoned the instant application halfway to the Court to deal with it in whatever manner it could.

72. The Court, in its wisdom, having considered the circumstances of the matter, and having read a grand scheme to adjourn the matter or cause an excuse to exist to complain further and read bad faith, decided in the interest of justice, not to deny the Plaintiff audience but to proceed with the hearing as was scheduled and not to dismiss the application. Further, the court decided to wait for the Plaintiff's counsel to urge the application for temporary stay of proceedings if they so wished and moved the court in the course of the same. They never logged into the session up to the end of the day. At the end of the proceedings of the day the Court had to fix the application for hearing and gave directions as to its disposal.
73. The last issue complained about was that on 8<sup>th</sup> November, 2024, the learned Judge levied punitive costs on the plaintiff while he was more than willing always to give the defendants adjournments. The court record bears that on 8<sup>th</sup> November, 2024 when the matter had been scheduled for further Defence hearing the first defendant's counsel and the third defendant's counsel and their clients were present. The first defendant who had stood down earlier to let the court deliver the ruling of 6<sup>th</sup> November, 2024, had travelled from Eldoret. The 5<sup>th</sup> defendant had travelled from Mombasa via air flight, rail and road and was scheduled to return after the session. The witness for the third defendant, the Land Registrar, had traveled by driving from Kisumu to attend the hearing.
74. It was brought to the attention of the court that only on the previous evening at about 7:00 PM, had the plaintiff's counsel written a letter to the other counsel indicating that he would not attend court for reason he was unwell, but there was no medical evidence supporting the claim. Information was given to the court by counsel present that they indicated to him that since the communication was made late, they would not be indulging him and that it would be fair for him to send somebody to hold the brief and continue the matter. Much of that communication was relayed to the court and put on the recorded of 8<sup>th</sup> November, 2024. On that date, the Court waited for the plaintiff's counsel or other holding brief for him, from 8:00 AM in the morning up to about noon. Even during that time, there was a back-and-forth communication between counsel present in court and counsel for the plaintiff, as the Court willingly indulged the plaintiff to organize to proceed with the matter in one way or other or give an indication as to what could be done. Counsel for the plaintiff did not give any further instructions but only informed the others that he had given reasons for not attending. Therefore, the court was left with no option but to adjourn the matter but since the witnesses had travelled from far and had not been notified of that eventuality prior to traveling, the Court directed that their attendance expenses be refunded by the plaintiff. The record bears out, learned counsel's costs were assessed to scale as per the Advocates' Remuneration Order and in accordance with the actual expenditure that was incurred by their clients. What punitive costs were levied against the Plaintiff? Furthermore, the Plaintiff never appealed against that decision or ever moved the Court to set it aside, to date.
75. The upshot is the reasons given by the applicant for the court to recuse itself are absolutely unmerited. None accords with the provisions of the law regarding reasons a judge or judicial officer can recuse him or herself from proceeding with a matter, or the decisions that have been rendered previously in many matters regarding recusal of such officers. This court has a duty to sit. It also has a duty to hear and



determine expeditiously and justly any matter before it if it has jurisdiction. That includes this matter. The application is therefore dismissed.

## 5. Who to bear the costs of the Application

76. Costs follow the event. Section 27(1) of the *Civil Procedure Act* provides that:

“Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.”

77. Thus, since the Applicant lost the application, but not all parties opposed it, the event is that those who mounted opposition to it will have the costs thereof.

78. Further, the application dated 19<sup>th</sup> November, 2024 is hereby fixed for inter parties hearing on Monday, 16<sup>th</sup> December, 2024 at 08:30 AM.

79. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA THE TEAMS PLATFORM ON THE 11<sup>TH</sup> DAY OF DECEMBER, 2024.**

**HON. DR. IUR F. NYAGAKA**

**JUDGE, ELC KITALE**

**In the presence of:**

Mr. Kenei Advocate for the Plaintiff/Applicant

Mr. Momanyi Advocate for the 1<sup>st</sup> and 5<sup>th</sup> Defendants

M. W. Odongo SSc for 3<sup>rd</sup> Defendant

N. K. Keter Advocate for the 4<sup>th</sup> Defendant

