Kenya Electricity Transmission Company Limited v Onsongo & another (Environment and Land Appeal E028 of 2022) [2024] KEELC 13723 (KLR) (10 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13723 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

ENVIRONMENT AND LAND APPEAL E028 OF 2022

M SILA, J

DECEMBER 10, 2024

BETWEEN

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED ... APPELLANT

AND

ESTHER MORAA ONSONGO ..... 1ST RESPONDENT

ESTHER GESARE ONSONGO ..... 2ND RESPONDENT

RULING

(Application filed by the appellant for recusal of the judge; principles to be applied in such application; application found to be unmerited and dismissed with costs)

1. The application before me is that dated 28 August 2024 filed by the appellant. What the appellant seeks is for recusal of myself from hearing this matter. There are 17 grounds listed in support of the application but in a nutshell what the appellant contends is that this court has actual bias against her. The reasons given for arriving at this conclusion is that the court ought first to have heard an application dated 30 January 2024 instead of the appeal; that the appellant feels that the court was highhanded in condemning her to pay certain costs which according to the appellant were uncalled for; that the court dismissed the appellant's application (that dated 30 January 2024) to summon the 2nd respondent and call for additional evidence; that the court did not address all prayers in the application dated 30 January 2024; that the appellant no longer has trust in the court.

2. The application is supported by the affidavit of Eunice Lumallas who is the advocate on record for the appellant practising under the name and style of M/s Lumallas, Achieng & Kavere Advocates LLP. In that affidavit, she more or less deposes as follows : that she is counsel on record for the appellant thus competent to swear the affidavit; that the applicant filed the Memorandum of Appeal herein on 5 December, 2023 and Record of Appeal dated 12 September, 2023; that on 30 October, 2023 parties appeared before myself where the appellant confirmed filing of a supplementary record of appeal and

directions were issued; that each party was directed to file submissions in 60 days and the matter was to be mentioned for compliance on 8th February, 2024 (she has attached a printout from the system). She has continued to depose that before the matter was mentioned on the specified date, the applicant filed an application dated 30 January, 2024 seeking to adduce and file additional documentary evidence; that the said application by the appellant was to be mentioned for directions on 8 February, 2024; that when the matter came up for directions on the application dated 30 January, 2024 as well as confirming of compliance on filing of submissions, I indicated to the applicant that the matter was coming up for hearing of the main appeal; that I ended up adjourning the matter and condemning the applicant to pay Court Adjournment Fees to the court and the 1st respondent's advocate; that this was despite the fact that she indicated that a different counsel was handling the matter and that it was indicated that the matter was for mention for directions and that there was a pending application for adducing additional evidence; that I treated Counsel like a dishonest individual in spite of being her first appearance; that the 1st respondent advocate did not request for costs which I outrightly impressed upon him to take. Counsel deposes further that the matter came up again on 7 March, 2024 and I refused to hear the application by the applicant on account that the adjournment fee was yet to be paid, and that I proceeded to condemn the applicant to pay costs. She deposes that on 25 April 2024, parties were directed to file submissions and a ruling date given; that despite the prayers by the applicant to be allowed to adduce additional evidence and requesting the summoning of the 2nd respondent to be cross-examined on whether she received the funds, and on 19 June 2024 (sic), I dismissed the application with costs. She avers that it has become apparent that I have misconducted myself by demonstrating prejudice and bias in the following manner and particulars: -

i. Deliberately disregarding the fact that the application dated 30 January, 2024 filed under Certificate of Urgency ought to have been heard first and it was not in the interest of justice to hear the main appeal before disposing off the application on 8 February, 2024 therefore insisting on adjournment of the hearing was misguided and orders as to costs were to the detriment of the applicant.

ii. Deliberately disregarding and failing to consider the applicant's prayers in the application and the weight of evidence the 2nd respondent would have brought to court.

iii. Actively descending into the arena of litigation by arguing the issue of costs to the 1st respondent's counsel despite there being no request by counsel hence demonstrating bias and pre-determination of the matter.

iv. Refusing to allow the appellant/applicant's counsel ventilate its application on merits during the hearing date on 8 February, 2024 and on 7 March, 2024, despite the applicant's Counsel attempts to do so, to which I would constantly interject, interpose and variously pre-empt the applicant's counsel address to the court, hence occasioning miscarriage of justice upon the appellant.

3. Counsel deposes that the foregoing circumstances and events demonstrate apparent prejudice and bias to the appellant/applicant and her counsel on my part. She deposes that the appellant/applicant now believes that there exists justifiable doubts as to the impartiality of my person in continuing to handle this matter; that it is in the interest of justice and fairness that the orders sought in the motion herein are granted as the applicant stands to suffer irreparable loss and gross miscarriage of justice. She continues to contend that my conduct is contrary to the Judicial Service (Code of Conduct and Ethics) Regulations, 2020 which requires judicial officers to perform the duties of their office impartially, courteously, competently, diligently and without favour or bias. She believes that any decision will not appear to be impartial as she feels that in the view of the litigious nature of ELC appeals, there is likelihood of bias which will erode her confidence in the judicial system. She deposes that she has lost

trust in the trial court following the way I have handled the matter starting from unjustifiably awarding costs, listing the matter for hearing when it was coming up for a mention, disregarding pleadings filed, and dismissing the application by the appellant. She believes that justice in this case would be better served if the instant matter is heard by a fresh mind. She depose that the respondents in this petition will not be prejudiced if this application is allowed.

4. The application is opposed by the 2nd respondent who has sworn a replying affidavit.

5. She has deposed inter alia that she is well seized with the facts and issues in the matter and thus competent to swear the supporting affidavit on her own behalf; that she has understood the application dated 28 August 2024 and the accompanying affidavit sworn by counsel on record for the applicant. It is her view that the application seeks recusal on spurious allegations particularly the allegations of bias and hostility. She avers that where a litigant seeks recusal of a judge or judicial officer, it is incumbent on such party to provide cogent, credible and reasonable basis to anchor such application. She avers that she is advised by her counsel that such application ought not to be made merely because the judge or judicial officer has made a decision which the party mounting the application finds to be unpleasant; that to the contrary if such party is aggrieved the avenue is to appeal or lodge a review. She has elaborated that she has been advised that in instances of recusal, the test is whether a fair minded and informed observer, having considered the facts, would conclude that there is a real possibility that the court is biased and that the test is an objective one. She has thereafter proceeded to outline the history of the matter which I will nevertheless give a synopsis of. She believes that recusal must be exercised sparingly and that the applicant should not be allowed to justify her application simply because she is displeased with the manner that the court has conducted the proceedings. She avers that it will be setting a bad precedent because it will allow the applicant to engage in forum shopping. She asks that the application be dismissed.

6. There is a supplementary affidavit filed. It reiterates the previous affidavit and adds that the court had earlier dismissed the appellant's application dated 17 February 2023 for non-attendance on 6 March 2023 despite the matter being fixed for 8 March 2023.

7. I invited counsel to file their submissions which I have given due consideration.

8. I think it is prudent for me to first outline a few basic facts regarding the case. The 1st respondent was plaintiff before the Magistrate's Court. She sued the appellant and the 2nd respondent in the case. She averred that the appellant had acquired part of land that she was beneficial owner of but did not pay her compensation in the sum of Kshs. 231, 285.60/= despite undertaking to pay. She pleaded that she followed up on the issue and was advised by staff of the appellant that her money was paid to the 2nd respondent. She sued for recovery of this money. The appellant's defence was that the 1st respondent executed an authority that the 2nd respondent may be paid on her behalf. The 2nd respondent did not enter appearance in the suit and the case was heard without her participation. The matter proceeded for hearing and judgment was entered against the appellant with the trial court ordering the appellant to pay the 1st respondent the sum of Kshs. 231, 285.60/=. Aggrieved by the judgment the appellant preferred this appeal on 5 December 2022.

9. At first the appellant came with an application for stay pending appeal dated 17 February 2023. The application came before me ex parte on 21 March 2023 and I directed that it be served for inter partes hearing on 6 March 2023. On 6 March 2023, no counsel was present for the applicant and I dismissed the application for non-attendance. An application dated 7 March 2023 to reinstate the dismissed motion was brought. There was explanation given that counsel were misdirected by a record in the registry which indicated that the hearing was due for 8 March 2023 and not 6 March 2023. The application was allowed by consent on 4 May 2023 which paved way for hearing of the application

dated 17 February 2023. I heard the application and delivered ruling on 13 July 2023. I thought it is sufficient that the Managing Director or Chief Executive Officer of the appellant to give an undertaking to pay the decree in the event that the appeal was lost. In essence, I allowed the appellant's application for stay pending appeal.

10. The next agenda in the case was to prepare the appeal for hearing. The case was mentioned on 17 October 2023 when counsel for the 1st respondent pointed out that he had been served with a record that was not complete. I directed that a supplementary record be filed and caused the matter to be mentioned on 30 October 2023. On that day counsel confirmed that the record was complete. I then issued directions admitting the appeal and directed that it may be canvassed through written submissions. I gave 30 days to counsel for the appellant to file and serve her submissions and 30 days thereafter to counsel for the 1st respondent. I ordered that the appeal be formally heard on 8 February 2024. I need therefore to make clear, since it is arising in this application, that the date of 8 February 2024 was the hearing date for the appeal. It was never a mention date. The hearing date was indeed taken in presence of counsel for the appellant.

11. No submissions were filed by the appellant within the 30 days given and no application was filed by the appellant within those 30 days. After lapse of the 30 days given to the appellant to file submissions, counsel for the 1st respondent proceeded to file his submissions on 26 January 2024, clearly in readiness for hearing of the appeal on 8 February 2024.

12. On 30 January 2024, about a week to the hearing of the appeal, and after the 1st respondent had already filed her submissions towards hearing of the appeal, the appellant filed an application of even date which went before my brother Kamau J as I was not in station. Kamau J, directed that the application be served and the application be placed before me on 27 February 2024 for directions. That application sought orders for the court to summon the 2nd respondent and be compelled to adduce her bank statement and also sought for leave to adduce additional evidence. I will come to this application a little later.

13. On 8 February 2024, the matter came before me for hearing of the appeal. Counsel for the 1st respondent pointed out to the court that he had not received any submissions from counsel for the appellant on the appeal but he had already filed his. He also pointed out that he was served with an application coming up on 27 February 2024. This is what I stated on that day:

> "I wouldn't encourage any party to file an application on the eve of the hearing of the main suit or in this case the appeal. That leads to delay in hearing and disposal of cases. As it stands, today's date was fixed for hearing of the appeal but 8 days before today an application was filed yet the appeal was filed more than a year ago. I will adjourn today's hearing so that the application can be heard but the appellant will pay today's full costs to the 1st respondent, who has already filed submissions and was ready for hearing of the appeal before the next date. I otherwise give Mr. Marita (counsel for the 1st respondent) 7 days to reply to the application and 7 days thereafter for counsel for the applicant to file her written submissions and 7 days for replying submissions by the respondents. The application also be served upon the 2nd respondent. Inter partes 7 March 2024. The date of 27 February 2024 is vacated."

14. After I gave the above directions, Mr. Marita asked for costs of Kshs. 5,000/=. I awarded the said amount and also ordered the appellant to pay court adjournment fees of Kshs. 2,000/= before the next date.

15. The matter next came up on 7 March 2024, and it will be recalled that it is the date I fixed for inter partes hearing of the application dated 30 January 2024. On that day, Mr. Ochoki, learned counsel for

the 1st respondent, stated that he filed his reply to the application on 12 February 2024 but he has not been served with any submissions from counsel for the appellant, and neither have the costs of Kshs. 5,000/= ordered on 8 February 2024 been paid. Counsel for the appellant was not present and I was gracious enough to place the file aside for some time just in case counsel was facing network challenges. Later in the day, Ms. Lumallas, for the appellant, appeared, and Mr. Ochoki reiterated that he had not been paid the costs ordered. What Ms. Lumallas said is that the costs are not payable because the date of 8 February 2024 was for mention and not hearing. This is what I recorded:

> " The record is clear that 8 February 2024 was for hearing of the appeal. The costs and court adjournment fees must be paid. Ideally the application should be struck out for failure to pay court adjournment fees and costs as directed. I have also not seen any submissions filed towards the application despite my directions. I will bend over backwards to accommodate the applicant but the applicant risks its application being struck out for non-compliance with orders and directions of the court. The applicant has 7 days to file and serve her submissions and there is 7 days to respond. Inter partes 25 April 2024. Applicant will pay court adjournment fees for today and today's costs will be to the 1st respondent before the next date."

16. Mr. Ochoki asked for costs of Kshs. 5,000/= which I reduced to Kshs. 3,000/=.

17. On 25 April 2024 parties appeared and confirmed that they have both filed their submissions on the application dated 30 January 2024. I reserved ruling for 19 June 2024 but I was unable to deliver ruling on that day as the file had been misplaced and I delivered the same the following day on 20 June 2024. It will be recalled that the application was seeking to summon the 2nd respondent and also to adduce additional evidence on appeal. In my ruling, I addressed both issues. On the summoning of the 2nd respondent, I was not persuaded that the order was merited. I reasoned that the 2nd respondent is already a party to the appeal and was 1st defendant in the original suit. I was not persuaded that the court can compel a party to a suit to appear and produce evidence during an appeal. I proceeded to hold as follows:

> " When one is sued as a defendant, it is that person's prerogative to either appear at the trial or not. In this instance, Esther Gesare (2nd respondent) chose not to appear at the trial court; that was fully within her rights, for a person sued has the right to remain silent. If the appellant thought that she was a compellable witness at trial then the appellant ought to have lodged an application to compel her attendance to testify during trial but no such application was made. I am at a loss on what basis, this court, as an appellate court, can now compel her to come to court to testify. I have gone through the submissions of counsel for the applicant and nowhere has she mentioned any law or authority that would compel this court to summon the 2nd respondent in order to testify during an appeal."

18. On the other prayer, which was to adduce additional evidence on appeal, I was also not persuaded to allow it. I relied on the principles laid down in the case of Wanje vs Saikwa (1984) KLR 275 and the Supreme Court decision in the case of Mohamed Abdi Mohamud vs Ahmed Abdullahi Mohamed & 3 Others, Petition No. 7 of 2018 consolidated with Petition No. 9 of 2018 (ruling of 28 September 2018). I was not persuaded that the appellant had met the test for calling of additional evidence on

appeal. Nevertheless, what the applicant wanted to adduce was a payment voucher and I had this to say on it:

> "This payment voucher is a document was prepared by the applicant herself and was therefore always in the custody of the applicant throughout the trial. It has in fact been annexed to the supporting affidavit herein and it is not said where it was fetched from for it to be so annexed. Being in her custody the applicant could have produced the document if she so wished. Besides, it was always the case of the applicant that she deposited this money into the account of the 2nd respondent. If she (the applicant) is the entity that deposited the money, then you would expect the applicant to have the bank deposit slip or the bank transfer instrument and she could have produced them at the hearing. These are not documents that would be in possession of either 1st or 2nd respondent but would uniquely be in possession of the applicant. The applicant cannot therefore be heard to say that she now wants the bank records of the 2nd respondent. If at all it was the applicant who made the deposit or transfer as she alleges, then she is the one with the evidence of this deposit, and she was at liberty to produce it, assuming that it existed."

19. On the above reasoning, I did not find merit in the application and I dismissed it. The appellant applied for leave to appeal which I granted.

20. The application being out of the way, I directed the appeal to now be heard on 23 September 2024. I gave the appellant 14 days to file and serve her submissions to the appeal and gave 14 days thereafter to the respondents to file any additional submissions.

21. No submissions were filed within 14 days of 20 June 2024 as directed above.

22. Before the appeal could be heard on 23 September 2024 as scheduled, the appellant filed this application and as earlier pointed out it seeks my recusal from the case. I need not repeat the grounds but in a nutshell the applicant feels that this court has not been fair to her inter alia for reason that the court has penalised the applicant with costs and also dismissed her application to adduce additional evidence.

23. Even before I go to the gist of the application, I am not even convinced that the application as filed is accompanied by a competent affidavit. A case is for the parties. When it comes to recusal, you would expect that the party in the suit is the one to swear the affidavit for recusal outlining why he/she feels that the judge ought not to handle the case. It has been said time without number that advocates should refrain from swearing affidavits on matters of fact that are within the knowledge of the client. In our case, if the appellant was the party wishing this court to recuse itself, one would expect that the affidavit be sworn by the client himself/herself. No authority was annexed by Ms. Lumallas to demonstrate that she has authority of her client to swear this affidavit or that her client indeed has an issue regarding my presence in the matter. When an advocate swears such affidavit, one wonders whether it is truly the client who is aggrieved or whether it is the advocate. As I stated, cases are for the parties and not for the advocates.

24. Be that as it may, I will still consider the application on its merits.

25. The test for recusal is an objective test. There are of course many authorities on the subject of recusal but I will only quote the decision of Majanja J in the case of Rachuonyo and Rachuonyo Advocates

v National Bank of Kenya Limited [2021] eKLR, (ruling of 30 April 2021) as I believe he properly outlined the test for recusal. He observed as follows:

> " The principles governing recusal in this jurisdiction are not (sic) well settled. In Jan Bonde Nielson v Herman Philipus Steyn & 2 others HC COMM No. 332 of 2010 [2014] eKLR the court observed that:
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> The appropriate test to be applied in determining an application for disqualification of a Judge from presiding over a suit was laid down by the Court of Appeal in R v DAVID MAKALI AND OTHERS C.A CRIMINAL APPLICATION NO NAI 4 AND 5 OF 1995 (UNREPORTED), and reinforced in subsequent cases. See R v JACKSON MWALULU & OTHERS C.A. CIVIL APPLICATION NO NAI 310 OF 2004 (Unreported) where the Court of Appeal stated that:
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> "...When courts are faced with such proceedings for 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..."

23. In Philip K. Tunoi & another v Judicial Service Commission & Another CA Civil Application NAI No. 6 of 2016 [2016] eKLR the Court of Appeal adopted the test for recusal propounded by the House of Lords in Porter v Magill [2002] 1 All ER 465, where it stated that, "The question is whether the fair minded and informed observer, having considered the facts, would conclude that was a real possibility that the tribunal was biased." The same position was taken by the Supreme Court (per Ibrahim J.) in Jasbir Rai and 3 Others v Tarlochan Singh Rai and 4 Others SCK Petition No. 4 of 2012 [2013] eKLR where he observed that,

"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."

24. The principles in the cases I have cited buttress the standards of conduct enacted in the Judicial Service (Code of Conduct and Ethics) Regulations 2020 dated 26th May 2020. Under Regulation 21 Part II of the said Code of Conduct, a Judge can recuse himself or herself in any of the proceedings in which his or her 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; or

(h) Or a member of the Judge's family has economic or other interest in the outcome of the matter in question.

25. Regulation 9 of the Judiciary Code of Conduct emphasizes the importance of impartiality of a Judge. Regulation 9(1) provides:

A Judge shall, at all times, carry out the duties of the office with impartiality and objectively in accordance with Articles 10, 27, 73(2) (b) and 232 of *the Constitution* and shall not practice favoritism, nepotism, tribalism, cronyism, religious and cultural bias, or engage in corrupt or unethical practices."

26. The test therefore is whether, a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the court is biased.

27. I am not persuaded that in the instance of this case this test has been met. First, regarding costs, costs are always in the discretion of the court, as dictated by Section 27 of the *Civil Procedure Act*, which is drawn as follows:

27. Costs

(1) 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.

(2) The court or judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.

28. From the above, it will be seen that the judge has full power to determine by whom and to what extent costs are to be paid and to give all necessary directions regarding the costs. It is very common, if not routine, for parties to be condemned to pay costs when they adjourn a matter or for failure to comply with orders of court. There is nothing unusual or unfair in that. I do not see how a party can ask for recusal of a judge because the judge has exercised his discretion to award costs and has directed the manner and the period within which such costs are to be paid. I am not persuaded that any fair minded and informed observer will form opinion that the court is biased because the court has directed payment of adjournment fees and costs to a party who is ready to proceed for a hearing. In any event, any party who feels that an award of costs is unmerited can apply for leave to appeal. But while I am on this, it was alleged by Ms. Lumallas that the costs of 8 February 2024 were not payable because the case was for mention. For the record 8 February 2024 was for hearing of the appeal and I gave good reason as outlined above as to why I made the order for costs. There had been time to file the application for additional evidence, indeed such application ought to have been filed before directions on hearing of the appeal were taken, and the appellant did not need to wait for the 11th hour to file it. Counsel made a print out from the Court Tracking System where there is an entry for "mention date given" but that was simply a clerical error, and counsel cannot make a meal out of it. The same CTS shows "hearing

date set" and also shows that 8 February 2024 is for hearing. In any case the court record speaks for itself and it shows the case was for hearing. Whatever the case, counsel was present on 30 October 2024 when the hearing date was given. The date was indeed taken by consent and I wonder why counsel wishes to insist on the case being a mention when it is so clear that it was for hearing of the appeal.

29. The other matter raised is that the court is biased because it did not allow the application dated 30 January 2024. I am not persuaded that a party should make an application for recusal based on orders that the court makes on applications. The court is there to make rulings on applications. A ruling will in most instances favour one party and be against the other; a court must make a decision either way. In determining applications, the court is actually doing its job. How then do you ask for recusal of a judge for doing his job? If that was to be entertained then every party will apply for recusal when a ruling does not favour him/her. It cannot be the intention of the law that a judge ought to recuse himself merely for making a determination in a matter. I find the application completely misguided for seeking the recusal of this court merely because the court did not make ruling in her favour regarding the application dated 30 January 2024. So, does it mean that if the court had ruled in favour of the appellant, the 1st respondent would have been within her rights to demand for my recusal because I have allowed the application? You can see how absurd it will be if parties are permitted to file applications for recusal because a judgment or ruling did not go their way.

30. The other grounds raised in the application really hold no water. The applicant claims that she ought first to have been heard on the application dated 30 January 2024 but that is exactly what the court did. It heard her application first and indeed this appeal is yet to be tried. There is a claim that the court did not address the prayers sought in the application dated 30 January 2024. The court actually addressed itself fully on the application and that is why there is a ruling on it. If for any reason the appellant feels that the court erred, the avenue is to appeal, not to ask the judge to recuse himself. There is mention of the court arguing the case for costs for the 1st respondent which I even wonder where it is coming from. I have nevertheless fully addressed myself on the issue of costs. There is mention of the court being hostile to the appellant. How have I been hostile? I have spelt out in full my directions in the case. I wonder what is hostile in those directions as they were directions aimed at fulfilling the overriding objective in Section 1A of the *Civil Procedure Act* which is to facilitate the just, expeditious, proportionate and affordable resolution of this appeal.

31. I have no reason to recuse myself from this matter. For the record, I have no bias against the appellant. I am not persuaded that any reasonable party will assume any bias on the part of this court. I am in fact very comfortable handling this case. I have no favour for or against any party in this case. I even do not know them. I have never dealt with them. I have no stake in this matter. It is simply by sheer accident that I happen to be the judge in Kisii and this matter happens to be before me. I am the only judge in this station and I have not arrogated the case for myself. I have no reason to be biased against any of the parties. I am a firm believer in the tenet that a court cannot be condemned for doing its job. That is exactly what I intend to do in this matter; do my job as a judge to the best of my ability and with full fidelity to my oath of office, and see out this appeal one way or the other. It is not a must for the parties or counsel to like the judge as a precondition for them to be heard before that particular judge. If that were the case, parties would apply for recusal on the basis that they do not like how the judge looks like, or how he dresses, or such other subjective issues that have no bearing to the facts and law of the case. At the end of the day, as a professional, the decision will be based on the facts and the law as appreciated by the judge. That is what I will proceed to do for this case.

32. I think I have said enough to demonstrate that I do not find any merit in this appeal. It is hereby dismissed with costs to the 1st respondent.

33. Upon reading of this ruling, I will proceed to give directions and a date for the hearing of the appeal.

34. Orders accordingly.

DATED AND DELIVERED THIS 10 DAY OF DECEMBER 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of:

Mrs. Omondi h/b for Ms. Lumallas for the appellant/applicant;

Mr. Marita present for the 1st respondent;

N/A for 2nd respondent;

Court Assistant – David Ochieng'