



Omondi v Ongiri & 3 others (Environment and Land Appeal E069 of 2024) [2024] KEELC 14231 (KLR) (10 December 2024) (Ruling)

Neutral citation: [2024] KEELC 14231 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E069 OF 2024
SO OKONG'O, J
DECEMBER 10, 2024**

BETWEEN

VINCENT ERIQUE OMONDI APPELLANT

AND

PENINA ADHIAMBO ONGIRI 1ST RESPONDENT

FLORENCE OBORAH 2ND RESPONDENT

DISTRICT LAND REGISTRAR-KISUMU 3RD RESPONDENT

JOAB ONGIRI ATTITO 4TH RESPONDENT

RULING

1. The Appellant is well known to me. He comes from my village in Kisumu East Sub-County, Kisumu County. We grew up together in the same village. I have known him since we were young. For all the years I have known the Appellant, he was known to me and has always been known to me by the name Vincent Omondi Kokore. I have never known him by the name of Vincent Erique Omondi.
2. This matter came before me for the first time on 11th October 2024 when I directed that the Appellant's Notice of Motion application dated 1st October 2024 be served for hearing on 22nd October 2024. On 22nd October 2024, the application which had been amended was argued before me. Mr. Mwamu appeared for the Appellant while Mr. Okello appeared for the 1st Respondent. After hearing the application, I reserved the ruling for 10th December 2024. When I gave directions on the application on 11th October 2024 and subsequently heard the same on 22nd October 2024, I did not know that the Appellant was Vincent Omondi Kokore who was well known to me. If I had known that the Appellant, Vincent Erique Omondi was the same Vincent Omondi Kokore who is my village mate whom I have known for several years, I would not have heard the application dated 1st October 2024 (as amended). I would have recused myself from handling the matter so that I am not accused of the likelihood of bias by the Respondents to the application if I ruled against them.



3. In *Accredo AG & 3 others v Stefano Ucceli & another* [2018] eKLR, the court stated as follows:

“The test for establishing real likelihood of bias has evolved over time from the point where suspicion of bias was sufficient to the reasonable man test, that is, whether a reasonable man taking into account the surrounding circumstances would conclude that there is a real likelihood or reasonable apprehension of bias. This current position was succinctly set out by the House of Lords in *Porter v Magill* [2002] 1 All ER 465 as follows:

“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.”

Expounding on that test the Supreme Court of Canada in *R. v S. (R.D.) (supra)* had this to say:

“The test is what would an informed person, viewing the matter realistically and practically — and having thought the matter through — conclude. This test contains a two-fold objective element: the person considering the alleged bias must be reasonable and the apprehension of bias itself must also be reasonable in the circumstances of the case.”

4. How did I get to know that Vincent Erique Omondi is the same person known to me as Vincent Omondi Kokore? On 1st December 2024, the Appellant approached me with a request that I assist him in the application that was pending before me for ruling today. I have done some soul-searching on the matter of whether I should go ahead and deliver a ruling on the merit of the pending application but I have decided against it. I have found myself in a situation in which I may be accused of bias by one of the parties for the reasons that I have given. I am of the view that the best thing to do in the circumstances is to recuse myself from handling the matter. As mentioned earlier, I would have taken the earliest opportunity to recuse myself when the matter first came before me but I could not do so because I did not know that the Appellant was a person known to me.
5. For the foregoing reasons, I recuse myself from handling this matter. In the exercise of the inherent powers of this court, I set aside the proceedings of October 22, 2024 and the orders made on the same date. The Appellant’s amended Notice of Motion application dated October 11, 2024 shall be placed before Asati J. for directions and further orders.

DELIVERED AND DATED AT KISUMU ON THIS 10TH DAY OF DECEMBER 2024

S. OKONG’O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Mwamu for the Appellant

Mr. Okello for the 1st Respondent

Ms. J.Omondi-Court Assistant

