

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA

CAUSE NO. 137 OF 2013

ERASTUS SAFARI KENGA.....CLAIMANT

v

AWANAND ENTERPRISES LIMITED..... RESPONDENT

RULING

1. This Cause came up for hearing on 26 July 2013 before Makau O. N. J and Mr. Koech appeared for the Claimant while Mr. Katete held brief for Mr. Amuga for the Respondent.
2. Mr. Katete orally sought that the Cause be heard before another judge. The reason given by Mr. Katete was that Makau J had dealt with a similar matter between the same parties and lawyers.
3. Mr. Koech opposed the application because, he submitted, it would amount to forum shopping which would be bad for administration of justice. The reason given by Mr. Katete, he further submitted was not a valid reason.
4. Makau J thereafter referred the Cause to me to give directions.
5. As Makau J observed in his short ruling what in essence Mr. Katete was seeking was that he recuse himself from hearing the Cause.
6. The Cause was therefore brought before me and Mr. Amuga was now present for the Respondent while Mr. Koech appeared for the Claimant. Mr. Amuga informed me that Makau J was handling 4 other matters involving the Respondent and that the Respondent was apprehensive that most of the cases were going to the same Court and this could prejudice the Respondent's case.
7. For a judge to recuse himself there must be an apprehension of bias on the part of the judge. The apprehension of bias must be a reasonable one and the test must be objective. In my mind there are no events or factual situation demonstrated by the Respondent that give rise to a reasonable apprehension that Makau J is likely to be biased or impartial against the Respondent.
8. The Respondent through its counsels did not argue that Makau J had any relationship with any of the parties or has any financial interest in the outcome of any of the Causes involving the Respondent or any of its (former) employees for that matter.
9. There are only two judges of the Industrial Court in Mombasa. Many of the cases we deal with emanate from employment relationship of certain employers within Mombasa County.
10. If any of the Judges will have to recuse themselves from any Cause because they have handled other Causes relating to the said employers then within a very short time no cases will proceed in this station unless new judges are posted. In any case the cycle would only commence afresh. I say so because the possibility of the Respondent, as an employer being sued before this Court in more than one Cause are there. The question therefore is whether I will also be asked to recuse myself after dealing with one or two Causes involving the Respondent.
11. What was presented before the Court are unsubstantiated perceptions of bias but this alone cannot suffice for a judge to recuse from a matter. From the material presented I am not able to discern that the Respondent will not get a fair trial before Makau J.
12. I therefore direct that this Cause be placed before Makau J today so that he can give further directions as to when the trial can commence before him.

Delivered, dated and signed in Court on this 28th day of August 2013.

Justice Radido Stephen

Judge