



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NAKURU**

**CAUSE NO. 363 OF 2013**

**JOSEPH MAINA THEURI..... CLAIMANT**

**-VERSUS-**

**GITONGA KABUGI.....1<sup>ST</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF**

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

**GAKUHI CHEGE.....3<sup>RD</sup> RESPONDENT**

**SANITATION  
THE NYAHURURU WATER AND**

**COMPANY LIMITED.....4<sup>TH</sup> RESPONDENT**

(Before Hon. Justice Byram Ongaya on Wednesday 11<sup>th</sup> December, 2013)

**RULING**

**The Applications**

The 3<sup>rd</sup> respondent **Gakuhi Chege** filed a notice of motion on 21.11.2013 under **section 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Order 51 of the Civil Procedure Rules and Article 50 of the Constitution**. The 3<sup>rd</sup> respondent prayed for orders:

- 1. That this honourable court do recuse itself from hearing the instant cause.**
- 2. That this hounourable court do forward the claim file to Nairobi Industrial Court for hearing and determination.**
- 3. That costs of the application be in the cause.**

The 3<sup>rd</sup> respondent stated the following grounds, reasons and arguments to support the application:

- a. The 3<sup>rd</sup> respondent has no faith that the honourable court can accord him a fair hearing in**

**this cause.**

- b. The honourable court has in both conduct and its rulings made herein exposed actual bias against the respondents and is intent through hook or crook to assist the claimant to get a favourable judgment in this cause.**
- c. The old adage that justice “must not only be done but must be seen to be done” is at the risk of being trashed by the continued hearing of this cause by the presiding judge.**
- d. It is in the interest of justice and fairness that the orders sought herein be granted.**

The application was supported by the 3<sup>rd</sup> respondent’s supporting affidavit who has stated in paragraph 2 of the affidavit that he is the Chairman of the Board of Directors of the 4<sup>th</sup> respondent and is swearing the affidavit on his own behalf and on behalf of the 4<sup>th</sup> respondent. The 3<sup>rd</sup> respondent is also an Advocate of the High Court and is acting in person in this cause.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed a notice of motion on 3.12.2013 under the same provisions of law as the ones cited in the 3<sup>rd</sup> respondent’s application and all other enabling provisions of law. The 1<sup>st</sup> and 2<sup>nd</sup> respondents prayed for the following orders in that application:

- 1. That this honourable court do recuse itself from hearing this cause.**
- 2. That the honourable court do order that the file in respect of the claim herein be transferred to the Industrial Court at Nairobi for hearing and determination.**
- 3. That costs of this application be in the cause.**

The application stated that it was based on the following grounds:

- a. The honourable court has openly displayed actual bias against the respondents throughout the proceedings and has for unclear reasons favoured the claimant in the matter.**
- b. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have lost confidence in this honourable court and are apprehensive that they will not get a fair hearing if the court continues to hear this matter, as they (the 1<sup>st</sup> and 2<sup>nd</sup> respondents) have, in the same matter been condemned unheard by this court.**
- c. The 1<sup>st</sup> and 2<sup>nd</sup> respondents are entitled to a fair hearing in this cause.**
- d. It is therefore in the interest of justice that the orders sought be granted as prayed.**

The application was supported by the affidavit of Gitonga Kabugi filed together with the application.

The 4<sup>th</sup> respondent’s counsel submitted that the 4<sup>th</sup> respondent supported the applications as filed and urged.

The claimant opposed the application by filing his replying affidavit sworn on 6<sup>th</sup> December 2013 and filed on 9.12.2013.

### **The Background**

The main suit was fixed for hearing on Monday, 9.12.2013 by consent of all the parties as per the orders of the court made on 14.11.2013. On that date, it was ordered:

**“By consent hearing of main suit on 9.12.2013 at 9.00 am for 2.5 hours. The amended statement of claim to be filed and served by close of 15.11.2013. The respondents to file statements of response and to serve by close of 22.11.2013. The**

**reply to statements of response may be filed and served by 29.11.2013. Parties to agree at the hearing to proceed by oral evidence or on the basis of documents filed.”**

After the orders, on the same date being 14.11.2013, the parties argued the issue of the extension of the interim orders. Each party made elaborate submissions on that issue and the court made an elaborate and considered ruling in which it was ordered:

- 1. A declaration that no valid appointment into the office of the 4<sup>th</sup> respondent’s managing director can be made to take effect until after 11.1.2014.**
- 2. Order 3 in the orders of 8.11.2013 is extended until the hearing and determination of the suit or until further orders by the court.**
- 3. The orders of the court made on 1.11.2013 shall remain in place as ordered.**

The orders made by the court on 8.11.2013 were as follows:

- 1. That the application (by the claimant dated 8.11.2013) is certified urgent to be served by close of day on 11.11.2013 for direction on inter-partes hearing to be made on 14.11.2013 at 9.00 am.**
- 2. That pending hearing and determination of the application dated 8.11.2013, there be stay of process of recruitment of the managing director of the 4<sup>th</sup> respondent.**
- 3. That pending further orders of the court, there be a stay of implementation of the 4<sup>th</sup> respondent’s decision sending the claimant on annual leave for 45 days with effect from 5.11.2013 and conveyed in 4<sup>th</sup> respondent’s letter ref. no. CTM/MD/08/17 dated 4.11.2013.**
- 4. That the claimant is at liberty to file and serve a further supporting affidavit by 11.11.2013.**
- 5. That costs be in the cause.**

Earlier, the court had considered the application by the claimant dated 23.10.2013 for interlocutory orders and after hearing all the parties made orders thus:

- a. That pending the hearing and determination of the suit, the respondents shall by themselves or by their agents or employees give the claimant access to his office, remove the padlocks and guards and allow the claimant to proceed with his duties as the managing director of the 4<sup>th</sup> respondent.
- b. That pending the hearing and determination of the suit, the respondents shall by themselves or by their agents or employees allow the claimant access to the 4<sup>th</sup> respondent’s offices.
- c. That pending the hearing and determination of the suit, the respondents either by themselves, their agents, servants and or employees are prohibited from interfering with the employment of the claimant, as the managing director of the 4<sup>th</sup> respondent, and the procedure known as stepping aside and all resolutions made by the respondents under that procedure are stayed until the determination of the suit.
- d. The officer commanding the Kenya Police Service at Laikipia County is directed to enforce and ensure the compliance with the court orders as made.
- e. The respondents shall pay the costs of the application.

### **Hearing of the Applications**

The two applications for recusal were not fixed for hearing on 9.12.2013, the date scheduled for the

hearing of the main suit. However, before the hearing of the suit commenced, the applicants drew the court's attention to the filing and serving of the applications and it was urged that by their nature, the applications had to be prioritized over the hearing of the main suit. The court considered the parties' readiness to argue the applications and directed the two applications to be heard together on the same date.

### **The Respondents' (Applicants') Submissions**

The 3<sup>rd</sup> respondent's submissions were largely and essentially premised on paragraph 17 of the 3<sup>rd</sup> respondent's supporting affidavit which stated as follows:

**"17. That arising from the rulings and orders made in this case by Hon. Justice Byram Ongaya, it is clear that the court is biased and it is therefore not possible to accord me and my co-respondents a fair trial as more exemplified hereunder:**

- a. **The court has been ruling and making orders on matters which are not actually before it, for example when it held by its ruling of 1<sup>st</sup> November 2013 that the respondents' actions are designed to deny the claimant a chance to renew his contract.**
- b. **The court also exposed its bias when it stated in its ruling that "...the respondents appear engaged in surreptitious designs and schemes to deny the claimant the benefit of the agreed renewal clause" which comments were uncalled for and prejudicial to respondents.**
- c. **The said comments are not based on any pleadings by the claimant or any valid submissions by counsel.**
- d. **The court's rulings have guided the claimant to subsequently amend his statement of claim in the assurance that he will finally get a favourable judgment on basis of the judge's comments in the matter.**
- e. **The court on 8<sup>th</sup> November 2013 entertained an ex-parte application by the claimant seeking for various orders and granted two substantive prayers without affording the respondents a hearing or having regard to the fact that the application was a complete departure from statement of claim.**
- f. **On 14<sup>th</sup> November 2013, the court went ahead to confirm the orders of 8<sup>th</sup> November 2013 without hearing the application which move was aimed at assisting the claimant to have a head start in the case against the respondents.**
- g. **The orders of 8<sup>th</sup> November 2013 are an outright contradiction of those made on 1<sup>st</sup> November 2013 in so far as recruitment process of the 4<sup>th</sup> respondent's managing director is concerned."**

The 3<sup>rd</sup> respondent therefore concluded that it was clear that he and his co-respondents will not get a fair hearing in the cause should the presiding judge continue to handle the matter. It was the 3<sup>rd</sup> respondent's submission that the presiding judge had pre-judged the dispute before hearing the case. The respondent urged that the conduct of the case before the presiding judge will go against the respondent's constitutional right to a fair hearing in view of the judge's open bias towards the claimant.

For the 1<sup>st</sup> and 2<sup>nd</sup> respondent, it was submitted that they associated themselves with the submissions made by the 3<sup>rd</sup> respondent. It was submitted, and as stated in paragraph 7 of the supporting affidavit of Gitonga Kabugi, that in the interlocutory proceedings, the judge failed to rule on issues raised for the 1<sup>st</sup> and 2<sup>nd</sup> respondents including accusations of non-disclosure against the claimant, allegations of financial impropriety, mismanagement of human resources, the public interest and substantive justice which were not controverted by the claimant. The respondents further urged that the judge was biased because he had made orders in favour of the claimant despite opposition by the respondents. Further, it was submitted for the respondents that on 8.11.2013, the court made ex-parte orders and it was submitted the orders were not supported by any prayer in the statement of claim. It was further submitted for the two respondents that on 14.11.2013, the case was fixed for hearing **"despite the unanimous condition by the respondents"** that interim orders flowing from the application of 8.11.2013 should not be confirmed.

Such, it was submitted, were orders made on a mention date and the respondents were therefore condemned unheard. The respondents concluded their submissions by stating that in the circumstances, the judge was biased in favour of the claimant and against the respondents.

### **The Claimant's (Respondent's) Submissions**

The claimant has opposed the applications relying on the claimant's replying affidavit. The claimant has stated in paragraph 3 of the affidavit that he vehemently opposes the applications and urges the court to dismiss the applications with costs. The claimant submitted that the issue of renewal of his contract had been before the court because the contract containing the relevant clause had been before the court at all material times. It was submitted for the claimant that by alleging that the court had made prejudicial statements, the applicants were attempting to gag and intimidate the court and the claimant urged the court not to succumb. The claimant submitted that he was entitled to amend the statement of claim and also entitled to pursue the renewal of his contract of service as per the agreed terms of contract.

At paragraph 15 of the affidavit, the claimant stated thus, **"15. THAT the respondents should further appreciate that at no time has the court moved itself on any issue and application in this matter. At all time I make my applications based on the wicked designs adopted by the respondents to frustrate me. The court faced with issues and application is under obligation to make a resolution based on the facts and the background of the case."**

It was submitted for the claimant that the case was fixed for hearing on 9.12.2013 based on the consensus that the matter be heard expeditiously and judgment delivered soon thereafter addressing the issues comprehensively. Thus, the applications were meant to scuttle the expeditious hearing of the case and an attempt to shop for a forum where the respondents can perpetuate their schemes and designs to disregard the renewal clause he was entitled to enforce. The claimant submitted that he had no doubt about the court's readiness to do justice and preparation to met out justice irrespective of the parties' economical, political, social or other status.

### **The General Principles on Recusal**

The principles that guide the courts in applications for recusal have largely been discussed in the authorities that the parties submitted in this case. The cases essentially dealt with cases of causes of recusal rooted in extra-judicial sources such as a disabling conflict of interest of the presiding judicial officer, a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings but acquired outside the proceedings. Such would include cases where the presiding judge has previously acted as counsel for a party or expressed opinion on the outcome of the dispute or if the judge or member of his family or immediate family has a financial interest in the outcome of the dispute. The cases set a general rule that to occasion recusal, a judge's expression of an opinion about merits of a case or familiarity with the facts (subject matter of the dispute) or the parties must have originated in a source outside the case itself.

Thus, in **Tumaini –V- Republic [1972] E.A 441** cited for respondents, the appellant was convicted of fraudulent false accounting and theft by a public officer. On appeal, he alleged he had not received fair trial because the trial magistrate was a friend to the appellant's superior officer. The magistrate had also transferred the case from the court it had been originally allocated to. The High Court as the appellate court held that in considering the possibility of bias, it was not the mind of the judge which is considered but the impression given to reasonable persons and in that case there existed a real likelihood of bias.

The respondents also referred to **Jasbir Singh Rai & 3 others –V- Tarlochan Singh Rai & 4 Others [2013] eKLR**, where it was considered that if the nature of the interest of the presiding judge is such that public confidence in the administration of justice required that the implicated judge disqualifies himself, it was irrelevant that there was in fact no bias on the part of the judge, and there is no question of investigating whether there was any likelihood of bias or any reasonable suspicion of bias on the fact of the particular case.

For the claimant, it was submitted that the presiding judge in the instant case suffered no disabling interest and the court was referred to the opinion in the ruling by *Kariuki J.* in **R P M –V- P K M [2011] eKLR** on the applicable principles. In that case, the court pointed out that in the Constitution, a trial must accord parties a fair hearing, parties have a right for justice not to be delayed, the right for justice not to be administered without undue regard to procedural technicalities and that the national values and principles in Article 10 of the Constitution bind a judge when applying or interpreting the Constitution or any other law (as per Articles 10, 50(1) and 159(2) of the Constitution). It was further submitted for the claimant that the applicants had not established parameters set out in rule 5 of the Judicial Service Code of Conduct and Ethics on disqualification and as referred to in the cited case. The rule states that a judicial officer shall disqualify himself in proceedings where his impartiality might reasonably be questioned including but not limited to instances in which:

- a. he has a personal bias or prejudice concerning a party or his lawyer or personal knowledge of facts in the proceedings before him;
- b. he has served as a lawyer in the matter in controversy;
- c. he or his family or a close relation has a financial or any other interest that could substantially affect the outcome of the proceedings; or
- d. he, or his spouse, or a person related to either of them or spouse of such person or a friend is party to the proceedings.

The claimant also referred the court to the opinion in **Republic –V- Mwalulu & 8 Others [2005]1KLR 1 at 4-5**, where it was stated that in applications like the present ones, sight must not be lost of the fact that losing litigants might be more inclined to explain their loss on the alleged wickedness of other people rather than on the weakness of their own case.

### **The Opinion and Decision**

The grounds advanced for recusal in the instant case have not been shown to originate from a source outside the case itself; they are not of extra-judicial source. The grounds as alleged may be summed up to include that the presiding judge made interlocutory orders in favour of the claimant and against the respondents despite the respondents' opposition; the respondents are not satisfied with some of the interlocutory orders; allegedly that the judge may not have considered some of the material before the court; and generally that the respondents are not happy with the interlocutory orders.

The court has carefully considered the grounds as submitted for the respondents. The court finds that the grounds are the kind of matters that might entitle the respondents to apply for review or to invoke appellate jurisdiction. The court holds that such matters and grounds that would entitle a litigant to apply for review of interlocutory orders or to invoke the appellate jurisdiction are not in themselves sufficient grounds for a judge's recusal from continued hearing and determination of the case before the court.

The court considers that the judge carries an ethical obligation for recusal if the judge knows the reason to do so. Where no such reason is known or is not established, the court holds that the judge similarly carries an ethical obligation to hear and determine the case at hand. Thus, a judge holds an obligation to hear and determine matters brought before the court until a valid basis for recusal is established and, a judge should not invoke recusal unless a valid reason to do so exists. The court holds that the threshold and compelling obligation for recusal of a judge in an appropriate case in every measure, equals to the threshold and compelling obligation for hearing and determining the case for which the presiding judge is vested with the jurisdiction to decide and in absence of a valid disabling reason against the judge. Thus, in deciding for or against recusal, the presiding judge must carefully balance the thin line separating the two ethical obligations.

The court has again carefully considered the grounds the applicants have advanced for recusal in this case. It has not been shown that the judge has an entrenched or deep-rooted favouritism or antagonism for or against any of the parties or in the subject matter before the court in the instant case and, spreading beyond the court's legitimate duty to judge; it has not been shown that the parties have been denied the due process of justice including the rights to apply for review or to appeal or to be accorded the relevant

rules of procedure to urge their respective cases.

The court must not in the present applications try to justify its decisions like it were sitting on appeal on its own decisions or address the present applications as if they were applications for review. The court has cautioned itself in that regard and it is sufficient that the court has revisited its record in its entirety and is satisfied that the proceedings have continued and been conducted within the established tenets of the due process of the court.

The applicants have alleged bias against the presiding judge because the judge has made findings and orders in the suit one way or the other. Judicial bias is the judge's bias towards one or more of the parties to a case over which the judge presides and judicial bias is not enough to disqualify a judge from presiding over a case unless the judge's bias is personal or based on some extra-judicial reason, (**See definition of judicial bias in Black's Law Dictionary, 9<sup>th</sup> Edition**).

Thus, once the court has jurisdiction over the dispute before it, the court is obligated to hear and conclude the dispute on the basis of the material before the court. If the trial judge considers the material before the court and opines or finds any party before the court is a horrible or a wonderful person, that would be no ground for recusal of the judge. It is the opinion of the court that such are the judgments the judge would be entitled to make in the mechanics of judging to facilitate judging or as part of the judicial decision making process by the court.

Accordingly, the court holds that decisions by a judge in interlocutory proceedings against or for other party (like in the instant case) must be subjected to the very high measure of establishing the judge's deep-rooted prejudice against a party or the subject matter that the judge cannot be trusted to decide fairly. It is not enough for a party, like in the present case, to simply allege that the party is dissatisfied or not happy with interlocutory orders and attribute the same to speculative and unsubstantiated allegations of bias in applying to seek recusal of the presiding judge. It is only where genuine reasons are established to doubt a judge's impartiality that the judge should be required to recuse or may *sua sponte* recuse because the disabling grounds are visibly present. As it has been judicially decided again and again, the test is objective. It is not what rests in the mind of the judge to decide fairly but what a reasonable person with knowledge of all the circumstances and facts of the case will perceive of the judge's capacity to decide the case fairly.

This court upholds the opinion in **R P M –V- P K M [2011] eKLR**, where the court stated, thus “.... **Where a judge senses that he may be biased, he must disqualify himself. The Constitution enjoins Judges to exercise their judicial powers to do justice for the good of society always keeping in mind that judicial power is vested in them by the people on whose behalf and for whose benefit they must exercise it. They are required to act valiantly in preserving and using that judicial power to do justice and to maintain truth. They must do that which good conscience dictates to be right upon application of the law regardless of criticisms. But they must take criticism positively. Where the criticism is justified, they must mend; where it is not, they must take it in stride. But they must not be deterred in their quest to do justice....**”

The court considers that the court as an arena for justice is not like the arena of the little boy with the beautiful red ball in which other boys do not play and the game suddenly comes to an end if they fail to appease the little boy with the red ball. In the arena of the childish little boy, the boy says, **“I take away my beautiful red ball because you boys fail to meet my happiness and conditions for continued kicking of my beautiful red ball- the game is over. Had you heeded to share with me your sweet orange or rallied around my terms this way or that way, the game would go on. For now, am gone with my beautiful red ball.”**

In a court of justice, not any of the litigants or the presiding judge is permitted to play like the little boy with the beautiful red ball. The altar of justice is a platform of due process in which the presiding judge is a free voice of judging and chained only by the Constitution, the law and the established tenets of fairness and human dignity. The jurisdiction of the court to decide binds the presiding judge and the litigants and the court will frown at any unfounded tendencies by a litigant to shatter, snap, revolt, vacate or suppress

the properly established jurisdiction of the court over the case at hand. The court holds that the legitimate exercise of the free voice of judging in the case before the court does not constitute a legitimate ground for recusal of the presiding judge. That is the essence of the rule that judicial bias is no basis for recusal unless the judge's bias is personal or based on some extra-judicial reason. Further, within that framework of exercising the legitimate free voice of judging, there is a general provision of application for review or invoking appeal for a second chance for judging as may be necessary in appropriate circumstances. However, at all times of decision making the presiding judge must take all necessary care, and judges are reasonably presumed to be seasoned to take such care, that the best decision is made in the first instance of judging as per the circumstances and facts of the case so that recourse to review or appeal is therefore exercised by the parties as the exception in appropriate cases.

It is not disputed that the present applications were filed after the directions for hearing of the main suit were taken and the hearing date fixed by consent of all the parties. It is also not disputed that the applicants sought to have the applications heard on the date scheduled for hearing the main suit without prior involvement of the claimant and without a prior court order for such purpose despite the applicants having had ample time to obtain appropriate court orders for urgent hearing of the applications. In the circumstances, the court finds that the claimant's submission that the applications were filed to derail the hearing as scheduled was founded upon valid grounds and which finding would serve as an impetus to dismissing the applications.

The court holds that an application for recusal of the judge must be filed, served and prosecuted at a time in the proceedings so as not to invite other parties' suspicion of bad faith on the part of the applicant. Where it comes on a date fixed for hearing and long after the directions for the hearing were taken like in the instant case, the court holds that the other parties would be justified to suspect and even urge such bad faith.

In considering the applications, I have perused the Constitution and deeply considered the role of the judge to do justice and in issues of both integrity and leadership. Article 73 of the Constitution is not the only provision but it stands out as one of the most compelling and instructive in this respect. The Article provides as follows:

“Responsibilities of leadership.

**73. (1) Authority assigned to a State officer—**

**(a) is a public trust to be exercised in a manner that—**

**(i) is consistent with the purposes and objects of this Constitution;**

**(ii) demonstrates respect for the people;**

**(iii) brings honour to the nation and dignity to the office; and**

**(iv) promotes public confidence in the integrity of the office; and**

**(b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.**

**(2) The guiding principles of leadership and integrity include—**

**(a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;**

**(b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;**

**(c) selfless service based solely on the public interest, demonstrated by—**

**(i) honesty in the execution of public duties; and**

**(ii) the declaration of any personal interest that may conflict with public duties;**

**(d) accountability to the public for decisions and actions; and**

**(e) discipline and commitment in service to the people.”**

I have revisited the court record over and over again and measured the orders made, proceedings and the issues in dispute against the test in Article 73 of the Constitution. I have arrived at the impelling finding that the test in Article 73 has been satisfied. Taking the issues in dispute in the case in to account, as the presiding judge, I have a conviction that the judicial authority as vested has been exercised in accordance with the Constitution.

Accordingly, the court finds that the alleged threshold and compelling obligation for recusal of the judge in this case does not in any measure begin to outweigh the threshold and compelling obligation for the presiding judge to hear and determine the case for which the presiding judge is vested with the jurisdiction to decide because, no valid disabling reason against the judge has been established by the applicants.

In arriving at the finding, the court has considered the provisions of Article 6(1) of the Constitution which provides that a national state organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service. Within the Judiciary’s administrative arrangements, this court sitting at Nakuru is the reasonable provision for the parties in this case to access justice and it is the opinion of the court that the arrangement as premised on Article 6(1) should not be defeated without a valid reason. The court holds that the provisions of Article 6(1) of the Constitution imposes mandatory obligations on the state organs and once a given state organ has instituted reasonable measures for access to the services in a given part of the Republic, the arrangements cannot be defeated without justification.

The court has also considered the provisions of section 3 of the Industrial Court Act, 2011 that establishes the court and the section provides for the guiding principal objective of the court. The section provides as follows:

“Principal Objective.

**3. (1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious and proportionate resolution of disputes governed by this Act.**

**(2) The Court shall in the exercise of its powers under this Act or the interpretation of the rights of individuals and parties, seek to give effect to the principal objective in subsection (1).**

**(3) The parties and their representatives, as the case may be, shall assist the Court to further the principal objective and, to that effect, to participate in the proceedings of the Court and to comply with directions and orders of the Court.”**

The court has considered the applications for recusal, taken into account the findings already made in this ruling and further finds that the prayers made in the applications, the grounds as urged and the manner or circumstances in which they were made cannot be said to be consistent with the foregoing statutory principal objective of the court. Facilitation of the just, expeditious and proportionate resolution of the disputes vested in the court’s jurisdiction is the principal statutory objective of the court. The parties to the suit are obliged by the statutory provision to assist the court in furtherance of the principal objective by participating in the proceedings before the court and complying with the court’s directions and orders. That is the clear statutory role of the parties in the proceedings before the court.

The court shall hold true to the virtue of justice. The judge shall uphold fidelity to the oath of office. The court shall steadfastly espouse the authority vested in the judge by the people through the Constitution. The court shall not waiver so as to defeat the purpose of the constitutional and statutory establishment of the judiciary. The court shall not engage in vanity to proceed with a hearing in visibility of a valid ground for recusal of the judge. In this case, the court has found that no disabling valid ground for recusal has been established. The applications will therefore fail as unmerited.

In conclusion, the applications are dismissed with costs and parties are now invited to fix the hearing of the main suit on a date convenient to the parties and the court.

**Signed, dated and delivered in court at Nakuru this Wednesday, 11<sup>th</sup> December, 2013.**

**BYRAM ONGAYA**

**JUDGE**