



**Kanyotu v Kangaita Coffee Estate Limited & another (Commercial Cause E551 of 2023)
[2025] KEHC 2401 (KLR) (Commercial and Tax) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CAUSE E551 OF 2023
MN MWANGI, J
FEBRUARY 28, 2025**

BETWEEN

JOHN KARIUKI KANYOTU APPLICANT

AND

KANGAITA COFFEE ESTATE LIMITED 1ST RESPONDENT

THE REGISTRAR OF COMPANIES 2ND RESPONDENT

RULING

1. The 1st respondent Kangaita Coffee Estate Limited filed an application dated 27th May 2024 brought under the provisions of Order 2 Rule 15, Order 5 Rules 3, Order 10 Rule 11 and Order 53 of the Civil Procedure Rules, 2010. The 1st respondent prays that I recuse myself from hearing this matter and for the case to be placed before the Presiding Judge for reallocation to another Judge. The 1st respondent also prays for costs.
2. The application is supported by an affidavit sworn on 27th May 2024 by Ms Margaret Nyakinyua Murigu, a Director of the 1st respondent. She contended that I granted stay orders on the 1st respondent's existing CR12 vide orders issued on 26th July 2023 despite representations by Counsel for the 2nd respondent that he needed time to file a proper response to explain how the current CR12 came into place.
3. The deponent further contended that I failed to probe and confirm whether the individual claiming to be a Director of the 1st respondent, Mr. Ken Njau, was indeed an existing Director of the company at that moment, based on the evidentiary materials placed before me.
4. Ms Nyakinyua averred that on 13th February 2023 when the matter came up for mention to confirm filing of the response for the exparte applicant's application and submissions, I proceeded to render



- a ruling allowing the application as prayed without any consideration on the velocity of the evidence placed before me.
5. She contended that the manner in which the application of the applicant was dealt with reveals gross violation of judicial integrity and impartiality which undermines public confidence in me.
 6. Ms Nyakinyua deposed that the 1st respondent has no faith in my ability to adjudicate over this matter fairly without occasioning prejudice to the 1st respondent.
 7. The applicant, Mr. John Kariuki Kanyotu filed a replying affidavit sworn on 1st October 2024 to oppose the application. He stated that he is a Director of the 1st respondent and competent to swear the affidavit.
 8. He stated that his Advocate had advised him that an application of this nature cannot be brought under Order 2 Rule 15, Order 10 Rule 11 and Order 53 of the Civil Procedure Rules. He prayed for the application to be struck out in limine with costs, for being fatally incurable.
 9. He contended that the application has been brought without due authority of the applicant company. He stated that he had been advised by his Advocates that mere suspicion of bias and/or displeasure with a decision cannot be a ground for recusal of a Judge. Mr. Kanyotu averred that the 1st respondent's grievance lies in the manner in which the proceedings herein were conducted culminating in the Court's judgment and decree dated 21st February 2024.
 10. He stated that the 1st respondent subsequently filed an application dated 12th March 2024 seeking inter alia, to have the orders issued on 21st February 2024 revoked, and that the said application is still pending determination before me.
 11. Mr. Kanyotu stated that in response to the said application, he has raised a preliminary question challenging the applicant's locus (standi) for want of authority from the company (1st respondent).
 12. He contended that other than preferring an appeal to ventilate its dissatisfaction with the said judgment and decree, the instant application is an attempt at intimidating and/or blackmailing me to rule in favour of the 1st respondent.
 13. Mr. Kanyotu then proceeded to outline the proceedings that had taken place on 10th July 2023 and 26th July 2023. He contended that the dissatisfaction of the handling of proceedings, and particularly, the granting of the prayer for leave to operate as a stay of proceedings cannot form the basis of an application for recusal. He urged me to be wary that the instant application is a disguised attempt at appealing/setting aside of the judgment and decree dated 21st February 2024.
 14. He stated that the 1st respondent cannot speak for the 2nd respondent who has knowledge of the pendency of these proceedings. He further stated that the 1st respondent cannot sustain an application for recusal on account of how the 2nd respondent was allegedly prejudiced during these proceedings.
 15. He deposed that it should not be lost to the Court that the Registrar of Companies was served with pleadings, acknowledged service, and entered appearance through its Counsel Mr. Odhiambo, who on 26th July 2023 was directed to file a response within 14 days but did not comply and he was on 4th October 2024 granted additional time to file a response but failed to do so.
 16. Mr. Kanyotu deposed that I allowed the Judicial Review application as prayed when the matter came up for mention on 13th February 2024 being over six (6) months since the 2nd respondent's acknowledgement of service of the application and its indolence by failing to file a response, which cannot be a ground for recusal by the Court.



17. Mr. Kanyotu stated that the 1st respondent had not tendered any evidence in support of its allegation of violation of judicial integrity and lack of impartiality on my part. He contended that the present application is intended to intimidate and/or blackmail me to rule in the 1st respondent's favour when considering the application pending before me.
18. Mr. Kanyotu further contended that the 1st respondent's antics of imputing bias, and seeking my recusal in the absence of any material to support its claims is a threat to judicial independence warranting to be disregarded with the contempt it deserves.
19. He stated that the instant application is bereft of any merits and should be dismissed with an order of costs against Ms Margaret Nyakinyua Murigu and the firm of Advocates representing her.
20. Apart from the replying affidavit, the applicant also filed grounds of opposition dated 18th June 2025.
21. In written submissions dated 10th September 2024, the 1st respondent's learned Counsel, Mr. King'ori gave a brief history of the succession cause in the estate of James Kanyotu (deceased). He contended that the applicant instituted these proceedings and obtained the orders dated 26th July 2023 to say the current CR12 of the 1st respondent which shows the genuine shareholding structure of the said company pending the hearing of his application. Counsel for the 1st respondent stated that the applicant's intention is to ensure that the illegal changes in the company's shareholding effected sometime in 2011 is reinstated, with the objective of taking over conduct of the affairs of the company, and particularly, Milimani ELC Case No. 4 of 2021.
22. Counsel submitted that I allowed the applicant's application on 13th February 2024 unopposed without having been satisfied that the 1st & 2nd respondents or shareholders of the company had been given the opportunity to be heard.
23. He took issue with the fact that I declined to grant stay of execution of my orders dated 13th February 2024 when an application for review dated 12th March 2024 was filed.
24. The 1st respondent's Counsel cited decisions in Rai & 3 others v Rai & 4 others (Petition 4 of 2012) [2012] KESC 20 (KLR), Rawal v Judicial Service Commission & another; Okoit (Interested Party); International commission of Jurists & another (Amicus Curiae), [2016] KECA 117 (KLR).
25. Counsel for the 1st respondent contended that the manner in which I conducted proceedings leading to my decision of 13th February 2023 demonstrates outright bias and undue influence by the applicant because of granting the orders dated 26th July 2023 for stay exparte, whose overall effect was to change the shareholding of the 1st respondent without any assessment of the evidence before me.
26. He contended that a stay of the CR12 issued after 4th July 2011 meant that the shareholding of 1st respondent was reversed to the shareholding obtained by illegal and fraudulent means by the applicant, and that I failed to act with caution where it was absolutely necessary to avoid causing changes in a company that would affect the company's relationship with third parties or overturn directorship, shareholding and control of the company.
27. Counsel contended that the orders that I granted had the effect of determining the case at interlocutory stage, thereby denying parties the opportunity to give evidence.
28. He submitted that on 26th July 2023 the 1st respondent was purportedly represented by Mr. Kenneth Njau who claimed to be a Director of the 1st respondent. Counsel contended that I failed to ascertain if the said Mr. Kenneth Njau who had been given authority to represent the 1st respondent yet he had not filed any document to enter appearance on behalf of the company.



29. That I proceeded to record that the 1st respondent was not opposed to the application by the applicant merely on the basis of Mr. Kenneth Njau's admission before me.
30. That I should have required the party adversely affected being a corporate entity to produce documentary evidence that authority had been given to the individual (Kenneth Njau) appearing in Court. Counsel contended that by declining to grant stay of my previous orders, I applied double standards.
31. The applicant's Counsel filed written submissions. Most of what is contained on page 1 of the said submissions is captured in the averments made in his affidavit and there is no need to repeat the same.
32. The applicant's learned Counsel, Mr. Ng'ang'a relied on Regulation 21(1) of the Judicial Service (Code of Conduct & Ethics) Regulations 2020 on the circumstances in which a Judge may recuse himself or herself. Counsel for the applicant submitted that the 1st respondent had not pleaded let alone proved the facts constituting grounds to warrant my recusal.
33. Counsel stated that the basis upon which my recusal is sought herein falls short of the established threshold as the 1st respondent is asking me to down my tools in this matter because of how I exercised my discretion or applied myself in determination of the dispute before me.
34. He submitted that mere dissatisfaction with how I handled proceedings and/or my application of the law does not amount to bias and cannot therefore inform an application for recusal as a party aggrieved by a Judge's application of the law or exercise of discretion has the option of preferring an appeal. He also stated that discontent or dissatisfaction with the outcome of a case is no justification for recklessly attacking my integrity.
35. Counsel relied on the case of Hassan Omar Hassan & another v IEBC & others [2017] eKLR, where the Court declined an application for recusal. Mr. Ng'ang'a submitted that the standard of established bias is high and must be done with cogent evidence, but the 1st respondent had not tendered any evidence in support of its allegation of violation of judicial integrity and lack of the impartiality on my part.
36. He stated that an applicant seeking recusal of a Judge must demonstrate a reasonable apprehension of bias, which a right-minded person applying themselves to the question would conclude that the Judge was biased. He added that the test is objective and is not based on the perception of the applicant but a fair minded and an independent observer as asserted by the Court of Appeal in the case of Philip K. Tunoi & another v Judicial Service Commission & another CA Civil Application NAI No. 6 of 2016 [2016] eKLR, to support the assertion that a Judge should not recuse himself/herself where no valid reasons have been tendered, as in the instant case. He also relied on the case of Re JRL exp CJL (1986) 161 CLR 342 at 352 cited by Lakha J., in the case of Kaplan & Straton v L.Z Engineering Construction & 2 others [2000] eKLR.
37. The applicant's Counsel urged me to decline the 1st respondent's disguised attempts of sourcing for what she considers a "favourable bench". He submitted that Courts should not countenance a situation where litigants cherry pick the Judges who should hear their matters.
38. Counsel cited the case of Republic v Independent and Electoral Boundaries Commission, Wiper Democratic Movement (Kenya), Registrar of Political Parties and Kyalo Peter Kyuli Exparte Wavinya Ndeti [2017] KEHC 886 (KLR), where the Court cited with approval the holding of the constitutional court in President of the Republic of South Africa Vs the South African Rugby Union and others CCT 16/98 (supra).



39. Mr. Ng'ang'a prayed for the application to be dismissed with costs against Ms Margaret Nyakinyua Murigu and the firm of Advocates representing her, noting that she had no authority to institute proceedings on behalf of the company.

Analysis and Determination

40. I have considered the Notice of Motion dated 27th May 2024, the supporting affidavit, as well as the grounds of opposition and replying affidavit filed by the applicant. I have also considered the written submissions filed. The issue for determination is if I should recuse myself from hearing this matter.
41. To put matters into context, the applicant, Mr. John Kariuki Kanyotu filed a Judicial Review application dated 26th July 2023 where he sought leave to prosecute the Judicial Review application as a derivative action on behalf of the 1st respondent. He also sought leave to apply for a judicial review order of certiorari to remove to this Court for the purposes of quashing the decision of the 2nd respondent purporting to alter the lawful shareholding and directorship of the 1st respondent contained in letters/CR12 Forms dated 24th January 2023, 8th October 2020, 18th April 2019 and 10th October 2016 and/or any other CR12 Forms issued after 4th July 2011.
42. The applicant also sought leave to apply for judicial review order of mandamus compelling the 2nd respondent by itself and/or its agents to rectify the 1st respondent's company record by removing from the Register, names of persons not listed as Directors/Shareholders as at 4th July 2011 and restoring the directorship/shareholding of Kangaita Coffee Estate to the position it was as at 4th July 2011. The applicant also sought an order for the leave granted to operate as a stay against the impugned falsified CR12 Forms dated 24th January 2023, 8th October 2020, 18th April 2019, 10th October 2016 and/or any other CR12 Forms issued after the 4th July 2011 and any suit proceedings or action whatsoever being undertaken or commenced on the strength of the impugned CR 12 Forms be stayed pending the filing, hearing and determination of the substantive Judicial Review application.
43. The applicant also sought to be granted leave to apply for a judicial review order of prohibition restraining the 2nd respondent and its respective agents or servants from further altering or interfering in any manner whatsoever with the shareholding and directorship of the 1st respondent by issuance of any further letters, CR12 Forms or other documents or directives whatsoever purporting to show that the 2nd respondent's shareholding is in any way different from that contained in the CR12 Form dated 4th July 2011.
44. On 19th July 2023 when I considered the application dated 26th July 2023, I granted prayers 3, 4 and 6 but not the prayer for leave to operate as a stay against the impugned falsified CR12 Forms. I directed service of the application, and scheduled prayers No. 2 and 5 for directions on 26th July 2023.
45. An affidavit of service sworn on 21st July 2023 filed by the applicant's Advocates Mbugua Ng'ang'a and Co. Advocates shows that the application and the directions that I gave on 19th July 2023 were served upon Kangaita Coffee Estate Limited and the Registrar of Companies, and that Mr. Kenneth Peter Njau, one of the Directors of Kangaita Coffee Estate Limited was served through his last known email addresses and also through WhatsApp vide his last known mobile number.
46. Ms Nyakinyua seems to suggest in her affidavit that it was my work to probe if the person who was served, namely, Mr. Kenneth Peter Njau was a Director of the 1st respondent. I beg to disagree. My duty when I sit in Court is to issue directions and/or orders, and it is the work of litigants and Advocates to ensure compliance with the same. It is not my work to investigate if indeed the persons who are said to



be Directors of a company serve in that capacity, unless and until an opposing party adduces evidence to the contrary.

47. The onus is therefore upon Ms Nyakinyua to bring evidence to show that the said Mr. Kenneth Peter Njau who attended Court on 26th July 2023 is not a Director of the 1st respondent. Ms Nyakinyua has vide a Notice of Motion dated 12th March 2023 and her supporting affidavit expressed her displeasure by the orders that I granted to the applicant. Rather than prosecute her application dated 12th March 2024 on behalf of the 1st respondent where she seeks the setting aside of the orders that I made on 19th February 2024, She filed an application for my recusal. Litigants must be reminded that in every legal duel there is a winner and a loser, unless the parties compromise an application or suit by agreeing to reach an amicable settlement which brings about a win-win scenario.
48. On 26th July 2023, Mr. Ng'ang'a Advocate for the exparte applicant sought a prayer for his client, Mr. John Kariuki Kanyotu to be granted leave to proceed with the matter as a derivative action. Mr. Kenneth Peter Njau who appeared as a Director of the 1st respondent did not oppose the application. Mr. Odhiambo Advocate for the 2nd respondent asked for time to seek proper instructions so as to explain how the Registrar of Companies arrived at the specific position they were in. He prayed for five (5) days to respond. On that day, in the exercise of my discretion I granted an order for the leave granted on 10th July 2023 to operate as a stay until the hearing and determination of the Notice of Motion. I proceeded to give further directions for compliance and a mention date for 4th October 2023.
49. On 4th October 2023, Mr. Odhiambo Advocate informed me that they were trying to trace some documents. He requested for three (3) days to file and serve a replying affidavit. Mr. Isahi held brief for Mr. Ng'ang'a and agreed to indulge Mr. Odhiambo. I gave Mr. Odhiambo three (3) days to file a response and gave further directions for compliance and scheduled the matter for mention on 7th December 2023.
50. I did not sit in Court on that day and the matter was rescheduled to 13th December 2023. On that day, Mr. Isahi held brief for Mr. Ng'ang'a for the applicant. There was no appearance for the 1st and 2nd respondents. Mr. Isahi addressed me by stating that what was pending was the substantive application, and that prayers 1 and 2 of the said application were spent. I made a ruling to the effect that on 4th October 2023 I had given Mr. Odhiambo representing the 2nd respondent three (3) days to file and serve a response to the Notice of Motion dated 10th July 2023, and that I also gave further directions as to the filing of written submissions, but the Registrar of Companies had not responded to the Notice of Motion dated 10th July 2023.
51. I proceeded to deem the said application as unopposed as more than six (6) months had gone by since directions were given. I proceeded to grant the orders sought in paragraphs 1, 2 and 3 of the Notice of Motion dated 10th July 2023.
52. Following the said ruling, the 1st and 2nd respondents had the right to either file an appeal against my decision or apply for the setting aside of the said ruling, they opted to do the latter. What the 1st respondent should do is to prosecute its application instead of allege impartiality and lack of integrity where none exists.
53. The 1st respondent is in this suit in its own right and should not be seen to be representing the 2nd respondent who is the Registrar of Companies who is arguably, ably represented by Mr. Odhiambo Advocate.



54. With a Director of the 1st respondent having conceded to the application, I exercised my discretion judiciously in light of the non-compliance by the Registrar of Companies with the directions given by myself.
55. Section 1A (3) of the *Civil Procedure Act* is clear that a party to civil proceedings or an Advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court. That is what the 2nd respondent's Counsel failed to do.
56. Guided by Regulation 21(1) of the Judicial Service (Code of Conduct and Ethics) Regulations, 2020, the 1st respondent has failed to meet the threshold required for my recusal.
57. Dissatisfaction with a Court order/ruling cannot be a ground for recusal as alternate remedies lie in appeal, review or setting aside of Court orders.
58. I am also guided by the decision rendered in *Kaplan & Straton Vs L. Z Engineering & 2 others* [2002] eKLR, where the Court stated thus: -
- Although it is important that justice must be seen to be done, it is equally important that Judicial Officers discharge their duty to sit and do not by acceding too readily to suggestions of appearance of bias encourage parties to believe that by seeking disqualification of a Judge, they will have their case tried by someone thought to be more likely to decide the case in their favour.
59. See also the case of *President of the Republic of South Africa Vs the South African Rugby Football Union and others*, CCT 16/98 cited in the case of *Republic Vs IEBC (Wiper Democratic Movement (Kenya), Registrar of Political parties and Kyalo Peter Kyuli ex parte Wavinya Ndeti* [2017] KEHC 886 (KLR).
60. Having analyzed the proceedings that took place before me and applying the above decisions to the facts herein, I decline to recuse myself from hearing this case. Litigants should be content with the Courts where their cases land, unless there is outright bias or impartiality or perceived bias or impartiality, which has not been proved in this instance.
61. The application dated May 27, 2024 filed by the 1st respondent/applicant is hereby dismissed with costs to the applicant/respondent, Mr. John Kariuki Kanyotu.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF FEBRUARY, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of:

Mr. King'ori for the 1st respondent/applicant

Mr. Isahi h/b for Mr. Ng'ang'a Mbugua for the applicant/respondent

Ms Lucy Njeru – Court Assistant.

