



**Njue & 8 others v Mangi & another (Tribunal Case 250 & 251 of 2020) [2023] KEBPRT 1288 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEBPRT 1288 (KLR)

**REPUBLIC OF KENYA  
IN THE BUSINESS PREMISES RENT TRIBUNAL  
TRIBUNAL CASE 250 & 251 OF 2020  
P MAY, MEMBER  
OCTOBER 17, 2023**

**BETWEEN**

**MBURU NJUE ..... 1<sup>ST</sup> TENANT  
ALEX KINYUA ..... 2<sup>ND</sup> TENANT  
HELLEN MUTHONI ..... 3<sup>RD</sup> TENANT  
EUNICE KIVUVA ..... 4<sup>TH</sup> TENANT  
JANE WANGECHI ..... 5<sup>TH</sup> TENANT  
EVERLYNE MUKASI ..... 6<sup>TH</sup> TENANT  
RAPHAEL KAIMENYI ..... 7<sup>TH</sup> TENANT  
REGINA MUTHONI ..... 8<sup>TH</sup> TENANT  
LYDIA WANJIRU ..... 9<sup>TH</sup> TENANT**

**AND**

**STEVEN MANGI ..... 1<sup>ST</sup> RESPONDENT  
DAVID KIRIMI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction**

1. The 1<sup>st</sup> Respondent's representative one Christine Mukangi brought this present application by way of Notice of Motion dated 6<sup>th</sup> March, 2023. The Applicant prays for orders that I do recuse myself from these matters.



2. The Application has grounds upon which are relied and is further supported by the affidavit of the Applicant.

### Determination

3. Upon careful consideration of the said Application, the Affidavits, the written submissions of learned Counsels for the parties, the authorities relied on and the law; in my appreciation and understanding of the law and the principles therein, recusal forms an integral principle of law and practice in the administration of justice.
4. I also appreciate that any party is entitled to apply for recusal by a particular judicial officer; and it is incumbent upon such a judicial officer to give the application due consideration within the law. This tribunal is therefore called upon to determine whether to recuse or not.
5. The decision of the Constitutional Court of South Africa in *The President of the Republic of South Africa & others v South African Rugby Football Union & others*- 1999 (4) S.A. 147 (C.C.) (hereinafter referred to as the SARFU case) is quite persuasively instructive in this regard. Therein, the Court noted at para 10 as follows: -

“At the very outset we wish to acknowledge that a litigant and her or his counsel who find it necessary to apply for the recusal of a judicial officer has an unenviable task and the propriety of their motives should not lightly be questioned. Where the grounds are reasonable it is counsel's duty to advance the grounds without fear. On the part of the judge whose recusal is sought there should be a full appreciation of the admonition that she or he should “not be unduly sensitive and ought not to regard an application for his [or her] recusal as a personal affront.”

6. It suffices to note from the onset of this ruling that everyone is entitled to a fair trial and that includes the right to a hearing before an impartial adjudicator. This common law right is now constitutionally entrenched under the provisions of our Constitution at Article 48 and 50 of the [Constitution](#) of Kenya, 2010. The law in this regard is unblemished, having been the subject of recent judgments of superior Courts and thus I do not need reinvent the wheel.
7. The Court of Appeal while aptly discussing the recusal of one of the judges in the case of the [Kaplana H. Rawal v Judicial Service Commission & 2 others](#) [2016] eKLR pointed out two tests that seemingly, jurists were grappling with which one to adopt. And this is what they stated;

“For quite some time there was contestation in several Commonwealth jurisdictions regarding the proper test to be applied in such case: was it real likelihood of bias or reasonable apprehension of bias by a reasonable person. In *R. v. Gough* (1993) AC 646, the House of Lords adopted the real danger test, meaning that the question to ask is whether there was a real danger that a fair trial was likely to be denied. The test did not win universal acceptance within the Commonwealth and in *Magill v. Porter* (2002) 2 AC 357, the House of Lords subsequently modified the test to whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility that the judge was biased.



The East Africa Court of Justice adopted the same test in *Attorney General of Kenya v Prof Anyang' Nyong'o & 10 Others EACJ Application No. 5 of 2007* when it stated:

“We think that the objective test of “reasonable apprehension of bias” is good law. The test is stated variously, but amounts to this: do the circumstances give rise to a reasonable apprehension, in the mind of the reasonable, fair minded and informed member of the public that the judge did not (will not) apply his mind to the case impartially. Needless to say, (a) litigant who seeks disqualification of a judge comes to court because of his own perception that there is appearance of bias on the part of the judge. The court however, has to envisage what would be the perception of a member of the public who is not only reasonable but also fair minded and informed about all the circumstances of the case.”

8. While agreeing to what test to adopt in the said Application before it in the *Kalpna Rawal* case (*supra*) the Court of Appeal went on to point out the decision of the Supreme Court of Canada where the Court expounded the test in the following terms in *R. v. S. (R.D.)* [1977] 3 SCR 484:

“The apprehension of bias must be a reasonable one held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. 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. Further the reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties the judges swear to uphold. The reasonable person should also be taken to be aware of the social reality that forms the background to a particular case, such as societal awareness and acknowledgement of the prevalence of racism or gender bias in a particular community. The jurisprudence indicates that a real likelihood or probability of bias must be demonstrated and that a mere suspicion is not enough. The existence of a reasonable apprehension of bias depends entirely on the facts. The threshold for such a finding is high and the onus of demonstrating bias lies with the person who is alleging its existence.”

9. I do not wish to depart from the finding of this court as adopted by the Court of Appeal, which decision is binding before this tribunal. Guided by the tests/elements clearly laid down above, with which I am in full agreement and have adopted, it is my duty to consider, with a mind very much open to persuasion, the grounds the Applicant has raised for seeking my recusal from handling the head matter as filed herein.
10. While pointing out that this Court is biased, the Applicant states that the orders given were biased and that they could only have been granted through being partial. I disagree. Any orders were only granted by myself after having thoroughly read the applications, the grounds in support, the supporting affidavit thereto and all material before me. I was convinced as I still am that the orders granted were the appropriate orders in those circumstances.
11. The above said and stated I am of the opinion that the Applicant's undoing is that she has suspicions and a suspect mind. At this point she feels (even though this isn't a relationship to be based on feelings) that she may not get justice before me. She is already agitated.



12. This Tribunal has 10 members as currently composed and I wouldn't be doing justice even to myself if I insist on handling this matter even though the Applicant has not adduced evidence of the alleged bias.
13. In the result, I shall allow prayer 2 of this application .
14. This matter shall be placed before Hon C Mugambi Chairperson for further directions  
It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF OCTOBER 2023.**

**HON. P. MAY**

**MEMBER**

**BUSINESS PREMISES RENT TRIBUNAL**

**Ruling delivered in the presence of:**

Ngigi for the 2<sup>nd</sup> Respondent

Christine Mkangi w/o for the 1<sup>st</sup> Respondent

No appearance for the Applicants

