**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB- REGISTRY OF DAR ES SALAAM**

**AT DAR ES SALAAM**

**MISC. CIVIL CAUSE NO. 271 OF 2021**

**HOBOKELA FRED MWANGOTA ..... 1ST APPLICANT**
**SUMA FRED MWANGOTA ..... 2ND APPLICANT**

**VERSUS**

**AUGUSTION MWANGOTA ..... RESPONDENT**

**RULING**

31st August & 13th October, 2022

**ISMAIL, J.**

When the matter came up for orders on 31st August, 2022, Mr. Elinihaki Kabula, learned counsel whose services were enlisted by the respondent, rose and addressed the Court on a couple of issues. Of the two, the most relevant for purposes of this application is the prayer for my recusal from the conduct of the matter. Mr. Kabura submitted that the respondent's displeasure with my conduct was expressed in his letter dated 19th July, 2022. In the said letter, Mr. Kabura contended, the respondent stated that he had a reason to believe that justice will not prevail under my watch.

He argued that the allegations arise from their appearance on 12th July, 2022, when learned counsel accompanied his senior brother, Mr. Ezekiel Fyandomo, who addressed the Court on the day. He contended that the Court denied him the right to rejoin after the submission by his counterpart, Mr. Francis Mgare. Mr. Kabura felt that that was very harsh and that the respondent's right of representation was marginalized, and justice was curtailed. He urged me to reconsider my involvement in the proceedings.

In a bare knuckled response, Dr. Chacha Murungu, learned counsel who deputized for Mr. Francis Mgare, for the applicant, shrugged off the contention raised by his adversary. He argued that the prayer by the respondent is a detestable practice which is tantamount to a forum shopping. Dr. Murungu submitted that the Court of Appeal of Tanzania abhors recusal for flimsy reasons that are not backed by cogent reasons, and that the Court should not give that luxury to the parties. He argued that the case of ***Isaack Mwamasika & Registered Trustees of Dar es Salaam EDBP & GD Construction Ltd v. CRDB Bank Limited***, CAT-Civil Revision No. 6 of 2016 (unreported), came up with reasons for recusal. It was held that recusal should only be allowed where there is bad blood between the judge and a client; where a judge has a pecuniary interest; and where the judge or his family has an interest in the outcome of the case.

He argued that in the instant case, no reason had been adduced to move the Court to recuse itself, and that the recusal is based on an imaginary fear. He submitted that being reprimanded is quite usual in court.

Mr. Kabura's rejoinder maintained the respondent's quest for recusal, arguing that Dr. Murungu is a stranger to what happened on the material date.

The narrow question to be resolved is whether the respondent's prayer for recusal is justified.

It should be stated, as a prelude to the disposal of the matter, that the general rule is that a judicial officer assigned a brief should be left to see out his tenure and mandate on the assigned brief, unless a supervening event occurs. One of such events is where, on account of cogent reasons, and at the instance of one or more of the parties, the said officer relieves himself from the conduct. As stated by Dr. Murungu, grounds for recusal were stated in the ***Mwamasika case*** (supra) in which the upper Bench's earlier decision in ***Laurean G. Rugaimukamu v. Inspector General of Police & Another***, CAT-Civil Appeal No. 13 of 1999 (unreported), was quoted with approval. In the latter, principles for recusal were enumerated as quoted hereunder:

*"An objection against a judge or magistrate can legitimately be raised in the following circumstances:* ***One****, if there is evidence of bad blood between the litigant and the judge concerned.* ***Two****, if the judge has close relationship with the adversary party or one of them.* ***Three****, if the judge or a member of his close family has an interest in the outcome of the litigation other than the administration of justice.* ***A judge or a magistrate should not be asked to disqualify himself for flimsy or imaginary fears.****"*

The reasoning of the upper Bench beds well with other persuasive decisions on the subject. Thus, in ***Ex parte Blume; Re Osborn*** (1958) S.R. (NSW) 334 at 338, the High Court of Australia held as follows:

*"****Suspicion is not enough and courts will not act on unsubstantiated grounds of flimsy pretexts of bias. The reason for that was that the test for there being an apprehension of bias is 'an objective one****.' Would a reasonable man, knowing the facts, draws the inference that the magistrate would be likely to be biased one way or the other. Put differently, what should be objectionable is not the decision to be made will actually be tainted with bias but rather, whether the circumstances under which it was made was such as to create a reasonable apprehension in the mind of other right-minded people that there was a likelihood of bias affecting the decision."* [Emphasis is added]

The foregoing excerpt is a tonic to an earlier decision of the same court in ***R v. Australian Stevedoring Industry Board, Ex parte Melbourne Stevedoring Co Pty Ltd*** [1953] 88 CLR 100, which was quoted with approval by the Court in ***Dhirajlal Walji Ladwa & 2 Others v. Jitesh Jayantlal Ladwa & Another***, HC-Comm. Cause No. 2 of 2020 (unreported). It was held in the former, as follows:

> *"to demonstrate disqualification for bias "it is necessary that there should be strong grounds for supposing that the judicial or quasi-judicial officer has so acted that he cannot be expected fairly to discharge his duties."*

It is noteworthy, that the decisions cited above have spoken so fervently about bias for obvious reason. This is that bias is actually a negation of impartiality, an indispensable cornerstone in the dispensation of justice. It resides in confidence, as was illustrated by Lord Denning, MR, who was quoted as saying the following in ***Metropolitan Properties Co (FGC) Ltd v. Lannon*** [1968] 3 All E.R. 304:

> *"Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking: 'The judge was biased.'"*

Mr. Kabura's contention is that there appears to exist bad blood between the respondent and I. To understand the import of the respondent's contention, it behooves me to pick the synonyms of the word **"bad blood"**. https:/thesaurus.yourdictionary.com has picked the following synonyms: ***animosity, enmity, hatred, ill will, hostility, antagonism, antipathy, bad will, disaccord, malevolence and rancor***." He has not stated the reason that makes him think that that bad blood exists. No citation has been given for a case in which such conduct was exhibited, besides saying that I was a bit harsh when I declined to give an opportunity for counsel to rejoin against the order of speech set out when proceedings are conducted. In my considered view, this was quite in order and it is in keeping with the duty that is bestowed on the Court, to ensure that there is decency in the conduct of proceedings in court.

It is why I find Mr. Kabura's contention on bad blood stranger than fiction. It is an inflammatory allegation that should not be left to see the light of the day. It should be nipped in the bud, and the reason for my thinking is twofold. ***One***, that the respondent is a person who was not known me and he still isn't. It is doubtful if I met him before that date. He is a complete stranger against whom no bad blood or grudge would be held. ***Two***, Mr. Fyandomo, another of the respondent's counsel, has appeared before me

once or twice before. He is equally an unknown person to me, and I do not recall having had any slightest contact with him before that. It would be utterly foolhardy for any person to impute any bad blood when all of the 'protagonists', in this case, the respondent, his counsel and I, are complete strangers to one another.

It is my conviction that the contention calling for my recusal is nothing better than a figment of imagination or a reverie which lacks the basis for any consideration, lest it be left to germinate and be left to serve as a tool of deflecting the cause of justice and fair trial. It is not unfair to contend that this is a diversionary tactic which threatens to erode the independence that the judicial officers enjoy, in presiding over matters without any fear or favour, and with a minimum of inconvenience or intervention. This is besides the normal threat of cultivating a distasteful conduct of forum shopping among the parties.

It is on the basis of the foregoing, that I decline the urge to recuse myself from the conduct of the matter. Nothing of value has been adduced as to justify the respondent's call for 'change of venue'.

Consequently, the application fails and it is dismissed.

It is so ordered.

DATED at **DAR ES SALAAM** this 13th day of October, 2022.

**M.K. ISMAIL**

**JUDGE**

**13.10.2022**