

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO 170 OF 2018

KURUTHUM YUSUF (suing as administratrix of
the estate of SUGRA JAFARI).....**PLAINTIFF**

VERSUS

SHABANI HASSAN.....**1ST DEFENDANT**
HASSAN SEIF MTUNGAKOA.....**2ND DEFENDANT**
SALEHE SEIF MTUNGAKOA.....**3RD DEFENDANT**
ALLY SEIF MTUNGAKOA.....**4TH DEFENDANT**

Date of Last Order: 28.02.2022
Date of Ruling: 14.03.2022

RULING

V.L. MAKANI, J

When the matter was called for hearing of the defendants' case, the court noted a letter from the 2nd, 3rd and 4th defendants praying to this court for the honourable Judge presiding over the matter to recuse herself from determining this suit on account of bias.

Mr. Kerario, Advocate representing the said defendants, said in principle that he agreed to the complaints that were raised by his clients.

Mr. Assenga, Advocate for the 1st defendant did not agree to the claims raised calling them flimsy, and proceeded to say that he cannot be associated with the said claims. He said there are legal principles laid down for the recusal of a Judge and this is according to the case of **Khalid Mwisongo vs. M/S Unitrans (T) Limited, Misc. Application No. 298 of 2016, (HC-Labour Division)** (unreported). He said the High Court in the said decision quoted several cases which gave principles of recusal of a Judge including the case of **Lauren Rugaimukamu vs. Inspector General of Police, Civil Appeal No. 13 of 1999 (CAT)** (unreported) and the case of **Tridos Bank NV vs. Dobbs [2001] EWCA Civil Case No. 468** cited in the case of **Otkritie International Investment Management Limited & 4 Others vs. Mr. George Urumov [2014] EWCA Civ. 1315**. In these cases it was held that a Judge should not recuse himself/herself from the case for flimsy reasons. He said he does not think the reasons given are sufficient for the Judge to recuse herself from the matter.

Mr. Karoli Fabian, Advocate for the plaintiff supported the arguments by Mr. Assenga. He said the first complaint is on time limitation, which advocate for the defendant knows is an interlocutory order and that

the only avenue available is later in an during appeal. Secondly, the respondents said they do not trust the evidence of **PW2** as recorded which is merely suspicious and fear. He said the plaintiff case has been marked as closed and this is a long-time case, and there is no proof that there is blood relation between the Judge and the plaintiff or siblings and the imaginary fear is flimsy because if they have a strong case then they ought to present their evidence during the defence case and not ask for recusal of the Judge. He said if the defendants will not be satisfied with the decision of the Judge then they may go to the Court of Appeal as the reasons for recusal in the letter may also form grounds of appeal. He said they are no legal reasons which are genuine, and if any, they would have been presented at the earliest possible time before the closure of the plaintiff's case. He concluded by saying that he does not see strong reasons for the recusal of the Judge.

In rejoinder Mr. Kerario said he did not agree with the arguments by both Counsel that the reasons reflected on the letter are flimsy. He said the respondents have given the reasons from practical assessment from what they saw, witnessed and heard. He said this was not hearsay. He said the judgment cited is a High Court judgment

and thus not binding and so the letter of recusal is proper to remove that fear. He said it is best if the letter is considered as they have used their right to express what they think is vital for them.

I have gone through the recusal letter and listened carefully to the arguments by Counsel for the parties. As asserted by Counsel for the parties, and correctly in my view, the complaint by the defendants in the recusal letter revolve around the issue of bias shown by the presiding Judge. The principles regarding recusal of a Judge are well elaborated in the case of **Laurean G. Rugaimukamu vs. Inspector General of Police** (supra) where the Court of Appeal stated:

*"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 ligation other than the administration of justice. **A judge or a magistrate should not be asked to disqualify himself or herself for flimsy or imaginary fears.**"*

(see also the case of **Issack Mwamasika & 2 Others vs. CRDB Bank Limited, Civil Revision No. 6 of 2016 (CAT-DSM)** (unreported) and **Khalid Mwisongo vs. M/S Untrans (T) Limited** (supra).

In the case of **Issack Mwamasika** (supra) the case from Kenya was quoted, namely, **Uhuru Highway Development Ltd Central Bank of Kenya & 2 Others, C.A. (K) Civil Appeal No. 36 of 1996, Kenyan Appeal Reports Vol. 3 p. 211 -219** where it was held:

"For our part, we dare say that most litigants would much prefer that they be allowed to shop around for the judges that would hear their cases. That, however, is a luxury which is yet available under our law to litigants and these applicants cannot have it."

And the Court of Appeal in the case of **Issack Mwamasika** (supra) emphasized that:

"recusal or disqualification of judges or magistrates is a sensitive subject....so the decision to file a motion seeking for disqualification should be made only after careful consideration..."

In the present case the reasons advanced by the 2nd, 3rd and 4th defendants do not fall within the ambit of the principles set out in the decision of **Issack Mwamasika** (supra), which is binding upon this court. And as correctly observed by Mr. Karoli, the complaints if found by the defendants to have any merit may be taken up as grounds of appeal in the event that the decision of this court would not be in their favour.

It is pertinent to state that shopping forum for judges has to be discouraged. That is why the Court of Appeal warned of its sensitivity and advised the courts to consider recusal of judges from presiding over a matter very carefully.

In the result, I dismiss the prayer for my recusal from the conduct of this suit. I order the hearing of the defendants' case to proceed as appropriate.

It is so ordered.


V.L. MAKANI
JUDGE
14/03/2022

