

UGANDA / JUDGMENT

Mabirizi Kiwanuka v Attorney General (Miscellaneous Application No. 89 of 2022) [2022] UGHCCD 71 (1 April 2022) [2022] UGHCCD 71

COURT

HC: Civil Division (Uganda)

BEFORE

Boniface Wamala, J

CASE / FILE NUMBER

Miscellaneous Application No. 89 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (CIVIL DIVISION) IN THE MATTER OF AN APPLICATION FOR RECUSAL BY MALE H. MABIRIZI K. KIWANUKA MISCELLANEOUS APPLICATION NO. 089 OF 2022 (Arising from Misc. Application No. 843 of 2021) (Arising from Misc. Cause No. 287 of 2021) MALE H. MABIRIZI K. KIWANUKA ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA RULING

- [1] The Applicant brought this application by letter seeking my recusal from cases involving him arising out of Misc. Application No. 843 of 2021 and arrest of a pending ruling on preliminary objections in Misc. Application No. 89 of 2022: Male H. Mabirizi K. Kiwanuka vs Attorney General. According to the letter by the Applicant dated 23rd March 2022, the Applicant expresses dissatisfaction with the way I have handled his matters and the decisions I have made in the matters which have all apparently been against him. The Applicant alleges that I appear to have a personal vendetta against him and accuses me of being an extension of Justice Musa Ssekaana. He thus asks me to recuse myself from his matters including not delivering the pending ruling in proceedings already taken by me.

[2] The Applicant brought the application under **Articles 28, 44(c), 126 and 128 of the Constitution** and provisions under **The Constitution (Recusal of Judicial Officers) (Practice) Directions, Legal Notice No. 7 of 2019** (hereinafter to be referred to as the "**Recusal Practice Directions**"). Rule 5 of the Practice Directions provides that *"A Judicial Officer may, on application by**

any of the parties or on his or her own motion, recuse himself or herself from any proceedings in which his/her impartiality will reasonably be in question". Rule 6 of the Practice Directions sets out circumstances under which a Judicial Officer may on his/her own instance disqualify him/herself from handling a particular matter. Rule 7 provides for Recusal of Judicial Officers at the instance of parties. It provides as follows –

*"Any party to the proceedings may apply to court for a judicial officer to recuse himself or herself under the following circumstances –**

- **a) Where the judicial officer has an interest in the subject matter or has a relationship with any person who is interested in the matter;**
- **b) Where a judicial officer has background information or experience, such as the judicial officer's prior work as a lawyer;**
- **c) Where a judicial officer has personal knowledge about the parties or the facts of the case;**
- **d) Where a judicial officer has ex parte communications with lawyers or parties to the case;**
- **e) Where a judicial officer makes inappropriate comments or exhibits unacceptable conduct in the course of the hearing; or**
- **f) Where a judicial officer has exhibited actual, imputed or apparent bias.**

[3] The Applicant wrongly invoked Rule 6 of the Practice Directions, which is only applicable where a judicial officer opts to recuse him/herself on their own motion. The applicable rule therefore is Rule 7 set out above. The Applicant has to prove that any of the circumstances set out under Rule 7 exists in the instant case. Since the Applicant did not address his mind to the provision under Rule 7, he did not lead facts to establish any of the circumstances specifically. However, since the basis of his request is in regard to alleged lack of impartiality, I will take it that the allegation falls under paragraph (f) of Rule 7 above, that is, *"Where a judicial officer has exhibited actual, imputed or apparent bias"*. I will, therefore, consider this application as if the said provision was invoked by the Applicant.

[4] Let me begin by pointing out that an application for recusal of a Judge from a particular matter is not a light matter and is, certainly, not one that should be made as a routine. A judge and, indeed, every judicial officer takes an oath to do justice impartially and in accordance with the Constitution, the laws and usages of the Republic of Uganda, without any fear or favour, affection or ill will. This oath has been described as having the effect of

raising the judge above an ordinary human being to a higher calling. This calling is something greater than a judge's personal feelings. Judges must stand to this calling if they are to serve in their capacities as administrators of justice. See **Republic vs Raphael Muoki Kalungu HIGH COURT CRIMINAL CASE NO. 77 OF 2014(K)** cited in **Male Mabirizi Kiwanuka Vs Attorney General and Hon. Lukwago Erias & Others Vs Electoral Commission & Others, HC Misc. Cause No. 237 & 431 of 2019 (Consolidated)**. Also See: **Locabail (UK) Ltd Vs Bayfield Properties Ltd & Others (Consolidated) [2000] 1 ALL ER 64; [2000] 1 QB 451**.

- [5] In the present case, the Applicant claims that I have not acted impartially and among the particulars are that I appear to be bent to keep him in prison at all costs; that I appear to extend an already existing personal vendetta on the part of certain circles of the Judiciary; that I appear to have joined his persecutors; and finally that I have proved to be an extension of Justice Ssekaana Musa. For the record, Justice Ssekaana handled the cases that led to the Applicant's committal to prison for contempt of court.
- [6] For all intents and purposes, the only allegation that is factual is that in the course of the proceedings leading to this application for recusal, a number of applications have been made and I have made rulings in at least four instances. It is true that in all the four instances, the decisions have gone against the Applicant. But this cannot constitute evidence of bias. It simply depends on the nature of the applications, the law and the facts. It is not true that every time a party loses, even repetitively, before a particular judge, such is a sign of bias. The other allegations are speculative and not based on any facts. Judicial officers do not hold personal vendetta against litigants that appear before them. In case any such vendetta exists, which would be exceptional to the rule, it cannot be assumed. Facts must be set out that point to and establish existence of such a vendetta. It is not true that I have any vendetta against the Applicant. No facts to prove otherwise have been disclosed. My conscience is very clear and I have handled the cases in issue with a clear mind.
- [7] According to rule 4 of the Recusal Practice Directions, *"bias"* means *"inclination or prejudice for or against one person or a group of persons especially in a way considered to be unfair; whether actual, imputed or apparent"*. *"Actual bias"* means *"the existence of a state of mind that leads to an inference that a person will not act with impartiality"*. *"Imputed bias"* refers to *"a situation where a judicial officer has a pecuniary (monetary) or proprietary (property related) interest in the decision he/she is charged to adjudicate, and includes a situation where a judicial officer has personal or non-pecuniary interest in a decision"*. *"Apparent bias"* means *"a scenario where a judicial officer is not a party to a matter and does not have an interest in its outcome, but through his/her conduct or behavior, gives rise to suspicion that he/she is not impartial"*.
- [8] From the above definitions of bias, none of the scenarios exists in the present case and none has been established by the Applicant. The Applicant cannot rely upon baseless allegations to impeach this court's impartiality. On my part, my conscience is clear and I am in position to bring an impartial mind to bear on the adjudication of the matter before me.

- [9] Let me also make a comment on the applicability of the long held exposition of the principle of impartiality to the effect that "justice must not only be done but must be seen to be done". Much as this is a true and a crucial tenet under the principle of impartiality, it cannot be restricted to or seen through the eyes of only one of the parties to the litigation. Both parties and other independent observers should be put into consideration when determining whether justice is done and is seen to be done. If this principle is restricted to one party's perception of justice, it will not only occasion a miscarriage of justice but will also water down judicial practice.
- [10] For the above reasons, I have not found any reason to make me recuse myself from the matter before me and to arrest the ruling as asked by the Applicant. I will proceed to deliver the Ruling which is already set and is ready for delivery. The application for recusal is dismissed with no order as to costs.

It is so ordered.

Boniface Wamala JUDGE 01/04/2022

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