

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISC. CAUSE NO. 362 OF 2013**

**IN THE MATTER OF TRIBUNAL SET UP BY THE MINISTER  
RESPONSIBLE FOR KAMPALA TO INVESTIGATE THE PETITION  
FOR REMOVAL OF THE APPLICANT AS LORD MAYOR OF  
KAMPALA CAPITAL CITY AUTHORITY**

**LUKWAGO ELIAS**

**LORD MAYOR, KAMPALA**

**CAPITAL CITY AUTHORITY       :.....: APPLICANT**

*VERSUS*

**1. THE ATTORNEY GENERAL**

**2. THE TRIBUNAL INVESTIGATING**

**A PETITION FOR THE REMOVAL OF**

**THE LORD MAYOR OF THE KAMPALA**

**CAPITAL CITY AUTHORITY       :.....: RESPONDENTS**

**BEFORE: HON JUSTICE NYANZI YASIN**

**RULING OF THE JUDGE**

**1. BACKGROUND**

I gave the background of this case in my Ruling in Misc Application No. 445 of 2013 which arose from this Misc Cause in which I granted an order of temporary injunction to the applicant. I will for reasons of brevity not repeat that background here. Suffice to say that due to my conduct and the manner in which I directed the Deputy Registrar of this Division to handle Misc Application No. 454 of 2013, the Attorney General wants me to disqualify myself now.

2. The background to filing Misc Application No. 454 of 2013 appears to be that on the 21.11.2013 the Honourable Minister in charge of the Presidency and Kampala City Hon. Frank Tumwebaze issued a notice for a statutory meeting to be convened to vote on the removal of the applicant from office. That meeting was to take place on 25.11.2013 at 09.00am.
3. On the same day of the 21.11.2013 the Acting Head of the Civil Division fixed Misc Application No. 445 of 2013 on the 25.11.2013 at 10.00 am for hearing. This was the application by the applicant filed in this court seeking an order of temporary injunction to prevent the Honourable Minister from holding the meeting for his removal from office.
4. It appears to be that due to the above sequence of events, on the 22.11.2013 the applicant filed Misc Application No. 454 of 2013 seeking an interim order from the Deputy Registrar of this division to stop the Minister or the Attorney General from

convening at 09.00 am so that his application could be heard at 10.00 am.

5. On the 25.11,2013 the Deputy Registrar of this Division consulted me on what to do with the application. He must have done that because under SI No. 11 of 2009 - The Judicial Review Rules, Rule 9(1) thereof provides that unless only when directed by the Judge a Registrar of Court has no jurisdiction over Judicial Review Matters
6. The Deputy Registrar asked me what to do in writing and I replied in writing. I will detail what was written later. However when this application came for hearing on the 15.01.2014 learned counsel Mr. Martin Mwambutsya who appeared for the Attorney General requested me for an in camera meeting in chambers as he had a matter to raise. I allowed his request.
7. He made a brief address suggesting that the Attorney General had reasonable fears that I will not hear and determine this case impartially. He then made submission to justify that fear. This appears to have been a departure from the correct procedure which required a formal application with an affidavit bringing out the evidence upon which the fear of partiality is based. See: **ATTORNEY GENERAL Vs ANYANG'NYONGO [2007]1 E.A 12, A.K DETERGENTS CIVI APPEAL NO. 10 OF 2000** and **SHELL (U) LTD & 9 ORS Vs ROCK PETROLEUM (U) LTD, URA & ANOTHER MISC APPLICATION NO. 645 OF 2010**

8. The rationale for adopting that procedure is explained by the authorities. It gives the opportunity to others to challenge the evidence the applicant presents. It also helps the party raising the objection from giving evidence from the bar. Nevertheless like it happened in **SHELL (U) LTD & 9 ORS Vs ROCK PETROLEUM (U) LTD & ORS** (supra) and other cases, courts went ahead and answered the recusal. Similarly I will place no undue regard to the Attorney General's fault in procedure. In any event the Attorney General's objection here did not require evidence but looked to be a question of interpretation.
9. Mr. Mwambutsya for the Attorney General submitted that Attorney General's apprehension that there will be no partial trial is based on my conduct when I was handling Misc Application No. 445 of 2013. The Attorney General specifically referred to page 5 of the ruling of this court. He cited the use of the words;

***“In order to allow court time to hear the application at 10.00 am.”***

And argued that the above language I used left the Deputy Registrar with no option but to grant the application. He added that from those words the matter before the Deputy Registrar was pre-determined as the judge imposed it on the Registrar.

10. The Attorney General further argued that when I used the words quoted below, it in the Attorney General's view meant that I would be not impartial. The words are;

***“I am of that opinion in order to protect the integrity of Courts of Judicature.”***

The Attorney General submitted that there was no attack on the integrity of courts of Judicature in the first place. Secondly that neither the applicant nor the respondent raised this issue. He concluded that those two aspects point to the existence of partiality and prejudice.

11. To support his case the Attorney General relied on **1. MEERA INVESTMENTS LTD Vs COMMISSIONER GENERAL URA CIVIL APPEAL NO. 15 OF 2007 (Court of Appeal) 2. UGANDA POLYBAGS LTD DEVELOPMENT FINANCE CO. LTD & 3 ORS MISC APPLICATION NO. 02 OF 2003**. The learned State Attorney concluded using Lord Denning's words in **METROPOLITAN PROPERTY LTD Vs LANNON [1969]1 OB 571** that judgment must be rooted in confidence and confidence is destroyed when right minded people go away thinking the "judge was biased".
  
12. The gist of reply by Mr. Walubiri Peter, Caleb Alaka, Hon. Abdu Katuntu and Okalang the learned advocates who among others represented the applicant, can be summarized as below:-
  - i) That in applications of this nature the discretion is left to the judge to decide whether or not there is merit in the application before he/she reaches any decision. They cited the same authority the Attorney General cited to me to support that position of the law.

- ii) That the directive the judge gave to the Deputy Registrar does not show any likely bias. The advocates argued that it is the Deputy Registrar who asked to be guided and the judge replied by giving the guidance. That the fact that Misc Application No. 445 of 2013 would be rendered nugatory was expressed by the Deputy Registrar and not the judge. In their view as expressed by Mr. Walubiri, Katuntu and Okalang the judge had the power to direct that the status quo be maintained until the main application for injunction was heard.
- iii) That all the complaints raised by the Attorney General related to Misc. Application No. 454 of 2013 before the Deputy Registrar and 445 of 2013 before the judge. There was therefore no proof that the judge will be biased in this application Misc. Cause No. 362 of 2013.
- iv) That as the Attorney General did not appeal against the decision of the Deputy Registrar and that of the judge, he cannot complain of bias now. This application is intended to prolong litigation.
- v) Lastly the advocates expressed concern that has been taken note of by court about the growing trend of these kind of applications. They referred me to the concluding remarks the justices of the Supreme Court made in Constitutional Petition No. 1 of 1997 **TINYEFUNZA VS**

**ATTORNEY GENERAL, CIVIL APPEAL NO. 09 OF 2000**  
**G. M COMBINED (U) LTD Vs A.K DETERGENTS (U) LTD**  
and in **UGANDA POLYBAGS LTD Vs DEVELOPMENT**  
**FINANCE CO. LTD & 3 ORS** where the justices stated:-

***“Before we take leave of this matter we would like to reiterate our concern ..... over the growing tendency to level charges of bias or likelihood of bias against judicial officers. We would like to make it clear that litigants in this country have no right to choose which judicial officer should hear and determine their cases. All judicial officers take the oath to administer justice to all manner of people impartially and without fear, favour, affection or ill will. That oath must be respected”.***

13 (a) In rejoinder the Attorney General answered without necessity following this order of presentation.

(b) On the issue that the Attorney General did not raise the concern of bias in other applications and did not appeal the Attorney General explained that he knew of the way how the Judge had guided the Deputy Registrar when court delivered its ruling in Misc. Application No. 445 of 2013. Before the ruling the Attorney General did not know how the Deputy Registrar had come to handle that application.

14. I agree with the Attorney General on this point. The reasons for and the manner in which Misc Application No. 454 of 2013 was handled were given during the delivery of the ruling in Misc Application No. 445 of 2013. True as the Attorney General argued, there is no way he would have known those reasons before the delivery of the ruling.

15. On the other points in rejoinder the Attorney General maintained his main submission. In emphasis, he cited the case of **BALEKE KAYIRA PETER & 4 ORS Vs ATTORNEY GENERAL & 2 ORS Civil Suit No. 179 of 2002** to reason that where in any case the existence of partiality or prejudice is shown, the litigant has irresistible grounds for objecting to the trial of the case by that judge or for applying to set aside the judgment. Justice Anup Singh was quoting the position expressed in the English decision of **LOCOBALL (UK) LTD Vs BAYFIELD PRPERTIES LTD (2000) QB 451.**

16. The Attorney General also quoted the same case where judge Anup Singh quoted Lord Denning in **Metropolitan Properties (F.G.C) Ltd Vs Lannon** (supra) to reason that when right minded people think “the judge was bias” the confidence of judgment is destroyed.

17. I had the interesting opportunity to hear the submission of both sides but keeping in mind that at the end of the day as the law



is, the discretion is mine. In the short period I have served in the judiciary and the relatively longer period I was at the bar and from the available precedents, I must say that it is very rare for the Attorney General to make an application of this nature but as the right to object belongs to any litigant, he is also a litigant.

18. Of all the cases cited to me I read and found **MEERA INVESTMENTS LTD Vs THE COMMISSIONER GENERAL URA CIVIL APPEAL NO. 15 OF 2007** particularly the decision of His Lordship Amos Twinomujuni JA (as he then was) RIP more comparable to the situation before me. For that reason I will extensively quote what I did in Misc Application No. 445 of 2013 that the Attorney General now says caused a reasonable fear of bias and then quote extensively what happened to his Lordship Twinomujuni RIP. I will then compare the two situations.

19. Below is what happened in Misc Application 445 of 2013:-

***9 - "At about 8.15 am the Deputy Registrar of this court in writing asked for my guidance as to how and what to do with the application. For purposes of clarity I will reproduce both the request for guidance by the Deputy Registrar and my reply.***

***10 - 25.Nov.2013***

***"My Lord,***

***You are holding M/A 445/2013 at 10.00 am. There is information on this court file to the effect that this meeting is called at 9.00 am***

*hence this MA 545/2013. The intended meeting may render the purpose of MA 445/2013 nugatory.*

*I am seeking your guidance on the matter”*

*“ signed DR”*

***I read the above minute and replied as below.***

*“Proceed to consider this ex parte matter for reasons stated, in order to allow court time to hear the application at 10.00 am. I am of that opinion in order to protect the integrity of courts of judicature”*

*Signed - Judge*

*25/11/2013 at 8.20 am*

***11 - Before I issued that directive of guidance I considered the fact that from 8.15 am to 10.00 am there was only one hour and 45 minutes. I deemed it impracticable to hear the application interparty. Behind my mind I considered the provision of O. 52 r2 which for purposes of clarity I will reproduce. It is headed “Notice to party”.***

***O.52 r 2 provides***

***“No motion shall be made without notice to the party affected by the motion; except that the court, if***

***satisfied that the delay caused by proceeding in an ordinary way would or might entail irreparable or serious mischief, may make any order ex parte upon such terms as to costs or otherwise, and subject to such undertaking, if any, as to the court may seem just, and any party affected by the order may move to set it aside.” (emphasis is mine)***

***12 - As I have already stated I deemed it that the remaining 1.45 minutes would not allow Misc. Application No. 454/2013 to proceed in an ordinary manner and if no order had been made serious or irreparable mischief would result. In my view that is what O.52 r 2 is meant for. The order refuses motions without notice to the affected parties but creates exceptions. My view was that at that time this was exceptional situation with two important matters both occurring at the same time about the same subject.***

***13 - The absurdity of the matter was, the executive was holding a meeting to remove the applicant and the applicant was at the judiciary seeking an order to stop the same meeting. That is the exceptionality in this case.***

***14 - .....***

**15 - .....**

**16 - Given the above background I proceeded with application on the premises that this court issued an order stopping the meeting and hence this ruling.....”**

20. The above is what I did that the Attorney General argued as evidence of reasonable fear of bias. Below I will reproduce what Justice Twinomujuni JA did in **MEERA INVESTMENTS LTD Vs COMMISSIONER GENERAL URA** (supra) (see page 10 typed ruling). After giving the background of how he came to handle the case, the judge stated:-

***“I was requested to hear Civil Application No. 22 of 2007. I heard the application on Thursday the 1<sup>st</sup> of March, 2007 in presence of Mr. James Nangwala and Mr. Alex Rwezida who represented the Applicant/Appellant and Dr. Joseph Byamugisha who represented the Respondent. At the end of the hearing I made the following order***

***“It is now 4.40 pm and there is no time to enable me make a reasons ruling on the points that have been made by the parties. It follows that a future date has to be fixed to deliver the ruling. The ruling will therefore be delivered on 9<sup>th</sup> March 2007. In the meantime, this court orders the status quo as exists at the time I am hearing this application, namely that***

***no move to collect the taxes said to be involved in the 26 shilling billion claim be made till after my ruling, if the application does not succeed.”***

***On Monday 5<sup>th</sup> March, 2007 I came to my chambers and made the following order;***

**“COURT ORDER”**

***Following a resolution of the judiciary dated 2<sup>nd</sup> March, 2007 in which it was resolved to suspend with effect from 5<sup>th</sup> March 2007 all judicial businesses in all Courts of Uganda, I make the following consequential orders:-***

***1) Ruling which was scheduled for delivery on 09.03.2007 will not be delivered on that day. It will be delivered on notice.***

***2) The order of interim injunction which was granted to the applicant due to expire on 09.03.2007 will remain in force till the ruling is delivered.”***

***It is this order which was made on 5<sup>th</sup> March 2007 that constitutes the crime I committed against Dr. Byamugisha’s client for which he wants me to disqualify***

***myself from hearing this appeal. He has no quarrel with my conduct on the 1<sup>st</sup> March, 2007 nor does he quarrel with my conduct on 29<sup>th</sup> March, 2007 when I delivered my ruling in Civil Application No. 22 of 2007 when I granted the order of an injunction against his client.***

***My order dated 5<sup>th</sup> March, 2007 was brought to Dr. Byamugisha's attention by a letter written by the Registrar on that day communicating the contents of my order. On 13<sup>th</sup> March, Dr. Byamugisha wrote to the Deputy Chief Justice, who is my immediate boss, as follows:-***

***"Yesterday I received a letter from Uganda Revenue Authority (URA) a photocopy of which is annexed hereto. My client and URA as a whole are concerned that:***

- Hon Twinomujuni JA made the order complained of (A copy of which is annexed hereto) on the 5<sup>th</sup> of March 2007 during the National wide strike of all judicial officers:***
- The order is therefore most probably illegal.***
- The order was granted ex parte.***
- While the order of 2<sup>nd</sup> March, 2007 was that***

***“No move be made for collection of the designated tax of shs 36,514,786,374/- until the 9<sup>th</sup> of March 2007 when the ruling would be delivered”***

***Hon Twinomujuni JA calls his new order an order of interim injunction which he then leaves open sine die.***

***I have discussed the above matter with URA, who strongly believe that Hon. Twinomujuni JA did not, in making the order act judicially, independently or impartially.***

***For the foregoing reasons I am instructed to write this letter with a copy to Honourable Twinomujuni JA asking him to handover the court file to you so that you may assign it to another Justice of Appeal”***

.....  
.....  
.....

The Hon Deputy Chief Justice Leticia Mukasa Kikonyogo instructed the Registrar of court Mr. Joseph Murangira to reply as follows:-

***“I am under the instructions of the Deputy Chief Justice to reply your letter of even reference dated March, 13<sup>th</sup> 2007 as here below;***

- 1. That the Hon. Deputy Chief Justice observes that though the courts had put down their tools, this did not take away the jurisdiction and independence of any judge. And that as such in order to prevent abuse of any process during the period our courts could not be operational to the public, the trial judge had power to extend the time within which to do an act. (emphasis mine)***
  
- 2. That there was no order, which was granted, ex parte; as you seem to indicate.***
  
- 3. That for the reasons given above, there is no way one could fault the trial court on what it did on March 2, 2007.”***

***This letter constitutes the crime the Deputy Chief Justice committed for which Dr. Byamugisha’s client allegedly wishes her to disqualify herself from the hearing of this appeal.***

***In making his submission before us, that I should disqualify myself because of the reasons he put in his***



**letter of 13<sup>th</sup> March 2007, he did not elaborate any further except to add that:**

***“The beneficiary of the Justice of Appeal’s order is one of the riches (sic) companies in Uganda. You had humble persons on remand who could not be brought to court to apply for bail, in police custody who could not be produced to court to apply for bail within 48 hours and many other litigants whose cases were due to be heard over the period which cases were not handled by any judge.”***

***The accusation that I had on 05.03.2007, “not acted independently, professionally, legally or impartially” imports a very clear meaning to every judicial officer. Coupled with the innuendos that the beneficiary was one of the richest companies in Uganda speaks it all. Dr. Byamugisha was accusing me of having been influenced by bribes of one of the richest companies in the land to take the decision I took. All that, without producing an iota of evidence against me. He used the platform provided by our court process to defame me at will without producing any evidence to support his malicious allegations.”***

21. That for now would end the similarities between the two cases the analysis of which I will come to later. However just like in the MEERA INVESTMENT case above where Dr. Byamugisha wrote an

unfounded letter against late Justice Twinomujuni, in the present case the learned Attorney General wrote a similar letter against me. I was surprised when this letter did not form the basis of the Attorney General's complaint of bias yet he wrote it very early.

22. On the **25<sup>th</sup> Nov, 2013** I heard Misc. Application No. 445 of 2013, I adjourned the proceedings to **28<sup>th</sup> Nov, 2013** to enable me write a ruling. A day after, on **26.11.2013** the learned Attorney General wrote to the Hon. Principal Judge. The Hon. Principal Judge got the letter on the same day. He copied it to the office of the Deputy Chief Justice which got it on **27.11.2013**.

23. The relevant part of the letter is as follows:-

***“On 25.11.2013 Misc Application No. 445 of 2013 was due to be heard before the Hon. Justice NYANZI YASIN at 10.00 am for the grant of an interim order inter alia restraining the respondent from convening a meeting and voting on the removal of the Lord Mayor of Kampala.”***

24. The Attorney General then in detail stated what, had transpired when his representative Mr. Mwambustya attended the hearing at the Deputy Registrar's Chambers and in my court.

About what occurred in my court the learned Attorney General added:-

***“Upon exclusion from these proceedings my Attorney moved to the chambers of the judge for the hearing of Misc Application No. 445 of 2013. The proceedings commenced shortly after 10.00 am where after the judge’s opening remarks, lead counsel for the applicant, Hon Abdu Katuntu, informed court that they had appeared before the Registrar and obtained an interim order pending determination of the interim application that was now before court.***

***My Attorney protested the manner in which he was excluded from the proceedings before the Registrar and the fact that at the point, the Attorney as the lawyer handling the matter and indeed my office had not been served with this order. It is at this point that the judge instructed counsel for the applicant to serve my Attorney in court and stated that court was a witness of the service of the interim order. The hearing of Misc Application No. 445 of 2013 proceeded up to about 1.00 pm when the judge reserved his ruling for Thursday 28.11.2013 at 10.00 am.***

***Your Lordship, I am compelled to bring this matter to your attention because the above process has been extremely irregular and there***

**are several illegalities that have been carried out to the prejudice of the state.**

.....  
.....  
.....

**During the hearing of Misc. Application 445 of 2013, it was brought to the attention of the court that under S. 12(17) and 12(18) of the Kampala Capital City Act 2010, the Minister has only 14 days to convene a meeting of the Authority to act on the tribunal report after which any resolution of the Authority to remove the Lord Mayor shall be time barred. The court was informed that the 14 days expire on the 28.11.2013.**

**To our surprise the learned Judge reserved his ruling and extended the impugned interim order to the very same date, the 28<sup>th</sup> Nov, 2013 at 11.00 am, when the Minister shall run out of time to take action on the Tribunals Report.**

**Clearly, this would have the effect of finally determining the main application because the Minister would be time barred and unable to call the meeting of the Authority to act on the report which is the remedy the applicant sought in the main application for judicial review.**

25. Then the learned Attorney General made the prayers below to the Hon. the Principal Judge in conclusion:-

“.....  
.....  
..... ***The manner in which this matter has been handled has already prejudiced the respondent and has created doubt that justice will be done. However I am compelled to bring up the above matters to your attention in your capacity for intervention to ensure that justice be afforded to all including the state.***” (emphasis mine)

26. One wonders under what procedure the Hon. Principal Judge would intervene as I heard the application on 25.11.2013 and I was to deliver my ruling on 28.11.2013. What would the Hon. Principal Judge do under our procedural law. May be the learned Attorney General knows but as naturally expected the learned Principal Judge did not grant the prayer for intervention.

27. I have labored to bring out the details of that letter because it formed the first if not the real grievance of the Attorney General. From the letter he complains about two illegalities I committed:-

- 1) The first one is that I allowed service of the court order on his Attorney and said that court would be a witness.

2) The second one in my interpretation is that I deliberately calculated and adjourned my ruling to the 28<sup>th</sup> Nov, 2013 to defeat the Minister from taking any action on the report despite the fact that the same had been brought to my attention.

28. Now one wonders why the Attorney General's letter to the Hon. PJ did not form part of his complaint in court and he completely picked a new ground to allege likelihood of bias.

29. The Attorney General wrote to the Deputy Registrar of the Division and asked for certified proceedings. The same was availed to him. He then wrote back complaining that I had omitted part of the proceedings specifically where I purportedly directed that the Attorney General be served in my court and I would be a witness to the service. This is contained in his letter of 1<sup>st</sup> December 2013 signed by Cheborion Barishaki.

30. I am further perplexed why when the Attorney General came to court to raise the issue of bias and perhaps my commission of illegalities he did not raise the earlier complaints which he had written down and communicated up to the Deputy Chief Justice? Is the learned Attorney General making a failed attempt to look for or invent blame? I will however not explain his concerns that he never raised in court suffice to say, they are innovations.

31. I will now go back to the comparison between this case and **Meera case** and what was decided in a situation of this nature.

- i) First in both cases the courts acted not upon the request of any part but at court's own instance. The facts I earlier narrated clearly reveal that.
- ii) His Lordship Late Justice Twinomujuni JA (as he then was) acted the way he did in order to prevent the mischief that would result if he had not made the order. That would be so because the judiciary had resolved not to function.

Similarly I directed the registrar the way I did to prevent the irreparable and serious mischief that would result if I had not so directed the Deputy registrar. In detail, I explained why I acted that way in my ruling of 28.11.2013 I will not repeat it here.

- iii) In both cases the Justice of Appeal and myself appear to have gone out of the ordinary to protect the image courts depict to the public if no such orders are made when the circumstance so require. Just imagine the late Justice sat in his chambers and made the order to protect an institution that had suspended working. Similarly in my case it was noticeable that the executive and the judiciary were each taking different trends over the same subject matter. In order to prevent irreparable mischief and to protect the image

of the judiciary I took the decision the Attorney General calls likely bias or partiality.

- iv) Just like the late Justice made the order himself, under O. 52 r2 of the Civil Procedure Rules I also had the power to make the order myself and then proceed to hear the case. The fact that I directed the Deputy Registrar to do so has no effect at all. O. 52 r2 uses the term “court”. That term is defined by the Civil Procedure Act to mean any court exercising civil jurisdiction. Since I had the power to make the order myself as the Justice did in Meera case my directive to the Deputy Registrar had to be similar to the order I would have made myself.

32.I will now turn to what the two Justices who had been accused of bias decided in the **Meera case**. Dr. Byamugisha had alleged bias against the Hon. Deputy Chief Justice Leticia Mukasa Kikonyogo (as she then was) and late Justice Twinomujuni. I have found the citation and quotation from the case of the **THE PRESIDENT OF THE REPUBLIC & 2 ORS Vs SOUTH AFRICA RUGBY FOOTBALL UNION & 3 ORS** by Justice Twinomujuni very relevant and applicable here. The learned Justice quoted:-

***“Success or failure of the government or any other litigant is neither ground for praise or condemnation of a court. What is important is whether the decisions are good in law and whether they are***



***justifiable in relation to the reasons given for them. There is unfortunate tendency for decisions of court with which there is disagreement to be attacked by impugning the integrity of the judges, rather than by examining the reasons for the judgment. Decisions of our courts are not immune from criticism. But political discontent or dissatisfaction with the outcome of the case is no justification for recklessly attacking the integrity of judicial officers.”***

From the same case the learned late justice then added:-

***“While litigants have the right to apply for recusal of judicial officers where there is a reasonable apprehension that they will not decide a case impartially, this does not give them the right to object to their cases being heard by particular judicial officer merely because they believe that such persons will be less likely to decide the case in their favour. The nature of the judicial function involves the performance of difficult and at times unpleasant tasks. Judicial officers are nonetheless required to administer justice to all persons alike without fear, favour or prejudice in accordance with the constitution and the law. To this end they must resist all manner of pressure, regardless of where it comes. This is the constitutional duty common to all judicial officers. If they deviate, the independence of the***

***judiciary would be undermined and in turn the constitution itself.”***

33. In her judgment the Hon. The Deputy Chief Justice who was a co-accused in the same case with Justice Amos Twionmujuni relevant to this case stated:-

***“Clearly the charges made against myself and Justice Twinomujuni are intended to intimidate us in particular to decide the matter in his client’s favour  
.....  
.....It  
must be appreciated that this court is not only enjoined to consider the numerous complex legal issues put before it but it is also duty bound to protect the integrity of its justices so as to maintain the proper decorum in the court room.  
.....”***

34. After such elaborate reasoning the two Justices dismissed the complaint as baseless. Now in my case the charge against me is that the language I used in giving my guidance to the Deputy Registrar left no room for him to decide any otherwise. I have already said that that in itself cannot be a reason upon which to premise a complaint of partiality as O. 52 r2 of the Civil Procedure Rules would allow even a presiding judge to make the

order the Deputy Registrar made. I gave an example where Justice Twinomujuni JA made the order himself.

35. I have also failed to understand how that guidance would affect me in deciding this application when it did not affect me when deciding Misc. Application No. 445 of 2013. It appears to me that the Attorney General is groping in legal darkness for what correct reason to raise, to successfully make an application for recusal. Earlier in this ruling I stated the reasons he gave to the Hon. Principal Judge. Thereafter in his letter of 11.12.2013 he accused me of having produced a record that is different from what occurred in court. When it came to make the application formally before me, the earlier reasons were abandoned and he picked new ones. There may be other reasons he has not yet advanced. The sky is the limit.

36. In arriving at the decision I am about to arrive at I have been guided just like my fellow judges who find themselves facing this unfortunate situation by what the Supreme Court of NEW JERSEY in the United States held in **CARTE - ARTIS CASE 1981**;

***“A review of the basic cases ..... indicates that the challenger must adduce proof of the truth of the charges and as to the sufficiency of such proof the judge himself must decide. .... Not only is a judge not required to withdraw from the hearing of a case upon a mere suggestion that he is disqualified to sit, but it is improper for him to do so***

***unless the alleged cause of the recusation is known by him to exist or is shown by proof to be true in fact. .... A mere suggestion, that the court is disqualified to sit is not sufficient and it is in fact improper for him to do so.”***

37. In the matter before me I never believed that the Attorney General had any reason or cause to make an application for recusal nor did he produce any proof that it exists. Like the Justices reasoned in the case I cited, the Attorney General's complaint amounted to a mere suggestion.

38. Finally before I take leave of this matter I must say that the whole conduct of the learned Attorney General has been embarrassing since this case started. Such conduct include his letter about me to the Hon. Principal Judge when I was just to deliver a ruling of court and the holding of press conference and making of press statements on a matter which is subjudice. In my view such conduct is not expected of the learned Attorney General and was very easy to avoid.

39. Secondly I have read the ruling of His Lordship Kanyeihamba in **GM Combined Ltd Vs A.K Detergents Ltd** (supra), of my sister judge Irene Mulyagonja in **Shell (U) Ltd & 9 ors Vs Rock Petroleum (U) Ltd & 2 others** (supra) and that of the two justices of the Court of Appeal my Lord the Hon. Deputy Chief Justice and Justice Twinomujuni in **Meera Case** and perhaps

even if one was to read so many others, all the judges and justices appear to use strong and somewhat emotional language. I have not been the exception in my ruling here. Where I have done so it is for the obvious and similar reasons that compelled the other judges and senior justices to do so.

40. Finally, the suggestion the learned Attorney General made that I disqualify myself from the conduct of this case is not legally sufficient for me to grant the prayer for the reasons I have endeavoured to detail above. The application is dismissed with costs to the applicant and the main application will proceed as earlier arranged.

**Nyanzi Yasin**

**J U D G E**

**04.02.2014**