



**In re Estate of Kirotie Ole Butu (Deceased) (Succession Cause 3 of 2022) [2024] KEHC 9226 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9226 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
SUCCESSION CAUSE 3 OF 2022  
F GIKONYO, J  
JULY 31, 2024  
(FORMERLY NAIVASHA SUCC. CAUSE NO. 128 OF 2015)  
IN THE MATTER OF THE ESTATE OF KIROTIE OLE BUTU (DECEASED)**

**BETWEEN**

**ALICE KIMORI OGETO ..... APPLICANT**

**AND**

**PETER ORIPU BUTU ..... 1<sup>ST</sup> RESPONDENT**

**MUSA KAMBO ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**FELISTA WAMAITHA KIROTIE ..... INTERESTED PARTY**

**RULING**

**Adoption of AJS Award**

1. On 9.10.2023, parties informed the court that they wish this matter to be resolved through AJS. The court referred the matter to AJS resolution and all parties were asked to attend AJS resolution on 21.10.2023.
2. According to Mr. Okinyi and Kitipa, the matter was resolved in AJS meeting held on 24.10.2023 in the presence of all parties and family members. They filed minutes of the AJS elders' resolution.
3. Mr. Kiprono's clients were dissatisfied with the said AJS award and held another meeting on 28.10.2023 amongst only some of the parties. They also filed minutes of the meeting.
4. In an AJS meeting held on 24.10.23 and attended by all parties, it was agreed and resolved that: -



- i. The suit properties had already been divided between two houses; of mama Kaka and late mama Oriku because mama Peter had left 30 years ago;
  - ii. That each of the two houses to give 3 acres of land to mama Peter which mama Peter accepted on the basis that she left and never came back during the lifetime of mzee.
5. It was also recorded after the resolution that, Oriku and Kambo and some wazee of the family, were dissatisfied with the resolution and will appeal to the court to complete the case as title deeds had already been issued.
6. It appears that, those dissatisfied by the resolution of 24.10.2023, unilaterally convened their meeting at the exclusion of other parties on 28.10.2023 and did minutes thereof which they have also filed in court.
7. These happenings present occasion to reinforce certain pertinent constitutional imperatives on AJS.
8. *The Constitution* in article 159(2)(c) does not create or establish AJS. *The Constitution* only acknowledges and restates relevance of AJS in dispute resolution; and sets AJS apart as a separate and different from the formal court system, yet complete mechanism for dispute resolution. The article does not also establish any hierarchical relationship with the courts.
9. AJS operates outside court and upon own organic, evolutionary and quite adaptive mechanisms, processes and procedures. Its processes will be viewed with more legitimacy and buy-in if they emerge organically and participating parties converge to them.
10. This feeds the hallmark of AJS jurisdiction; exercise of party agency (volition) and absence of any constitutional, statutory or public policy exclusionary provisions. Commonly known as the Agency Theory.
11. In this case, the parties agreed to submit themselves and the dispute herein to AJS resolution. In making this decision, all the parties were represented by legal counsel. Their decision was therefore, informed decision. The award passes the first test.
12. The dispute was whether the Objector who was married to the deceased but left his homestead was entitled to inherit in the estate of the deceased. There is no constitutional or statutory or public policy which excludes such dispute from AJS resolution. The award passes the final hurdle on jurisdiction. The AJS resolution was, therefore, done with jurisdiction.
13. The incident where dissatisfied parties unilaterally convened another meeting to the exclusion of others, in the name of AJS, is most unfortunate, bringing to the fore a discussion on the duty of the court to promote AJS.
14. Under article 159(2)(c) of *the Constitution*, the court is obligated to promote AJS. The obligation entails; duty to respect, to protect and to reform AJS.
15. Of particular relevance to the situation at hand, is the duty to protect AJS from harmful tendencies by third parties.
16. A party in AJS resolution is bound by and should respect AJS outcome. Except, such party, may seek review of the AJS award on proportionality or procedural impropriety only. A dissatisfied party does not have a right to disregard an AJS resolution of which he was a party or unilaterally convene another resolution to the exclusion of other parties, in the name of AJS.



17. Applying the test, the AJS award of 24.10.2023 does not suffer any procedural impropriety or proportionality infirmity. Accordingly, this court must accord due deference to, and the AJS award made on 24.10.2023 is hereby adopted and recognized as the order of this court.
18. Before closing, obedience to AJS awards is encouraged. But where necessary or the law requires, recognition of the award, makes enforcement of the award through court process an option.
19. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS APPLICATION, THIS 31<sup>ST</sup> DAY OF JULY, 2024.**

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**F. GIKONYO M**

**JUDGE**

In the presence of: -

Kitipa for objector

Okinyi for objector

Kiprono for petitioners

