



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of James Muange Nguu (Deceased) (Succession Cause 503 of 2006) [2024] KEHC 9269 (KLR) (29 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9269 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
SUCCESSION CAUSE 503 OF 2006**

MW MUIGAI, J

JULY 29, 2024

**IN THE MATTER OF THE ESTATE OF JAMES MUANGE
NGUU DECEASED)**

BETWEEN

MUASA MUANGE 1ST PETITIONER

SAMUEL MATHEKA MUANGE 2ND PETITIONER

PETER MULI MUANGE 3RD PETITIONER

JOHN MBITHI MUANGE 4TH PETITIONER

AND

ALFRED MUINDI MUANGE OBJECTOR

AND

LABAN MAINGI MUANGE RESPONDENT

RULING

Court record

1. The deceased herein James Muange Nguu died intestate on 25th March, 1999 *vide* Certificate of Death Serial No. 828745.
2. The deceased left behind one wife and nine children surviving him as per the Chief's letter of Kaewa Sub-location dated 24th July 2006.
3. The deceased left behind several properties in terms of land and shares under his namely;
 - a) Lukenya Ranching Co-op Society



- b) Parcels of land at Kaewa Nos.1723, 1660 & 1993
 - c) Plot No. 2577 (20 acres Nzaiani)
 - d) Plot No.2468 (40 acres at kwamboo)
 - e) 10 shares with Katelembo Athiani co-op Society
 - f) 1 share Masaku Kalasinga Society
 - g) 1 share Makueni farmer's Co-operative
 - h) 2 Shares with Kyeni Kya Kangundo
 - i) 5 shares Machakos Wattle bark company
 - j) 1 share Kawambolya Loitokitok
4. Muasa Muange, Samuel Matheka Muange, Peter Muli Muange and John Mbithi Muange petitioned for letters of Administration intestate.
 5. The grant was issued jointly to Muasa Muange, Samuel Matheka Muange, Peter Muli Muange and John Mbithi Muange on 25th March, 1999.
 6. The Certificate of confirmation of Grant was issued on 26th October, 2012.
 7. On 18th July 2018 the confirmation of grant dated 26/10/2012 was revoked and the court ordered that a fresh Grant of letters of Administration intestate to issue to Muasa Muange, Peter Muli Muange and John Mbithi Muange and Alfred Muindi Muange. The Petitioners were directed to serve fresh summons for confirmation of grant within 30 days of the issuance of the fresh grant.
 8. The summons for confirmation of Grant dated 17th September, 2018 was filed in Court on 27/09/2018.
 9. An Affidavit of Protest to confirmation of grant sworn on 5th February, 2019 was filed on 5th February, 2019.
 10. An application dated 19th October, 2020 was filed in Court on 21st October, 2020 to substitute the 4th Administrator Alfred Muindi Muange – deceased who died on 11/09/2019. The same was allowed and John Mbithi Muange one of the 4th Administrator's beneficiaries was appointed to substitute the deceased Administrator.
 11. The application was allowed and a fresh letter of Administration intestate issued to Muasa Muange, Peter Muli Muange and John Mbithi Muange on 16th December, 2020.
 12. On 18/07/2022 the issue of distribution was referred to Court Annexed Mediation. The same commenced *vide* proceedings in Mediation Cause No. 046 of 2022.

Chamber Summons

13. The Petitioners/Applicant herein filed Chamber Summons dated 4th April, 2023 and filed in Court on the same date stating that the mediation exercise did not result in any amicable arrangement on distribution of the estate of the deceased as only one individual (the Respondent) herein signed the Mediation Settlement Agreement, the rest having not agreed; this Court issued a Certificate of Confirmation of Grant dated 18th October, 2022 based on the terms of the said unsigned Mediation Settlement Agreement submitted to the Court by the Mediator and that there is imminent threat that



the Respondent on the strength of the confirmed grant may dispose of estate properties to third party or in any other way interfere with the same which action will be detrimental to other beneficiaries.

14. On 5/04/2023 this Court certified the application dated 4/4/2023 as urgent and directed the following;
 - a) The Respondents may collectively or individually file their response(s) to the application within the requisite period.
 - b) The Mediation Settlement Agreement in MKS/MCD/46 of 2022 and resultant Certificate of Confirmation of Grant of 18/10/2022 issued on 23/02/2023 are hereby stayed, suspended, not to be implemented and status quo to be maintained until hearing and determination of the instant application.

Replying Affidavit

15. Obed Musyoka Muindi the Objector herein filed his Replying affidavit sworn on 31st January, 2024 stating as follows; His late father Alfred Muindi Muange was the son to James Muange Nguu (deceased herein) thus making him a beneficiary of the Estate of James Muange Nguu. When his father passed on he sought letters of administration Ad Litem to substitute himself as the Objector in place of his late father and the same was granted on 29/11/2023. When the matter was referred to mediation he could not participate as he lacked the legal capacity to represent his late father. The Respondent used a signed Mediation Settlement Agreement to obtain the grant. The objections raised by his late father in his Affidavit of Protest to Confirmation of Grant sworn on 5/02/2019 were never resolved by the dependants of the estate thus leaving the matter unresolved and in turn unsuitable for the issuance of a grant.

Determination

16. I have perused the pleadings and the responses there to and the issue that arises for determination is whether the mediation settlement agreement was proper to be adopted and thus leading to the confirmation of the grant
17. On 18/07/2022 the issue of distribution was referred to Court Annexed Mediation. The same commenced vide proceedings in Mediation Cause No. 046 of 2022
18. There was subsequently a mediation settlement agreement which was only signed by one Laban Maingi
19. The process of court annexed mediation is governed by the Judiciary of Kenya Practice Directions on Court Annexed Mediation issued by the Chief Justice under Article 159 of the Constitution and section 59B (1) (a), (b) and (c) of the Civil Procedure Act.
20. Mediation is an informal, voluntary and non-adversarial process where an impartial mediator encourages and facilitates resolution of a dispute between two or more parties. The mediator does not determine the dispute and/or come up with a decision. The parties propose how a dispute should be settled and once they agree, the mediator leads them to signing a mediation agreement.
21. Under the Court Annexed Mediation, the Mediation Report is filed in court and is subsequently adopted as an order of the court. However, if the parties are unable to agree on the issues that had been referred to mediation, the Mediator files a Non-Compliance Report and the matter is then referred back to court for determination.
22. It is procedural that once parties had signed a Mediation Settlement Agreement which was then lodged into the court, it became incumbent upon the courts to adopt it to enable enforcement to set into



motion. Paragraph 12 of The Judiciary of Kenya Directions of *Court Annexed Mediation* (as amended in 2018) provides as follows:-

“ 12.

- (a) Where there is an agreement resolving some of all the issues in dispute, such agreement shall be in the prescribed Form 8, duly signed by the parties and shall be filed by any of the parties, with the Deputy Registrar or Magistrate of Kadhi as the case may be within ten (10) days of conclusion of the mediation.
- (b) Any agreement filed with the Deputy Registrar or Magistrate or Kadhi as the case may be shall be adopted by the Court and shall be enforceable as a Judgment or order of Court.”

23. The court considered the implication of a consent in the cases of *Flora N. Wasike vs Destimo Wamboko* [1988] e KLR and in *Board of Trustees National Social Security Fund vs Michael Mwalo* [2015] e KLR. The common thread was that “a consent order entered into by the parties has a contractual effect, and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general or for reason which would enable the court to set aside an agreement.”

24. Due to the final nature of the Mediation Agreement, this court questions the circumstances under which the mediator arrived at the settlement agreement when only one party signing the said agreement.

25. The guiding principles used by courts in setting aside consent judgments or orders are well established. In *Flora N. Wasike v Destimo Wamboko*[1988] eKLR Hancox, JA, as he then was, said:

“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside or certain conditions remained to be fulfilled which are not carried out”

26. This position is clearly articulated in the English Case of *Purcell v. F. C. Trigell Ltd, (trading as Southern Window and General Cleaning Co. and Another)*, [1970] 3 ALL ER671, where Winn, LJ, opined:

“It seems to me that, if a consent order is to be set aside, it can only be set aside on grounds which would justify the setting aside of a contract entered into with knowledge of the material matters by legally competent persons, and I see no suggestion here that any matter that occurred would justify the setting aside or rectification of this order looked at as a contract.”

27. The fact that the mediation report was not signed by all the parties to the mediation process already points out to a process and there was no way it should have been adopted as Court order leading to the Confirmation of grant.

Disposition

1. The Applicant persuaded the court and established that the application is merited as all parties were not involved in Court Annexed Mediation process. The Court sets aside enforcement and/or implementation of the mediation settlement agreement as is now.



2. Parties /Counsel are at liberty to return through DR MHC to Mediator and include all relevant parties and consider issues afresh if agreed sign the Mediation Settlement Agreement before it is presented to Court as Mediation Settlement for adoption as an order of the Court or
3. Have the matter set down for hearing in any of Court in Machakos High Court for hearing and determination of the matter.

RULING DELIVERED SIGNED & DATED IN OPEN COURT ON 29/7/2024 IN MACHAKOS HIGH COURT.(VIRTUAL /PHYSICAL CONFERENCE).

M.W.MUIGAI

JUDGE

