



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2453 OF 2015

IN THE MATTER OF THE ESTATE OF JEANIE NJERI MUHUNI (DECEASED)

JOHNSON WAIGANJO.....OBJECTOR

VERSUS

JOSEPH KAHUYO MUHUNI.....ADMINISTRATOR

ELIEZER NJOROGE MUHUNI.....ADMINISTRATOR

RULING

1. The Applicant herein **JOHNSON WAIGANJO** seeks to be paid interest on an amount of **Kshs 8,500,000** paid to him by the Administrator pursuant to a Mediation Settlement Agreement dated **1st August 2018**.
2. The Administrators **JOSEPH KAHUYO MUHUNI** and **ELIEZER NJOROGE MUHUNI** contend that having paid the principal amount of **8,500,000/-** they have fully complied with the Mediation Settlement Agreement. They state that the Agreement did not provide for payment of interest and assert that no interest is due or payable to the Objector.
3. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated **7th September 2021** whilst the Administrator relied upon their written submissions dated **20th September 2021**.

BACKGROUND

4. This succession cause relates to the estate of **GRACE JEANIE NJERI MUHUNI** who died intestate on **11th August 2015**. Following the demise of the Deceased the Administrators filed a Petition for letters of Administration. The Applicant herein filed an Objection to the Summons for confirmation of the Grant. The matter was referred for Court Annexed Mediation and the parties reached an Agreement vide the Mediation Settlement Agreement dated **1st August 2019** which was filed in court on **5th August 2019**.
5. Under the terms of the Mediation Settlement Agreement the Administrators would retain ownership of the property known as **LR No. 4894/9** (hereinafter the **suit property**) and the Objector would have no claim whatsoever over the said property. It was further agreed that the Administrators were to pay the Applicant an amount of **Kshs 8,500,000/-** as a refund for the house he had erected on the suit property. The suit land and all the structures thereon were to be retained as part of the estate of the Deceased.
6. The Mediation Settlement Agreement was adopted as an order of the court. However, the Administrators did not pay the **Kshs 8,500,000/-** within the expected time frame. The matter was mentioned in court on **23rd September 2019** when the court was informed that the Administrators were awaiting confirmation of the Grant. The Administrators were given **14** days to amend the Grant.
7. The matter dragged on and it was not until **20th February 2020** that the Grant was eventually confirmed. The Applicant continued to wait patiently for his payment until **January 2021**, when he instructed his Advocate to file a Notice to Show Cause seeking orders for the arrest and committal to civil jail of the Administrators for failure to pay the agreed sum after the lapse of **six (6)** months after the Grant had been confirmed. It was at this point that the Administrators paid the lump sum of **Kshs 8,500,000/-** to the Applicant. The Applicant now claims interest on this amount.

ANALYSIS AND DETERMINATION

8. I have carefully considered the facts of this case as well as the written submissions filed by both parties. The Mediation Settlement Agreement dated **1st August 2019** provided at clause (2) as follows:

“2.THAT Joseph Kahunyo Muhuni and Eliezer James Njoroge Muhuni as the Administrators of the Estate of the late Jeanie Njeri Muhuni (Deceased) will compensate Mr John Waiganjo, the Objector a gross sum of Kshs 8,500,000 (Kenya Shillings Eight Million Five Hundred Thousand only) as a refund for the house he had previously erected on a portion of the aforesaid property. Further any and all structures, fixtures and contents thereof shall be retained and be the property of the Estate of Jeanie Njeri Muhuni (Deceased until otherwise authorized by the Administrator.”

9. As pointed out by the Administrators the Agreement did not provide for payment of any interest on the amount due.

10. In my view the Mediation Settlement Agreement was tantamount to a consent between the parties which Agreement settled the issues in dispute between the parties. The Agreement which binds the parties was duly adopted and is therefore enforceable as an order of the Court. **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 the court.”

11. It is not disputed by the Administrators that they only paid the **Kshs8,500,000** after much delay. The Agreement was reached on **1st August 2019** but was not until **20th July 2021** (almost **two (2)** years later) that the court was informed that the agreed amount had been paid to the Applicant.

12. The Administrators explain that delay by stating that they had to wait for the Grant to be confirmed before the payment could be made. That even after the Grant was confirmed the same contained errors, which necessitated the filing of a Summons to Rectify the Grant which summons also took a fair period of time to be concluded.

13. The Applicant submits that he is unemployed and the rental income from the house in question was his only source of income before the Mediation Agreement was signed. That the delay in remitting the payment to him has caused the Applicant great losses which can only be compensated through payment of interest.

14. The parties herein reached a settlement after a process of mediation. This is a process in which parties are brought together to discuss and agree amongst themselves on a solution to their dispute.

15. The Mediation Settlement Agreement was adopted as an order of this court. The same is tantamount to a consent between the parties. It is trite that a consent is order has contractual effects. If the Applicant felt that he was entitled to interest on the sum of **Kshs 8,500,000** then this ought to have been included in their Agreement.

16. It is arguable that the Applicant may not have anticipated he would have to wait **two (2) years** for the payment. However, the Applicant could have included a Clause that interest would be payable if full payment was not made within, say six to twelve months.

17. Whilst the court sympathizes with the Applicant for the delay in reaching full realizing full payment, I am loathe to make orders that would amount to an interference the Mediation process.

18. Courts are reluctant to interfere in consent agreements reached between the parties themselves. This would be tantamount to the courts imposing its own views/wishes in respect of the Agreement reached by the parties.

19. In **BOARD OF TRUSTEES NSSF – VS – MICHAEL MWALO** the Court Appeal stated as follows: -

“A Court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. To impeach a consent order or a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of court.” (emphasis ours)

20. **Clause 7 of the Settlement Agreement** provides as follows:-

“7. THAT this agreement settles any and all claims from Johnson Waiganjo the Objector to the estate of Jeanie Njeri Muhuni (Deceased) as pertains to any and all matters”.

21. The wording of **clause 7** makes it clear that payment of **Kshs 8,500,000** would settle all claims that Applicant has against the estate of the Deceased. Again, no mention is made of interest payable on the principal sum. By virtue of **Clause 7** once the **Kshs.8,500,000** was paid no further claim could be entertained.

22. Finally, I find that given that no provision for interest was made, no interest is payable to the Applicant. I do so find.

DATED IN NAIROBI THIS 19TH DAY OF NOVEMBER 2021.

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MAUREEN A. ODERO

JUDGE