



**Wirell v Chepkosgey (Environment & Land Case 110 of 2015)
[2022] KEELC 14695 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14695 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 110 OF 2015
EO OBAGA, J
NOVEMBER 10, 2022**

BETWEEN

NIL STAFFAN WIRELL PLAINTIFF

AND

EMILY CHEPKOSGEY DEFENDANT

RULING

1. When this matter came up for further hearing on October 24, 2022, Mr. Yego for Defendant raised an issue that this matter had been concluded after six mediation sessions. Mr. Yego argued that the mediation settlements had been adopted as judgment of the court and that therefore there was nothing remaining for determination other than execution of the decree arising from the orders of the court.
2. Mr. Odhiambo for the Defendant on the other hand argued that there was no adoption of the mediation agreements and as such the matter remains to be determined by the court. Mr. Odhiambo argued that the joint valuation report was only meant to guide the court during the hearing.
3. I asked for time to go through the file and give a comprehensive ruling on the issue as to whether there was a final settlement of this matter through mediation or not. I have now gone through the file and notice that there were six mediation sessions which were all reduced into writing and were signed by the parties herein and their advocates.
4. The six mediation agreements were partial in nature and the partial mediation settlement was adopted by Lady Justice (Dr.) Odeny on November 20, 2019. The mediation Deputy Registrar then directed that the file be returned to the Environment and Land Court Registry. The court annexed mediation registry then did a letter forwarding the file back to the Environment & Land court Registry as required by the judiciary mediation manual.
5. After the initial valuation report had been shared, Mr. Chigiti on July 21, 2020 indicated to court that the parties were not likely to negotiate further. Mr. Chigiti asked for a further mention date with a view



to exploring the next course of action. On September 16, 2020, Mr. Chigiti informed the court that there was a confidential report which contained unsettled issues. It is at this juncture that the judge directed parties to frame the unresolved issues for determination by the court. The case was set down for hearing on November 30, 2020.

6. On November 30, 2020, the hearing did not proceed as the counsel for the defendant objected to documents which had been mentioned in the mediator's confidential report being produced. The court then directed that the Plaintiff do file originals of bank statements which was done. The case was fixed for hearing on March 17, 2021.
7. On March 17, 2021 when the Plaintiff had started testifying, the trial judge observed that this was a matter which could be solved amicably. The parties counsel then agreed to carry out a joint valuation. The joint valuation was finally prepared on April 27, 2021. The matter was mentioned about three times until the trial judge was transferred.
8. When I took over the conduct of this matter, the Defendant's counsel indicated that the matter had been settled through mediation I then observed that this was a concluded matter and the only remaining issue was execution. Later on September 22, 2021, Mr. Odhiambo whose firm had not come on record sought to address the court. I directed that the advocate first comes on record formally and takes a mention date at the registry.
9. A mention date was taken at the registry for September 30, 2021 when counsel for all parties took a hearing date for 18th and January 19, 2022. On January 18, 2022, the case did not proceed as the Defendant's counsel applied for adjournment. The case was adjourned to 11th and May 12, 2022. The case proceeded to hearing on 11th and May 12, 2022 and was adjourned to October 24, 2022 when the issue of the matter having been concluded arose after evidence of two witnesses had been taken and a third witness was ready to proceed.
10. It is therefore clear that there was a partial settlement recorded and a confidential report by the mediator indicated that there were unresolved issues. These are the issues which are remaining. It is therefore clear that there was no final settlement of this case by way of mediation.
11. The fact that there was no mention in the order recorded by the judge that the partial settlement had been adopted as order of court does not mean that there was no partial settlement reached. Judges do not sign proceedings in mediation. They sign orders arising out of mediation as was the case in this partial settlement. What is only remaining for determination by this court are the unresolved issues which were identified in the confidential report by the mediator which the court clearly directed the parties to frame.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 10TH DAY OF NOVEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Odhiambo for Plaintiff.

Mr. Yego for Defendant

Court Assistant –Albert

E. O. OBAGA



JUDGE

10TH NOVEMBER, 2022

