



**LJY v JKY (Matrimonial Cause E007 of 2022)  
[2025] KEHC 1797 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1797 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MATRIMONIAL CAUSE E007 OF 2022  
RN NYAKUNDI, J  
FEBRUARY 14, 2025**

**BETWEEN**

**LJY ..... APPLICANT**

**AND**

**JKY ..... RESPONDENT**

**RULING**

1. This matter was referred to mediation on 27<sup>th</sup> March 2023. Upon reading the full Mediation Settlement Agreement dated 23<sup>rd</sup> May 2023 and duly signed by Francis Yator Chepyegon, the Mediator, and the parties herein, it was recorded as follows: We, the undersigned parties in this matter, have agreed to settle our disputes/difference as follows:
  - i. That both Plaintiff and the Defendant knows each other as once husband and wife.
  - ii. That both parties agreed on how to share the matrimonial home/shamba into two:  
That one acre goes to the defendant JKY and the remaining two (2) acres be transferred to the Plaintiff LJY and the children MJY and SKY on equal shares Title No. Pioneer/Ngeria Block x (EATC) 1xxxx.
  - iii. That the Defendant to own the Pioneer/Ngeria Block x (EATC) 2xx
  - iv. That the Defendant JKY to vacate the matrimonial house/shamba Pioneer/Ngeria Block x (EATC) 1xxxx on or before 1<sup>st</sup> December 2023.

**Analysis and Determination**

2. The legal framework of Court annexed mediation is governed by the Judiciary of Kenya Practice Directions on Court Annexed Mediation issued by the Chief Justice pursuant to Article 159 of *the Constitution* and Section 59B (1) (a), (b) and (c) of the *Civil Procedure Act*.



3. Article 159 (2)(c) of *the Constitution* of Kenya provides as follows: -

“In exercising judicial authority, the courts shall be guided by the following principles: - alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted subject to clause (3).”

4. Also, Under Section 59 C of the Civil Procedure Rules Cap 21 (Laws of Kenya), it is provided that: -

- “1. Any suit may be referred to any other method of dispute resolution where the parties agree or the court considers the case suitable for such referral.
2. Any other method of alternative dispute resolution shall be governed by such procedure as the parties themselves agree to or as the court may in its discretion order ...”

5. In addition, under Order 46 Rule 20 (1) of the Civil Procedure Rules, 2010, it is stipulated as follows: -

“Nothing under this order may be construed as precluding the court from adopting and implementing of its own motion or at the request of the parties, any other appropriate means of dispute resolution (including mediation) for the attainment of the overriding objective envisaged under Sections 1A and 1B of the Act.”

6. The Judiciary Mediation Manual provides as follows: -

Clause 1.3 (f) that:

“The Court may at any stage of court proceedings, make an order requiring parties to participate in additional mediation.”

Clause 1.5 provides that:

“There shall be a Mediation Judge in each Division/Court. The Mediation Judge will handle interlocutory applications arising when the mediation process is ongoing.”

Clause 1.7 provides for the role of the Deputy Registrar assigned to handle mediation matters which include inter alia:

- d) Place interlocutory applications before the Mediation Judge.
  - i) Place the Mediation Report before the Judge for action as may be required.
  - j) Place the mediation agreement before the Judge for adoption.

Clause 4.3 provides that:

“Upon receipt of the Mediation Settlement Agreement:

- a) The Deputy Registrar or Magistrate or Kadhi shall file the Agreement in the Court file.
  - b) The file shall be placed before the Judge or Magistrate in charge or Kadhi in charge for adoption of the Agreement as a Judgment or Order of the Court.”

Clause 4.5 provides that:

“The Agreement adopted shall be enforceable as a Judgment or Order of the Court.”



7. Section 12 of the Practice Directions [As amended in the Practice Directions on Court Annexed Mediation (Amendment) 2018] provides that:
  - (a) Where there is an agreement resolving some or all of 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 or Kadhi as the case may be within ten (10) days of conclusion of the mediation.
  - (b) Any agreements 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 Judgement or order of court.
8. A glimpse of the court record, this Mediation Settlement Agreement was adopted by this Honourable court on 15<sup>th</sup> June 2023 on the mode of distribution of the matrimonial home/shamba. The Mediation Settlement Agreement was reached after the main suit was referred to mediation and a mediator was appointed to assist in the mediation process. Subsequently, the sessions culminated in the execution of a Mediation Settlement Agreement which had been presented as evidence.
9. In the case of Re Estate of the Late Ngaulo arap Tanui (Deceased) [2021] eKLR, the court held that: It has been held time and again that a mediation settlement agreement once adopted as an order of the court becomes a binding agreement as between the parties and cannot be set aside unless the party seeking to have it set aside proves that there were vitiating factors such as in any other contract such as, fraud, misrepresentation, coercion, undue influence etc.
10. I also take cognizant note that all the parties herein did sign the mediation agreement as presented. From the foregoing and the settled facts of this matter, I come to the conclusion that the mediation agreement is valid.
11. Consequently, the Deputy Registrar is ordered to give the confirmation of the Grant regarding the distribution of the matrimonial home from the Mediation Settlement Agreement dated 23<sup>rd</sup> May 2023. It is so ordered.

**DATED SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 14<sup>TH</sup> DAY OF FEBRUARY, 25**

.....  
**R. NYAKUNDI**  
**JUDGE**

