



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re the Late Wilson Kiptanui Koech (Succession Cause  
27 of 2019) [2025] KEHC 8287 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8287 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 27 OF 2019  
RN NYAKUNDI, J  
JUNE 11, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE WILSON KIPTANUI KOECH**

**RULING**

1. This commercial dispute was substantially settled by dint of a mediation agreement dated 9.11.2022 which was adopted by this court as a decree capable of being executed and enforced within the provisions of the *Civil Procedure Act* and Rules. The law is settled in Kenya with regard to the legitimacy, legality, justness, propriety, of a consent order adopted as a consent judgement by the court with jurisdiction. This is what is affirmed by the various court decisions as demonstrated in the cases of:
2. In the Court of Appeal in the case of *Brooke Bond Liebig Ltd V Mallya* [1975] EA 266 at 269 Law Ag P said: “A court cannot interfere with a consent judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.” In *Kenya Commercial Bank Ltd V Specialised Engineering Co. Ltd* [1982] KLR 485, Harris J correctly held inter alia, that –1. A consent order entered into by counsel is binding on all parties to the proceedings 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 for a reason which would enable the court to set aside an agreement. 2. A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side. In *Hirani V. Kassam* [1952] 19 EACA 131 the Court of Appeal held; “It is now well 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 if certain conditions remain to be fulfilled, which are not carried out: see the decision of this court in *J. M. Mwakio v Kenya Commercial Bank Limited* Civ Apps 28 of 1982 and 69 of 1983. In *Purcell v F.C. Trigell Ltd* [1970] 3 All ER 671, Winn LJ said at 676:- “It seems to me that, if a consent order is to be set aside, it can really only be set aside on grounds which would justify the setting aside of a contract entered into with the 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.”



3. The consent duly signed is binding to the parties without any variation, substitution, or singular review without reference to the rest of the parties who negotiated and agreed to the terms prescribed in the text and content of the order. It has emerged severally that parties have been appearing before this court to speak on certain clauses of the consent which appear to be violated by an Act of omission or commission. In so far as the terms of the consent are concerned, this court has no jurisdiction to address the parties on any of such covenanted binding clauses. As a consequence, the court reminds the parties that the following clauses have not been varied, reviewed, or substituted by either a coma, a phrase, or word to alter the letter of the mediation agreement namely:
- i. That the deceased guaranteed Kshs 120,000,000 (One hundred and twenty million) to M. Oriental Bank Ltd
  - ii. That the bank and the estate have agreed that the estate pays a sun of kshs 125,000,000 (One hundred and twenty-five million shillings only in full and final settlement of the debt owed to M' Oriental Bank (K) Limited
  - iii. That in order to pay 125,000,000 to the bank, the parties agree that the bank charges the charged property being Kitale Municipality Block 15(Koitogos)/3321 measuring approximately 105 Acres.
  - iv. That upon discharge of land parcel No. Kitale Municipality Block 15 (Koitogos) 33321. The bank to hive off a portion measuring 30 Acres Acres and charge the remainder of the parcel of land
  - v. That the files to the 30 Acres of the Land shall be retained by the bank's lawyers in trust for sale.
  - vi. That the beneficiaries and the administrators to find purchasers and introduce them to the bank to pay for portion of land of the 30 Acres. In order to reduce the indebtedness of Kshs 125,000,000 (One hundred and twenty-five million)
  - vii. That the bank shall also be paid a sum of Kshs 5,000,000 (Five million) out of the sale the 30 Acres to cover the conveyance charges.
  - viii. That the sale should be completed within one year from the date of the notification of discharge of the 30 Acres of land.
4. From the court record, I do not agree with learned counsel Mr. Tororei that as of today clause No. 5 which reads as follows that the title to the 30 Acres of land shall be retained by the bank's lawyers in trust for sale. Given the a foregoing any other action to retain the titles outside the prescription of clause 5 of the mediation agreement constitutes a variation of the intention between the parties as reduced into writing. It is the expectation of this court that the party in breach relying on clause No. 8 of the agreement should comply within 7 days to give effect to clause 5 in the 1<sup>st</sup> instance.
5. Orders accordingly

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 11<sup>TH</sup> DAY OF JUEEN 2025**

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**R. NYAKUNDI**

**JUDGE**

