



REPUBLIC OF KENYA



**KENYA LAW**  
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**Thika Nursing Home Limited (Under Receivership) v Shah & another;  
Bank of Baroda (K) Limited & 2 others (Interested Parties) (Civil  
Case E036 of 2024) [2025] KEHC 8108 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8108 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL CASE E036 OF 2024  
FN MUCHEMI, J  
JUNE 5, 2025**

**BETWEEN**

**THIKA NURSING HOME LIMITED (UNDER RECEIVERSHIP) ..... PLAINTIFF**

**AND**

**MR. S.M. SHAH ..... 1<sup>ST</sup> DEFENDANT**

**MRS. S. M. SHAH ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**BANK OF BARODA (K) LIMITED ..... INTERESTED PARTY**

**SWAROOP RAO ..... INTERESTED PARTY**

**PONANGIPALLI V. RAMANA RAO ..... INTERESTED PARTY**

**RULING**

1. This application dated 7<sup>th</sup> May 2024 seeks for orders of adoption and enforcement of the mediation settlement agreement dated 22<sup>nd</sup> May 2019 and for any other order or decree of the court as well as for the respondent and interested parties to ensure that the applicants have vacant possession and occupation of the building on land known as LR. No. 4953/61/IX Thika as per the mediation settlement agreement. The applicants further seek that the respondent and interested parties ensure the applicants are paid the rental amounts of Kshs. 14,156,132/- as of 5<sup>th</sup> May 2024 from January 2024 and agreed advocates fees of Kshs. 1 million as per the mediation settlement agreement.
2. The respondent say they opposed the application in their replying affidavit dated 18<sup>th</sup> March 2025. However, no copy of the said affidavit was traced in the court file or in the CTS platform.



### **The Applicants' Case.**

3. Vide plaint dated 9<sup>th</sup> February 2001, the respondent instituted the present claim against the applicants on allegations of trespass into the buildings erected on all that land property known as LR. No. 4953/1175/81 Thika Town. The applicants filed their defence dated 16<sup>th</sup> March 2001 and later an Amended Defence and Counterclaim dated 10<sup>th</sup> July 2013 stating that they were seeking rent and vacant possession of the building constructed on all that property known as LR. No. 4953/1175/81 Thika Town. The applicants state that they became the proprietors as well as the landlords in the suit property after the passing on of the late L.M. Shah.
4. The applicants state that the matter proceeded to hearing but was partly heard when the Honourable Court was of the opinion that parties could negotiate and referred the matter to court annexed mediation. Parties proceeded to mediation which culminated to the settlement agreement dated 22<sup>nd</sup> May 2019 which was adopted as a final decree of the court. As per the mediation agreement, the respondent was supposed to vacate the suit property by 31<sup>st</sup> January 2020 failure to which the normal rent would continue to accrue until vacation of the suit property. The applicants state that as of 31<sup>st</sup> January 2020, the respondent had not vacated.
5. The respondent was placed under receivership by the Bank of Baroda (Kenya) Limited on 29<sup>th</sup> December 2021 and the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties from the firm of Tact Consultancy Services were appointed as joint administrators. On 19<sup>th</sup> April 2024, the applicants state that their advocates and the bank's jointly appointed administrators met and the contents of the mediation agreement and identity of the suit property were disclosed and explained and the bank's jointly appointed administrators undertook to liaise with the bank the outcome of the meeting and resolve the terms of the outstanding mediation settlement agreement. The applicants argue that up to date the bank and the bank's jointly appointed administrators have not adhered to the terms of the mediation settlement agreement.
6. Directions were issued that parties put in written submissions and the record shows that the applicants complied by filing submissions on 17<sup>th</sup> April 2025. The interested parties on the other hand had not filed their submissions by the time of writing this ruling.

### **The Defendants /Applicants' Submissions**

7. The applicants refer to Section 2 and 59B of the [Civil Procedure Act](#) and Rule 14 of the Mediation (Pilot Project) Rules and submit that once a mediation settlement agreement is filed before the mediation deputy registrar it shall be adopted by the court and shall be enforceable as a judgment of the court. Relying on the case of *Alios Finance Kenya Limited vs Country farms Limited* (Civil Appeal E005 of 2020) [2022] KEHC 11012 (KLR), the applicants submit that the mediation agreement dated 22<sup>nd</sup> May 2019 should be adopted as a judgment by this court and enforced as any other judgment of this court as it was signed by both parties.
8. The applicants further refer to the cases of [Kasturi Limited vs Nyeri Wholesalers Limited \(Civil Appeal 248 of 2012\)](#) [2014] KECA 428 (KLR) and *Maher Unissa Karim vs Edward Oluoch Odumbe* [2015] KEHC 4029 (KLR) and argues that they should be given vacant possession of the suit property as they are proprietors of the suit property and the respondent agreed to vacate the suit property by 31<sup>st</sup> January 2020 as per the mediation settlement agreement. Furthermore, failure to vacate the suit premises, resulted to rent accruing which is due and owing amounting to Kshs. 14,156,132/- as of 5<sup>th</sup> May 2024.



9. The applicants submit that the respondent agreed to pay legal fees of Kshs 1 million to their advocates through a post dated cheque dated 31<sup>st</sup> January 2020 however the same was not realised.
10. The applicants rely on Section 60 and 65 of the *Land Act* and submit that the respondent has an obligation to pay the rent for the period they remained in possession of the suit property even after it was agreed that they shall vacate the suit property as of 31<sup>st</sup> January 2020. The applicants further rely on Section 521, 522, 524 and 582 of the *Insolvency Act* and submit that since the 1<sup>st</sup> interested party appointed the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties as administrators of the respondent it is presumed that the respondent has entered administration whose objective is to maintain the company as a going concern. Further the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties have the duty to perform their functions as is reasonably practicable including assisting in achieving a better outcome for the creditors and making distribution to the creditors of the company. The applicants thus argue that the interested parties should ensure that they are paid the sum owed to them by the respondent.

### **Background Facts**

11. The respondent herein instituted the suit herein vide a plaint dated 9<sup>th</sup> February 2001 against the applicants seeking a declaration that it owes no rent arrears to the lawful landlord of the premises situated on LR. No. 4953/1175/81-Thika and is entitled to continue paying rent at Kshs. 15,000/- per month; a declaration that the applicants herein are not the owners of the suit premises and have never been the landlords of the respondent; a permanent injunction restraining the applicants from carrying away the proclaimed medical equipment and/or goods from the suit premises; general damages for unlawful distress for rent and interference with the respondent's quiet possession of the premises and costs of the suit. The applicants in response filed a Defence on 16<sup>th</sup> March 2001 and subsequently after filed their Defence and Counter Claim on 10<sup>th</sup> July 2013 disputing the claim and by way of counterclaim sought for judgment against the respondent herein for a declaration that they are entitled to exclusive and unimpeded right of possession and occupation of all that piece of land known as LR. No. 4953/61/IX Thika; a declaration that the respondent is wrongfully in occupation of the suit premises and is thereby a trespasser; a declaration that the respondent is not entitled to remain on the suit premises; vacant possession of the suit premises; mesne profits at the rate of Kshs. 170,000/- per month having been unpaid since November 1999 and general damages for trespass. The matter proceeded partly before the court in the year 2019 and the Honourable Court referred the matter to court annexed mediation on the opinion that parties could reach a settlement out of court.
12. Parties proceeded to mediation vide Mlm/Med/3/2019 which culminated into a mediation settlement agreement on 22<sup>nd</sup> May 2019. Pursuant to the mediation settlement agreement the respondent agreed to vacate the suit premises by 31<sup>st</sup> January 2020 and pay the applicants' advocates legal fees of Kshs. 1 million through a postdated cheque dated 31<sup>st</sup> January 2020. All the parties together with their advocates executed the mediation settlement agreement and the same was placed before the Deputy Registrar for the matter to be placed before the judge for the adoption of the agreement as an order of the court.

### **The Law And Analysis**

13. Section 59B of the *Civil Procedure Act* provides:-

An agreement between the parties to a dispute as a result of a process of mediation under this part shall be recorded in writing and registered with the Court giving the direction under subsection (1), and shall be enforceable as if it were a judgment of that Court.



14. Rule 14 of the Mediation (Pilot Project) Rules provides that:-

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 Mediation Deputy Registrar within ten days of conclusion of the mediation.

Any agreements filed with the Mediation Deputy Registrar shall be adopted by the Court and shall be enforceable as a judgment or order of the court.

15. Thus, it follows that the mediation settlement agreement as filed before the Mediation Deputy Registrar ought to be adopted by the court and shall be enforceable as a judgment of the court.

16. The importance of the mediation process was highlighted by A.O Muchelule J. (as he then was) in Re Estate of BM (Deceased) Succession Cause No. 2195 consolidated with Succession Cause No. 1975 of 2015 [2019] eKLR where the Judge stated:-

Where the parties have agreed on all, or some of the issues in dispute, the mediator helps in the drafting of the agreement which is then owned by the parties by appending their signatures on the document. The agreement, which is known as mediation settlement agreement, is then filed into court which adopts the same as the order or judgment of the court. The agreement becomes enforceable.

17. The mediation settlement agreement dated 22<sup>nd</sup> May 2019 is therefore, an enforceable order of the court. The respondent is required to have moved from the premises on 31<sup>st</sup> July 2020 and paid the applicants' advocates fees of Kshs. 1 million. The agreement has not been adhered to and therefore the applicants are entitled to charge the rent for the period the respondent remained on the suit premises after agreeing to vacate. Thus it is my considered view that the respondent owes the applicants rent in the sum of Kshs. 14,156,132/- and legal fees of Kshs. 1 million.

18. The record shows that it is not in dispute that the respondent is under receivership and that the 2<sup>nd</sup> and 3<sup>rd</sup> interested parties are the administrators of the respondent. Pursuant to Section 524 and 528 of the *Insolvency Act*, the receivers and the interested parties have the power to make a distribution to creditors on the money owed by the respondent. In that regard, the interested parties are under a legal obligation to ensure that the applicants are paid Kshs. 14,156,132/- being rent and advocates' fees of Kshs. 1 million. In other words, mediation agreement is enforceable based on the terms agreed by the parties.

19. It is my considered opinion that the application dated 7<sup>th</sup> May 2024 is successful and is allowed in the following terms: -

- a. That the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> interested parties are hereby joined as parties in this application.
- b. That the mediation agreement dated 22<sup>nd</sup> May 2019 is hereby adopted as a judgment of the court.
- c. That the respondent and the interested parties are hereby ordered to give to the applicants vacant possession for ease of occupation of L.R. No.4953/61/IX Thika within 60 days.
- d. That the respondent and interested parties do pay to the applicants the outstanding rental sum of Kenya shillings Fourteen Million one Hundred and Fifty-six Thousands One Hundred and Thirty-two (KSh.14,156,132) from January 2020 to date as per the mediation agreement.



- e. That the respondent and the interested Parties do pay the agreed advocates fees of Kenya Shillings One Million (KSh.1,000,000) as per the Mediation Agreement.
- f. That the respondents and the interested parties shall bear the costs of this application as well as costs of execution of the decree, if any.

20. It is hereby so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**F. MUCHEMI**

**JUDGE**

