



**In re Estate of Ngulolu Cheruiyot alias Cheruiyot arap Ngulolu (deceased)
(Succession Cause E028 of 2021) [2025] KEHC 10134 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE E028 OF 2021**

JK NG'ARNG'AR, J

JULY 15, 2025

**IN THE MATTER OF THE ESTATE OF NGULOLU CHERUIYOT
ALIAS CHERUIYOT ARAP NGULOLU (DECEASED)**

BETWEEN

PHILIP A CHERUIYOT APPLICANT

AND

KIKWAI ARAP CHERUIYOT PETITIONER

RULING

1. This matter relates to the estate of Ngulolu Cheruiyot Alias Cheruiyot Arap Ngulolu who died intestate on 26th November, 2021.
2. A petition was made by Kikwai Arap Ngulolu and letters of administration intestate were issued by this court on 2nd February, 2023 to the said Kikwai Arap Ngulolu, the petitioner herein.
3. Summons were filed dated 25th March, 2025 seeking the following orders:
 - i. Spent
 - ii. Pending the hearing determination of this application, there be stay of execution/enforcement of the mediation agreement that was partially adopted/endorsement by this honourable court on 25th April, 2024.
 - iii. Pending the hearing determination of this application, status quo in respect of the deceased estate as at the time of the demise of the de ceased herein, the late Ngulolu Cheruiyot Alias Cheruiyot Ngulolu, be maintained.



- iv. The Honourable court be pleased to set aside the mediation settlement agreement that was partially adopted/endorsed by this court on 25th April, 2024 and consequently direct that this matter proceeds for mediation once again or full hearing to its logical conclusion.
- v. That costs of the Application be in the cause.
4. The application is supported by an affidavit in support of summons for setting aside mediation settlement agreement. It is averred that the applicant is a son of Christina Chepkurui Melile (Deceased) who was a daughter of the deceased herein.
5. It is claimed that Christina Chepkurui Melile was the 1st born daughter of the deceased's household. It is claimed that the petition and mediation were filed secretly and clandestinely without involving or obtaining the consent of the applicant.
6. It is averred that this matter was screened for mediation by court and a mediator being appointed. It is claimed that the applicant was never invited to attend any meetings or give any input by the mediator. The applicant claims that he and his siblings wish to inherit from the estate of the deceased since their mother was a daughter of the deceased.
7. The applicant claims that they stand to be disinherited if the application is not allowed.
8. In response the petitioner states that the matter was referred to mediation, which was heard, and the mediation settlement agreement was filed in court on 23rd November 2023 and the same was adopted. They state that this was not a partial agreement and/or endorsement by the court as alleged by the applicant and it was actually adopted by the court.
9. They claim that in the mediation settlement agreement the beneficiaries/dependents of the 2nd household informed the mediator that their sisters had no issue as they did not have a desire to get a share from the estate of the deceased.

Determination

10. I have considered the summons, the affidavits in support and against the summons together with the written submissions by both parties. The only material issue for determination is:-
11. The application was argued by way of oral and written submissions. Counsel submitted that the applicant had presented the claim in court on behalf of his mother who is deceased. That the action of the mediator to decree that only the sons of the original owner of the land in question benefit was fundamental mistake during mediation proceeding on the part of the mediator.
12. That the Respondent was readily available with the Mediation settlement agreement which was never supplied to the applicant imputing collusion.
13. Under Rule 39(3) of the *Rules* it is the order or decree arising from the mediation settlement agreement that can be set aside. That in the present case there is no order or decree to be set aside. That there is no law providing for settling aside of mediation settlement agreement. That the application is premature and totally defective and that the same should be struck out.
14. On whether or not the application meets the threshold for granting the orders sought, under Rule 39(3) *Civil procedure (Court Annexed Mediation Rules 2022)* a party has to demonstrate that he or she did not know of the misconduct, fraud or mistake at the time of execution of the agreement and that further the mistake is one that affected the process and outcome of the mediation. That the applicant has not mentioned in his Affidavit of the fact that they did not know about the fundamental mistake



- that led to a one-sided agreement. That they further do not mention at what stage they got to know about the alleged fundamental mistake. That the applicant has not met the threshold required in granting the orders sought.
15. The application is stated to be brought pursuant to the provisions of Rule 39 of the *mediation Rules*. Rule 39 makes provision for setting aside of an order or decree arising out of a Settlement Agreement as follows-
 - a. “No application for setting aside of an order or decree arising from a mediation settlement agreement shall be filed except with the leave of the court.
 - b. An application for leave under sub-rule (1) shall be supported by an affidavit detailing the grounds upon which the applicant intends to rely on in setting aside the order or decree.
 16. The following shall constitute the grounds upon which an application to set aside an order or decree arising from mediation settlement agreement:
 - a. Misconduct, fraud or fundamental mistake by the mediator as relates to the mediation proceedings that goes to the core of the matter. Provided that the misconduct, fraud or mistake should not have been known to the applying party at the time of execution of the settlement agreement and should be one which affected the process outcome of the mediation in such a way that it would be unfair and inequitable to enforce it in its form.
 - b. Fraud, collusion or misrepresentation by any party to the mediation (other than the party applying) or any witnesses or any person who took part in the proceeding and whose participation materially affected the outcome.
 - c. Fundamental mistake by any or all of the parties to the mediation as to the existence or state of the subject matter, person or thing, or to any set of facts that materially affected to enter into the subject agreement and which has rendered such agreement unfair and inequitable.
 - d. Where a party was, at the time of making of the agreement, under some legal incapacity to take part in the subject mediation proceedings or to conclude and execute a binding settlement.
 - e. Where the settlement agreement is invalid under Kenya or international law, or has become incapable of enforcement under Kenyan Law.”
 17. What this rule provides for is the setting aside of the order or decree arising from Mediation settlement agreement. The rules do not provide for setting aside of the Mediation Settlement agreement. Rule 33 and 34 envisage a situation where the next step after filing of the Mediation Settlement Agreement or the mediators report is adoption thereof by the court.
 18. To that extend, I am in agreement with the Respondent that the application is premature, having been filed before, there is in the matter, an order or decree drawn on the basis of the mediator’s report.
 19. That aside, even if the application had not been pre-mature, the ground upon which the same is made have not been proved. The applicant claims that there was fundamental mistake on the part of the mediator for failing to give information to the Applicant. However, those have not been proved. The mediation settlement agreement was signed by all parties and the 2nd house was duly represented the two (2) administrators.
 20. The applicant has not demonstrated that there was anything unconscionable, unequitable or unfair in the agreement.



21. I find that the application lacks merit and hereby dismiss it. No order as to costs. I hereby adopt the mediation settlement agreement as a judgment of the court.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 15TH DAY OF JULY, 2025.

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HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of Miruke for the Objector and Kenduiywo for the Petitioner. Siele/Susan (Court Assistants).

