



In re Estate of Stanley Mugambi Muketha (Deceased) (Succession Cause 361 of 2009) [2024] KEHC 5729 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEHC 5729 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 361 OF 2009
TW CHERERE, J
MAY 9, 2024**

BETWEEN

MORRIS MUTEMBEI MUGAMBI 1ST ADMINISTRATOR

EVANGELINE NKATHA MUGAMBI 2ND ADMINISTRATOR

AND

PETER MWITI 1ST APPLICANT

AGNES NKATHA 2ND APPLICANT

RULING

1. Following mediation between the parties herein, the estate of the deceased was distributed vide an Amended Certificate of Confirmation of Grant dated 28th November, 2023.
2. By Notice of Motion dated 22nd January, 2024, Peter Mwititi and Agnes Nkatha (Applicants) state that they are dissatisfied with the mediation agreement and seek leave to challenge it.
3. Evangeline Nkatha Mugambi (2nd Administrator/Respondent) opposed the application vide a replying affidavit sworn on 05th March, 2024 on the ground the mediation agreement was entered into by the 1st Administrator/Respondent on behalf of the Applicants and that the application is therefore an afterthought.
4. I have considered the application in the light of the affidavits on record. By their affidavit sworn on 22nd January, 2024, Applicants contend that 2nd Administrator/Respondent got over 70% of the assets and was therefore not entitled to a share of Nkuene/Uruku/1020.
5. Section 39. (1) of the *Civil Procedure (Court-Annexed Mediation) Rules*, 2022 provides that:
 1. No application for setting aside of an order or decree arising from a mediation settlement agreement shall be filed except with the leave of court.



- (2) An application for leave under sub-rule (1) shall be supported by an affidavit detailing the grounds upon which the applicant intends to rely in setting aside the order or decree.
 - (3) The following shall constitute the grounds upon which an application to set aside an order or decree arising from a mediation settlement agreement—
 - (a) misconduct, fraud, or a 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 by the applying party at the time of execution of the settlement agreement and should be one which affected the process and 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 witness or person who took part in the proceedings and whose participation materially affected the outcome;
 - (c) a 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 the parties' decision to enter into the subject agreement and which has rendered such agreement unfair and inequitable; (d) where a party was, at the time of the making of the agreement, under some legal incapacity to take part in the subject mediation proceedings or to conclude and execute a binding settlement; or
 - (e) where the settlement agreement is invalid under Kenyan or international law, or is or has become incapable of enforcement under Kenyan law.
6. From the Applicants' supporting affidavit, I find that they have made a case to warrant grant of leave to challenge the mediation agreement dated 11th September, 2023.
7. Consequently, the Notice of Motion dated 22nd January, 2024 is allowed on the following terms;
1. Applicants are granted leave to challenge the mediation agreement dated 11th September, 2023.
 2. The application to challenge the mediation agreement dated 11th September, 2023 be filed and served within 7 days from today's date
 3. Respondents to file and serve their responses within 7 days of service
 4. Mention for directions on 30th May, 2024

DELIVERED AT MERU THIS 09th DAY OF May 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Applicants - Mr. Muthamia for Bundi Muthamia & Co. Advocates

For 1st Administrator/Respondent - Mr. Muthuri for Muthuri & Co. Advocates

For 2nd Administrator/Respondent - Mr.Kariuki for Mithega & Kariuki Advocates

