



**In re Estate of Stanley Mugambi M'Muketha alias Stanley Mugambi Muketha(Deceased)
(Succession Cause 361 of 2009) [2024] KEHC 7332 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7332 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 361 OF 2009**

TW CHERERE, J

JUNE 6, 2024

**IN THE MATTER OF ESTATE OF STANLEY MUGAMBI
M'MUKETHA ALIAS STANLEY MUGAMBI MUKETHA (DECEASED)**

BETWEEN

MORRIS MUTEMBEI MUGAMBI ADMINISTRATOR

AND

EVANGELINE NKATHA MUGAMBI ADMINISTRATOR

AND

PETER MWITI 1ST APPLICANT

AGNES NKATHA 2ND APPLICANT

RULING

1. Following a successful mediation engagement between the parties, the estate of the deceased was distributed.
2. Consequently, a Certificate of Confirmation of Grant dated 28th November, 2023 was issued in terms of the mediation agreement dated 11th September, 2023 as follows:
 1. Nkuene/Uruku/863 - John Mutua
 2. Nkuene/Uruku/1711 0.10 Ha - Evangeline Nkatha
 3. Nkuene/Uruku/1714 0.63 Ha - Morris Mutemei
 4. Nkuene/Uruku/1020 - 3 Acres to John Mutua, Peter Mwititi, Susan Kathure, Agnes Nkatha and Jacob Munene - Evangeline Nkatha, 2 Acres
 5. Ngobit/Supuko/Block 5/339 0.97 Ha - Joseph Kimathi



6. Ngobit/Supuko/Block 5/764 7.383 Ha - Evangeline Nkatha
 7. Supuko/Block 5/765 7.383 Ha - John Mutembei & Others
 8. Ngobit/Supuko/Block 5/339 0.2813 Ha - Evangeline Nkatha
 9. Ngobit/Supuko/Block (Unknown) - Evangeline Nkatha
 10. Ngobit/Supuko/Block 5/765 - Peter Mwiti, Susan Kathure, Agnes Nkatha, Jacob Munene, Fridah Kagwiria and Morris Mutembei
3. By notice of motion dated 22nd January, 2024, Peter Mwiti and Agnes Nkatha (1st and 2nd Applicants respectively) have approached the court under Section 39(1)(D) of the *Court Annexed Mediation Rules* seeking leave to challenge the mediation agreement relating to LR Nkuene/Uruku/1020.
 4. The motion is supported by an affidavit sworn by the 1st Applicant on 22nd January, 2024 in which he avers that his siblings Morris Mutembei and John Mutua who were representing the 1st house did not consult them concerning distribution of LR Nkuene/Uruku/1020 and that it would be unfair to give 2 acres of the land to Evangeline Nkatha to whom about 70% of the estate has been distributed.
 5. By his affidavit sworn on 28th May, 2024, Morris Mutembei Mugambi supports the application on the ground that the mediator did not afford them time to consult their siblings.
 6. By her replying affidavit sworn on 05th March, 2024, Evangeline Nkatha Mugambi (2nd Administrator) opposed the application on the ground that the Applicants were ably represented in the mediation sessions by their siblings Morris Mutembei and John Mutua and that the application is an afterthought and ought to be disallowed.
 7. I have considered the application dated 22nd January, 2024 in the light of the affidavits on record.
 8. Rule 39 of the *Civil Procedure (Court-Annexed Mediation) Rules*, 2022 provides as follows:
 - (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. Setting aside an order or decree arising out of a settlement agreement.
 - (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.

(4) At the hearing of an application to set aside an order or decree, no party shall, without leave of court, be allowed to canvass any other ground in support of the application other than the grounds specified in sub-rule (3).

(5) The court shall hear and determine an application under this on priority basis within thirty days after filing

9. I understand the Applicants to say that there was misrepresentation of facts concerning the mode of distribution of LR Nkuene/Uruku/1020.

10. The foregoing is in my considered view sufficient ground for the Applicants who were themselves not present during the mediations sessions to challenge the same.

11. In the end, the notice of motion dated 22nd January, 2024 is determined in the following terms:

- 1. Peter Mwiti and Agnes Nkatha are granted leave to challenge the mediation agreement relating to LR Nkuene/Uruku/1020.
- 2. The application to challenge the mediation agreement relating to LR Nkuene/Uruku/1020 shall be filed and served not later than 14 days from today
- 3. Mention on 03rd October, 2024 for direction

DELIVERED AT MERU THIS 06TH DAY OF JUNE 2024

WAMAE. T. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

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

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

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

