



**In re Estate of Francis Njiru (Deceased) (Succession Cause  
191 of 2015) [2024] KEHC 12824 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12824 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
SUCCESSION CAUSE 191 OF 2015  
LM NJUGUNA, J  
OCTOBER 23, 2024  
IN THE MATTER OF THE ESTATE OF FRANCIS NJIRU (DECEASED)**

**BETWEEN**

**VIRGINA WAIRIMU NJIRI ..... 1<sup>ST</sup> PETITIONER**

**LUCY PAULINE WANJA NJIRU ..... 2<sup>ND</sup> PETITIONER**

**AND**

**FELIX NJAGI WAMBUGU (DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**DAISY KAGENDO NJIRU ..... 2<sup>ND</sup> RESPONDENT**

**CATHERINE NJOKI NJIRU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before the court is an application dated 11<sup>th</sup> June 2023 through which the applicants seek the following orders:
  - a. That the Honourable Court review the decision arrived at following the mediation settlement agreement which culminated to issuance of amended certificate of confirmation of grant dated 22<sup>nd</sup> February 2022;
  - b. That the grant issued on 17<sup>th</sup> February 2022 be revoked; and
  - c. That the costs of this application be provided for.The application is premised on grounds set out on its face and in the supporting affidavit to the application.
2. The 1<sup>st</sup> and 2<sup>nd</sup> applicants are 1<sup>st</sup> wife and daughter of the deceased respectively, while the 1<sup>st</sup> respondent is the deceased brother, who also died in the course of these proceedings. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents



are daughters of the deceased with his second wife, who also died. A grant of letters of administration was issued to the applicants in the estate of the deceased. The respondent moved to have the grant revoked and the matter was referred to court annexed mediation. The mediation process culminated into a settlement that excluded the 1<sup>st</sup> applicant from inheriting from the estate.

3. The 1<sup>st</sup> applicant deposed that she expressed her dissatisfaction with the findings of the mediation settlement but the mediator forced her and the 2<sup>nd</sup> applicant to sign the agreement. That, with the advice of counsel, she wrote a letter to the deputy registrar for court annexed mediation, expressing her dissatisfaction with the mediation process. That she later learned that the estate had been distributed and a certificate of confirmation of grant had been issued. She stated that it was unfair to disinherit her as the wife of the deceased thus she urged the court to revoke the grant and review the mode of distribution.
4. Through a replying affidavit, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents stated that the 1<sup>st</sup> applicant deserted the deceased many years prior to his death. That the mediation settlement agreement was signed by the parties and adopted as an order of the court that led to the certificate of confirmation of grant. That the grant issued is still valid and no reason has been given for its revocation.
5. The court directed the parties to file their written submissions but only the respondents complied.
6. In their written submissions, the respondents stated that the 1<sup>st</sup> respondent sought revocation of grant on the grounds that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents had been left out in the distribution yet their deceased mother was married to the deceased under Christian marriage. That the applicants did not contest the marriage certificate produced for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents' mother and the deceased and that they signed the mediation settlement agreement. It was their argument that a mediation settlement agreement cannot be set aside except through an application filed with the leave of court under Rule 39(1) of the [\*Civil Procedure \(Court Annexed Mediation\) Rules 2022\*](#). That the application herein was filed without the leave of court but if the court should consider it as properly filed, then the grounds for setting aside the mediation agreement have not been established.
7. The issue for determination is whether the application has merit.
8. The mediation settlement agreement signed on 10<sup>th</sup> February 2022 was adopted by the court on 17<sup>th</sup> February 2022. The 1<sup>st</sup> respondent wrote a letter dated 10<sup>th</sup> February 2022 to the court stating her dissatisfaction with the process of mediation and that the mediator was partial. She now seeks to have the mediation agreement set aside since she has been disinherited as a wife of the deceased. The respondents argued that the 1<sup>st</sup> applicant was not a wife of the deceased but she only lived with him for a while before deserting him and going away with the 2<sup>nd</sup> applicant.
9. Setting aside a mediation settlement agreement is provided for under Rule 39 of the [\*Civil Procedure \(Court-Annexed Mediation\) Rules, 2022\*](#) 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.
  - (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.”

10. Going by the provision cited hereinabove, the application seeking setting aside the settlement agreement has not complied with the procedure set in the law. It is immaterial to determine whether there were any vitiating factors to the mediation settlement. The applicants were required to seek leave to file an application for setting aside the settlement agreement but they failed to do so. The application for leave is meant to allow the court to verify the reasons given for setting aside the agreement. In my view, the application is not properly before the court.

11. The application also sought orders for revocation of the grant and the certificate of confirmation thereof. Revocation of grant is provided for under section 76 of the *Law of Succession Act*. The applicants' main contention in the application is that the 1<sup>st</sup> applicant has been disinherited through the mediation settlement. The grounds for revocation of a grant are specific to concealment of material fact or fraud on obtaining the grant, among others. The application does not disclose any grounds under section 76 of the Act, thus the grant of representation as issued by the court cannot be set aside, there being no grounds to do so.



12. As regards the certificate of confirmation of grant, the mediation settlement agreement is still valid and it is what culminated into the distribution adopted in the certificate of confirmation of grant. As already determined herein, the application to set aside the mediation settlement agreement is not properly before the court, meaning that there is no basis for setting aside the certificate of confirmation.
13. In the end, I find that the application lacks merit and it is hereby struck out with costs.
14. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 23<sup>RD</sup> DAY OF OCTOBER, 2024.**

**L. NJUGUNA**

**JUDGE**

.....for the 1<sup>st</sup> Petitioner/ Applicant

..... for the 2<sup>nd</sup> Petitioner/ Applicant

..... for the 1<sup>st</sup> Respondent

..... for the 2<sup>nd</sup> Respondent

..... for the 3<sup>rd</sup> Respondent

