



In re Estate of Anastacia Antonia Obonyo (Deceased) (Succession Cause E799 of 2020) [2023] KEHC 19467 (KLR) (Family) (20 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19467 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE E799 OF 2020
EKO OGOLA, J
JUNE 20, 2023
IN THE MATTER OF THE ESTATE OF ANASTACIA
ANTONIA OBONYO (DECEASED)**

BETWEEN

**JOSEPH OBONYO OGOLO 1ST APPLICANT
ANTONIA JOSEPHINE ATIENO OBONYO 2ND APPLICANT
IVY EDITH AKOTH OBONYO 3RD APPLICANT**

AND

**NATASHA ANYANGO KOYO 1ST OBJECTOR
MYRTLE CLAIRE ACHIENG OBONYO 2ND OBJECTOR
CHARLENE KAVELE OBONYO 3RD OBJECTOR**

RULING

1. Before this court for determination is the Chamber Summons Application dated July 11, 2022 filed under a Certificate of Urgency. The Application is made by the Applicants Joseph Obonyo Ogolo, Antonia Josephine Atieno Obonyo and Ivy Edith Akoth Obonyo where they seek the following Orders; -
 1. Spent
 2. That this Honorable court be pleased to issue a Certificate of Confirmation of Grant as sought in the application for confirmation of grant dated May 24, 2022, and as per the results of the Mediation Agreement (MLM/MED/235/2021)



3. Costs be borne by; Natasha Anyango Koyo, Myrtle Claire Achieng' Obonyo, Charlene Kavele Obonyo.
2. The application is premised upon Rules 73 of the *Probate and Administration Rules*. It is based on the grounds set out therein and supported by separate Affidavits of the Applicants.
3. The 2nd and 3rd Objectors opposed the Application vide an undated Replying Affidavit signed by Charlene Kavele Obonyo. The 2nd Objector then filed a Supplementary Affidavit dated April 24, 2023 signed by Myrtle Claire Achieng Obonyo. The Applicants filed a Further Affidavit dated March 6, 2023 in response to the Objector's responses.
4. The Applicants filed submissions dated August 11, 2022. The 2nd Objector filed submissions dated October 11, 2022 and skeletal submissions dated April 24, 2023.

The Applicant's Case

5. This matter relates to the estate of Anastacia Antonia Obonyo (the deceased) who died on 20th of April, 2020. The beneficiaries of the estate applied for Grant of letters of Administration. The Grant was issued to all beneficiaries of the deceased as follows; Joseph O'bonyo Ogolo, Jean Christian Ogolo O'bonyo, Natasha Anyango Koyo, Antonia Josephine Atieno O'bonyo, Myrtle Claire Achieng O'bonyo, Ivy Edith O'bonyo, Charlene Kavele Obonyo and Annastacia Adhiambo Obonyo on 21st of January, 2021.
6. According to the Applicants, the beneficiaries were in the process of seeking for Confirmation of Grant when the 2nd Objector lodged an Objection against the same and hence parties were referred to mediation where they were able to achieve a mediation settlement on the distribution of the estate. The mediation settlement informed the proposed mode of distribution of the estate as it appears on the Application for confirmation of Grant dated July 11, 2022. According to the Applicants, the Objectors failed to sign the application for confirmation of grant therefore knowingly and intentionally frustrating the distribution of the estate to the detriment of all other beneficiaries.
7. The Applicants depose that the objectors were parties to the mediation process entirely and on March 11, 2021 the Objectors and the applicant signed the mediation agreement in the presence of the mediator. The Applicants further depose that no appeal has been lodged by the Objectors against the Mediation Settlement since it was concluded on 11th of March, 2022.

Objectors' Case

8. The Objectors state that they were not agreeable to some of the proposed issues with regard to distribution of the estate of the deceased and an agreement was not reached on how to resolve those issues. According to the Objectors, during the mediation proceedings the applicant's lawyers antagonized the Objectors who did not have representation.
9. According to the Objectors, the mediation ended abruptly without addressing all the issues raised; that the Mediator stated that only the Administrators signatures were needed for the grant to be confirmed. According to the Objectors, at the end of the meeting they did not append their signatures since the intended distribution was not fair as it did not conform to the family meetings held earlier.
10. The Objectors depose that the applicants used threats and intimidation to coerce the objectors to agree to the proposed mode of distribution. The Objectors further depose that being that there was no effective conclusion through mediation, the Objection dated July 8, 2021 is still pending for determination.



11. The Objectors urge the court to dismiss the application.

Applicants' Response To The Objectors' Case

12. The Applicants denied the allegations of threats to the Objectors. The applicants dismissed the claims by the Objectors as entirely spurious and without any basis. According to the Applicants, none of the parties was denied a chance to ventilate his/her issues before the mediator; that the objectors signed the mediation agreement before the mediator then the agreement was filed in court and adopted as a consent Order and according to the Applicants, it is final and binding upon all the parties to this dispute.

Objectors' Further Response To The Applicants' Case

13. The Objectors state that there is an email dated April 21, 2022 in which the advocate representing the estate of the deceased expressly confirmed that the mode of distribution had not been agreed upon in some properties. According to the Objectors, this email was written after the mediation had allegedly been concluded on March 11, 2022.

Determination

14. After careful consideration of the Application, the Affidavits and the party submissions, the issue coming up for determination is whether the Grant should be confirmed as per the mediation agreement.
15. The court is faced with a situation where the beneficiaries to the estate of the deceased are divided. After the Grant of letters of Administration issued on January 21, 2021, the parties filed an application for confirmation of Grant but some of the beneficiaries who are the Objectors failed to sign a consent on the mode of distribution and the Objection dated July 8, 2021 was filed. Lady Justice Achode directed the parties to pursue mediation to try and get a settlement.
16. The contention is that the Applicants are arguing that the mediation was successful and all parties agreed to the settlement reached while the Objectors are arguing that the Mediation was not helpful as most issues raised were not discussed and resolve and the Objectors did not agree with the mediation settlement.
17. The Applicants have produced a copy of the Mediator's Report dated March 11, 2022 showing that the parties reached a settlement in Mediation No: MLM/MED/235 of 2021. The Applicants have also produced Mediation Settlement Agreement where it is shown that only four (4) beneficiaries out of eight signed the Mediation Agreement.
18. An agreement arrived at through mediation and adopted by the court amounts to a consent judgment which can only be set aside by leading evidence to the satisfaction of the court that indeed there was a vitiating factor to warrant revocation of a contract.
19. Was there a mediation settlement agreement in this case? Section 32(1) of the *Civil Procedure (Court-Annexed Mediation) Rules, 2022* provides that "where there is a settlement agreement resolving some or all of the issues in dispute, such agreement shall, with the necessary modifications, be in Form 12 as set out in the Schedule and be duly signed by the parties, the parties' advocates or representatives, and the mediator".
20. The Mediation Settlement Agreement presented before the court was signed by Joseph O'bonyo Ogolo, Antonia Josephine Atieno O'bonyo, Charlene Kavele Obonyo and Ivy Akoth Obonyo. The



other beneficiaries; Jean Christian Ogolo Obonyo, Natasha Anyango Koyo, Myrtle Claire Achieng Obonyo and Anastacia Adhiambo Obonyo have not signed the mediation settlement.

21. Black's Law Dictionary, 11th Edition at page 470 defines a Contract as an agreement between two or more parties, Preliminary Step in making of which is offer by one and acceptance by other, in which minds of parties meet and concur in understanding of terms and that there must be a meeting of minds, otherwise known as consensus ad idem.
22. The meeting of minds is seen in the execution of the mediation agreement and when a party signs the agreement, there is reason to believe that the party has read and understood the terms of the agreement and in the absence of any vitiating factor; he is bound by the terms of that agreement.
23. In the case of Amcon Builders Ltd v Vintage Investment Ltd & Another [20181] eKLR the court held that: -

“Unlike arbitration or litigation mediation process ends with an agreement not an award. The success of a mediation process is that parties come up with own resolution. The part of the mediator is merely to guide the parties by setting an atmosphere of mutual, candid and honest discussions. He makes no own findings nor does he make any coercive determination at all. His is to listen and assist the parties settle. Once a settlement is reached, he must assist in drawing and crafting the agreement which is then owned by the parties by each appending his signature thereto. Even where the parties agree on the dispute but decline to sign the agreement, the mediator should report lack of agreement. Indeed, parties can reach a partial agreement which if signed is reported by the mediator as such. A mediator merely helps parties reach a mutually agreeable solution.” (Emphasis supplied)
24. In re Estate of the Late Ngaulo arap Tanui (Deceased) [2021] eKLR, Justice Githinji in delivering a ruling where some parties had not signed a Mediation Agreement stated that “ it is my considered view that the mediation agreement is invalid to the extent that some of the parties to the suit and in particular the applicants herein who are the objectors in the main suit, never appended their signatures on the said agreement, a fact of which the respondent’s counsel has admitted in their submissions when she stated that the applicants were present during the mediation processes but refused to append their signatures on the agreement. I also find that the applicants’ refusal to sign the mediation agreement is a clear indication that they were not in agreement with its terms and the Mediator should have indicated so. There was no settlement.”
25. From the correspondences provided by the Objectors between themselves and the Applicants and the Applicants’ Advocate, it is clear that there was a rift during the whole process which prevented the parties from coming into a common agreement. The parties clearly did not agree, something which the mediator did not raise in the mediation report.
26. From the foregoing, I find that the document dated March 11, 2022 does not amount to a Mediation settlement. The parties had not reached a settlement; they did not append their signatures to any settlement. With respect, the mediator’s report is misleading. The court has not yet adopted the ‘mediation settlement’ alleged as a consent by the parties. This court cannot use the said ‘mediation settlement’ to issue a Confirmation of Grant in this cause. There being no mediation settlement, I dismiss the Applicants application dated July 11, 2022 and declare the mediation agreement dated March 11, 2022 void *ab initio*.
27. Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE 2023.



E.K. OGOLA

JUDGE

Ruling read and delivered in chambers online in the presence of:

Mr. Jaoko for the Petitioner/Applicants

Mr. Muriithi for the 2nd Objector

N/A for the 1st Objector

Ms. Gisiele Court Assistant

