



**In re Estate of Tangushi Oloo Nkerient (Deceased) (Succession Cause E001 of 2021) [2024] KEHC 16456 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16456 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KILGORIS  
SUCCESSION CAUSE E001 OF 2021  
F GIKONYO, J  
DECEMBER 17, 2024**

**IN THE MATTER OF THE ESTATE OF TANGUSHI OLOO NKERIEN'T (DECEASED)**

**BETWEEN**

**SAMSON MOROMPI TAMPUSHI ..... 1<sup>ST</sup> OBJECTOR  
ERASTUS TAMPUSHI ..... 2<sup>ND</sup> OBJECTOR  
FREDRIC LETEIPA TAMPUSHI ..... 3<sup>RD</sup> OBJECTOR  
WILSON KISIO TAMUSHI ..... 4<sup>TH</sup> OBJECTOR  
SAMUEL OLOSUKI TAMPUSHI ..... 5<sup>TH</sup> OBJECTOR  
PRISCILLAH NAINI ..... 6<sup>TH</sup> OBJECTOR**

**AND**

**EZEKIEL OLEMOI TAMPUSHI ..... 1<sup>ST</sup> PETITIONER  
RICHARD MUTUNKEI TAMPUSHI ..... 2<sup>ND</sup> PETITIONER  
LEONARD LESUMAN TAMPUSHI ..... 3<sup>RD</sup> PETITIONER**

**RULING**

**Mediation report**

1. This cause relates to the distribution of the estate of Tangushi Oloo Nkeriet who died intestate leaving behind three wives and multiple heirs. Oloo Nkeriet’s sons Ezekiel Olemoi Tampushi, Richard Munukei Tampushi, and Leonard Lesuwan Tampushi petitioned this court at Kilgoris for grant of letters of administration intestate. The objectors contested the grant and sought to be recognized as bona fide beneficiaries of the estate. By consent of all parties herein, this court referred this matter for mediation.



2. A mediation meeting was convened on 21/03/2024 by the assistant county commissioner. The mediator filed a mediation report dated 27/03/2024.
3. The objectors were not satisfied with the findings, recommendations, and manner of proceedings of the mediation and have raised their grievances on the said mediation report.
4. The objectors contend that one beneficiary- Peter Lekakeny Tampushi was chased out of the meeting on the pretext that he was not an invited party to the meeting.
5. The objectors have raised objections regarding the conduct of the mediation panel with allegations of bias and procedural irregularities.
6. In light of these disputes and objections, the objector contends that the matter remains unresolved pending further adjudication by this court. The objectors are aggrieved by the process and the final decision of the panel hence the submissions herein.

#### **Direction of the court.**

7. The dispute on the mediation report was canvassed by way of written submissions.

#### **The objectors' submissions.**

8. The objectors submitted that the meeting was not conducted under the natural principles of mediation of fairness, impartiality, party autonomy, neutrality, voluntariness, and confidentiality and it was not a stand-out collaborative dispute resolution process. The objectors contend that the mediator was not neutral and explicitly showed biasedness in action and words. Parties were not given an opportunity to make their own decisions both individually and collectively were imposed by the mediator and her team through a closed-door meeting. According to some attendees, the report does not reflect the true facts of what was discussed. Therefore, according to the objectors the mediation panel was shambolic and conflicted, and thereby the resultant decision was not justified, fair, and reliable and thus ought to be disregarded. The objectors relied on *Joseph Munyao Kyalo v Japheth Kyalo Nzioka & 2 others* [2015] eKLR, *Eunice Njeri Ngari & another v Mercy Muthoni Ngari* [2017] eKLR, *Betty S Omwenga v Joseph N. Omwenga* [2013] eKLR, *Flora N. Wasike v Destimo Wamboko* [1988] eKLR, *Board Of Trustees National Social Security Fund v Michael Mwalu* [2015] eKLR, and *Metropolitan Properties Co(FGC) Ltd v Lannon And others*.
9. The objectors submitted that the objectors demonstrated a sustained pattern of maintenance extended to Naini by the deceased thereby warranting due recognition of her claim to the estate. The objector relied on section 29 of the *law of Succession Act, in re estate of Alfred Mutune Munyao (deceased)* [2019] eKLR, and *Beatrice Ciamutua Rugamba v Fredrick Nkari Mutegi & 5 others* [2016] eKLR.

#### **The petitioners' submissions.**

10. The petitioners submitted that the settlement arising from the arbitration proceedings ought to be enforced as a judgment of this court. The petitioners contend that once a settlement from an alternative dispute resolution method is reached and signed by parties, the agreement becomes enforceable between parties and no appeal and/ or review can be entertained in respect of the said agreement. Therefore, the objection by the objectors on the mediation process and agreement is without basis in law and as such ought to be dismissed with costs. The petitioners relied on Article 159(2) (c) of the *Constitution* and Section 59© (1) (3)(4) of the *Civil Procedure Act*.



## Analysis And Determination

11. This court has considered the mediation report and the respective parties' submissions. The issue that arises for determination by this court is whether the mediation report should be adopted as a judgment of this court.
12. The objectors contend that the mediator convened a mediation meeting on 21/03/2024 at her office for a few beneficiaries and excluded other beneficiaries.
13. The objectors alleged that the mediator chased out a beneficiary Peter Lekakeny Tampushi.
14. The objectors contend that the members who were present did not agree on the modalities of undertaking the mediation process with the former DCC who initiated the process. The ACC did not call for any preparatory meeting with all beneficiaries as expected on critical issues that could impede the mediation process including the role of mediators, elders, and other interested parties, meeting place, etc. The ACC informed members that she had received express orders from this court to only invite 4 sons and other objectors (Wilson and Samuel) out of 14 sons of which the order was not availed despite request by Leonard Tampushi. Though the widows were not on the list from the court the mediator took a personal initiative to extend the invite to widows only. Samson Morompi, Fred Leteipa, and Pricilla Naini did not participate in the mediation session. Also, the daughters of the deceased were excluded
15. The objectors contend that Ezekiel Olemoi and Richard Mutunkei made serious allegations against some family members who were not invited and not given an opportunity to be heard...
16. The objectors contend that the final conclusion and recommendations were actualized through a closed-door meeting with elders in the absence of key beneficiaries, some objectors, and family consensus.
17. The objectors contend that more land was awarded to those who were given the biggest shares by the deceased particularly the first household against the young sons of the deceased who are from the third household and were supposed to benefit from the remaining parcel which was held in trust by their father.
18. The objectors contend that the report does not reflect true facts of what was discussed for example Leonard Tampushi requested the mediator to make sure that all beneficiaries were involved in the mediation and fronted key elders and relatives of the deceased namely Sanamwala Naula, Mzee Murunga and Olminis Naula and other close elderly relatives since they were actively involved in the discussion including distribution of the parcel of land in a traditional norm held on 19/10/2012 at the deceased's home after interment where it was agreed that the parcel Transmara Osinoni/1 be subdivided among the three sons who were issued with title deeds but their respective portions were showed and demarcated by the deceased himself. The mediator did not consider this information.
19. The objectors challenged the information provided by Ezekiel Olemoi about Priscilla Naini as untrue. Priscilla was not invited to the meeting nor was her mother (Lilian Ntiito Tampushi). The objectors argued that Ezekiel never had a good relationship with the deceased and was apart from the deceased for more than 10 years. Therefore, he is unaware of the full circumstances surrounding Priscillah's life.
20. The objectors contend that the statement by Ezekiel Olemoi is fabricated against Benson Tampushi and Leonard Tampushi since Benson Tampushi was left out of the mediation process. Furthermore, he concealed information that his brother Emmanuel Parningo forcefully occupied Transmara/Osinoni/184.



21. The objectors contend that several members of the mediation panel were embroiled in a conflict of interest. Kimuria Ole Shira was the guarantor to Ezekiel Olemoi in this succession cause. Denis Nairenke is affiliated and has a close business relationship with Ezekiel's family particularly Julius Tabarai his elder brother. Leparakuo Lemunke is a father of the chief and a friend to Julius Tabarai and there was prolonged estrangement with the deceased since 1992

### **Review of mediation report**

22. It is important to restate that; a mediation settlement procured by consent of and signed by the parties, will not be reviewed merely because of dissatisfaction of some parties with the outcome of mediation.
23. The court will defer to a settlement arising out of mediation; and only reviewing it for; procedural propriety and constitutional proportionality. Except, in instances where the mediation settlement is not dispositive of all the issues or requires further clarification of some pertinent issues, the court may adopt a facilitative approach and consider the report as relevant and is deemed to be part of evidence to be adduced at the trial.
24. The objectors have raised concerns that some beneficiaries were left out of the mediation process. Yet, Mediation should involve all parties in the dispute. They claimed that one beneficiary by the name Peter Lekakeny Tampushi was chased out of the mediation. These are due process issues which, if proved, makes the outcome to suffer procedural impropriator.
25. The objectors contended that the mediator was not neutral and explicitly showed biasedness in action and words. They claim that parties were not given an opportunity to make their own decisions both individually and collectively; decisions were imposed by the mediator and her team through a closed-door meeting.
26. These allegations were not substantiated because the parties herein were given an opportunity to state their claims. From what was recorded, parties were given ample time to state their respective claims.
27. Contrary to the allegations by the objectors, the arbitrator gave the parties enough opportunity even after conclusion of the proceedings to give their solution of the matter. But, they reported back that they cannot agree. The mediator therefore retired to write the decision which is perfect and in harmony with practices of decision making. Nothing strange here. The objectors seem to suggest that the mediator ought to have decided the way they wanted. The decision by the mediator draws upon the facts or agreements by the parties and not parties' desires.
28. The other arguments on bias, intimidation as well as that the arbitrator did not consider some crucial information for instance, on distribution of the parcel of land known as Transmara Osinoni/1 through a traditional norm held on 19/10/2012 at the deceased's home after interment, are neither here nor there.
29. However, the mediation report did not resolve some issues which require further interrogation by the court and the relevant government agencies. For instance, overlap of the 16 acres herein which will require intervention by the court. The matter of Patricia Naini also requires further interrogation. Thus, the court will adopt facilitative approach and consider the mediation report to be relevant and is deemed to be part of evidence to be adduced during the trial. The report is so deemed.
30. Therefore, the mediation report dated 27/03/2024 is relevant and is deemed to form part of the evidence of the trial.
31. The court will assign the matter a date for directions on the areas requiring resolution by the court and how they shall be canvassed.



32. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT KILGORIS THROUGH TEAMS APPLICATION, THIS  
17<sup>TH</sup> DAY OF DECEMBER, 2024.**

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**HON. F. GIKONYO M**

**JUDGE**

In the presence of: -

Begi for petitioners

C. langat for 3<sup>rd</sup>-5<sup>th</sup> objectors

Maritim for 1<sup>st</sup> and 2<sup>nd</sup> respondents-absent

