



**In re Estate of Stanley Mugambi M'muketha alias Stanley Mugambi Muketha (Deceased)
(Succession Cause 361 of 2009) [2024] KEHC 15390 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15390 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 361 OF 2009
HM NYAGA, J
DECEMBER 6, 2024**

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

BETWEEN

MORRIS M'UTEMBEI MUGAMBI 1ST ADMINISTRATOR

EVANGELINE NKATHA MUGAMBI 2ND ADMINISTRATOR

AND

PETER MWITI 1ST APPLICANT

AGNES NKATHA 2ND APPLICANT

RULING

1. By an application dated 16/05/2024 brought under Section 39(20) of the Court Annexed Mediation Rules. The Applicants have sought the following orders;
 - a. That the court do set aside the order/Decree and/or settlement reached herein and the matter do proceed for mediation before a different mediator.
 - b. That in the alternative, the court do order that the property known as NKUENE/URUKU/1020 do go to John Mutua Mugambi and his siblings.
2. The application is propped by the grounds set out on the face of it and is supported by the affidavit of Peter Mwititi sworn on even date.
3. In a nutshell, the applicants state that the matter was referred for mediation. That not satisfied with the outcome of the mediation, they sought leave to challenge the same, which leave was granted.



4. The Applicants aver that after the 2nd Administrator transferred most of the prime properties to herself, and her children, other beneficiaries (1st house) had a legitimate expectation that they would get the entire parcel of land known as NKUENE/URUKU/1020.
5. It is further avered that during the mediation process the 1st house was represented by Morris Mutembei and John Mutua who could not explain how they allowed the Respondents to take the lion's share of the properties forming the estate. That national justice demands the estate be shared equitably among the beneficiaries and take into account what may have been taken at given intervals (sic).
6. The Applicants further aver that while their father was ailing, the Objector herein transferred most of the prime properties to herself and her children who did not biologically belong to the deceased. That their family (1st house) have occupied parcel NKUENE/URUKU/1020 since time immemorial and were surprised that the Objector was to get 2 acres from the same, yet she had never used the said land.
7. The Applicants referred the court to the Affidavit of Morris Mutembei sworn on 14th May, 2014 which listed the properties in possession of the 2nd Administrator, who has sold most of them.
8. In response to the Application, the 1st Administrator (Morris Mutembei Mugambi) filed a replying affidavit sworn on 28th May, 2024. He states that he supports the application in full as the mediation did not give him time to consult his sibling before concluding the mediation process. He referred the court to his affidavit filed in court on 19th May, 2014 so as to show the extent to which the 2nd Administrator from the properties of the deceased both when he was alive and after his death. That any benefits to a beneficiary during the lifetime of the deceased ought to be taken account of.
9. He urges this court to proceed to deliver its judgment or have the matter referred to a different mediator.
10. The Objector/2nd Administrator filed a replying affidavit sworn on 25th May, 2024. She states that the mediator was ordered pursuant to a Mediation Settlement Award made on 11th September, 2023. That the Applicants were fully represented by the 1st Administrator and their elder brother John Mutua. That the two had at the beginning of the mediation session confirmed that they had instructions to represent the Applicants. That therefore the 1st house was duly represented and this application is an afterthought driven by the desire to get more from the estate.
11. The Respondent further avers that no valid grounds have been set out to warrant the settling aside of the mediation settlement.
12. The Respondent further avers that this application is similar to the one filed by the 1st Administrator, this raising strong suspicions that he is the one behind the present application.
13. The Respondent states her share of 2 acres in NKUENE/URUKU/1020 was informed by the fact that the deceased had granted her possession and occupation thereof. She complained that the 1st Administrator and John Mutua have destroyed tea bushes on her portion of land, with the intention to dispossess her off the same.
14. She denied that the deceased left the entire parcel of land NKUENE/URUKU/1020 to the 1st house as alleged by the Applicants.
15. This application has been brought under Rule 39(2) of the Court Annexed Mediation Rules.
16. Before I delve into the issue at hand, it is important to affirm that leave to file this application was granted by this court vide its ruling delivered on 6th June, 2024.



17. The court's duty now is to establish if the Applicants have offered any of the grounds set out under sub-rule (3) of the Court Annexed Mediation Rules. They provide as follows;

39.

- (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.

18. The Applicants contend that during the medication, they were not present but their house was represented by Morris Mutembei and John Mutua and at no time did they seek their opinion and they only came to learn of the decision in question.

19. This court referred the matter for mediation by the court on 27/07/2023. On 01/11/2023, the parties presented the mediation settlement agreement dated 11/09/2023 and the same was adopted by the court. Subsequently, a certificate of confirmation of grant was issued on 8th November, 2023.



20. If I get the Applicants correctly, their issue is that while their house was represented by 1st Administrator and John Mutua, they were not asked to make their opinion.
21. From the court record, the deceased left several surviving beneficiaries, who are listed in the court's judgment delivered on 05/03/2019.
22. From the mediation settlement agreement only the following were present during the proceedings during the mediation; Evangeline Nkatha Mugambi with her advocate. Morris Mutembei. John Mutua.
23. Even though several other beneficiaries are listed, they did not sign the agreement and so it is reasonable to conclude that they were not present.
24. Rule 17(1) of the Court Annexed Mediation Rules provides as follows;
 17.
 - (1) Where a natural person participates in the mediation through a representative who is not an advocate, the representative shall, at the first mediation session, present to the mediator written authority signed by the party indicating that the representative has been authorised to take part in the mediation process and execute a settlement agreement on behalf of that party.

Representatives of natural persons.
 - (2) The authority under sub-rule (1) shall be in Form 6 as set out in the Schedule.
25. The rule is self-explanatory. The representatives of the absent parties ought to have presented a written authority as set out in Form 6 of the schedule. I have perused the entire court record and find that no such authority was presented or filed as required.
26. In a succession matter, the consent of every beneficiary to proposed mode of distribution has to be obtained and in its absence, proof that the beneficiary has been served with the proposed distribution so as to either agree to it and file a protest and a counter-proposal. This is because all the beneficiaries have equal rights and the administrators ought to involve them at the point of distribution.
27. In the absence of the stated authority, I find that the Applicants, alongside others not present were not represented, I find that the attendance of the parties at the mediation did not meet the threshold set out a fundamental mistake under Rule 39(3)(a).
28. The proceedings in question were thus a nullity and the subsequent certificate of confirmation of grant is hereby annulled/revoked and set aside.
29. I have restricted myself to the process in the mediation and deliberately avoided the substantive issues on the distribution of the estate to avoid any prejudice to the parties should they decide to address the court on the same.

H.M. NYAGA

JUDGE

DATED, SIGNED & DELIVERED IN OPEN COURT AT MERU THIS 6TH DAY OF DECEMBER , 2024.

H.M. NYAGA

JUDGE

