



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Meshach Kimursi Matutu (Deceased) (Probate & Administration
E054 of 2022) [2025] KEHC 14614 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14614 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION E054 OF 2022**

E OMINDE, J

OCTOBER 16, 2025

IN THE ESTATE OF MESHACK KIMURSI MATUTU (DECEASED)

BETWEEN

**ISAAC KIBET TALAM 1ST PETITIONER
PAUL KIPTOO TALAM 2ND PETITIONER
BETTY JEPKOECH KICHWEN 3RD PETITIONER**

AND

**PRISCA JELAGAT MATUTU 1ST OBJECTOR
JANE KIPLETING CHEPSIROR 2ND OBJECTOR
MARY JEPKETER 3RD OBJECTOR
ROSE JEBITOK 4TH OBJECTOR
MONICA JEPTOO SAMITUI 5TH OBJECTOR
DANIEL KIPYEGO TALAM 6TH OBJECTOR**

RULING

1. This matter relates to the estate of Meshack Kimursi A. Matutu who died intestate on 9/12/2006. On 13/05/2022, Isaac Kibet Talam, Paul Kiptoo Talam and Betty Jepkoech Kichwen in their capacities as sons and daughter-in-law of the deceased petitioned Court for the Grant of Letters of Administration Intestate. The following persons were listed as having survived the deceased:
 - a. Ann Motutu Chepkosgei- Widow
 - b. Susan Chesum Matutu- Widow (Deceased)



- c. Emily Sambai Matutu- Widow (Deceased)
 - d. Martha Maiyo (Deceased)
 - e. Jane Jepleting Chepsiror
 - f. Isaac Kibet Talam
 - g. Isaac Kibet Talam
 - h. Susan Jepchumba
 - i. Monica Jeptoo Samitui
 - j. Milka Jeptum Matutu
 - k. Paul Kiptoo Talaam
 - l. Daniel Kipyego Talam
 - m. William Kipkenei Meli
 - n. Elijah Kipchirchir Talam
 - o. Priscila Jerobom Matutu
 - p. Rosaline Jepkemboi
 - q. Betty Jepkoech Kichen
 - r. Proscah Jelagat Matutu
 - s. Abraham Kipkemei Talam
 - t. Rose Jebitok
 - u. Mary Jepketer
2. As the matter was still pending in Court the Objectors vide Summons dated 28/07/2023, sought time within which to lodge their Objection against the petition for the grant of letters of administration intestate filed by Isaac Kibet Talam, Paul Kiptoo Talam and Betty Jepkoech Kichwen. However, vide a Consent dated 6/12/2023, parties were able to compromise the Objection and agreed that the following persons be appointed as administrators in the estate of the deceased: Isaac Kibet Talam, Daniel Kipyego Talam, Prisca Jelagat Matutu and Betty Jepkoech Kichwen. The Court also directed parties to file their agreed mode of distribution and in default their respective modes of distribution.
3. On 23/9/2024 when the parties appeared before the court, the Objectors' Counsel informed Court that he had filed and served his Summons for Confirmation of Grant dated 4/6/2024, however on his part, the Petitioner's Counsel had not filed his proposed mode of distribution and the Court granted the Petitioners time to file their respective mode of distribution.
4. On the mention of 11/11/2024, Counsel for the Objectors informed the Court that the Petitioners had also filed their Summons for Confirmation of Grant dated 1/11/2024 and further sought that the matter be referred to mediation for the parties attempt an out of Court settlement and the matter was accordingly referred. Subsequently, the Mediator filed in court the Mediation Settlement Agreement dated 23/12/2024 and the matter scheduled for the adoption of the said agreement on 11/3/2025.



5. The beneficiaries present on 11/3/2025 were Prisca Jelagat Matutu, Isaac Kibet Talam, Jane Jepleting Chepsiror, Milka Cheptum Matutu, Mary Chepketer, Rose Jebitok, Paul Kiptoo Talam and Abraham Kipkemei Talam, and the rest were purchasers. Counsel for the Objectors informed the Court that a mediation settlement had been reached.
6. The Court then read out the proposed mode of distribution as set out at paragraph 8 of the Affidavit in support of the Summons as adopted from the Mediation Report dated 23/12/2023 to all the beneficiaries present and upon parties being asked if they were agreed a majority of the parties present agreed with said mode of distribution save for the following; Isaac Kibet Talam disagreed on grounds that his portion is less than 6 acres. Paul Kiptoo disagreed on grounds that he was moved by their father from Plot No.99 Chepsaita to Kipkaren Plot No. 262 where he has lived for more than 20 years and he did not understand why he had been moved out of Kipkaren to Chepsaita yet he had already fenced 8 acres of his land and that further, he also did not see why some children of the deceased should get 17.5 acres, others 11 acres and others 2 acres.
7. On his part, Abraham Kipkemei merely disagreed with the mode of distribution on grounds that they had not had a sitting as a family regarding this matter.
8. Noting the aforementioned concerns regarding the mediation settlement reached, the grant herein could thus not be confirmed. The court then directed the parties together with their Counsel to try and find an amicable solution to the outstanding issues.
9. At the mention of 21/5/2025, when the parties appeared before court it was clear that no amicable solution had been reached and the court directed that the matter proceeds to hearing. The objecting beneficiaries were directed to file and serve the Administrators within 21 days with the reasons for their objections to the proposed mode of distribution and the final settlement reached by the mediator. The Administrators were directed to file their respective responses within 21 days of service.
10. At the mention of 10/7/2025, the Objector Isaac Kibet Talam, informed the Court that his objection on the error on the acreage had been rectified and being satisfied with the said rectification, he now had no problem with the Mediation Settlement Agreement being adopted by the court.
11. Paul Kiptoo, on his part filed an Objection dated 14/7/2025. The same is written in Kiswahili and which can be summarized as follows; that he is a son of the deceased, that his father showed him the parcel of land where he could construct a house in the year 2002, and he began constructing in the year 2003, and that in the year 2004, by the command of his father his family was relocated to the place where he currently resides at and that his father involved neighbours and his brother Stephen Kirwa Matutu in doing so.
12. That in the year 2007, their deceased father died having shown him the place to live with his brothers and that since that day they have been having discussions on how to distribute the land but they have never agreed because, his father's wishes were never regarded. That the said discussions were taken up for mediation but he does not agree with the said report because not every child was involved. That in the said report he is required to move from the parcel of land he currently resides in to another parcel of land against his father's wishes. That he only signed the mediation report but did not agree with the contents therein and that the report should have regard to how the distribution of land should be done and that his father's wishes should be considered too.
13. Stephen Matutu, on his part filed his Objection on 14/07/2025, in which he sought that the issue regarding the distribution of land be resolved by the family members and the elders at home.



14. Abraham Kipkemei Talam, on his part in objecting to the Mediation Settlement Agreement, wrote a letter dated 16/6/2025, and filed in Court on 17/6/2025. In the letter he stated that he did not append his signature on the agreement neither was he present and thus did not know what was passed in the mediation resolution. He also sought that parties be referred back to mediation.
15. Betty Kichwen, on her part also wrote a letter dated 18/7/2025 in Objection to the mediation settlement agreement. In the letter, she stated that she has not been involved in the Succession process, that she was unjustly removed as an administrator and that as a widow she has not been granted the right to participate in the distribution of land and that some of her late husband's siblings have sidelined her and have denied her and her children their fair share of the estate. She thus proposed that the Court consolidated the estate of the late Matutu and share it equally to the listed beneficiaries so as to avoid any unjust and unfair distribution and that this consolidation should leave out the portions of land which the deceased had sold or allocated to persons who are not beneficiaries in the estate.

Determination

16. The sole issue that arises for determination is whether the Court should set aside/adopt the Mediation Settlement Agreement dated 23/12/2024.
17. The process of Court annexed mediation is governed by the Judiciary of Kenya Practice Directions on Court Annexed Mediation issued by the Chief Justice pursuant to Article 159 of *the Constitution* and Section 59B (1) (a), (b) and (c) of the *Civil Procedure Act*.
18. Article 159 (2)(c) of *the Constitution* of Kenya provides as follows: -

“In exercising judicial authority, the courts shall be guided by the following principles:
alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted subject to clause (3).”
19. Alongside the aforementioned, the following is provided by Section 59C of the Civil Procedure Rules:
 - “ 1. Any suit may be referred to any other method of dispute resolution where the parties agree or the court considers the case suitable for such referral.
 2. Any other method of alternative dispute resolution shall be governed by such procedure as the parties themselves agree to or as the court may in its discretion order ...”
20. Order 46 Rule 20 (1) of the Civil Procedure Rules also provides as follows:

“Nothing under this order may be construed as precluding the court from adopting and implementing of its own motion or at the request of the parties, any other appropriate means of dispute resolution (including mediation) for the attainment of the overriding objective envisaged under Sections 1A and 1B of the Act.”
21. In the case of *In re Estate of BM (Deceased)* [2019] eKLR, Muchelule J (as he then was) stated as follows:
 - “ 13. The Family Division and the Judiciary as a whole have embraced mediation in the resolution of civil disputes filed by the parties. Mediation is an informal and no-adversarial process where an impartial mediator encourages and facilitates



resolution of a dispute between two or more parties. Like was stated by Judge P.J.O. Otieno in *Amcon Builders Ltd v Vintage Investments Ltd & Another* [2018] eKLR, the mediator merely guides the parties by setting an atmosphere for mutual, candid and honest discussions. He makes no determination. Where the parties have agreed on all, or some of, the issues in dispute he helps in the drafting of the agreement which is then owned by the parties by them appending their signatures. The agreement, known as the mediation settlement agreement, is then filed into court which adopts the same as the order or judgment of the court. The agreement becomes enforceable if the mediation collapses, or no agreement is reached, the matter returns to court to be heard in the normal manner. The parties may ask the judge to refer their matter to mediation, or the judge may on his or her motion refer the matter to mediation. Parties are under obligation, when referred to mediation, to attend the mediation sessions, and to act in good faith during the process.

15. Court Annexed Mediation enhances access to justice, reduces backlog and, most importantly, allows parties an opportunity to generate home-grown solutions to their disputes. Solutions that they can live with and which can bolster their long-term relations. This is why, ordinarily, such a solution is not appealable. It is a contract mutually arrived at, and which would not, ordinarily, be the subject of review.”
22. A Mediation Settlement Agreement once adopted as an order of the Court becomes a binding Agreement as between the parties and cannot be set aside unless the party challenging it proves that there are justifiable grounds that warrant its setting aside. Fraud, misrepresentation, coercion, and undue influence are examples of vitiating factors that apply to all other contracts or consent orders. Since objections were made prior to the Agreement’s adoption, the Court has not yet adopted it in this particular case. However, if the Court is being urged not to adopt the Agreement that the Mediator forwarded, as it is in this case, the same rules that apply for rescinding the order after adoption would still apply.
23. In respect to the grounds applicable in setting aside consent orders, Achode J (as she then was), in the case of *NKM v SMM & Anor* [2019] eKLR, put it as follows:
 27. The purpose of this court is to determine whether the settlement agreement adopted was obtained by fraud, or collusion, or by an agreement contrary to the policy of the court, or where the consent was given without sufficient material facts, or in misapprehension or ignorance of such facts or in general for a reason which would enable the court to set aside an agreement or consent judgment. See Justice Harris, J, (as he then was) in *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd (Supra)*”
24. In case of *Flora N. Wasike v Destimo Wamboko*[1988] eKLR where Hancox, JA, as he then was, observed as follows:

“It is now settled law that a consent judgment or order has contractual effect and can only be set aside on grounds which would justify setting a contract aside or certain conditions remained to be fulfilled which are not carried out”
25. In the instant case is not in dispute that other than the beneficiaries, the Objectors namely; Paul Kiptoo, Abraham Kipkemei, Stephen Kirwa and Betty Kichwen, attended the Mediation and voluntarily signed the Mediation Settlement Agreement dated 23/12/2024. None of them has stated that they were coerced into signing the said agreement.



26. Looking at the Mediation Settlement agreement dated 23/12/2024, vis a vis some the Objections raised by the Objectors it is clear that the said agreement catered for all the beneficiaries of the deceased. The Objectors have not demonstrated that there was anything unconscionable, unequitable or unfair in the agreement save for levelling unsubstantiated allegations in view of the mode of distribution. It is trite law that he who alleges must prove. Section 107 and 108 of the Evidence Act provides: -
- “(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
27. It must be noted that equity is not synonymous with equality and/or sharing land or property on a fifty - fifty basis. It means fairness and impartiality. In Succession matters, equitable distribution of the deceased’s property entails a fair but not necessarily equal allocation of the property. In this regard, I am well satisfied that the Mediation Settlement Agreement in this instance has catered for all the beneficiaries of the deceased as it should. Furthermore, the court also notes that no allegation of misconduct, lack of professionalism and/or fundamental mistakes have been made by any of the parties against the mediator to warrant the attention of the Court.
28. It is important to note that litigation must always come to an end and that the essence of Succession proceedings is making sure that a deceased person’s estate passes to his or her beneficiaries without unreasonable delay. Being satisfied that the objections raised by the objectors do not meet the threshold of the setting aside of the Mediation Agreement as envisaged in the Statutory and Case law herein cited, I find that the same lack merit and are accordingly dismissed.
29. In this regard, the Mediation Settlement Agreement dated 23/12/2024 is now hereby adopted as an order of the Court, the Summons for Confirmation of Grant dated 10th March 2025 which seeks that the Estate of the deceased be distributed in line with the proposals made in the said Mediation Agreement is now hereby allowed. A Certificate of Confirmation of Grant is to issue and this file is now hereby closed.

READ DATED AND SIGNED AT ELDORET ON 16TH OCTOBER 2025

E. OMINDE

JUDGE

