



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL MISC APP NO. E 124 OF 2024

SILAS MURIUNGI
M'NDENGWA.....APPLICANT

VERSUS

DEPUTY REGISTRAR COURT ANNEXED MEDIATION.....1ST
RESPONDENT

MARTHA REGERIA KIUNGA.....2ND
RESPONDENT

DANIEL GICHURU KIRIMA.....3RD
RESPONDENT

ISAAC MURIUKI.....4TH
RESPONDENT

RULING

1. By a Notice of Motion dated 22nd October,2024, brought under certificate of urgency, Silas Muriungi M'ndegwa, seeks for ORDERS: -

1. That the 1st Respondent accepts and allows the filing of an application dated 23rd August 2024.

2. That no person, body, or institution undermines the mediation process by dictating the appointed representatives or elders.
3. That Michael Kungu be allowed to represent him pursuant to Article 22 of the Constitution.
4. That the 2nd Respondent be restrained from breaching mediation regulations by introducing two women who are not parties to the dispute.
5. That the costs of the application be borne by the Respondents.

2. The Application is premised on the grounds on its face and supported by an affidavit sworn by the Applicant, Silas Muriungi M'ndegwa, on the even date.

3. It was the Applicant's case that the respondents, who are the children of his late brothers and police officers by profession, evicted him from their late father's ancestral land without any lawful justification.

4. He deposed that on 15th August, 2024, lawyers interfered with the court-sanctioned mediation process and that the mediator conducted a session that lasted 30 minutes, failed

to comply with the prescribed mediation procedures, permitted the participation of two unidentified women and subsequently prepared a false report.

5. Owing to the frustrations experienced during the mediation process, the Applicant requests this Honourable Court to allow the matter to proceed. He further contends that lawyers have no jurisdiction over mediation proceedings or authority to direct that the case be returned to Nkubu, particularly where such a directive was influenced solely by one respondent through his advocate in court.
6. The Applicant thus requests this Honourable Court to direct that the matter proceed before a different mediator and to allow him file the application dated 23rd August, 2024.
7. The respondents did not file any response.
8. The Application was canvassed through written submissions. Only the Applicant's submissions are on record.
9. The Applicant submitted that the dispute concerns ancestral land Abogeta/U-Chure/180, registered in the name of their late father, M'Ndegwa Kirea, in 1963. He argued that his late brother, Julius Kirima M'Ndegwa, filed a succession cause in

1970 at Nkubu without the consent of the family or the Njuri Ncheke Council of Elders and subsequently subdivided the land among his sons.

10. He submitted that he could not afford the services of an advocate to represent him and that the deceased brother's sons, Daniel Gichuru and Isaac Muriuki, have attempted to evict him and his sister from the land despite having carried out extensive development on the land.
11. He contended that the Njuri Ncheke Council of Elders have unsuccessfully repeatedly summoned the said sons to desist from such actions and prayed that the Court grants the reliefs sought in his application.

Analysis & Determination

12. Having given due consideration to the Application and submissions on record, the issues for the determination by this court are as follows;

- a) Whether the Applicant should be represented by Michael Kungu.

b) Whether the Court should grant the Applicant the reliefs sought.

Issue No.1

13. This Court, on 27th November 2024, observed that Michael Kungu is neither an advocate nor a recognized agent under the Civil Procedure Act. The Court thus directed him obtain a power of attorney donated by the Applicant, failing which, he would not have audience before the Court.
14. Subsequently, the Applicant prepared a power of attorney dated 28th January 2020(sic). The same is incomplete, and appears to have been hastily done by the applicant. On 24th February,2025, this Court advised him to have it completed and duly registered as is required.
15. A Power of Attorney is defined under the Black's Law Dictionary as an instrument authorizing a person to act as the agent or attorney of the person granting it. It therefore confers rights upon an agent.
16. In context a power of attorney is used to allow another person to act as if it was the person that is giving the power

to act on their behalf. Examples are in transactions for sale of land, registration of intellectual property, filing of lawsuits, signing off on documents, opening of a bank account. A Power of Attorney can either be specific and is only executed for a particular purpose, or it can be general. (See **In re Estate of David Wang'ang'a Gichuhi (Deceased) [2021] KEHC 6342 (KLR)**)

17. Section 4 of the **Registration of Documents Act** provides that: -

“All documents conferring, or purporting to confer, declare, limit or extinguish any right, title or interest, whether vested or contingent to, in or over immovable property (other than such documents as may be of a testamentary nature) and vakallas shall be registered as hereinafter prescribed.”

18. Section 7 (g) of the **Land Registration Act** provides for the maintenance of a register and a file for powers of attorney.

19. In light of the foregoing, it is manifest that the power of attorney must be duly registered to confer authority. At the

time of writing this ruling, there is no evidence that the Applicant has complied with my directions and registered the same. Consequently, the prayer for Michael Kungu to appear and represent him is untenable.

Issue No.2

20. The **Civil Procedure (Court-Annexed Mediation) Rules, 2022**, defines mediation as follows;

"mediation" means the informal and non-adversarial process conducted physically or virtually where a mediator encourages and facilitates the resolution of a dispute between two or more parties but does not include any attempt by a judge or magistrate to settle a dispute within the course of judicial proceedings;

21. One of the definitions of mediation found at page 1130 of the 10th Edition of **Black's Law Dictionary** 10th Edition at page 1130 defines mediation as;

"A method of non-binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution."

22. Article 159(2)(c) of the Constitution of Kenya 2010 obligates courts and tribunals in the exercise of judicial authority to promote the application of ADR mechanisms.
23. Article 189(4) of the Constitution of Kenya 2010 states that national legislation shall provide procedures for settling intergovernmental disputes by ADR mechanisms including mediation.
24. Section 59B of the Civil Procedure Act No. 12 of 2012 gives the court the discretion to refer a dispute to mediation upon request of the parties, where it deems it appropriate or if the law so requires. Such mediation shall be conducted in accordance with the Civil Procedure (Court-Annexed Mediation) Rules 2022.
25. Order 46, Rule 20 of the Civil Procedure Rules, read together with sections 1A and 1B of the Civil Procedure Act No. 12, therefore, obligates the court to employ ADR mechanisms to facilitate the just, expeditious, proportionate and affordable resolution of all civil disputes governed by the Act.

26. The roles of a mediator were discussed in the case of **Amcon Builders Ltd v Vintage Investment Ltd & another [2018] eKLR** where the court stated 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 may assist in drawing and crafting the agreement which is then owned by the parties by each appending his signature thereto. Even where parties agree on the dispute but decline to sign the agreement, the mediator must 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.”

27. It is thus evident that mediation is firmly anchored in our legal framework. Once a matter is referred to mediation,

parties are obligated to participate in good faith. The mediator, as a neutral facilitator, plays a critical role in assisting the parties to resolve their disputes amicably.

28. In the present case, according to the documents filed by the Applicant alongside his application, Nkubu ELC Case No. E003 of 2022, which relates to the same subject herein, was referred to mediation on 12th July 2024 and the Deputy Registrar appointed **Martha Regeria** as the mediator.
29. There is also a progress report and a certificate of non-compliance, both dated 15th August 2024, addressed to the Deputy Registrar by the appointed mediator, indicating that the respondents herein refused to engage in discussions or sign the requisite forms to facilitate the mediation process, despite the Applicant's willingness to proceed.
30. The Applicant has prayed that the 1st Respondent be compelled to accept and allow the filing of an application dated 23rd August, 2024. However, there is no evidence that the application was declined. This prayer is therefore untenable.

31. The Applicant has further prayed for a declaration that no person, body, or institution should undermine the mediation process by dictating the choice of representatives or elders. Similarly, no evidence has been advanced to show that any person has attempted to undermine the mediation process. Accordingly, this prayer cannot issue.

32. There is also no evidence to show that the 2nd Respondent breached the mediation regulations by introducing two women who are not parties to the dispute. Therefore, prayer 3 of the application cannot issue.

33. The Applicant also seeks the replacement of the appointed mediator on the allegation that she filed a false report. There is no evidence to support this allegation and no grounds have been established to justify the appointment of a new mediator.

34. **Section 3A of the Civil Procedure Act (Cap 21, Laws of Kenya)** provides that;

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of

justice or to prevent abuse of the process of the court.”

35. In view of the mediator’s report showing that the respondents had refused to participate in the mediation process, what the parties ought to do is to go back to the trial court and proceed with the case or make the necessary application, including the appointment of a new mediator.

36. In summary, I find that the prayers in the application, though made in good faith, cannot be granted.

37. Costs follow the event and are at the discretion of the Court. In the interests of justice, I order that each party shall bear its own costs.

Dated, Signed and Delivered at Meru this 8th day of October, 2025.

**H. M. NYAGA,
JUDGE.**

In the presence of;