**Mecca & another (Suing on behalf of the Estate of Elizabeth Nasimiyu Nyongesa) v County Government of Trans Nzoia (Environment and Land Case E021 of 2023) [2025] KEELC 7352 (KLR) (29 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7352 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ENVIRONMENT AND LAND CASE E021 OF 2023**

**CK NZILI, J**

**OCTOBER 29, 2025**

**BETWEEN**

**ANNEMARIE MTONYI MECCA ..... 1ST PLAINTIFF**

**SAMUEL WANYONYI MECCA ..... 2ND PLAINTIFF**

**SUING ON BEHALF OF THE ESTATE OF ELIZABETH NASIMIYU NYONGESA**

**AND**

**THE COUNTY GOVERNMENT OF TRANS NZOIA ..... DEFENDANT**

**RULING**

1. The court is asked through an application dated 2/10/2025 to:

   (1) Arrest and or stay the delivery of judgment due on 5/11/2025, pending further orders of the court.

   (2) Grant leave to the defendant to engage the plaintiffs towards a negotiated and amicable settlement of the dispute.

   (3) Judgment date for 5/11/2025 be vacated and the matter instead be given a mention date for the parties to update the court on the status of the negotiations between them.

2. The reasons are contained on the face of the application and in a supporting affidavit of Truphosa Amere Otwala, the County Secretary of the defendant, sworn on 2/10/2025. It is deposed that when the matter came up for defence on 29/9/2025, the court directed that the defence close its case and fixed a judgment for 5/11/2025, after a request for an adjournment was denied, inadvertently denying it an opportunity to present its evidence or ventilate the issues in controversy.

3. The deponent deposes that the defendant governor has personally intervened and taken the responsibility constitutionally and politically bestowed on him to initiate direct engagement with the plaintiffs, with a view to amicably settling the matter. It is deposed that the defendant has reconsidered its position and wishes to engage the plaintiffs constructively on the issues of the demolished structures while maintaining that it did not itself carry out the demolition.

4. The deponent deposes that unless the scheduled judgment is postponed, parties shall be denied an opportunity to explore a settlement that could be more beneficial, sustainable, and mutually satisfactory than a judgment pronouncement.

5. The deponent goes on to state that parties are currently engaged in negotiations aimed at an amicable resolution of the dispute. It is deposed that of significant note is that the plaintiffs are seeking mesne profits for the unexpired remainder of the leasehold term, of approximately 57 years; otherwise, any decretal amount adjudged as payable would fall due and be settled within a relatively shorter period of time, hence, the ongoing negotiations will not occasion any prejudice to the plaintiffs.

6. It is further deposed that this court is enjoined by Article 159(2)(c) of *the Constitution* to promote Alternative Dispute Resolution, including negotiations, reconciliation, and mediation, while under Article 189 thereof. Public entities are obligated to resolve disputes through negotiations and cooperation, hence the basis of the governor's intervention.

7. The defendant deposes that its right to a fair hearing under Article 50 of *the Constitution* was curtailed by being denied the opportunity to present its last witness; hence, this application is necessary to restore balance and fairness.

8. The defendant deposes that the plaintiffs will not suffer any prejudice if the reliefs sought are granted, since she stands to benefit from a settlement process that may afford her remedies beyond the limits of a court decree.

9. The deponent states that the public interest is best served by allowing dialogue to proceed, since the issues in dispute touch on land ownership, governance, and demolition, matters that are socially sensitive and better resolved through reconciliation.

10. The defendant deposes that this court retains inherent powers under Section 3A of the *Civil Procedure Act* to make such orders as are necessary to meet the ends of justice and to prevent abuse of its process, otherwise, if the application is not allowed, there is an imminent risk of miscarriage of justice and further litigation by way of appeals and reviews, which will unnecessarily expend judicial and public resources.

11. The deponent deposes that the application is brought in good faith and not intended to delay the matter, but rather, to ensure justice is achieved holistically.

12. When this application came up for inter-partes, learned counsel Mr. Omenta, for the applicant, admitted that there was an oversight on his part in effecting service upon the respondents until 21/10/2025. He regretted the oversight, though he said that he reached out to learned counsel for the plaintiffs, whom he had engaged with a view to settling the matter.

13. Learned counsel for the respondents, Mr. Masika, submitted that the failure to comply with the court directions and serve the application was deliberate and a calculated move to derail and delay the judgment endlessly.

14. Learned counsel submitted that his clients are not aware of and do not intend to enter into any negotiations with the defendant at this stage. Learned counsel submitted that his clients are not

amenable to any attempts for an out-of-court settlement and that the applicant and his counsel were lying and misleading the court, for no one, including the defendant's officers or the lawyer now on record, had formally reached out to his clients or made a proposal to that effect as at the hearing of the application.

15. Further, learned counsel submitted that he had already filed a written submission to oppose the application for being incompetent and lacking merits; otherwise, his clients, some in court, had instructed him that they are not aware of any alleged ongoing negotiations or attempts to settle the matter out of court.

16. The applicant relies on written submissions dated 2/10/2025. It submits that the reliefs sought are driven by public interest. The first issue is whether the court should exercise its inherent and statutory powers to arrest or stay the delivery of judgment to allow bona fide settlement negotiations. The applicant, relying on Section 3A of the Civil Procedure, submits that the court should invoke its powers to see that ends of justice are met by promoting reconciliation, mediation, and Alternative Dispute Resolution under Article 159(2) (c) of *the Constitution*.

17. The applicant also submits that Order 45 and Order 51 of the Civil Procedure Rules and courts' practice allow it to manage trial procedures, including fixing and, where just, to vacate judgment dates or further mention so that parties are not deprived of substantive justice or the opportunity to resolve matters amicably.

18. The second issue is whether the applicant has acted in good faith and whether the balance of convenience, absence of prejudice to the respondents, and the public interest favour the grant of the application. The applicant submits that it has engaged the respondents and served a settlement proposal for their consideration, in resolving the dispute peacefully and practically.

19. Further, the applicant submits that the respondents shall not suffer any prejudice if the judgment is arrested, and that, in any event, potential prejudice can readily be addressed by sensible case management directions. The applicant also submits that it is in the public interest that the orders sought are granted.

20. On the other hand, the respondents filed written submissions dated 23/10/2025. They submit that arrest of a judgment is foreign to the *Civil Procedure Act* and under Order 21, Rule 1 thereof, after a case has been heard, this court can only pronounce judgment either at once or within sixty days. The conclusion of a hearing, as the applicant concedes at paragraph 2 of its supporting affidavit, means only that a judicial determination is pending.

21. Relying on Peninah Nandako Kiliswa -vs- Independent Elections and Boundaries Commission & 2 others [2014] KECA 807 (KLR), the respondents submit that the court is therefore functus officio on interlocutory matters having fully heard and reserved a date for delivery of Judgement. Further, the respondents submit that the applicant's application is a procedural misadventure, incompetent, and legally untenable.

22. The respondents submit that the applicant adamantly refused to attend the further hearing of 29/9/2025, and cannot now seek to direct the court to a future date at which it seeks to reopen the case and be granted audience.

23. The respondents submit that the applicant was fully vindicated at trial, where it failed to appear. Reliance is placed on Article 50 of *the Constitution* and Benjoh Amalgamated Limited & another -vs- Kenya Commercial Bank Limited [2014] KECA 872 (KLR), where the court cited Management Corporation Stratta Title Plan No.901 -vs- Lee Tat Development Pte Ltd [2009] S GHC 234, on

the proposition that *the Constitution* does not protect perpetual litigation and emphasis on finality of proceedings.

24. Regarding whether the application is an abuse of the court process, the respondents submit that the applicant's conduct falls squarely within the mischief explained in Muchanga Investments Ltd -vs- Safaris Unlimited (Africa) Ltd & 2 others [2009] KECA 453 (KLR), where the court cited with approval Beinosi -vs- Wiyley 1973 SA 721 [SCA]) and Sarak -vs- Kotoye (1992) 9 NWLR 9pt 264) 156 at 188-189 (e), on what constitutes abuse of the process of the court.

25. The respondents submit that the applicant has not tendered any evidence on the alleged claim of ownership of the suit property, and cannot be heard saying it has reconsidered that position. Reliance is placed on Cove Investments Limited -vs- Rono & 2 others [2025] KECA 1089 (KLR). Equally, the respondent submits that the applicant's repeated non-compliance offends Article 10 and Chapter Six of *the Constitution*, which demands integrity, diligence, and accountability in the exercise of public power.

26. Order 21 Rule 1 of the Civil Procedure Rules provide that the court after the case has been heard, shall pronounce judgment in open court either at once or within 60 days from the conclusion of the trial, notice of which shall be given to the parties or their advocates provided that where a judgment is not given within 60 days, the judge shall record reasons thereof, copy of which shall be forwarded to the Hon. Chief Justice and shall immediately fix a date for judgment.

27. The court notes that the defendant's case was marked closed on 29/9/2025, and parties were directed to file written submissions by 15/10/2025. To date, no application for review of the orders has been sought or an appeal filed that the defendant was unjustly denied an opportunity to offer evidence or call witnesses in support of its defence.

28. It is on record that the then defendant's lawyers on record tried in vain to reach out to their witness, one Trusphosa Amere, to attend court virtually or physically. It is the same witness for the defendant who has now sworn on oath that an application for adjournment was declined, the defendant was inadvertently denied an opportunity to present their evidence or ventilate all issues in controversy fully, yet she does not state why, though given several opportunities, she did not attend court for the defence hearing.

29. It is also the same witness who has sworn that the defendant's right under Article 50 of *the Constitution* was curtailed; hence, this application is necessary to restore balance and fairness and to meet the ends of justice, and to prevent abuse of the process.

30. A party that has been allowed to be heard but squandered the opportunity cannot turn around and invoke a fair hearing without explaining why, in the first instance, it failed to seize the opportunity. It can only do so through a sufficient or satisfactory explanation for non-attendance or noncompliance with court directives.

31. The applicant is now invoking Article 159(2)(c) of *the Constitution* to urge this court to postpone the delivery of the judgment and for leave for it to engage in an out-of-court settlement, which this court has an obligation to promote.

32. The purport of Article 159(2)(c) of *the Constitution*, as geared towards the promotion of Alternative Dispute Resolution, was discussed in Geoffrey M. Asanyo & Others -vs- The Attorney General SCOK Petition No, 21 of 2015. The Court of Appeal had declined to adopt a consent settling the matter under Order 25 Rule 5(1) of the Civil Procedure Rules and instead read out the judgment, despite attempts to arrest its delivery.

33. The court said that Article 159 of *the Constitution* lies at the heart of the judicial authority that is derived from the people and vested in the courts and tribunals, established under *the Constitution*, as they exercise judicial power.

34. The court cited Council of County Governors -vs- Lake Basin Development Authority & Others [2017] eKLR, that a court is entitled to either stay the orders until such a time as the alternative remedy has been pursued or bring an end to the proceedings before the court and leave the parties to pursue the alternative remedy.

35. The court further cited Council of Governors -vs- Senate & Another [2014] eKLR, that courts have to facilitate the pursuance of other means of dispute resolutions. The court also cited Star Paper Mill Ltd & Another -vs- Bashiru Adetunji & Others [2009] 7 iLaw/SC.292/2002 Supreme Court of Nigeria; that one of the cardinal principles of judicial system was to allow parties to settle disputes amicably between them, and that a settlement is a contract between parties whereby rights are created between them to put a stop to litigation between them and therefore, when parties have shown their intention to resolve a matter amicably, the best order was to send back the matter for retrial.

36. The court held that no rule of law precludes parties from withdrawing a matter or recording a consent between them before delivery of judgment and making it moot. The court held that the epitome of justice between the parties before a court of law is when parties finally, voluntarily, come to an amicable settlement of the dispute between them, and the court only comes in as an impartial arbiter, where parties have failed to agree among themselves. A court should not close the door for parties to continue negotiating to reach an amicable settlement.

37. The court gave a caveat that it was alive to the facts that some parties may use the court, through settling of proceedings, as coercion for other parties to submit to negotiation, and where such action is discerned, then it amounts to abuse of court process and that Article 159(2)(e) is not be a panacea for such a malpractice, since Alternative Dispute Resolution should always be entered into without malice and with free will.

38. The court said that whereas a lot of judicial work and industry goes into the preparation of a judgment, which may be ready for delivery, that should not be a reason for denying the litigant an opportunity to explore Alternative Dispute Resolution under Article 159 of *the Constitution*, as frustrating as it might be, it is the price that judges occasionally have to pay in pursuit of safeguarding access to justice and the rule of law, and that a party at any one stage, should not before the court, feel that he is no longer in charge of his, matter even if the court ultimately determines such a matter.

39. Applying the foregoing guiding principles, it is not in dispute that a court in exceptional circumstances may postpone its judgment delivery date. The discretion to do so must be exercised on sound principles and judicially. An applicant must bring up enough material to show why there should be a postponement of the delivery of judgment.

40. In this matter, the reasons are that the defendant has reconsidered its position on the matter, and the responsibility to engage the plaintiffs has been taken over by the highest office of the county. The affidavit in support has not supported the said assertions by any written correspondence indicating when the intention to negotiate was expressed, its terms and conditions, and the timelines.

41. The plaintiffs, who are the legal representatives of the estate of their late mother, appeared before the court through one of them on 23/10/2025 and denied any such alleged attempts by the governor of the defendant or any of its officers, including the county secretary and the deponent of the supporting affidavit, to reach out.

42. Learned counsel for the respondents on his part denied receiving a call or a written proposal from the applicant's counsel on record up to and including the hearing of the application.

43. Learned counsel told the court that his clients were not willing, open, or ready to any negotiations. The court record shows that the first time the defendant, through the former law firm on record, expressed intention to enter into possible negotiations was a while back.

44. When the matter came again for further hearing, the plaintiffs denied that the defendant had reached out to them. Again, on 29/9/2025, the defendant, through its then lawyers, mentioned the said intention, which the plaintiffs denied.

45. Alternative Dispute Resolution is a process, but not an event. A settlement refers to an agreement or meeting of the minds. As held in Asanyo -vs- Attorney General (supra), a court cannot close a door for parties who are willing to negotiate or record a settlement before it.

46. David Foskett QC, in his book "The Law and Practice of Compromise", defines an unimpeached compromise as representing the end of the dispute or disputes from which it arose.

47. An event or success of a negotiation, as held in Little Africa (K) Ltd -vs- Andrew Mwiti Jason, Nairobi High Court, Milimani Civil Case No. 149 of 2011, can constitute the result of an entire litigation. One of the chief functions of any legal system is to provide a mechanism for settling disputes between members of the society that the system serves. Article 159 of *the Constitution* creates the atmosphere in which parties can effect without bloodshed, the resolution minimizes or avoids disputes. See James K. Iroin 11; "The Rule of Law in the Negotiated Settlement of International Disputes", 3 Vanderbilt Law Review [58] [2021].

48. The three main stages of negotiations are the initial investigation, making settlement demands, and reaching a settlement agreement.

49. In paragraph 7 of the supporting affidavit, Truphose Atwala swears that the "parties here are currently engaged in negotiations". What the deponent does not tell the court is who the parties in negotiations are, when the same began, at what stage it is, and the prospects. The affidavit is referring to a plaintiff, yet the initial plaintiff passed on and was replaced by her children, who deny any such ongoing negotiations.

50. Article 159(2)(2) of *the Constitution*, as held in Asanyo (supra), should not be used to abuse the court process or to coerce parties to enter into Alternative Dispute Resolution without their free will. Article 159, as held in Nicholas Kiptoo Arap Korir Salat -vs- IEBC & Others [2013] eKLR, was not intended to provide cover to parties who exhibit scant respect for rules and timelines, which make the process of judicial adjudication and determination fair, just, certain, and even-handed.

51. Article 50 of *the Constitution* aims to safeguard the right of access to justice for both the plaintiff and the defendant.

52. The applicant is seeking leave of court to engage in an out-of-court settlement without addressing the timelines to do so and the implications of the judgment remaining in limbo.

53. In Bia Tosha Distributors Limited -vs- Kenya Breweries Limited & 6 others [2023] KESC 14 (KLR), the court said that Article 159(2)(b) of *the Constitution* implores the court to ensure that, in the exercise of judicial authority, it is guided by the principle that justice should not be delayed.

54. Looking at the facts and the record of this matter, it is curious why the plaintiffs have not filed a replying affidavit to refute on oath the averments of the applicant that there is an express intention to explore an out-of-court settlement, though coming late.

55. A party should not, however, wait until it is too late, when the hour of reckoning has come, to now state that it has changed its mind and can give dialogues a chance. The court record shows that the applicant has not been forthright, diligent, and genuine; hence, the respondents have every reason to doubt its sincerity this time around.

56. Doing the best I can and in the interest of justice, the court shall postpone the judgment for a period of 30 days for the parties to come up with a possible consent, if any; otherwise, the judgment shall be delivered on 26th November, 2025, at 8:30 a.m.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 29TH DAY OF OCTOBER 2025.**

In the presence of:

Court Assistant - Dennis

Masika for plaintiff present

Alakonya absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**