



REPUBLIC OF KENYA



KENYA LAW
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**Ochuodho & 31 others v Kisony Welfare Group Ltd & 8 others (Civil
Case 28 of 2020) [2025] KEHC 14767 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14767 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CASE 28 OF 2020
JRA WANANDA, J
OCTOBER 21, 2025**

BETWEEN

PROF JULIUS ONYANGO OCHUODHO 1ST PLAINTIFF
DR JOHN SAWO AYIEKO 2ND PLAINTIFF
PROF CALEB OTHIENO 3RD PLAINTIFF
DR DUNCAN ANGAYO AMOTH 4TH PLAINTIFF
R EDWARD ODHIAMBO ANINO 5TH PLAINTIFF
EVANS ODIPO ANENO 6TH PLAINTIFF
THUCHE WELFARE SOCIETY 7TH PLAINTIFF
GORDON ANINO 8TH PLAINTIFF
DR STEVEN RUEBEN GER NYANJOM 9TH PLAINTIFF
ROBERT OCHIENG AKUNGU 10TH PLAINTIFF
LORINE ANYANGO 11TH PLAINTIFF
ROSELINE ANYANGO OTIENO 12TH PLAINTIFF
MARRIAN AGOLLA ODHANS 13TH PLAINTIFF
JAMES AGINGU 14TH PLAINTIFF
MAURINE D ATIENO OYAMO 15TH PLAINTIFF
GEORGE JULIUS OYOMBE 16TH PLAINTIFF
HELLEN ONYANGO OYAMO 17TH PLAINTIFF
EVERLYN ADHIAMBO OYAMO 18TH PLAINTIFF
PROF. CHRISTINE ATIENO OYAMO 19TH PLAINTIFF



PASCAL JEREMIAH OYAMO	20 TH PLAINTIFF
PROF SAMUEL GUDU	21 ST PLAINTIFF
CHRISTOPHER J. ODHIAMBO	22 ND PLAINTIFF
REBECCA O’KING	23 RD PLAINTIFF
AMOLLO O’KING	24 TH PLAINTIFF
JULIUS JWAN	25 TH PLAINTIFF
CHRISTABEL ONYANGO	26 TH PLAINTIFF
JAMES O JOWI	27 TH PLAINTIFF
BENARD ROMBO	28 TH PLAINTIFF
OSCAH ROMBO	29 TH PLAINTIFF
LILIAN BA OLOO	30 TH PLAINTIFF
JAEL GUDU	31 ST PLAINTIFF
MOSES AROWO	32 ND PLAINTIFF

AND

KISONY WELFARE GROUP LTD	1 ST DEFENDANT
BASIL OKONGO	2 ND DEFENDANT
HENRY OCHIENG GANDA	3 RD DEFENDANT
DUNCAN KIBOYE OKOTH YOGO	4 TH DEFENDANT
JOHN OMIRO ALLO	5 TH DEFENDANT
FRANCIS ODIPO OSANO	6 TH DEFENDANT
SIDIAN BANK LTD	7 TH DEFENDANT
CHIEF LAND REGISTRAR	8 TH DEFENDANT
ATTORNEY GENERAL	9 TH DEFENDANT

RULING

1. As titled above, this matter was initially filed at the Environment and Land Court (ELC) at Eldoret before it was subsequently transferred in July 2020 to this Court and assigned the current case number. The suit was commenced by way of the Plaint dated 27/06/2020 filed through Messrs Kalya & Co. Advocates. I gather that a majority of, if not all, the Plaintiffs and the 2nd-6th Defendants were presumably, at the material time, employees of the Moi University, and apparently came together to form the 1st Defendant, a welfare company limited by guarantee, as a vehicle for purposes of purchasing land for the benefit of its members.
2. The Plaintiff’s case is basically that as a group, they entered into an agreement in 2020 with the previous owner of the parcel of land described as Kibos-Londiani Road L.R 7536 (Grant No. I.R 6286)



measuring about 52.5 acres, (hereinafter referred to as “the property”), which property the owner was to sell to the Plaintiffs at a purchase price of Kshs 10,000,000/-. It was pleaded that the Plaintiffs agreed to use the 1st - 6th Defendants for purposes of transacting the Agreement, and to take a loan of Kshs 10,000,000/- from the 7th Defendant, through the 1st Defendant. It was alleged that this loan was indeed taken from the 7th Defendant, the purchase price paid to the initial owner and the 1st Defendant registered as the new owner, the 7th Defendant, in exchange, lodged a Charge on the property as security, which Charge, upon full repayment of the loan by the Plaintiffs was to be discharged and the 1st-6th Defendants were to then transfer the property to the Plaintiffs. It was alleged that however, either during the pendency of the loan, or upon its full repayment, the 1st-6th Defendants in breach of the Agreement, fraudulently, and without the consent of the Plaintiffs, took a further loan or overdraft from the 7th Defendant using the same property as collateral upon which the 7th Defendant registered a Further Charge against the property. It was alleged further that subsequently, the 7th Defendant then advertised the property for sale citing default by the 1st-6th Defendants to liquidate the said further loan. The Plaintiffs thus prayed for Judgment, inter alia, declaring the 1st Defendant to be holding the property in trust for the Plaintiffs, that the Further Charge be declared null and void, and the 7th Defendant be restrained by a Permanent injunction, from advertising for sale or selling off the property in recovery of the loan.

3. Messrs Onkangi, Onkangi & Associates Advocates then came on record for the 1st-5th Defendants, Messrs Louis Onguto Advocates for the 6th Defendant, and Messrs Otieno & Amisi Advocates for the 7th Defendant, and filed respective Statements of Defence. There does not seem to have been any representation for or on behalf of the 8th and 9th Defendants.
4. Fortunately, by consent of the parties recorded before me on 26/09/2023, the dispute was referred to Court Annexed Mediation, and Hon. Valentine Wandera was appointed the Mediator. The process then culminated into the Partial Mediation Settlement Agreement dated 10/11/2023, which was then recorded, on 14/11/2023 before the Deputy Registrar of this Court, as an order of the Court. By clause 1 of the order, the County Surveyor-Kisumu, was directed to survey, identify and beacon off land available for sale, to be excised from the property, within 14 days, and costs thereof to be shared by the Plaintiffs and the 1st-5th Defendants. Clause 2 directed that the Report arising thereof be filed in Court within 21 days of service thereof, and Clause 3 directed Mr. Onkangi Advocate to file, within 21 days, on behalf of his clients, a schedule giving details of the purchases, payment made and acreage sold, which schedule was also to be accompanied by the Agreement of Sale, allotment letter, and payment receipts.
5. It however turned out that, almost 1 year later, the consent order had not yet been implemented. Upon Application by Ms. Chesoo, Counsel for the Plaintiffs, I issued a Notice to Show Cause (NTSC), on 22/10/2024, requiring the 2nd, 3rd and 4th Defendants, who were alleged to be frustrating implementation of the order, to attend Court to explain their alleged actions and/or conduct. After several adjournments, the NTSC came up for hearing on 26/03/2025. Mr. Obudho, Counsel for the said Defendants however raised the objection that the NTSC could not be heard as drawn, since the consent order had imposed the duty of causing the implementation of the order, and reporting back to the Court, upon Mr. Onkangi Advocate, as an individual, and not the 2nd, 3rd and 4th Defendants. After hearing the Counsels in attendance. I upheld Mr. Obudho’s objection, but I gave leave to the Plaintiffs to apply for review, and/or amendment of Clause 3 of the consent order dated 14/11/2023 to refer the relevant parties.



6. The above, therefore, is the background to the Plaintiff's Application the subject of this Ruling, namely, the Notice of Motion dated 23/05/2025 filed through Messrs Kalya & Co. Advocates. It seeks the following orders:
- i. The Honourable Court be pleased to review and vary the mediation consent order adopted as an order of the Court on 14-11-2023 in Eldoret HCC Mediation No. 233 of 2023, to rectify Clause 3 thereof.
 - ii. Clause 3 of the mediation consent order be and hereby reviewed to the extent that the obligation imposed therein on Advocate Onkhang'i to file a schedule of purchasers, payments and acreage in respect to land parcel LR No. Kibos-Londiani LR No. 7536 (IR No. 6286) be vacated and substituted by an order compelling the 2nd, 3rd, 4th and 5th defendants jointly and severally namely; Basil Okongo, Henry Ochieng Ganda, Duncan Kiboye Okoth Yogo and John Omiro Alilo, are hereby directed to file and serve in Court and all parties within 21 days of issuance of this order a detailed schedule specifying.
 - (1) The names of all the purchasers of land parcel LR No. Kibos-Londiani LR No.7536 (IR NO.6286).
 - (2) The respective acreage purchased and
 - (3) The corresponding purchase paid, supported by copies of payments receipts ad sale agreements.
 - iii. The Honourable Court do make such other or further orders as it may deem fit and just in the circumstances.
 - iv. The costs of this application be in the cause.
7. The grounds of the Application are as set out on the face thereof, and it is supported by the Affidavit sworn by the 1st Plaintiff, Prof. Julius Onyango Ochuodho.
8. In the Affidavit, the 1st Plaintiff, in respect to Clause No. 3 of the consent Order imposing compliance obligations upon Advocate Onkangi , he termed the same as erroneous since it was contrary to the substance of the Mediation proceedings, and the actual legal obligations of the 2nd, 3rd, 4th and 5th Defendants who were in fact the contracting parties. He urged that the records and transactions relating to the sale of the property are within the exclusive knowledge and possession of the 2nd-5th Defendants, that the obligation to file a schedule of purchasers, payments, and acreage pertains to the internal affairs and records of the 2nd-5th Defendants, who negotiated and entered the sale transactions over the property in dispute on behalf of the 1st Defendant and the Plaintiffs, and are in exclusive possession of such records. He deponed that Clause 3 of the order erroneously imposed a duty on an Advocate, contrary to the law and principles of agency, as the obligation to file such a schedule lies with the parties themselves, not their Counsel. According to him therefore, this amounts to an error apparent on the face of record warranting correction under Order 45 Rule 1 of the Civil Procedure Rules, and Section 80 of the *Civil Procedure Act*. He urged that the error is prejudicial to the Plaintiffs who have a legitimate expectation of compliance and finalization of the mediated terms, and that the error, if not corrected, will occasion constructive injustice and deny the Plaintiffs the fruits of the Mediation. He urged further that the Court is mandated to correct or clarify clerical or factual mistakes on sufficient grounds.
9. The Application is opposed by way of the Replying Affidavit sworn by the 3rd Defendant, Henry Ochieng Ganda, on 23/06/2025, who deponed that he is the current Chairman of the 1st Defendant.



He deponed that the Mediation is still ongoing as is still incomplete, and urged that at no point did the said append or concede to any consent order of 14/11/2023. He thus termed the Plaintiffs' allegations to that effect as false or misconceived. He deponed further that the Application does not meet the threshold for review on grounds, that it is an abuse of the Court process as it seeks to review the proceedings of a Mediation process which is yet to be concluded, that the Plaintiffs are acting in bad faith in purporting that the said Defendants are responsible for actualizing the orders of 14/11/2023 yet the same is not directed to any of them. He contended that the purported error on the face on the record has not been demonstrated, and that the Plaintiffs are yet to respond to the proposal rendered on their behalf thus rendering the Application premature.

10. With leave of the Court, the 1st Plaintiff filed the Further Affidavit sworn on 15/7/2025, limited to only exhibiting a copy of the said Partial Settlement Agreement dated 10/11/2023.

Determination

11. The issue for determination herein is “whether Clause 3 of the Partial Mediation Settlement order adopted by the Court on 14/11/2023 should be reviewed and/or varied.”
12. I may first state that, in Kenya, the process of Court annexed mediation is governed by the Civil Procedure (Court-Annexed Mediation) Rules, 2022, otherwise referred to as the Mediation Rules, 2022.
13. Mediation as an alternative dispute resolution mechanism in Kenya, is itself anchored in Article 159 (2) (c) of the Constitution of Kenya which 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).”

14. Regarding the place of Mediation in our judicial system, Muchelule J (as he then was), in the case of *In re Estate of BM (Deceased)* [2019] eKLR, made the following comments:

“ 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 non-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/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.”
15. On her part, Kamau J, in the case of *Alios Finance Kenya Limited v Country Farms Limited* (Civil Appeal E005 of 2020) [2022] KEHC 11012 (KLR) described the effect of the adoption of a Mediation Settlement Agreement by the Court, in the following terms:
- “Any agreement filed with the Deputy Registrar or Magistrate or Kadhi as the case may be shall be adopted by the Court and shall be enforceable as a Judgment or order of Court.”
- Notably, once a mediation agreement is signed, it becomes final and binding on the parties. Mediation agreements were in the nature of consents. It is for that reason that this court considered the consequences and implications of entering a consent.”
16. On its part, Review of orders in Succession matters is, just like in civil litigation, governed by Order 45 of the Civil Procedure Rules, which by Rule 63(1) of the Probate and Administration Rules, is one of the provisions of the Civil Procedure Rules imported into the *Law of Succession Act* (see *John Mundia Njoroge & 9 Others vs. Cecilia Muthoni Njoroge & Another* [2016] eKLR).
17. Order 45 provides for three circumstances under which an order for review can be made. The first one is where there has been “discovery of new and important matter or evidence”. The second is where there has been “a mistake or error apparent on the face of the record”. The third ground is “for any other sufficient reason”. I presume the Plaintiffs have approached the Court under the ground of “for any other sufficient reason”.
18. Rules 49 and 73 of the Probate and Administration Rules, read together, also permit the Court to invoke its inherent jurisdiction to issue appropriate orders to meet the ends of justice, and to prevent abuse of process. The said provisions, read with Section 47 of the *Law of Succession Act*, are also, in my view, wide enough to cover the prayers sought herein.
19. In determining the issue identified above, I may say that a Mediation Settlement Agreement, once adopted as an order of the Court, becomes binding as between the parties and cannot be set aside, and by extension, reviewed, unless the party challenging it proves that there are justifiable grounds and vitiating factors similar to those applicable to all other contracts or consent orders. Such vitiating factors would therefore include, for instance, fraud, misrepresentation, coercion and undue influence. In respect to this principle, Achode J (as she then was), in the case of *NKM vs 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)”



20. The principle was also restated in the case of *Flora N. Wasike v Destimo Wamboko* [1988] eKLR in which, though not a Mediation case, Hancox, JA, observed that:

“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”

21. The same was also affirmed by Court of Appeal, in the case of *S M N vs. Z M S & 3 others* [2017] eKLR, although also not a Mediation issue, in the following terms:

“Generally, a court of law will not interfere with a consent judgment except in circumstances such as would provide a good ground for varying or rescinding a contract between parties. The factors touted for impeaching the consent in this matter were fraud and collusion. It is also alleged that counsel had no authority to enter into the consent. The onus of proving those assertions to the required standard was on the appellant. They are serious imputations bordering on crime and therefore the burden of proof is of necessity slightly higher than on a balance of probability but perhaps not beyond reasonable doubt.”

22. In this case, it is clear that by consent of the parties recorded before me on 26/09/2023, the dispute was referred to Court Annexed Mediation, and which process culminated into the Partial Mediation Settlement Agreement dated 10/11/2023, which was then recorded on 14/11/2023 before the Deputy Registrar of this Court. By clause 1 of the order, the County Surveyor-Kisumu was directed to survey, identify and beacon off land available for sale, to be excised from the property, within 14 days. Clause 2 directed that the Report arising thereof be filed in Court, within 21 days of service thereof, and Clause 3 directed Mr. Onkangi, the Advocate acting for the 1st-5th Defendants to file, within 21 days, on behalf of his clients, a schedule giving details of the purchases, payments made, and acreage sold.

23. The feeble denial by the 3rd Defendant that they were parties to the consent is clearly mischievous and not made in good faith. I say so because at no time since the Settlement Agreement was presented to, and recorded by the Deputy Registrar on 14/11/2023 as an Order of the Court, have the Defendants challenged the same. The subject Defendants have also always regularly personally appeared before me in Court, physically, and have, during my interaction with them in Court in the presence of their current Counsel, Mr. Obudho, always acknowledged existence of the Settlement Agreement. In any case, the Plaintiffs have exhibited a copy of an attendance sheet for the session of 10/11/2023 with the Mediator, the same date when the Settlement is said to have been recorded. Out of the 5 Defendants subject hereof, only the 2nd and 5th Defendants do not seem to have been registered as present. The 3rd and 4th Defendants are however noted as present and have signed the sheet. Their mobile phone numbers are also recorded. What is however important in respect to the 2nd and 5th Defendants is that their Advocate, Mr. Onkangi, their duly authorized agent, was also present. The 2nd and 5th Defendants having never at any time challenged the Settlement, cannot now belatedly purport to disown it to avoid their obligation. They are part and parcel thereof and cannot run away from it. Their conduct clearly estops them from claiming otherwise.

24. Having found as above, it is evident from the record that the basis of the consent order was that some portions of land were to be excised from the suit property, beacons and set aside for sale, and proceeds whereof were to be used to settle the loan said to be owing to the 7th Defendant. In other words, the spirit was to settle the 7th Defendant, get it out of the dispute, and leave the Plaintiffs and the 1st-6th Defendants to resolve their in-house misunderstandings. To this end, the idea behind Clause 3 aforesaid was evidently to therefore ensure accountability and verification of the excision exercise by



way of supply of supporting documentation. Although there is nothing wrong with imposing a duty upon an Advocate on behalf of his clients, as an Advocate is presumed to be an authorized agent of, or for his clients, in this case, the Advocate, Mr. Onkangi, whom, it was expected would take the lead in pursuing and ensuring implementation of the consent order, has to date, almost 2 years later, not made any known efforts towards that end. He also seems to have since been replaced by another Counsel, Mr. Obudho, as Advocate in the matter. Only the clients can explain why the Advocate never acted as expected as the Court and the other parties are not privy to their Advocate-Client relationship.

25. The interest and expectation of the other parties is simply that the 1st-5th Defendants discharge their obligation to implement the order. Whether that is done by the Advocates or by the clients directly is not relevant to the other parties in the suit who are being unfairly kept in limbo. An Advocate simply acts on the instructions of the client since he is not a party in Court litigation but simply a mouthpiece for the client. It cannot therefore be even ruled out that the reason why the Advocate has not acted to date may be because he has not been “instructed” by the clients. It might as well even be a case of collusion between the Advocate and the client. While therefore it may not really have been an error to have imposed the duty on the Advocate, the situation that now prevails requires that the clients directly assume that duty. As was witnessed during the hearing of the Notice to Show Cause, retaining the Advocate as the entity upon whom the obligation remains imposed has created procedural challenges in implementation of the consent order, contrary to its spirit.
26. I am therefore persuaded that there are “sufficient grounds” to warrant and justify variation and/or review of Clause 3 of the consent order if the spirit and purpose of the consent order is to be actualized. I have also considered that it is now almost 2 years since the consent was recorded and adopted by the Court but to date, it is yet to be implemented, partly because of the mere technicality relating to imposing of the implementation obligation thereof upon the Advocate, rather than the clients who, in reality, possess the primary duty to ensure such implementation.

Final Orders

27. In light of the foregoing, the Plaintiffs’ Application dated 23/05/2024 succeeds and I order as follows:
- i. The consent order adopted herein on 14/11/2023 as an order of the Court, and arising from the Partial Mediation Settlement Agreement dated 10/11/2023, is hereby reviewed and/or varied, but only to the following extent:
- The obligation imposed under Clause 3 of the said order on one Advocate Onkangi to file a schedule of purchasers, payments and acreage in respect to land parcel LR No. Kibos-Londiani LR No. 7536 (IR No. 6286) is hereby varied so as to now impose such obligation upon the said Advocate’s clients, 2nd, 3rd, 4th and 5th Defendants, jointly and severally, namely; Basil Okongo, Henry Ochieng Ganda, Duncan Kiboye Okoth Yogo, and John Omiro Alilo, thus directing and/or compelling them - 2nd, 3rd, 4th and 5th Defendants - to file in Court and serve all parties, within 30 days, of issuance of this order, a detailed schedule specifying
- (1) the names of all the purchasers of land parcel LR No. Kibos-Londiani LR No.7536 (IR No. 6286);
 - (2) the respective acreage purchased, and,
 - (3) the corresponding purchase prices paid, supported by copies of payment receipts and sale agreements.
- ii. The rest of the contents of the consent order adopted on 14/11/2023 remain as before.



iii. The costs of this Application shall be in the Cause.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 21ST DAY OF OCTOBER 2025

.....

WANANDA JOHN R. ANURO

JUDGE

Delivered in the presence of:

Rotich h/b for Ms. Chesoo for the Plaintiffs

Ms. Kibe h/b for Mr. Abuya for the 6th Defendant

N/A for other parties

Court Assistant: Brian Kimathi

