



**In re Estate of Maina Gathuri (Deceased) (Succession Cause
792 of 2015) [2025] KEHC 16017 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16017 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 792 OF 2015
MA ODERO, J
NOVEMBER 7, 2025**

IN THE MATTER OF THE ESTATE OF MAINA GATHURI (DECEASED)

BETWEEN

**BANCY WANJIRU NGATIA 1ST APPLICANT
ANN WANGUI KINYUA 2ND APPLICANT
CECILIA WAIRIMU MWANGI 3RD APPLICANT
PERIS WARUGURU MAINA 4TH APPLICANT
BEATRICE MUTHONI MAINA 5TH APPLICANT**

AND

**MARGARET WAMBUI NJUIRI 1ST PETITIONER
ESTHER WANJUGU MAINA 2ND PETITIONER**

RULING

1. Before this Court for determination is the Summons dated 10th June 2019 by which the Applicants Bancy Wanjiru Ngatia, Ann Wangui Kinyua, Cecilia Wairimu Mwangi, Peris Waruguru Maina And Beatrice Muthoni Maina seek the following orders
 - “1. That the orders issued on 23rd May 2019 adopting the mediation agreement dated 21st February 2019 as a judgment of this Honourable Court be set aside.
 2. That cost be provided for.”
2. The application was supported by the affidavit of even date sworn by Bancy Wanjiru Ngatia (the 1st Applicant). The Respondent opposed the application through the Replying Affidavit dated 17th July



2019 sworn by Margaret Wambui Njuiri. The 2nd Respondent Esther Wanjugu also filed a replying affidavit dated 23rd September 2019.

3. The application was canvassed by way of written submissions. The Applicants filed the written submissions dated 29th March 2020, whilst the Respondents relied on their written submissions dated 31st October 2022 and 10th June 2021.

Background

4. This matter relates to the estate of the late Maina Gathuri who died intestate on 30th July 2011. A copy of the Death Certificate Serial No. 144677 was filed in court on 15th October 2015.
5. The Deceased was survived by a widow Esther Wanjugu Maina and several children.
6. The estate of the Deceased comprised the following assets:-
 1. Parcel of Land known as Evaso Nyiro/Suguroi BLOCK VI/683.
 2. Parcel of land known as Konyu BARICHU/1081
7. Following the demise of the Deceased his widow filed a Petition for Grant of letters of Administration dated 15th October 2015. On 15th April 2016 Grant of letters of Administration were issued to the widow.
8. On 30th January 2017 one Margaret Wambui Njuiri, who being the widow of Ephantus Njuiri Maina, a son to the Deceased (who is a therefore daughter in law of the Deceased) filed a Summons for Revocation/Annulment of Grant.
9. On 13th June 2018, by consent of the parties the dispute was referred to Court Annexed Mediation (CAM). On 11th June 2019 the Mediation Settlement Agreement dated 21st February 2019 was adopted as an order of the court. The said settlement Agreement provided as follows:-
 - “1. Land No. Konyu/Baricho/1081 be subdivided into 6 equal parts (approximately ¼) and apportioned to beneficiaries as below;
 - i. Esther Wanjugu Maina where the homestead stands with the rest of the same portion going to Mary Kasika Kako.
 - ii. Peter Gathuri Maina.
 - iii. Daniel Weru Maina.
 - iv. Elijah Kiguta Maina.
 - v. Isaac Ngooro Maina.
 - vi. Margaret Wambui Njuiri.
 2. The beneficiaries to be allocated the said parcels in the places where they have current settled.
 3. Land no. Evasonyiro/Suguroi/BLK VI 683 to be subdivided into 5 equal parts and apportioned to beneficiaries as below;
 - i. Esther Wanjugu Maina.
 - ii. Peter Gathuri Maina.
 - iii. Daniel Weru Maina.



- iv. Elijah Kiguta Maina.
 - v. Isaac Ngooro Maina.
24. Subdivided portions to have separate title deeds issued in favor of the beneficiaries
Dated: 21/02/2019.”

10. It is this Settlement agreement which the Applicants now seek to have set aside. The Applicants allege that the agreements was reached by way of concealment of material facts from the mediator. The Applicant allege that they were not involved in the mediation process and are not in agreement with the mode of distribution of the estate as they are not provided for. The Applicants contend that the estate of the Deceased should be distributed equally among all his children and that the share due to the late Ephantus Njuiri Maina (who passed away on 28th January 2015), should be shared between his two (2) wives.
11. The Respondents aver that the Settlement Agreement once adopted by the court becomes binding on all the parties. They deny the allegation by the Applicants that they were excluded from the mediation process. That on the contrary the Applicants attended some of the mediation meetings.
12. Margaret Wambui Njuiri in her replying affidavit dated 17th July 2019 asserts that she is the only wife of the late Ephantus Njuiri Maina, thus the share of the estate due to the latter should devolve to her alone. The Respondents urge the court to dismiss this application in its entirety.

Analysis And Determination

13. I have carefully considered the application before this court, the replies filed thereto as well as the written submissions filed by the parties. The only issue for determination is whether the Applicants have advanced sufficient grounds to have the Mediation Settlement Agreement dated 21st February 2019 set aside.
14. Rule 39 of the Civil Procedure (Court Annexed Mediation)
Rules 2022 provide as follows:-
- “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 the 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 on in setting aside the order or decree.”
15. Therefore the law requires that in order to set aside such a settlement agreement the Applicants ought to have sought the leave of the court to do so. In the instant case there is no evidence that the Applicants first sought leave of the court for setting aside the mediation settlement Agreement. There is no record of such leave being granted. I find that failure by the Applicants to apply for leave in compliance with the provisions of Section 39 9(1) and (2) of the Mediation Rules means that this application is improperly before the court.
16. Be that as it may I will proceed to consider the merits of the application.
17. It is not in any dispute that the parties entered into a Mediation Settlement Agreement which agreement was duly adopted as an order of court on 23rd July 2019. A mediation agreement once adopted becomes a consent judgment and is binding on all the parties. A mediation settlement



agreement creates a binding contractual relationship between the parties. Section 59 B (4) and (5) the *Civil Procedure Act* Cap 21, Laws of Kenya provides that

“(4) An agreement between the parties to a dispute as a result of a process of mediation under this part shall be recorded in writing and registered with the Court giving the direction under subsection (1) and shall be enforceable as if it were a judgment of the Court.

(5) No appeal shall be against an agreement referred to in subsection (4)”

18. Therefore a judgment founded on mediation cannot be set aside nor can it be appealed. The consent so entered into creates a contractual relationship between parties. The intention was to give finality to the Mediation Process.

19. The legal position is that a mediation agreement/consent can only be set aside if grounds allowing for the repudiation of a contract are shown to exist. There is a long litany of case law asserting the binding nature of a consent judgment.

20. In the case of *Brooke Bond Liebig Ltd V Mallya* [1975] EA 266 at 269 was held that:-

“A court cannot interfere with a consent judgment except in such circumstances as would afford good ground for varying or rescinding a contract between the parties.”

21. In *Kenya Commercial Bank Ltd V Specialised Engineering Co. Ltd* [1982] KLR 485, Harris J held inter alia, that -

A consent order entered into by counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it 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 in general for a reason which would enable the court to set aside an agreement.....

22. In *Brooke Bond Liebig vs Mallya* (1975) EA 266 Mustafa Ag. VP stated thus;

“The compromise agreement was made an order of the court and was thus a consent judgment. It is well settled that a consent judgment can be set aside only in certain circumstances, e.g on grounds of fraud or collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract. In this case the parties and their advocates consented to the compromise in very clear terms; they were certainly aware of all the material facts and there could not have been any mistake or misunderstanding. None of the factors which could give rise to the setting aside of a consent agreement existed.” (emphasis my own)

23. Finally in *Board of Trustees National Social Security Fund v Micheal Mwalo* [2015] eKLR the Court of Appeal had this to say on the matter:

“The judgment arose from a consent of the parties to the suit. The law pertaining to setting aside of consent judgments or consent orders has been clearly stated. 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. To impeach a consent order or



a consent judgment, it must be shown that it was obtained by fraud, or collusion or by an agreement contrary to the policy of Court.” [Emphasis added]

24. Therefore mediation agreement may only be set aside upon proof of grounds which would justify setting aside a contract. The question then would be whether the grounds set out by the Applicants meet the threshold for setting aside a mediation settlement agreement.
25. In Kenya Commercial Bank Ltd -vs- Benjoh Amalgamated Ltd [1997] eKLR, the Court of Appeal stated as follows:-

“.....it is now settled law that a consent judgment or order had a contractual effect and can only be set aside on grounds which would justify the setting aside of a contract. The threshold for setting aside consent orders was discussed in the case of Kenya Commercial Bank Ltd v Specialized Engineering Company Ltd (1980) eKLR wherein it was held that:”... prima facie any order made in the presence and with the consent of counsel is binding on all parties to the proceedings and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the court or if the consent was given without sufficient materials or in misapprehension or ignorance of material facts in general for a reason which would enable the court to set aside an agreement.”
26. The Applicants have alleged that they were excluded from the mediation process and state that they did not agree with the settlement that was reached.
27. Annexed to the Replying Affidavit dated 17th July 2019 is a copy of the Mediation attendance sheet (Annexure ‘MWN 1(a)’). A look at that sheet reveals that on 13th December 2018 Bancy Wanjiru, Beatrice Muthoni Maina and Cecilia Wairimu Mwangi who are applicants have signed the attendance sheet confirming their presence during the mediation session on that date.
28. Likewise the attendance sheet for 8th February 2019 is signed by Bancy Wanjiru and Cecilia Wairimu confirming that they attended the session on that date.
29. The petitioner Esther Wanjugu Maina stated that she was not in agreement with the settlement reached on 21st February 2019 and that for that reason she did not sign the said agreement. However the said Esther Wanjugu affixed her thumb print on the settlement agreement thereby indicating her consent and agreement with the settlement reached. The petitioner has not denied that it is her thumb- print on the settlement agreement. I also note that this petitioner also thumb-printed her Replying Affidavits dated 23rd September 2019.

Thus it is a blatant lie for the Applicants to state that they were excluded from the mediation sessions.
30. In her supporting Affidavit the 1st Applicant claims that her late brother Ephantus Maina had two (2) wives. She asks that his share of the Deceased’s estate be divided equally between the two (2) wives.
31. The question of whether or not the late Ephantus Njuiri had one or two wives is not one that can be canvassed in this succession cause. That is a matter that can only be canvassed and determined under the succession cause relating to the said Ephantus Njuiri. This prayer is in my view misplaced.
32. Based on the material available I find and hold that the Applicants were fully included and participated in the mediation process. Their averments to the contrary are not true. The petitioner Esther Wanjugu actually attended four (4) mediation sessions and she also signed the settlement Agreement. The applicants cannot run away from what was agreed and consented to in mediation.



33. Finally there has been no allegation of fraud, misrepresentation coercion and/or collusion made by any of the Applicants. I find no merit in the summons dated 18th July 2019. The same is dismissed in its entirety. This being a family matter I make no orders on costs.

DATED IN NYERI THIS 7TH DAY OF NOVEMBER 2025.

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MAUREEN A. ODERO

JUDGE

