

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
MISC APPLICATION NO E063 OF 2025

**KEZIA WANJIKU MUCHIRI (Suing as the Legal Administrator
of the Estate of the late MUCHIRI NJOROGE).....**
APPLICANT

VERSUS

**JOSEPH NJOGU MAINGI (Suing as the Legal Administrator
of the Estate of the late MAINGI WAMUTI MBIRI)**
RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion Application dated 25th August, 2025, seeking the following orders:
 - a) *Spent.*
 - b) *THAT the suit currently before the Chief Magistrate’s Court in Nakuru being NAKURU CMELC NO. E092 OF 2020 is hereby transferred to this Honourable Court for hearing and determination*
 - c) *THAT the costs of this Application be borne by the Respondent.*

2. The application is supported by the annexed affidavit of the applicant, Kezia Wanjiku Muchiri sworn on 25th August, 2025, where she deponed that she is the duly appointed legal administrator of the estate of the late Muchiri Njoroge and that the dispute revolves around the suit property known as SUBUKIA/SUBUKIA WEST BLOCK 1/961, which is subject

to NAKURU CMELC NO. 92 OF 2020, whereby the late Muchiri Njoroge was a defendant.

3. She deponed that the deceased passed away on 6th August 2023 and that he had filed a counterclaim seeking to be declared the legal owner of the suit land by way of adverse possession.
4. The Applicant further stated that she had filed an application to amend the defence and counterclaim, whereby the court rendered a ruling on 28th July 2025, where the court appreciated that it does not have jurisdiction to hear and determine issues relating to adverse possession. The Applicant therefore urged the court to allow the application as prayed.
5. The Respondent Joseph Njogu Maingi filed a replying affidavit sworn on 6th October, 2025, in opposition to the Application and deponed that the matter in the lower court was referred for mediation on 12th September 2023. The parties reached a binding settlement on 15th December, 2023, which the court adopted as an order of the court as per the annexed Mediation Settlement Agreement.
6. It was the Respondent's disposition that the settlement agreement disposed of the entire dispute and that there is no outstanding issue requiring adjudication by this court including the issue of adverse possession and urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

7. I have considered the application, the supporting, replying and further affidavits together with the submissions of counsel and find that the issue that arises for determination is whether there is any suit pending before the Chief Magistrate's Court capable of being transferred for hearing and determination before this court.
8. From the records in the lower court and the averments of the parties, it is not disputed that the parties filed **NAKURU CMELC NO. E092 OF 2020**, which was referred to mediation on 12th September, 2023, and on 15th December, 2023, they reached a binding mediation settlement which was adopted as an order of the court. The Applicant confirms that she was part of the mediation settlement agreement but faults her capacity to enter into the agreement, as she did not have letters of administration for the estate of the deceased Muchiri Njoroge.
9. The Applicant further stated that she filed an application to amend the defence and counterclaim and set aside the mediation settlement agreement. The court in its ruling dated 28th July 2025, neither set aside nor vacated the mediation settlement agreement dated 15th December 2025. It also did not allow the application for amendment of the defence and counterclaim.
10. The court in its ruling stated that in the interest of justice it granted the Applicant 30 days to file an application before the ELC court to have the suit heard and determined failure to which the suit stands struck out with each party bearing their own costs.

11. The import of this ruling is that the mediation settlement agreement is still in force and has not been set aside; hence, there is no suit to be transferred for hearing and determination.
12. The court had rightly cited the provisions of Rule 39 of the Mediation Rules 2022 which provides as follows:

39. (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 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 in setting aside the order or decree.

(3) The following shall constitute the grounds upon which an application to set aside an order or decree arising from a mediation settlement agreement—

(a) misconduct, fraud, or a fundamental mistake by the mediator as relates to the mediation proceedings that goes to the core of the matter: Provided that the misconduct, fraud or mistake should not have been known by the applying party at the time of execution of the settlement agreement and should be one which affected the process and outcome of the mediation in such a way that it would be unfair and inequitable to enforce it in its form;

(b) fraud, collusion, or misrepresentation by any party to the mediation (other than the party applying) or any witness or person who took part in the proceedings and whose participation materially affected the outcome;

(c) a fundamental mistake by any or all of the parties to the mediation as to the existence or state of the subject matter, person or thing; or to any set of facts that materially affected the parties' decision to enter into the subject agreement and which has rendered such agreement unfair and inequitable;

(d) where a party was, at the time of the making of the agreement, under some legal incapacity to take part in the subject mediation proceedings or to conclude and execute a binding settlement; or

(e) where the settlement agreement is invalid under Kenyan or international law, or is or has become incapable of enforcement under Kenyan law.

13. I find that there is no suit to be transferred to this court for hearing and determination as the mediation settlement agreement has not yet been set aside. The application for substitution has also not been granted hence the Applicant will suffer the same fate if the matter is transferred to this court on the issue of *locus standi*. The application therefore lacks merit and is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OF JANUARY 2026.

**M. A. ODENY
JUDGE**