



REPUBLIC OF KENYA



In re Estate of Richard Achola Nyatuoro (Deceased) (Succession Appeal E010 of 2025) [2026] KEHC 109 (KLR) (19 January 2026) (Judgment)

Neutral citation: [2026] KEHC 109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
SUCCESSION APPEAL E010 OF 2025
DK KEMEL, J
JANUARY 19, 2026**

BETWEEN

CAROLINE ANYANGO ORWA APPELLANT

AND

ANDREW NANDI OCHOLA RESPONDENT

(An appeal against the ruling and order of Hon. Ayieta (RM) dated 29/4/2025 in Madiany PM Succession Cause No. E210 of 2023)

JUDGMENT

1. The appeal herein arises from the ruling of Hon. Ayieta (RM) dated 29/4/2025 in Madiany PM's Succession Cause No. E210 of 2023 wherein she allowed the Petitioner's summons for rectification of grant dated 4/4/2025 in terms of prayer (a) thereof.
2. The Appellant was aggrieved by the aforesaid ruling and filed her Memorandum of Appeal dated 5/5/2025 wherein she raised the following grounds namely:
 - i. That the learned trial magistrate erred in law and fact by failing to adopt the mediation settlement agreement dated 27/11/2024.
 - ii. That the learned trial magistrate erred in law and fact by denying the Appellant the statutory opportunity to file and serve an affidavit of protest or objection to the proposed confirmation and/or rectification of grant contrary to Rule 40(6) of the Probate and Administration Rules.
 - iii. That the learned trial magistrate denied the Appellant an opportunity to be heard contrary to rules of natural justice.
 - iv. That the learned trial magistrate arbitrarily imposed a decision upon the Appellant without conducting a full hearing of the dispute contrary to Rule 40(9) and 41 of the Probate and Administration Rules and rules of natural justice.



- v. That the learned trial magistrate erred in law and fact by failing to appreciate that the dispute was exclusively over the deceased's homestead being a portion of LR West Asembo/Siger/559 and not portions occupied by the beneficiaries at the behest and authorization of the deceased before his demise.

The Appellant therefore prayed that the ruling of the trial magistrate be set aside and that the mediation settlement dated 27/11/2024 be adopted as an order of the court and that the estate be distributed in terms of the said mediation settlement.

3. This being the first appellate court, its duty is well spelt out namely to re-evaluate the evidence presented before the trial court and subject it to an independent analysis so as to arrive at its own independent conclusion as to whether or not to uphold the decision of the trial court. See *Selle Vs. Associated Motor Boat Co. Ltd* [1968] EA 123.
4. The record of the trial court reveals inter alia; that the Respondent herein had filed for letters of grant of administration intestate and obtained the same on 12/3/2024; that the Respondent later filed summons for confirmation of grant dated 23/9/2024 wherein he proposed the estate property comprised in LR No. Asembo/Siger/559 be shared equally between the three houses (1/3 share each); that during the hearing of the summons for confirmation of grant on 29/10/2024, the three houses proposed the names of the persons to hold the shares on their behalf but the trial court later indicated that the beneficiaries had failed to agree on the mode of distribution and thus referred the matter to mediation; that the beneficiaries later resolved to maintain their portions as previously distributed by the deceased and that the homestead was to be divided among the three houses and further appointed Andrew Nandi, Caroline Orwa and Isaiah Gor as administrators of the estate of the deceased and that the sub division of property was to be completed by March 2025; that the mediation settlement dated 27/11/2024 was adopted as a judgment of the court on 10/12/2024 and that the grant issued on 12/3/2024 was confirmed and the property Asembo/Siger/559 registered in the names of Caroline Anyango Orwa, Andrew Nandi Achola and Achola Isaiah Gor to represent each household; that the Respondent herein later filed a summons for rectification of grant dated 4/4/2025 and sought for variation of the order on distribution to read equal share each; that the trial court later allowed the application which precipitated into the present appeal.
5. The appeal was canvassed by way of written submissions. Both parties duly complied.
6. Vide submissions dated 23/7/2025, learned counsel for the Appellant submitted inter alia; that the trial court completely ignored the mediation settlement agreement dated 27/11/2024; that the agreement entered into by the beneficiaries was binding and could only be set aside just like a contract; that the trial court did not seek for clarifications from the mediator or the parties regarding any errors requiring rectification; that the trial court did not accord the Appellant and other beneficiaries the right to respond to the application for rectification; that the trial court acted in breach of the fundamental rules of natural justice by denying the Appellant an opportunity to be heard and to challenge the summons for rectification of grant dated 4/4/2025.
7. Vide submissions dated 3/9/2025, the Respondent submitted inter alia; that the implementation of the mediation settlement agreement was met with violence by the Appellant and her group; that the ruling of the trial court was lawful and guided by Rule 29(b) and (c) of the Civil Procedure (Court Annexed Mediation) Rules of 2022 regarding the consequences of non-compliance of mediation settlement agreement; that the Appellant had the opportunity to file objection if need be but she did not do so; that the Appellant has not shown the prejudice suffered by the rectification of grant; that the Appellant has been the stumbling block in this matter regarding the administration of the estate of the deceased; that the Appellant has made the surveyor's exercise difficult as he cannot subdivide the



land as per the mediation report; that this court should proceed to allow the distribution as proposed in the certificate of confirmation of grant dated 29/4/2024.

8. I have given due consideration to the record of appeal and the rival submissions. I find the issue for determination is whether the appeal has merit.
9. It is noted that the disagreements between the beneficiaries kicked off the moment the Respondent lodged the summons for confirmation of grant and that the trial court directed that the matter be referred to mediation. Indeed, the mediator filed a mediation settlement agreement dated 27/11/2024 which was adopted as a judgment of the trial court on 10/12/2024. The said mediation settlement agreement was duly endorsed by all the beneficiaries and that it provided the framework regarding the appointment of administrators, sub-divisions of the estate property as occupied by the respective beneficiaries as well as the equal sharing of the deceased's homestead among the three wives of the deceased. Apparently, when the surveyor was taken to the ground, a disagreement arose when the Respondent herein attempted to distribute the estate equally in total disregard to the actual occupation and arrangements of the beneficiaries on the ground and which was contrary to the mediation settlement agreement entered into. It was at that juncture that the Respondent filed a summons for rectification of grant and which was not deliberated upon by the beneficiaries and which led to the impugned ruling dated 29/4/2025.
10. The Appellant has contended that the Respondent's summons for rectification of grant dated 4/4/2025 amounted to rewriting the consent of the beneficiaries vide the mediation settlement agreement and further contends that she was denied an opportunity to challenge the said rectification by filing a response or objection thereto. Even though the Respondent asserts that the Appellant was aware of the said application and was present in court, the court record reveals otherwise. Indeed, the said application does not indicate whether the same was to be served upon the beneficiaries. Again, there is no indication on the record regarding the presence of the Appellant and other beneficiaries as well as their participation thereof. It seems the trial court upon receipt of the application proceeded to entertain only the Respondent in the absence of the Appellant and other beneficiaries and went ahead to reserve the matter for ruling on 29/4/2025 wherein the Respondent was the only one present in court. It is instructive that the trial court during the hearing of the summons for confirmation of grant confirmed that the beneficiaries had not agreed to the mode of distribution and thus ordered the matter to go to mediation. It is also instructive that the trial court adopted the mediation settlement agreement but failed to proceed to give effect to the same by issuing a fresh grant and a certificate of confirmation of grant as proposed in the mediation settlement agreement. Hence, there was no grant to be rectified as none had been issued by the trial court so as to justify the Respondent's summons for rectification of grant dated 4/4/2024.
11. It is noted that the Respondent filed the summons for rectification of grant after the implementation of the mediation settlement agreement faced challenges as it transpired that the same was not carried out as agreed by the beneficiaries. I find it necessary to reproduce the mediation settlement agreement so as to establish whether there was a deviation in the implementation thereof. It was as follows:
 - “1. That the late Richard Achola Myatuoro married three wives namely Alice Opiyo, Jeniffer Haya and Peres Atieno. Upon his death, the late Richard Achola had given parcels of land to his three wives and his eldest son Simon Peter Orwa and Andrew Nandi.
 2. That the late Richard Achola's family agreed to let the status quo remain except that the homestead parcel to be divided among the three wives.



3. That the family had appointed Andrew Nandi, Caroline Orwa and Isaiah Gor as administrators to the late Richard Achola Nyatuoro's estate.
4. That the family should move with speed and contact a government surveyor to help in sub division of parcels to the three wives and also create pathways (routes) between and among the plots.
5. That these tasks of contacting a government surveyor, sub division of parcels and creation of pathways (routes) should be completed by March 2025.
6. That the family members resolved to live in peace, harmony and respect for one another irrespective of other considerations and distinctions.

From the foregoing agreement, it is quite clear that the Respondent went against the script that had been agreed upon namely that the portions and boundaries already established by the deceased were to be left intact and only the homestead was to be sub divided between the three wives. The mediation settlement agreement was indeed a binding consent just like a contract. That being the position, I find that the same can only be vitiated by fraud, collusion or that an agreement contrary to the policy of the court or that the consent was obtained through misrepresentation, ignorance of facts or for reasons which would enable the court to set aside an agreement. See *Flora N. Wasike Vs Destimo Wamboka* [1982 – 1988] 1 KAR 625). The mediation process conducted under the auspices (umbrella) of the court improves access to justice and reduces backlog and allows parties to provide their own solutions to the dispute and which enables them to co-exist peacefully. Such form of consents are usually not appealable since the parties willingly agreed on the issues amicably. The parties herein duly participated in the mediation process and duly signed the terms thereof and therefore the product of the deliberations was binding on all the beneficiaries. Hence, if the Respondent found that implementation of the mediation settlement agreement was unworkable, then he should have approached the court to review and or set aside the said agreement but not to impeach the eventual certificate of confirmation of grant.

12. The mediation settlement agreement was arrived at pursuant to the guidelines of the Court Annexed Mediation (Amended 2018) and that the same once filed with the Deputy Registrar or magistrate or Kadhi as the case may be shall be enforceable as a judgment or order of the court. Again, Rule 34 of Civil Procedure (Court Annexed Mediation) Rules 2022 provides as follows:

“The mediation Deputy Registrar or other officer designated for that purpose shall within ten (10) days after the settlement Agreement being filed under Rule 32:

- i. Place the Settlement Agreement before the trial court or other designated officer for adoption.”
- ii. It shall not be necessary for the parties or the mediators to attend court for purposes of adoption of the settlement agreement and such proceedings may be conducted in chambers or virtually.
- iii. Where the court deems it necessary, it may seek further clarification from the mediator each party's representative before adopting the settlement agreement.

From the foregoing, the trial court was expected to seek clarification from the mediator if there were any challenges faced by the parties. In any event, the mediation settlement agreement captured all the agreed issues and thus the trial court ought to have directed the Respondent to ensure that all parties



to the agreement were involved before the trial court could establish if there was need to interfere with the said agreement. I concur with the sentiments of J. N. Kamau J in Kisumu Civil Appeal No. E005 of 2020 Alois Finance Kenya Ltd vs Country Farms Ltd where she held as follows:

“The trial court was also *functus officio* and could not re-open the negotiations of supplemental Hire Purchase Offer Letter. Any revision of the terms of mediation settlement agreement such as negotiations of the terms of supplemental Hire Purchase Offer Letter as had been prayed by the Respondent in its Notice of Motion application dated and filed on 29th June 2020 could only have been with the consent of the parties and not composed on the Appellant through the intervention of the court. Having opted to mediate the dispute between itself and the Appellant herein, the Respondent could not move the litigation to resolve a dispute that was resolved by the parties themselves with facilitation of a third party neutral. Any negotiation on any terms that had already been agreed upon could only have been re-opened through another mediation process, the settlement agreement having been adopted as an order of the court.”

13. An analysis of both the Appellant and Respondent’s cases, leads me to come to the conclusion that it was erroneous for the trial court to entertain the Respondent’s application dated 4/4/2024 in view of the presence of a consent in the form of a Mediation Settlement Agreement that had not been set aside or varied and further in view of the fact that the trial court had not yet issued a certificate of confirmation of grant in terms of the said mediation settlement agreement. There was thus nothing to be rectified by the trial court as pursued by the Respondent. As the application had not been served upon all beneficiaries and who did not get an opportunity to contest the same, the trial court thus failed to accord the Appellant and beneficiaries the opportunity and right to be heard. Hence, the finding by the trial court was made outside the terms of the mediation settlement agreement and was thus in error and which warrants this court to interfere with it.
14. In view of the foregoing observation, it is my finding that the Appellant’s appeal has merit. The same is allowed. The ruling of the trial court dated 29/4/2025 is hereby set aside and substituted with an order dismissing the Respondent’s Summons for Rectification of Grant dated 4/4/2025 with the following further orders.
 1. A fresh grant be and is hereby issued in the names of Andrew Nandi Achola, Caroline Anyango Orwa and Isaiah Gor.
 2. The fresh grant (now issued) be and is hereby confirmed.
 3. The estate of the deceased comprised in LR Asembo/Siger/559 be distributed in accordance with the Mediation Settlement Agreement dated 27/1/2024.
 4. As parties are members of one family, there shall be no orders as to costs.

DATED AND DELIVERED AT SIAYA THIS 19TH DAY OF JANUARY 2026.

D. K. KEMEI

JUDGE

In the presence of:

Jaoko.....for Appellant.

Andrew Nandi Achola.....for Respondent.

Maureen/Kimaiyo.....Court Assistant.

