

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT PROBATE AND ADMINISTRATION CASE NO. 21

OF 2004

IN THE MATTER OF THE ESTATE OF ANTHONY NJERU

KAROBIA (DECEASED)

MARY WAMBUI ANTHONY.....APPLICANT

VERSUS

DAVID MAINGI NJERURESPONDENT

RULING

1. Before this Court is the Summons dated **15th April 2025** by which the Applicant **MARY WAMBUI ANTHONY** seeks the following orders:-

“1. THAT this Honourable Court be pleased to set aside the mediation agreement dated 8th July 2024 and this matter be heard and determined before the Honourable Judge.

- 2. THAT this Honourable Court be pleased to make the Applicant one Mary Wambui Anthony a Co-Administrator together with the Respondent.**
- 3. THAT this Honourable Court be pleased to accommodate the deceased persons' Shares at Mutheka Cooperative Society Certificate No. 1537 in the schedule of properties and the same be shared equally amongst the Applicant and the Respondent.**
- 4. THAT this Honourable Court be pleased to review the mode of distribution of the deceased person parcel of land TETU/MUTATHIINI/454 as stated in the Applicant's supporting affidavit.**
- 5. THAT this Honourable Court be pleased to direct the Nyeri County Surveyor to conduct subdivision of TETU/MUTATHIINI/454 and do order the Area OCS to maintain peace and order during subdivision of the same.**
- 6. THAT the costs be in the cause."**

2. The application was supported by the affidavit of even date sworn by the Applicant.
3. The Respondent **DAVID MAINGI NJERU** opposed the application through the Replying affidavit dated **21st July 2025**. The application was canvassed by way of written submissions. The Applicant filed the written submissions dated **11th August 2025** whilst the Respondent relied upon his written submissions dated **10th November 2025**.

BACKGROUND

4. This Succession Cause relates to the estate of the late **ANTHONY NJERU KAROBIA** who died on **31st October 1999**. A copy of the Death Certificate Serial No. **533690** is annexed to the Petition for letters of Administration Intestate dated **23rd December 2003**.
5. There has been much litigation over this estate but finally on **21st September 2004** a Grant of Letters of Administration Intestate was issued to the Respondent **David Maingi Njeru**. That Grant was duly confirmed on **16th July 2010**. The Confirmed Grant provided that the Parcel of Land known as **TETU/MUTATHIINI/454** would be distributed as follows:-

- (i) **David Maingi Njeru** - **0.5 Acres**
- (ii) **Hannah Wangui Muchemi** - **0.25 Acres**
- (iii) **Mary Wambui Anthony** - **0.25 Acres**

6. On **4th April 2023** the Applicant **Mary Wambui Anthony** filed a Summons for revocation of Grant alleging that the Grant issued to the Respondent had been obtained fraudulently, by concealment of material facts.
7. That dispute was referred for **Court Annexed Mediation** and the parties reached a Settlement on **8th July 2024**. That Mediation Settlement Agreement was adopted by the Court on **9th July 2024**.
8. The Applicant then filed this present application seeking to set aside the mediation Agreement on grounds that she was not a party to the same. As stated earlier the application was opposed.

ANALYSIS AND DETERMINATION

9. I have carefully considered this application, the reply filed thereto as well as the written submissions filed by both parties.

10. On **8th July 2024** parties in this matter filed in court the Mediation Settlement Agreement also dated **8th July 2024**.

That agreement provided as follows:-

“BY CONSENT, the parties hereto agree to settle all matters arising in **SUCC 21/2004** through the aforementioned mediation process in the following terms and conditions:

a) LAND

(i) TETU/MUTHUAINI/454

THAT HALF (50%) of the parcel of land TETU/MUTHUAINI/454 be allocated to DAVID MAINGI NJERU.

THAT the remaining HALF (50%) be shared among MARY WAMBUI NJERU (25%) and HANNAH WANGUI MUCHEMI (25%).

THAT DAVID MAINGI NJERU, HANNAH WANGUI MUCHEMI and MARY WAMBUI NJERU follow up for survey of the land and allocate each as hereinabove.

THAT the cost of survey works shall be shared **EQUALLY** by DAVID MAINGI NJERU, MARY WAMBUI NJERU and HANNAH WANGUI MUCHEMI.

THAT each shall meet the cost of processing the Title Deed for their allocated parcels.

THAT the survey works shall be completed within **SIX** (6) months from the date of signing this Settlement Agreement.

b) ADMINISTRATION OF THE ESTAE OF THE LATE ANTHONY NJERU KAROBIA

THAT DAVID MAINGI NJERU have been appointed as Administrators of the Estate of the Deceased.

c) ANIMALS

THAT DAVID MAINGI NJERU to give one (1) cow and one (2) goat to MARY WAMBUI NJERU within one (1) year from the date of signing this Settlement Agreement.

Dated in NYERI this 8th day of July 2024”

11. Following that agreement a Certificate of Confirmed Grant was rectified on **9th July 2024** to conform with the terms of the Settlement Agreement.
12. The Applicant now seeks to have the consent revoked on grounds that she was not involved in the deliberations which

led to the consent. The key question then is whether this consent ought to be revoked.

13. In law a consent order binds all the parties thereto. A consent order may only be set aside if the grounds required to invalidate a contract are shown to exist i.e fraud, mistake, collusion or if the consent runs counter to Public Policy.

14. In the case of **FLORA N. WASIKE -vs- DESTIMO WAMBOKO [1988] KLR** the **Court of Appeal** stated thus:-

“It is well settled law that a consent judgment or order has contractual effect and may only be set aside on grounds which justify setting aside a contract.”

15. In **KENYA COMMERCIAL BANK LTD -VS- SPECIALISED ENGINEERING COMPANY LTD [1982] KLR**, the Court stated 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 in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.”

16. In **BOARD OF TRUSTEES NATIONAL SOCIAL SECURITY FUND -VS- MICHAEL MWALO [2015] eKLR** the Court of Appeal held as follows:-

“The judgment arose from a consent of the parties to the suit. The law pertaining to setting aside of consent judgments or consent order 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.” [Own emphasis]

17. Finally on this point the case of **S.M.N -VS- Z.M.S [2017]** **eKLR** summarised the case law and the grounds upon which a consent may be varied or set aside as follows:-

(i) Where the consent was obtained fraudulently.

(ii) Where there was use of collusion between affected parties in securing the consent.

(iii) Where the consent agreement runs contrary to public policy.

(iv) Where the consent is based on insufficient material facts.

(v) Where the consent was obtained on the basis of misapprehension or ignorance of material facts.

(vi) For any other sufficient reason.

18. The Applicant claims that she was not involved in the mediation process which led to the consent. This is not the

truth. Annexed to the consent is an attendance sheet which indicates the parties who attended the mediation discussions. The very first name on that list is **Mary Wambui Anthony** who is the Applicant herself of I/D No. **0237334**. The Applicant has not denied that this is her I/D card number.

19. Further the Agreement itself is duly signed by the Applicant (again citing I/D Number **0237334** the Respondent and the Mediator one **ELSIE GLADYS W. MWANGI**. The Applicant has not denied having signed that Agreement.
20. The Applicant in her written submissions claims that she was not in the room when discussions were taking place. That when she returned she was merely told to sign the Agreement. The Applicant is a mature adult. Why would she sign a document which she knows nothing about. I do not buy this excuse at all.
21. The Applicant further claims that one of the beneficiaries **Hannah Wangui Muchemi** did not sign the settlement agreement.

This is

not entirely true. The said **Hannah Wangui** has appended her thumb-print on the attendance sheet indicating her involvement in the mediation process.

22. In conclusion I find no grounds upon which this Settlement Agreement can properly be impugned. I am satisfied that the same was the result of discussions between the parties guided by the mediator who was an objective party with no claim or stake in the estate. As such no sufficient grounds have been advanced to rescind the consent and I therefore decline to do so.
23. The Applicant has prayed that the confirmed Grant be rectified in order to include the shares held by the Deceased at **Mutheka Co-operative Society Certificate No. 1537** which shares the Applicant states were not included in the list of assets.
24. The Applicant has not annexed any document to prove that the Deceased held the shares in question, the court cannot allocate assets which have not been shown to exist. The Administrator is at liberty to file a Summons for rectification

of Grant when and if it is established that the Deceased truly held the shares in question.

25. Finally I note that this is a matter in which the Deceased died way back in the year **1999**. Twenty six (26) years down the line the estate is yet to be distributed. The Applicant has come in at every opportunity filing numerous application in an attempt to scuttle the distribution of the estate. Surely litigation must come to an end. Parties are advised to facilitate the distribution of this estate and bring the matter to an end.
26. The summons dated 15th April 2025 is hereby dismissed in its entirety.
27. This being a family matter each side will bear their own costs.

Dated in Nyeri this 20th day of February, 2026.

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MAUREEN A. ODERO
JUDGE

ORIGINAL