



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION APPEAL NO. E010 OF 2024

IN THE MATTER OF THE ESTATE OF DINAH MWOMBE
Alias DINAH CHEBUKWA MWOMBE (DECEASED)

KENNEDY MWOMBE KITERESI 1ST

PETITIONER/RESPONDENT

GRACE NASHIMIYU MAMATI 2ND

PETITIONER/RESPONDENT

AGNES NELIMA WAFULA 3RD

PETITIONER/RESPONDENT

JANE NANZALA MWOMBE 4TH

PETITIONER/RESPONDENT

VERSUS

JANET MAKHAKHA NAFULA 1ST

OBJECTOR/APPLICANT

JUMA MURUMBA MWOMBE 2ND

OBJECTOR/APPLICANT

ELIAKIM ADONGO MURUMBA 3RD

OBJECTOR/APPLICANT

JOASH MULIEVI MURUMBA 4TH

OBJECTOR/APPLICANT

RULING

1. The Petitioners filed a petition for letters of administration intestate for the estate of the above-named deceased who died on 15th November 2024.
2. After the Cause was gazetted on 28th June 2024, the Objectors lodged an objection to the making of grant of representation to the deceased's estate to the Petitioners on the grounds inter alia, that the petition was fatally flawed as the Petitioners had not sought consent from all the persons beneficially entitled to a share of the deceased's estate, that the objectors who are grandchildren of the deceased through one Caleb Mwombe (deceased) were omitted and that one of the assets listed was not the subject of intestacy proceedings as the deceased had distributed it before her death.
3. On 11th November 2024, the matter was referred to court annexed mediation. The Mediator proceeded to hear the parties and on 20th November 2024, he filed a Mediation Settlement Agreement dated the same day. When the matter came up for mention on 18th December 2024, the

Objectors expressed their intention to oppose the agreement and were granted 30 days leave to file an application to challenge the same.

4. Subsequent to the court's directions, the 1st Objector filed an application seeking leave to "set aside" (sic) the Mediation Settlement Agreement on the grounds that there was collusion between the Petitioners and the Mediator, that the mediation hearing was conducted without the presence of the Counsel for the 1st Objector whose request for adjournment to a more convenient date was denied, that the Mediation Agreement was obtained by means of fraud, collusion, and misrepresentation of material facts as well as coercion by the Petitioners in conjunction with non-family members present at the mediation hearing. The 1st Objector alleged that the misrepresentation and coercion was on account of the fact that the Applicant was merely told to append her signature to the agreement without being informed in a language she understood, the legal implications of the terms and conditions of the agreement. It is the 1st Objector's contention that there was therefore a fundamental mistake in the Mediation Settlement

- Agreement where strangers to the estate of the deceased were even named as beneficiaries.
5. The 1st Objector's application is supported by an affidavit sworn by the 1st Objector on 26th October 2024 in which she has made a general deposition affirming her claims.
 6. The 2nd, 3rd and 4th Objectors also filed an application dated 16th December 2024 seeking leave to set aside the Mediation Settlement Agreement on the grounds set out in the 2nd Objector's affidavit that the agreement was obtained by means of fraud, collusion and misrepresentation of facts at the material time.
 7. The first application was opposed by the Petitioners and the 1st Petitioner filed an affidavit sworn on 5th March 2025 in which he disputed the 1st Objector's claims and maintains that the Mediation Settlement Agreement is proper.
 8. The applications were canvassed by way of written submissions.
 9. The issues that arise for determination is whether the applications dated 16th December 2024 and 26th December

2024 have met the threshold for setting aside the Mediation Settlement Agreement on record.

10. The grounds upon which a Mediation Settlement Agreement can be set aside are set out in the Court-Annexed Mediation Rules. Rule 39 (3) provides that:

“(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.”

11. I have carefully considered the two applications, the affidavits in support, the response thereto, the written submissions filed by the parties, as well as the relevant law.

Without delving into the merits of the intended application, I find that the application is merited as the Objectors have established a *prima facie* case that would warrant a further inquiry by the court to determine whether there was a breach of the Mediation Rules by the Mediator. I have also considered the fact that the Mediation Settlement Agreement was not adopted as an order of the court as on the day it came up for adoption, the Objectors sought to file an application to have it set aside the mediation agreement.

12. Pursuant to Rule 39 (3), it is an order or decree arising from a Mediation Settlement Agreement that can be set aside and not the agreement itself.
13. In the premises, the court adopts the Mediation Settlement Agreement dated 20th November 2024 as an order of the court and the Objectors given thirty (30) days to file and serve their application to set aside the aforesaid order and in default, Grant of Letters of Administration to issue.

Dated, signed and delivered at Kakamega this 11th day of February 2026.

**A. C. BETT
JUDGE**

In the presence of:

Mr. Were for the 1st Objector/Applicant

Mr. Mulama for 2nd, 3rd and 4th Objectors/Applicants

No appearance for the Petitioners

Court Assistant: Polycap

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