

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**CIVIL CASE NO.E012 OF 2023**

**SUSY NGINA**

**CHIVINI.....PLAINTIFF/APPLICANT**

**VERSUS**

**HARON KARUNGANI**

**JUMA.....DEFENDANT/RESPONDENT**

**RULING**

1. Susy Ngina Chivini, the applicant herein has moved this court vide a Notice of Motion dated 24/10/2025 for the following reliefs namely;

***(i) That the mediation settlement agreement dated 19/6/2025 and adopted by this court be set aside.***

***(ii) That this matter be heard and determined by this court.***

***(iii) Costs be provided for.***

2. The applicant has listed the following grounds;

***(a) That this case was referred to compulsory mediation with a view to reaching an amicable settlement.***

*(b) That the parties met and agreed to settle their differences and a mediation agreement was made and signed on 19/6/2025 and filed in court on 19/6/2025.*

*(c) That when the applicant went through the mediation agreement she noted a mistake in that the parcel of land Waitaluk/Mabonde Block 5/Kebulwet/560 including all developments including a 3 bedroom house was to be sold yet the applicant has two children with one living with her in that house.*

*(d) That sharing the house will affect the welfare of the children.*

*(e) That it is fair that the case proceeds to full hearing and determination.*

*(f) That no party would be prejudiced.*

3. In her supporting affidavit sworn on 24/10/2025, the applicant reiterates the above grounds adding that after signing the mediation agreement she realized sharing the property is not right because the two parties herein have children whom she feels should also be catered for because the sharing of the property will also affect them.

4. This application is unopposed but given the nature of the prayers sought this court is inclined to determine it on the merits.

5. The applicant seek to set aside a mediation settlement agreement dated 19/6/2025. Mediation agreements or settlements are binding once executed by parties to the settlement. It is like a contract and can only be vitiated on the following grounds;

**(a) Misrepresentation or fraud if any party to the agreement proves that he was induced by false information or fraudulent statement or**

**(b) Duress or coercion where one party proves that he/she was forced, intimidated or threatened or pressured.**

**(c) Mistake where a party proves that there was a fundamental mistake or mistaken belief.**

**(d) If the contract is oppressive, unfair, illegal or against public policy.**

**(e) Lack of legal capacity on account of age (minor) or mental impairment.**

6. In this application the applicant has not cited any of the above grounds. She only stated informally at the hearing of this application that she was intimidated and felt unfairly treated by the mediator. She has however not sworn an affidavit to that effect.

7. The mediation agreement was signed by the two parties herein voluntarily and willingly. I do not find any evidence to the contrary because none has been availed.

8. The issue of children and their rights are a separate issue from a matrimonial cause. In any event when the applicant brought this originating summons, she sought for the valuation of the subject property WAITALUK/ MABONDE BLOCK 5/KEBULWET/560, sale and distribution of proceeds of same according to each party's contribution. She did not mention anything to do with children. If there are children or issues of marriage, their interests will be adjudicated through a children's case not a matrimonial cause.

In the premises this court finds no merit in the application dated 24/10/2025. The same is disallowed but I make no order as to costs.

**DELIVERED, DATED and SIGNED at KITALE this .....9<sup>th</sup> .... day of .....MARCH....., 2026.**

**HON JUSTICE R.K. LIMO**  
**KITALE HIGH COURT**

**Ruling delivered in open court**

**In the presence of**

**Susy Ngina Chivini the applicant in person**

**Haron Juma the respondent in person**

**Duke/Chemosop - Court assistants**