



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of the Late Tarus (Deceased) (Succession Cause  
68 of 2006) [2026] KEHC 2565 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2565 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 68 OF 2006  
RN NYAKUNDI, J  
FEBRUARY 26, 2026  
IN THE MATTER OF THE ESTATE OF THE LATE NKT (DECEASED)**

**BETWEEN**

**ROSALEEN CHELGAT KOGO ..... PETITIONER**

**AND**

**EVILINE ABRAHAM ..... OBJECTOR**

**RULING**

1. Before this court is a Mediation Agreement adopted as follows: -



| NAME               | SHARE                     | AGE     | Signature | ID NO |
|--------------------|---------------------------|---------|-----------|-------|
| FKK                | 30.65 Acres               | 56      | 1XXXXXX5  |       |
| AKK                | 29.65 ACRES               | 49      | 2XXXXXX2  |       |
| SKN                | 7.0 ACRES                 | 59      | 8XXXXXX2  |       |
| NKT                | 40.0 ACRES                | 59      | 11XXXXXX8 |       |
| LKM                | 17.0 Acre                 | 45      | 22XXXXXX5 |       |
| JKY                | 3.0 Acres                 | 46      | 2XXXXXX0  |       |
| FKK                | 24.0 Acres                | 67      | 4XXXXXX2  |       |
| DK                 | 16.0 Acres                | 0246316 |           |       |
| CCC                | 30.0 Acres                | 65      | 4XXXXXX8  |       |
| ST Thomas Catholic | 1.7 Acres                 | 71      |           |       |
| CKK                | In Trust of Church Elders |         |           |       |
| DKC                | Total 199 Acres           |         |           |       |

2. This matter was vested within the jurisdiction of this court and in the cause, an Application was made to have it referred to Court annexed mediation for purposes of settling the issues. This is in consonant with Order 59 B and C of the [Civil Procedure Act](#) which provides as follows: -

“ 59B: Reference of Cases to Mediation:

The Court may

- (a) on the request of the parties concerned, or
- (b) where it deems it appropriate to do so, or
- (c) where the law so requires,

Direct that any dispute presented before it be referred to mediation.

- (2) Where a dispute is referred to mediation under subsection (1), the parties thereto shall select for that purpose a mediator whose name appears in the mediation register maintained by the Mediation Accreditation Committee.
- (3) A mediation under this Part shall be conducted in accordance with the mediation rules.



(4) An agreement between the parties to a dispute as a result of a process of mediation under this Part shall be recorded in writing and registered with the Court giving the direction under subsection (1), and shall be enforceable as if it were a judgment of that Court.

(5) No appeal shall lie against an agreement referred to in subsection (4).

59C. Other alternative dispute resolution methods

(1) A suit may be referred to any other method of dispute resolution where the parties agree or the Court considers the case suitable for such referral.

(2) Any other method of alternative dispute resolution shall be governed by such procedure as the parties themselves agree to or as the Court may, in its discretion, order.

(3) Any settlement arising from a suit referred to any other alternative dispute resolution method by the Court or agreement of the parties shall be enforceable as a judgment of the Court.

(4) No appeal shall lie in respect of any judgment entered under this section.

3. In the instant case, the subject dispute was referred to mediation within the governing principles of Court Annexed Mediation. In Kenya the adoption and enforcement of mediation agreements often referred to as terms of settlement as a judgement of the court is strongly supported by the law and jurisprudence developed over time particularly within the framework of Court Annexed Mediation. Once a mediation agreement is signed and adopted by a Judge or any other court of competent jurisdiction, it becomes a Consent Judgment binding on parties and enforceable as a Court Order.

4. The Court Annexed Mediation in Kenya is a more recent phenomenon compared with other jurisdictions applying common law within the continent of Africa. However, mediation has always been in existence in Kenya prior to the introduction and adoption of litigation as a forum to secure and vindicate rights which arise out of a conflict or dispute. What is more fundamental is the modernized version of mediation has received serious recognition after the promulgation of *the constitution* 2010. Notwithstanding that position, there are still challenges facing the introduction of mediation into our legal system which include:

a. Low level of public awareness despite the fact that mediation seems to be gaining ground, there is still a low level of public awareness. Most disputants would rather approach the courts to resolve their disputes. Litigation is the default mode for most disputants in Kenyan post 2010 constitutional dispensation.

b. Seen as inferior to litigation, one reason why most people will refer litigation to mediation is the perception that mediation is inferior to litigation (and perhaps) arbitration due to the lack of statute and state machinery in support of enforcement of settlement Agreements directly unlike court judgements/Arbitral award.

c. Voluntariness of mediation: due to the fact that a party can walk out anytime and settlement agreement (until when entered as a consent judgement by the court or produced for pronouncement as an agreement) cannot be enforced adds to the distrust of the process by members of the public



- d. Open to misuse: Despite the usefulness of mediation as an excellent dispute resolution mechanism the fact that it is non binding (and thus depends on the volition of the disputing parties) makes it vulnerable to misuse
  - e. Resistance to mediation: this resistance is both from counsel and parties who refuse to submit to mediation
  - f. Lack of understanding of the Mediation process by both counsel and parties they represent in a Court of Law.
  - g. The level of literacy on mediation is very limited for reasons that Kenyans have been made to believe that resolution of disputes is only found in the form of court system
  - h. Lack of mediation law: Unlike arbitration which is governed by the *Arbitration Act*. There is no single unifying law for mediation and Arbitration in Kenya that supports their enforcement countrywide like Arbitration. Unlike Arbitration mediation does not have robust provisions concerning mediation. Rather, what we have are the provisions under the *Civil Procedure Act* which are very limiting in terms of its enactment as a conceptual framework to popularize litigation and administration of Justice.
5. In the application at bar, there is already a Mediation Agreement which has been facilitated and endorsed by the parties for adoption of this court. As things stand, each of the beneficiaries has signed as evidence of consenting to the mediation process and the terms so recorded. I am therefore for the considered view that the elements of mediation process have been satisfied to have the conflicting parties sit together to resolve their disputes on the distribution of the estate as indicative of the metrics incorporated in the matrix captured elsewhere in this ruling. For those reasons, this court does adopt it as a Judgement of this court and the nature of it becomes the basic structure of issuing the certificate of confirmation of grant as per the law established. With this in mind, the Certificate of Confirmation of Grant shall be issued forthwith and shared with Administrators for execution and implementation and thereafter to file a Probate Account within six Months from today's date. In order to monitor compliance, the Deputy Registrar of the High Court shall exercise ministerial powers to oversee that there is seamless transmission.
6. In adopting this consent, it is necessary to mention that the mediation settlement is mainly on Itigo farm LR/ XXXX measuring 200 acres and in addition the beneficiaries also settled the distribution of Chibogaa shares Limited for each one of them to benefit with and equal share of the Asset. On the other hand, the parties to the mediation agreement invited the court to exercise jurisdiction on the following Assets and other administrative issues:
- West Isorongai Blk 3(tapsagoi) 36- 247 Acres, And Uasin Gishu/Tapsangoi /scheme/XX &XX -39 Acres
7. In the context of this intestate Succession: -
- a. An order for survey be and is hereby issued to the County Surveyor to schedule a meeting with the Administrators and the Advocates of the High Court seized of this litigation for the very purpose to undertake the survey of the above mentioned estate with a view to ascertain the boundaries, the acreage and the proposal on the distribution scheme which the probate court might use under the provisions of the *Law of Succession Act*.
  - b. The other essential declaration to be made is that of issue of payment of rates and other liabilities to FST and AFC loans.



- c. This Honourable court therefore schedules a status conference which shall take the form of a pre-trial on the 10.3.2026 to expedite the disposal of the Succession Cause.
- d. I make no orders as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 26<sup>TH</sup> DAY OF FEBRUARY 2026**

.....

**R. NYAKUNDI**

**JUDGE**

