



REPUBLIC OF KENYA



**In re Estate of Lukale alias Khakoni Shiema (Deceased) (Succession Cause
183 of 2009) [2026] KEHC 2399 (KLR) (20 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2399 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 183 OF 2009**

AC BETT, J

FEBRUARY 20, 2026

**IN THE MATTER OF THE ESTATE OF KHAKONI
LUKALE ALIAS KHAKONI SHIEMA (DECEASED)**

BETWEEN

PHILIP MUCHESIA ISAACK PETITIONER

AND

DORICA BABUNA MALUNGU OBJECTOR

RULING

1. On 15th October 2024, the court referred this matter for mediation by a court-annexed mediator. On 22nd November 2024, the Mediator filed a partial settlement agreement in which the children of the deceased agreed on the persons to be appointed as administrators of the deceased's estate. Further, it was agreed that, upon confirmation of the true ownership of the land comprised in L.R. No. Kakamega/Shinyalu/51 and L.R. No. Kakamega/Shinyalu/1225, the property be distributed equally to the twelve children and the widow of the deceased.
2. The Mediator referred the contested issue to the court, which was whether L.R. No. Kakamega/Shinyalu/1225 forms part of the estate of the deceased, as the parties held divergent views.
3. Aggrieved by the partial settlement agreement, the Objector filed an application seeking leave to set aside the agreement on the ground that the Petitioner misrepresented facts concerning the disputed land parcel number 1225, which the Objector maintains belongs to her deceased father and not to the deceased herein. The application is supported by an affidavit sworn by the Objector, in which she avers that the deceased and her father were brothers, and that their father distributed his land in the 1970s, with her father, Enock Malungu Siema, being given L.R. No. KAKAMEGA /SHINYALU/54, while the deceased herein was given L.R. No. Kakamega/Shinyalu/51 and 52. It is her averment that the deceased fraudulently transferred a portion of her father's land, upon which her father had planted tea, to his name and caused it to be registered as L.R. No. Kakamega/Shinyalu/1225. She further avers that



her father died in the year 2007 and was buried on the said land without any protest from the Petitioner and his family, and that she has been using the land from the said year to date.

4. The application was opposed by the Petitioner, who avers that his deceased father was the first registered proprietor of the disputed land as reflected in the Green Card and that it was never owned by the Objector's deceased father, who did not lay any claim on the disputed land during his lifetime despite outliving the deceased herein by almost ten years. The Petitioner avers that the Objector's deceased father must have been satisfied with the land gifted to him by his father. The Petitioner also annexed a surveyor's report dated 29th January 2019, which indicated that the issue between the parties was a land dispute rather than a boundary dispute.
5. The court notes that the Objector is under a misapprehension that the Mediation Settlement Agreement made a final determination of the ownership of L.R. No. Kakamega/Shinyalu/1225. That is not the position as the agreement states as follows:-

- “1. Children of the late Khakoni Lukale alias Khakani Siema agreed that their brothers Philip Muchesia Atavachi and Patrick Siema Adavachi be confirmed as administrators of their father's estate.
2. After search and confirmation from the Lands office on ownership of parcels number L.R. No. Kakamega/Shinyalu/51 and L.R. No. Kakamega/Shinyalu/1225, the two administrators will ensure equal distribution of the parcels to twelve (12) siblings and Mama Sella Atemo Atabachi (widow).
3. We, the undersigned parties in this matter, have agreed to refer the following issues back to the court for determination:- Interpretation of a ruling of the court on parcel number L.R. No. Kakamega/Shinyalu/1225, each party has a different interpretation. This will help the parties to decide on the way forward.”

6. Rule 39(3) of the Civil Procedure (Court Annexed Mediation Rules) provides that:-

“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.”
7. I have carefully considered the application, the submissions filed herein, and the applicable law. It is apparent from the evidence before the court that the land comprised in L.R. No. Kakamega/Shinyalu/1225 belongs to the deceased, Khakoni Shiema, who was registered as the sole proprietor on 19th May 1975.
 8. The registration of the deceased is prima facie proof of ownership under Section 24(a) of the [Land Registration Act](#). It can only be impugned if the circumstances set out under Section 26 are established. Section 26(1) of the [Land Registration Act](#) states:-
 - “(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
 9. The Objector’s claim is against the deceased, who is alleged to have fraudulently transferred the disputed land to his name, thereby dispossessing his brother.
 10. The Objector has not impugned the part of the agreement which determined who should be appointed as administrators or who the real beneficiaries of the deceased are. She invites this court to grant leave to apply to set aside a partial mediation agreement that only identified the beneficiaries of the deceased’s estate and the persons to administer it. The mediator referred the unresolved issue relating to one parcel of land comprised in L. R. No. Kakamega/Shinyalu/1225 for determination by the court.
 11. From the Objector’s submissions, it is apparent that she claims that the said land is part and parcel of L. R. No Kakamega/Shinyalu/54, which does not form part of the estate of the deceased. As the determination of the status of the said two parcels of land was not part of the mediation settlement agreement but was referred to the court for determination, there is nothing to set aside. To grant the leave as prayed for, therefore, would be futile. It is trite that the court cannot grant orders in vain.
 12. Further, Article 162(2)(b) of [the Constitution](#) and Section 13 of the [Environment and Land Court Act](#) give the Environment and Land Court exclusive jurisdiction over all land-related disputes. In the premises, this court lacks jurisdiction to hear and determine the Objector’s claim. The Objector is therefore best advised to file her claim before the proper forum.
 13. Having said that, the Objector has not demonstrated that there are sufficient grounds as envisaged by Rule 39(3) of the Civil Procedure (Court Annexed Mediation) Rules, to warrant the setting aside of the



mediation agreement. The Objector participated in the mediation proceedings and signed the partial settlement agreement, thereby consenting to it. She cannot retract her consent unless on valid grounds. In the case of *Alios Finance Kenya Limited v Country Farms Ltd* [2022] KEHC 11012 (KLR), Kamau J held as follows:-

“Any agreement filed with the Deputy Registrar or Magistrate or Kadhi as the case may be shall be adopted by the Court and shall be enforceable as a Judgment or order of Court.” Notably, once a mediation agreement is signed, it becomes final and binding on the parties. Mediation agreements were in the nature of consents. It is for that reason that this court considered the consequences and implications of entering a consent.”

It is the court’s finding that the Objector’s application does not meet the threshold for leave to apply to set aside the partial mediation settlement agreement. The same is hereby dismissed.

14. Accordingly, the Partial Mediation Settlement Agreement filed on 22nd November 2024 is adopted as an order of the court.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA, THIS 20TH DAY OF FEBRUARY 2026.

A. C. BETT

JUDGE

In the presence of:

Petitioner present in person

Ms. Mahuni for the Objector

Court Assistant: Polycap

