

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO E001 OF 2020

IN THE MATTER OF THE ESTATE OF SAYIA SAKWA (DECEASED)

NELSON WAMOFSA SAYIA----- 1ST
APPLICANT

CHARLES LUTETWA SHIAYO-----2ND
APPLICANT

EZEKIAL LUNG'UNYO MUSANGA-----3RD
APPLICANT

VERSUS

JANE MBITHE WASHISINO-----
OBJECTOR

JUDGMENT

1. The matter refers to the estate of the deceased Sayia Sakwa, who died on 9th October 2006, who was survived by one widow and thirteen children and 17 liabilities. His estate comprised N/Kabras/Surungai/418.
2. His son Washisino Sayia applied for a grant of letters of administration intestate, which was issued on 19th July 2021. However, the administrator died on 02/09/2022 and was substituted by Nelson Wamofsa Safia, Charles Lutetwa Shiayo and Ezekiel Lung'unyo Musanga, whose grant of letters of administration was issued on 5th December 2022.
3. On 21st February 2023, the objector herein filed an affidavit of protest stating that the deceased was her father-in-law and that before his demise, he had bequeathed the sons to his first wife as follows;

- a) *LR No. North Kabras/Surungai/1331 given to Lawrence Soita Saiya and Peter Mukawali Sayia*
- b) *LR. No. North Kabras/ Surungai/1332 given to Juma Sayia*
- c) *LR No. North Kabras/ Surungai/1360 Nelson Sayia and Lawrence Soita Sayia*
- d) *LR No. North Kabras/ Surungai/1361 given to Nelson Sayia*
- e) *LR No. North Kabras/Surungai/1362 was given to her late husband, Washisino Sayia, before his death.*

4. She claimed that the family of the second family sold their share of the deceased estate and left for Kitale, where they reside, and that the land parcel No. North Kabras/ Surungai/1362 should be given to the surviving widow and the three children, and states that her late husband's former spouse, Joina Shilako, left her marriage to the deceased and remarried, hence her name should not be in the name of the beneficiaries.
5. On 23rd October 2023, an affidavit of protest was filed by Sarah Shemba Khatera claiming that she bought 0.1 acre from Washusino Sayia vide an agreement dated 13th May 2021, and she further avers that the petitioners had failed to consider her interest in the deceased estate.
6. She claimed that the petitioners witnessed the sale and they never objected to the purchase, and that she had been using the same parcel of land and prays that the grant not be confirmed without considering her interest.

7. The parties were directed to a mediation, and the parties had a successful agreement, which was dated 16th July 2024.
8. In the mediation agreement, it was stated that the deceased parcel, which was LR NORTH KABRAS/SIRUNGAI 418 measuring 1418 and subdivided into 1331,1332,1360,1361 and 1362 and that 1362 was what was disputed.
9. The parties agreed that the deceased had bequeathed his sons part of the estate with no daughters disputing the mode of distribution.
10. It was decided that Jane Mbithe Washisino, the widow of the late Washisino Sayia, was given 2.09 acres and that all the dependents of the Late Washisino Sayia were to benefit from the 2.09 Acres. Juma Saidi was given 4.05 acres in LR North Kabras Sirungai 1362, which is 1.203 acres, and the remaining 1.307 acres was given to the liabilities
11. On 26th May 2025. Joina Shilako Shikanga and David Sakwa acknowledged the protest by Jane Mbithe Washisino and aver that the land parcel 2.09 Acres N/Kabras/Surungai/1362 belonged to Washisino Sayia, who was her husband and father to David Sakwa, and pray that the portion of the late Washino Sayia be shared among his dependents as they were not able to agree with the deceased's other wife Jane Mbithe Washisino as they don't trust each other.
12. They agreed with the mode of distribution and adopted the same for the transmission process.

Analysis and determination

13. I have analysed the mediation agreement by the parties. Article 159(2)(c) of the Constitution obligates courts to promote alternative dispute resolution mechanisms, including mediation, while the Court-Annexed Mediation Rules further empower the court to adopt a mediation settlement as a judgment of the court.
14. I note that the mediation agreement before the court is duly signed by all the parties. There was no allegation of coercion, fraud, misrepresentation, or lack of capacity.
15. The principles applicable to consent and mediated agreements have long been settled. In *Flora N. Wasike v Destimo Wamboko [1988] eKLR*, the Court of Appeal held that a consent judgment, freely entered into by parties with full understanding of its implications, is binding and enforceable.
16. In *In re Estate of James Muange Nguu (Deceased) (Succession Cause 503 of 2006) [2024] KEHC 9269 (KLR) (29 July 2024) (Ruling)*, Ong'ondo J. observed: "Under the Court Annexed Mediation, the Mediation Report is filed in court and is subsequently adopted as an order of the court. However, if the parties resile from the agreement, the court retains discretion to enforce it where it serves the ends of justice and does not prejudice third parties."
17. Here, no party has objected and the agreement benefits all beneficiaries without prejudice.
18. Similarly, In *re Estate of Alice Chepngetich Kosgei (Deceased) (Succession Cause E021 of 2021) [2024] KEHC 9439 (KLR) (12 June 2024) (Ruling)* the court adopted a Mediation Agreement dated 3rd

August 2022 as orders of the court, stating: "*The Mediation Agreement adopted as orders of the court is binding and executable, as it embodies the parties' consensus on distribution, thereby obviating the need for adversarial confirmation proceedings.*"

19. I have carefully perused the mediation agreement dated 16th July 2024. It sets out a structured mode of distribution for the deceased estate, including the contested LR N. Kabras/Surungai/1362, allocating 2.09 acres to the dependents of the late Washisino Sayia, and 4.05 acres to Juma Saidi, with the remainder apportioned to liabilities.

20. I am satisfied that the agreement represents the free, informed and consensual will of the parties and meets all legal requirements for adoption. the Mediation Settlement Agreement dated 16th July 2024 is lawful, consensual, and equitable. Its adoption will expedite administration, honour the deceased's bequests, and avert further discord and is therefore adopted as an order of the court.

21. On the issue raised by the affidavit sworn by Joina Shilako and David Sakwa on 26th May 2025, which acknowledges the mediation distribution but seeks further directions regarding how the 2.09 acres allocated to the household of the late Washisino Sayia should be specifically distributed among his surviving dependents.

22. This raises the question of whether this court, sitting in the estate of Sayia Sakwa, can determine the intra-family division of the portion allocated to a deceased beneficiary.
23. The law is explicit that each estate must be administered separately. *in Re Estate of Veronica Wanjiku Mwangi (Deceased) [2014] eKLR*, where the Court of Appeal clarified: "The estate of a beneficiary who predeceases or dies post-confirmation must be administered separately to avoid conflation of successions and ensure precise tracing of devolution."
24. The claim by Joina Shilako therefore concerns the estate of the late Washisino Sayia, not the estate of Sayia Sakwa. This court cannot determine such issues within these proceedings without violating sections 51 and 45 of the Law of Succession Act, which prohibit intermeddling with estates not properly before the court.
25. As such, Joina Shilako Shikanga and David Sakwa are at liberty to file a fresh succession cause for the estate of the Late Washisino Saiyo with regard to the distribution of his estate.
26. Having considered the pleadings, the mediation report, this court finds that;
- a) The mediation agreement dated 16th July 2024 is hereby adopted as the Judgment and Order of this Court, and shall forthwith be enforced as such.
 - b) The mode of distribution agreed upon therein for LR N. Kabras/Surungai/1362 and all relevant subdivisions of N.

Kabras/Surungai/418 is hereby confirmed as the final distribution of the estate of Sayia Sakwa (deceased).

- c) The affidavit by Joina Shilako and David Sakwa is noted. However, the issues therein relating to the estate of the late Washisino Sayia fall outside the scope of this cause.
- d) The dependents of the late Washisino Sayia are hereby directed to institute a fresh succession cause in respect of his estate in order to determine how the 2.09 acres allocated to his household shall devolve.
- e) The administrators shall proceed with transmission of the estate of Sayia Sakwa in accordance with the adopted mediation agreement without undue delay.
- f) This being a family matter there shall be no orders as to costs.
- g) Orders accordingly.
- h) Right of Appeal 30 days explained.
- i) Administrators given 6 months for transmission. File closed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA
18th DAY OF MARCH, 2026.**

S.MBUNGI

JUDGE

In the presence of:-

CA: Angong'a/Velma/Zilda

Applicants present

Objectors absent, though aware of the Judgment date.