



**Nakitare v Matimamu & 2 others (Environment and Land Case  
E011 of 2025) [2026] KEELC 2069 (KLR) (10 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 2069 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND CASE E011 OF 2025**

**AK BOR, J**

**MARCH 10, 2026**

**BETWEEN**

**MAURICE NALIANYA NAKITARE ..... APPLICANT**

**AND**

**PERETA NALIANYA MATIMAMU ..... 1<sup>ST</sup> RESPONDENT**

**FRANCIS JUMA MATIMAMU ..... 2<sup>ND</sup> RESPONDENT**

**JOHN KIRWA MATIMAMU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Through the application dated 7/11/2025, the Applicant sought to have this court stay execution of the Mediation Agreement of 16/10/2025 and adopted as a judgement of the court on 5/11/2025 and any subsequent orders. Further, he sought to have the Originating Summons set down for hearing in the interest of justice and fair trial.
2. The application was made on the grounds that the mediator was not fair and failed to consider the Applicant's documents and claim. Further, that the Applicant was not allowed to call his witnesses and that he was made to sign a blank document after the session and being illiterate, he did not know that he was to vacate land which he has lived on for 25 years and calls home. The other grounds are that the mediator did not allow the Applicant to consult his advocate and that these concerns were taken up when the court adopted the mediation settlement.
3. The Applicant swore the affidavit in support of the application. He averred that being illiterate, he desired to have his advocate attend the mediation but on the day the mediation took place, his advocate was not available. He averred that his requests for another date and to contact witnesses were declined. He explained that the mediator directed them to take a group photo and to sign an attendance list before the session started.



4. The Applicant averred that he was informed that he would get the acre of land, which he had purchased, and he left the mediation happy only for his lawyer to inform him later that that was not what the mediation report contained. He annexed a copy of the settlement, which indicates at paragraph 5 that he would vacate the land he was occupying for the second house by 31/3/2026. He exhibited the group photograph taken during the mediation.
5. John Kirwa Matimamu, the 3<sup>rd</sup> Respondent swore the Replying Affidavit in opposition to the application. He deponed that the mediation was conducted peacefully without coercion, intimidation, misrepresentation or through undue influence. That after deliberation, they reached an agreement, which they signed. He argued that the photograph was taken as a sign of togetherness. He denied that the Applicant was illiterate or that he was forced to sign the mediation agreement. He added that the sessions were conducted in Kiswahili and that the Applicant was not denied an opportunity to call witnesses. He urged that a consent judgment cannot be set aside under Section 67 of the Civil Procedure Act except through another consent.
6. The application was canvassed through written submissions. The Applicant reiterated the grounds on which the application was made and urged that the matter involved land, which is an emotive subject. He submitted that the court has the discretion to set aside mediation orders on grounds similar to those for setting aside contracts such as fraud, collusion, misrepresentation, duress, procedural irregularities, lack of capacity or if it is contrary to public policy. He pointed out that he raised objections regarding the mediation report and that after it was adopted as a judgment, he could only apply to set it aside.
7. The Respondent submitted that the judgment was not obtained through fraud and was emphatic that the Applicant was not illiterate. He added that Applicant's signature on the mediation agreement was that of a learned man. He also denied that the Applicant signed a blank document. He was emphatic that a mediator was an umpire and did not favour any party. He relied on *JN & Another v KNK (2025) KEHC 9900 (KLR)* on the grounds upon which a consent judgment can be set aside. These include fraud, mistake and non-disclosure of material facts. He urged the court to dismiss the application.
8. The issue for determination is whether the court should stay execution of the mediation agreement dated 16/10/2025 adopted by the court on 5/11/2025 and have the suit set down for hearing. The Applicant's contention is that he is illiterate and did not understand that by signing that agreement he was to vacate the suit. He also claimed that the mediator was unfair by not allowing him to call witnesses and to have his lawyer present during the mediation. The Respondent countered this by urging that the Applicant was not illiterate. The court is not in a position to establish the literacy or otherwise of the Applicant and is therefore inclined to give him the benefit of doubt on this ground.
9. The Applicant commenced this suit seeking to be declared to have acquired an acre of land out of East Bukusu/ North Sngalo/1681 through adverse possession. He averred that he had settled on that portion of land, constructed a house and lived with his family. He contended that the 1<sup>st</sup> Respondent did succession secretly without informing him. Paragraph 5 of the mediation agreement stated that the Applicant would vacate the land he occupied by 31/03/2026. The contention that due to illiteracy, the Applicant did not comprehend the nature and import of the agreement he was binding himself to is a good ground for setting aside the mediation agreement to give parties an opportunity to have the dispute determined on merit by the court.
10. The court grants prayer 3 of the application dated 7/11/2025. The costs of the application will be in the cause.

**DELIVERED VIRTUALLY FROM NANYUKI THIS 10<sup>TH</sup> DAY OF MARCH 2026.**

**K. BOR**



**JUDGE**

No appearance for the Parties

