

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU**

**ELCLOS E001 OF 2025**

**LYDIA WANJIRU WACHIRA Suing on her behalf**

**and on behalf of the Estate of**

**PETER WACHIRA GACHURU.....**

**APPLICANT**

**-VERSUS-**

**PETMAR INVESTMENT LIMITED.....1<sup>ST</sup>**

**RESPONDENT**

**PETER GACHECHA MUGO.....2<sup>ND</sup>**

**RESPONDENT**

**RULING**

1. This suit was filed by way of an Originating Summons dated 22.1.2025 where the plaintiffs are seeking entitlement to parcel **L.R. NO: NYAHURURU MUNICIPALITY BLOCK 6/442 (FORMERLY L.R. NO. 6585/246 AND LR. NO: NYAHURURU MUNICIPALITY BLOCK 6/443 (FORMERLY L.R. NO: 6585/247)** (the suit parcels) by way of adverse possession. The court referred this matter for mediation pursuant to the provisions of Article 159 (2) (c) of the

Constitution and Section 59 B of the Civil Procedure Act during the Environment and Land Court Mediation week held in March 2025. A mediation agreement dated 8.4.2025 was filed in court on the even date.

2. Counsel for the plaintiff wrote a protest letter to the Mediator dated 11.4.2025 regarding the mediation agreement citing several grounds challenging the process of mediation. When the matter was mentioned before this court on 23.10.2025, counsel for the plaintiff addressed the court as follows;

**“We raised an objection to the mediation report as the process was not transparent, may case be heard fully”**

3. In opposition thereof, counsel for the defendants opposed the application averring that a formal application should be made, adding that the mediation agreement should be adopted as a settlement cannot be set aside through a letter.
4. This ruling relates to the above application made by plaintiff’s advocate urging this court to hear the matter, of

which the court has considered the rival arguments and submissions.

- 5.** I find that the application made by the plaintiff is premature on the following grounds; Firstly, the grievances of the plaintiff are anchored on a letter, of which and as rightly submitted by the defendant, the court cannot deal with substantive issues of law and fact touching on the fairness and legality of the mediation process through a letter. To this end, I must point out that mediation has been elevated from mere option to a Constitutional value, courtesy of the provisions of Article 159 (2) (c) of the Constitution. It follows that courts, litigants and advocates are required to treat mediation as an integral pathway to justice. In addition, there is a structured legal framework anchoring mediation processes including the Civil procedure Act at section 59B, the Civil Procedure Rules at order 46 and Court Annexed Mediation Rules.
- 6.** This far, it becomes clear that mediation is a constitutional imperative anchored on statutory framework. It is therefore untenable for this court to delve into constitutional commands through a letter.

7. Secondly, it is noted that the letter in question is addressed to the mediator and not to the court. What more, it is dated 11.4.2025, 3 days after the agreement was signed. The question begging for an answer is; What role was the mediator to play post the signing of the agreement. After all, the agreement really does not belong to the mediator, it is belongs to the parties.
8. Thirdly, it is noted that the agreement has not been adopted as an order of the court. In the case of **Kibosia & 11 Others V Chebelieni & Another (Civil Appeal E162 of 2021) (2024)KECA 1269 (KLR) (20 September 2024) (Judgment) neutral citation: (2024) KECA 1269(KLR)** cited by the plaintiff, the Courts were dealing with a situation where the mediation agreement had already been duly adopted as an order of the court unlike the situation before this court.
9. In the case of **Asanyo & 3 others v Attorney General (Petition 21 of 2015) [2018] KESC 15 (KLR) (20 November 2018) (Judgment) Geoffrey M. Asanyo & 3 others v Attorney General [2018] eKLR Neutral citation: [2018] KESC 15 (KLR)**, the Supreme Court of

Kenya set aside the Judgment of the Court of Appeal where the latter had declined to adopt a consent and stated thus;

**“61. It thus emerges that a concise reading of the judicial principles in article 159(2) of the Constitution would show that they are non-derogable and have to be adhered to by all courts and tribunals exercising judicial power/authority.....**

**100.....Courts of law are not academic institutions to engage in abstract deliberations. They resolve legal issues emanating from live disputes between parties. Where parties consent to the settlement of their dispute in light of Article 159(2) (c) of the Constitution, the court reserves no right to insist on determining the matter.” Emphasize added.**

**10.** The least that the plaintiff could have done was to move the court through a formal application as submitted by the rival party, otherwise the court reserves no right to

determine the matter where there is a consent agreed upon by the parties.

- 11.** In light of the foregoing analysis, I find that the oral application made by plaintiff's advocate for the court to hear the matter is hereby declined.

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 5<sup>TH</sup> DAY OF MAY, 2026 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**

**Bedan - Court Assistant**

**Gakenia Gacheru holding brief for Waichungo Martin for the Applicant**

**Olute for the Respondent**