

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO. 128 OF 1999

IN THE MATTER OF THE ESTATE OF BENJAMIN TOROITICH ROTICH

(DECEASED)

**EMMANUEL KIPCHUMBA.....1ST
APPLICANT**

**DUNCAN KIPLAGAT.....2ND
APPLICANT**

VERSUS

SALLY TOROITICH.....1ST PETITIONER

MILLY TOROITICH.....2ND PETITIONER

Coram: Before Justice R. Nyakundi

M/s T. Cheruiyot & Co. Advocates

M/s Limo R.K & Co. Advocates

RULING

1. Before this Court is a partial agreement dated 4th March 2025, in detailed and in context underpinned as follows:
 - a. *That the late Benjamin Toritich left behind the following beneficiaries Sally Toritich widow, Frank Kiplagat Toritich son deceased and Milly Toritich. The late Frank Kiplagat Toritich left the following surviving him, namely Ann Jelagat Kiplagat(widow), Emmanuel Kipchumba (son), Duncan Kipkoech Kiplagat(son), Collins Kipkalya Kiplagat(son), Victor Kipkurui(son), Caren Kiplagat(daughter), Sofia Kiplagat(daughter), Ida Kiplagat(daughter), Risper Kiplagat(daughter).*

- b. *The following properties are registered in the name of the late Benjamin Toritich namely; Tembeleo/Elgeyo Border Block 7 (Kapngetuny)/49 measuring approximately 3.632Ha, Mosop/Kaptarakwa/466 measuring approximately 2.0 Ha and Mosop/Kaptarakwa/319 measuring approximately 3.38 Ha. The parties herein hereby agree that the above mentioned properties be valued and shared equally among the 3 units, valuation be done by a government valuer and security be provided for by the OCS Tembelio police station and Kaptagat police station respectively. The copies of valuation be shared among the 3 units. That in the meantime the family of the late Irene Kiplagat Toritich to utilize 3 acres of parcel of land known as Tembeleo/Elgeyo Border Block 7 (Kapngetuny)/49 and Milly Toritich to utilize the remainder. The County Surveyor to identify the 3 acres and the costs to be shared by the 2 beneficiaries and the OCS Tembelio police station do provide security during the survey.*
- c. *The valuation to be done within 90 (ninety) days.*

Decision

2. In Kenya, mediation agreements and consent orders are strongly supported by Courts, particularly under the **Court-Annexed Mediation (CAM) Rules, 2022**, which allow them to be registered, adopted, and enforced as valid Court orders, making them binding and largely unappealable. The substratum of the law applicable to mediation in our legal system is anchored in Article 159(2)(c) of the Constitution, which mandates the Court to promote alternative dispute resolution. The other predominant legal instrument includes the CPA Section 59(A)-(C). The Superior Court have spoken to these issues as demonstrated in the cases of
- **Dina Management Limited v County Government of Mombasa & 5 Others [2021] eKLR (SC Petition 8 of 2021)** the Supreme Court recognized the legitimacy of ADR processes, emphasizing that Courts

should facilitate the timely settlement of disputes through mediation rather than just litigation.

- **Euromec International Limited v Shandong Taikai Power Engineering Company Limited [2021] KEHC 93 (Civil Case E527 of 2020):** high Court case regarding the enforcement of commercial mediation agreements highlighting the final and binding nature of settled matters.
- **MK v MMM (Environment and Land Appeal E051 of 2021) [2025] KEHC 6741 (7 October 2025):** *The High Court held that a mediation agreement, once signed, is binding. The Court set aside a previous ruling and adopted the agreement, emphasizing that allegations of duress must be strictly proven.*
- **STK v ENK (Civil Appeal E053 of 2024) [2025] KEHC 15390 (31 October 2025):** *The Court ruled that a partial mediation agreement, once adopted by the Court, becomes a binding Court order, akin to a final judgment.*
- **In re JMM (Minor) (Civil Appeal E022 of 2024) [2024] KEHC 12846 (23 October 2024):** *A mediation settlement agreement was adopted as a judgment of the Court five months after it was reached, affirming the validity of agreements under the Mediation (Pilot Project) Rules, 2015.*
- **In re Estate of Simon Mugweru Waithirwa (Deceased) [2025] KEHC 3764 (27 March 2025):** *The Court upheld a mediation consent order, noting that parties cannot simply reject an agreement they participated in. It cited Rule 39(1) of the Court Annexed Mediation Rules, 2022, which governs the finality of these agreements.*
- **In re Estate of Malome Origa (Deceased) (Succession Cause 777 of 2023) [2023] KEHC 22663 (29 September 2023):** *The High Court adopted a mediation settlement agreement in a succession matter, directing the administrators to act according to the agreement.*
- **CRN v MMN (Sued as the mother and next friend of TGM (Minor) [2023] KEHC 23881 (17 October 2023):** *The Court held*

that failure to consider a mediation settlement agreement, particularly in child maintenance cases, is a significant error by lower Courts, as mediation promotes cooperation

- ***Alios Finance Kenya Limited v. Country Farms Limited (Civil Appeal E005 of 2020) [2022] KEHC 11012 (27 July 2022):*** The appellate Court affirmed that a Mediation Settlement Agreement is final, binding, and acts as a barrier to further judicial intervention (*functus officio*) unless otherwise stated in the agreement.

3. The drivers of mediation or what is commonly referred to as the legal principles are by its characteristics confidential which means that information disclosed on mediation is privileged and cannot be used in Court by another person unless there is existence of compelling evidence to show that the agreement was obtained in violation of the legal policy and the appropriate provisions of the Constitution. The second limb is that Courts have the mandate under its jurisdiction to refer pending cases may it be family, civil, commercial etc. to mediation forum even without the consent of parties if they deem it appropriate. It is also appropriate as per Sections 59(B) (5) of the CPA now applies to have the settlement agreements registered with the Courts.
4. In the instant application this Court adopts the partial mediation settlement dated 4th March 2025 from which the basic structure of a certificate of confirmation of grant shall apply to the extent of not impeaching in its entirety the certificate of confirmation of grant issued on 5th November 2024. The Deputy Registrar of the High Court shall therefore correlate the terms of the partial agreement to give effect to the provisions of the law under the law of Succession Act within the scope of Section 29 as read with Section 35, 36, 37, 38 & 40 of the operative Statute on succession.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 11TH DAY
OF MAY 2026.**

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R. NYAKUNDI
JUDGE