



**In re Estate of Ongure Matekesi (Deceased) (Succession Cause
82 of 2012) [2025] KEHC 876 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 876 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 82 OF 2012
SC CHIRCHIR, J
JANUARY 30, 2025**

IN THE MATTER OF THE ESTATE OF ONGURE MATEKESI (DECEASED)

BETWEEN

ZELPHER ADHIAMBO MBAKAYA 1ST PETITIONER

ZAITUNA NANJIRA OTIALO 2ND PETITIONER

AND

GODFREY OUMA FAIDA THIRD PARTY

AND

JUSTUS BARASA MBOMERE OBJECTOR

RULING

1. The Applicant filed the application dated 20th May 2024 premised under section 80 of the *civil procedure Act*, Order 45, of the Civil Procedure Rules and Rule 63 of the probate and Administration Rules seeking the following orders;
 - a. (Spent)
 - b. Pending the hearing and determination of this Application, there be stay of execution/ enforcing the Mediation settlement agreement that was endorsed/adopted by the Honourable court on 7th November 2019.
 - c. This honourable court be pleased to set aside the mediation settlement agreement that was endorsed/adopted by the Honourable court on 7th November 2019 and consequently direct that this matter proceed for full hearing to its logical conclusion.
 - d. That the costs of this application be provided for.



2. The application is supported by the affidavit of the applicant sworn on 20th May 2024 and the grounds appearing on the face of the Application.
3. The applicant states that the court adopted the mediation settlement agreement dated 7th November 2019 which indicated that the parties had agreed on conditional settlement of the matter. That one of the conditions was that the objector, Justus Barasa Mbomere was to pay the Applicant Kshs. 100,000/= as compensation for his costs.
4. He further states that he was later surprised to be served with court documents from the small claims court in case No. KKSCCOM/E206/2024 where the respondent had sought a payment of Kshs. 100,000/- and two acres from him based on the terms of the said mediation settlement agreement .
5. The Applicant goes on to state that he only learnt about the mistake made on the mediation agreement upon his perusal of the records at the court registry.
6. He asserts that and avers that the correct position is that the objector was supposed to pay him Kshs. 100,000/= for the one acre piece of land, and not the other way round.
7. He states that he never read the mediation agreement at the end of the mediation process since he is illiterate; that he appended his signature on the consent without understanding the content. He therefore prays that the mediation settlement agreement dated 7th November 2019 be set aside.
8. The objector and the petitioners did not file any response
9. The application proceeded by way of written submissions.

Determination

10. On 14th March 2024 , the Registrar of this court sent out a Notice to the parties asking them to show cause why this matter should not be closed as the case had remained dormant for a while. The parties were then directed to appear before the judge on 5th April 2024 to show the said cause.
11. When the matter came up before the Judge on the 5th April 2024, the parties failed to turn up and this matter was closed.
12. Consequently, this court cannot entertain this Application as this matter remains closed. The Applicant ought to have moved the court appropriately in regard to the opening of the file, before filing the present Application.
13. In the circumstances, the Application before court is incompetent. The same is hereby struck off, with no orders as to costs.

DATED , SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE

