

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 207 OF 2009

IN THE MATTER OF THE ESTATE OF HARRY LOUIS NANGURAI (DECEASED)

JOHN P. NANGURAI.....APPLICANT

VERSUS

ANDREW LOUE NANGURAI.....1ST RESPONDENT

ADIJAH NAIREZIA NANGURAI.....2ND RESPONDENT

LUCY NYAMWIZI MUTANGURWA.....3RD RESPONDENT

RULING

1. There is a “Memorandum Recording Family Settlement” dated 29th October 2019 that seeks to replace the “Deed of Settlement” dated 30th July 2013 that was the basis of the distribution contained in the judgment of this court on 14th December 2015 over the estate of the deceased Harry Luis Nangurai who died intestate on 12th August 1984. The “Deed of Settlement” is the subject of the present application dated 8th April 2020 by John P. Nangurai who was one of the children of the deceased and co-administrator of the estate. The other administrators are Ruth Hellen Sempeyo Nangurai and Andrew Loue Nangurai. The reasons for the application are that it has become impossible to implement the judgment delivered on 14th December 2015 because certain buyers had been introduced into the estate, they had taken possession and have to be accommodated. Certain parcels had been transferred to them. Following advice from the Lands Registry, the family and these third parties had held meetings that had resulted in “Memorandum Record Family Settlement” which all beneficiaries had signed except Andrew Loue Nangurai.

2. It is notable that the “Deceased of Settlement” had foreseen a situation like the present one and had embedded a clause providing for its amendment or modification if the family were to agree in writing.

3. The application was served on Andrew Loue Nangurai who did not respond. He had not signed the “Memorandum Recording Family Settlement” dated 29th October 2019. If he was opposed to it he ought to have indicated the opposition by filing a replying affidavit, and so on.

4. The only opposition came from Adijah Nairesia Nangurai (one of the beneficiaries of the estate of the deceased) and Lucy Nyamwizi Mutangurwa (a grand-daughter of the deceased). Adija stated that she filed an application dated 5th November 2018 which had not been heard. He did not indicate why he had not since set down the application for hearing and determination. He stated that he had not signed the Memorandum, and that he did not see any reason why the earlier arrangement had to be reviewed. He did not propose any other way of implementing the judgment without varying it as has been applied. I see that the Memorandum has provided for him. He has not said he was entitled to more than that, or that he has been treated unfairly.

5. Lucy Nyamwiza Mutangurwa filed a replying affidavit dated 7th October 2020. She is daughter of the late Sarah Anana Nangurai who was the deceased’s daughter. The estate of her mother has been provided for in the Memorandum. She can only benefit through that estate.

6. Under **section 47** of the **Law of Succession Act** and **rule 73** of the **Probate and Administration Rules**, I allow the summons dated 8th April 2020 by the applicant John P. Nangurai.

7. This is family dispute. Parties shall bear own costs.

DATED and DELIVERED at NAIROBI this 2ND DECEMBER 2020.

A.O. MUCHELULE

JUDGE