



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)

HCCCMISC E004 OF 2023
IN THE MATTER OF THE ESTATE OF JAMES MORIASI
ONGERA (DECEASED)
DUNCAN MARITA MORIASI.....1ST
APPLICANT
WILSON NYAMWARO MORIASI.....2ND
APPLICANT
JELIAH NYANTUMBA MORIASI3RD
APPLICANT
VERSUS
JOHN NYAMBOGA MORIASI3RD
RESPONDENT

RULING

Background

1. This matter concerns the estate of James Moriasi Ongera (the deceased). It is not in dispute that the deceased died intestate on 17th November 2000.
2. The succession proceedings were initially commenced in Nyamira Chief Magistrate's Court Succession Cause No. 16 of 2001 and were subsequently transferred to this Court by consent of the parties on account of pecuniary jurisdiction.

3. The Applicants are Duncan Marita Moriasi, Wilson Nyamwaro Moriasi, and Jemiah Nyantumba Moriasi, all beneficiaries of the estate of the deceased.
4. The Respondent is John Nyamboga Moriasi, also a beneficiary of the estate. The dispute arises in the context of the administration and distribution of the estate, particularly concerning Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989.
5. During the pendency of the cause before this Court, the dispute was referred to court-annexed mediation pursuant to section 59B of the Civil Procedure Act, Order 46 Rule 20 of the Civil Procedure Rules, 2010, and the Judiciary (Court-Annexed Mediation) Practice Directions, 2015.
6. The parties entered into a Partial Mediation Settlement Agreement dated 21st August 2023, which agreement was duly adopted as an order of this Court on 22nd April 2024.
7. A mediation settlement agreement, once adopted by the Court, attains the status of a consent judgment and is binding upon the parties to the extent of the matters agreed therein.

8. This legal position is anchored in section 59B(4) and (5) of the Civil Procedure Act, which provides that such an agreement is enforceable as a judgment of the Court.
9. The Partial Mediation Settlement Agreement dated 21st August 2023 was therefore binding upon the parties only in respect of the issues resolved through mediation, save for those matters which were expressly referred back to the Court for determination.
10. As set out in paragraph 2 of the mediation agreement, the parties identified the children of the deceased as follows:
 - 1) Dorcas Jane N. Moriasi (deceased), survived by Irene Kerubo, Peter A. Moenga, Enock K. Moenga, and Ruth Moenga**
 - 2) Wilson Nyamwaro Moriasi**
 - 3) Hellen Nyaboke (deceased), survived by Joan Moraa and Evans Omboga**
 - 4) Duncan Marita Moriasi**
 - 5) Lispen Moriasi**
 - 6) John Nyamboga Moriasi**
 - 7) Dickson Marege**
 - 8) Rael Kerubo**

- 9) Janet Nyasuguta**
- 10) Alfred Karani**
- 11) Denis Nyamboga**

11. The parties further agreed on the appointment of administrators of the estate, namely John Nyamboga Moriasi and Duncan Marita Moriasi.

12. At paragraph 3 of the mediation agreement, the parties identified the assets of the deceased as comprising:

- (a) Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989**
- (b) Plot No. 13 Nyamaiya Market**
- (c) Plot No. 2 Nyankono Market**
- (d) Ikonge Market lease plot**
- (e) Land shares at Kitale - North Kish - Chalanganyi**
- (f) Road (tarmac) compensation.**

13. The parties agreed that Plot No. 2 Nyankono Market be sold and that the proceeds be shared equally among all beneficiaries. They further agreed that the Ikonge Market lease plot be allocated to Peter Ongera Moenga. It was

also agreed that the Kitale - North Kish - Chalanganyi land shares, no certificate having been issued, be shared equally among all beneficiaries when the land becomes available. The parties similarly agreed that the road (tarmac) compensation be shared equally among all beneficiaries.

14. As not all issues were resolved through mediation, the Partial Mediation Settlement Agreement referred the following outstanding issues back to the Court for determination namely:

- 1) The mode of distribution of Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989**
- 2) Distribution of Plot No. 13 Nyamaiya Market.**

15. The matter proceeded to hearing on the issues that had expressly been referred back to the Court for determination. The proceedings were anchored on **the** Notice of Motion dated 15th March 2023, supported by an affidavit sworn by the 1st Applicant on 17th October 2023.

16. The Respondent stated that following the death of the deceased, the family was confronted with a substantial

hospital bill and burial expenses. He explained that the family initially explored the option of selling Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989, but the offers received were inadequate. The Respondent further stated that the family thereafter agreed that his own parcel, Land Parcel No. NORTH MUGIRANGO/NYANKONO SETTLEMENT SCHEME/69, be sold as it was capable of attracting better value, and that the proceeds were applied towards settling the hospital bill and burial expenses.

17. It was the Respondent's evidence that following the deceased's burial, the family reduced their understanding into a written Agreement dated 06th December 2000, under which Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989 was allocated to him in exchange. The agreement was produced in evidence as P Exhibit 1, and PW1 stated that it was executed by adult members of the family, including the Applicants. The Respondent also relied on a joint affidavit sworn by several beneficiaries, whose makers testified and corroborated the existence and implementation of the family arrangement.

18. PW2 Alfred Karani Moriasi, PW3 Jane Nyanchama Moriasi and PW4 Joan Moraa Matunda corroborated the Respondent's testimony and confirmed that the agreement P Exhibit 1 reflected a collective family decision.

19. The 1st Applicant, Duncan Marita Moriasi, acknowledged execution of the agreement but contended that the hospital bill was not fully settled. The 1st Applicant produced various receipts and correspondence relating to the hospital bill and funeral expenses.

Submissions

Applicants' Submissions

20. In their written submissions dated 10th December 2025, the Applicants contended that the estate of the deceased ought to be distributed strictly in accordance with the Law of Succession Act, the deceased having died intestate. They submitted that the Court was bound by the statutory scheme of distribution and lacked discretion to depart from it save as expressly provided by law.

21. The Applicants argued that although an agreement dated 06th December 2000 was executed, the same could not override the provisions of succession law, particularly

where estate liabilities had not been fully settled. They maintained that the deceased died with an outstanding hospital bill from Nairobi Hospital, which liability, in their view, remained unpaid.

22. The Applicants further submitted that the parcel known as Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989, being the portion retained by the deceased for his own use ought to be distributed equally among all beneficiaries after settlement of liabilities. In support of this position, they invoked Article 27 of the Constitution, urging equal treatment of all beneficiaries.

23. They urged the Court to find that the Respondent had failed to demonstrate settlement of the hospital bill and to order that the said parcel be distributed among all beneficiaries after payment of the alleged outstanding liability.

Respondent's Submissions

24. The Respondent on the other hand filed written submissions dated 09th December 2025 in which he urged the Court to uphold the Agreement dated 06th December

2000 as a binding family arrangement that had been voluntarily entered into and fully acted upon.

25. The Respondent submitted that the family collectively resolved to sell his parcel, Land Parcel No. NORTH MUGIRANGO/NYANKONO SETTLEMENT SCHEME/69, because it could attract a higher value, and that the proceeds were applied towards the deceased's hospital and burial expenses. The Respondent emphasised that, pursuant to that arrangement, the entire family, including the Applicants, agreed that he would take Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989 in exchange.

26. The Respondent further submitted that all adult family members, including the Applicants, executed the agreement dated 06th December 2000, and that the Applicants could not approbate and reprobate by benefiting from the proceeds of sale and later denying the agreed exchange. He contended that the Applicants were estopped from resiling from the family arrangement.

27. It was also the Respondent's submission that the evidence of PW2, PW3 and PW4 demonstrated that the

hospital bill had been addressed through collective family efforts, and that the Applicants' claim of an outstanding liability was unsupported by credible evidence. The Respondent urged the Court to dismiss the Applicants' claim and to give effect to the family arrangement in order to avoid unjust enrichment

Issues for determination

28. Having considered the pleadings, the affidavit evidence, the oral testimony of the witnesses, the documentary exhibits produced, the Partial Mediation Settlement Agreement, and the written submissions filed by the parties, the Court identifies the following issues for determination:

1) The effect of the Agreement dated 06th December 2000

2) The mode of distribution of Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989

3) Distribution of Plot No. 13 Nyamaiya Market

1) Effect of the Agreement dated 06th December 2000

29. The evidence of the Respondent (PW1), who produced the Agreement dated 06th December 2000 as P Exhibit 1, established that the agreement was executed by adult members of the family, including the Applicants. This evidence was corroborated by PW2 Alfred Karani Moriasi, PW3 Jane Nyanchama Moriasi, and PW4 Joan Moraa Matunda, who confirmed that the agreement reflected a collective family decision. The 1st Applicant, Duncan Marita Moriasi (DW1), further acknowledged execution of the agreement.

30. The Court has considered whether the execution of the Agreement dated 06th December 2000 was vitiated by fraud, coercion, misrepresentation, or undue influence. The Applicants did not allege that their execution of the agreement was vitiated in any manner, nor did the evidence disclose any circumstances suggesting that the agreement was procured improperly.

31. The Court therefore finds that the Agreement dated 06th December 2000 constitutes a voluntary family arrangement, freely entered into and acted upon by the parties, and is binding upon the Applicants to the extent of the equitable obligations arising therefrom.

2) Distribution of Land Parcel No. WEST
MUGIRANGO/NYAMAIYA SETTLEMENT
SCHEME/2989

32. The evidence before the Court establishes that following the death of the deceased, the hospital bill and burial expenses were treated as a collective family liability. In addressing that liability, the family agreed that the Respondent would surrender his own parcel of land, Land Parcel No. NORTH MUGIRANGO/NYANKONO SETTLEMENT SCHEME/69, for sale, as it was capable of attracting a higher value, and that the proceeds would be applied towards meeting the estate's immediate necessities.

33. From the evidence on record, the Court is satisfied that the exchange of land was not conditional upon the full or immediate settlement of the hospital bill. The family arrangement was implemented as a practical response to the circumstances then prevailing and was acted upon by all concerned. The subsequent demand letter for unpaid hospital bills relied upon by the Applicants was issued more than ten years later and does not displace, vary, or qualify the arrangement that had already been performed.

34. Even though Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989 formed part of the free property of the estate pending distribution, the Court finds that the Respondent acquired an equitable entitlement thereto by reason of the family arrangement, his surrender of land for estate necessities, and the Applicants' acquiescence and benefit therefrom.

35. In the circumstances, and having regard to the conduct of the parties, the Applicants, having executed and acquiesced in the family arrangement and benefited from the sale of the Respondent's land, cannot now be permitted to resile from it. The Respondent acted upon the arrangement to his detriment, and it would be unconscionable to allow the Applicants to deny its effect.

36. This position accords with the principle of promissory estoppel as explained by the Court of Appeal in **Mjengo Limited v Menengai Oil Refineries Limited [2025] KECA 85 (KLR)**, where the Court stated that a party who makes a promise or assurance intended to be relied upon, and which is in fact relied upon to the detriment of another, cannot in equity be permitted to resile where doing so would result in injustice.⁴¹ The Court accordingly

holds that the Respondent acquired an equitable entitlement to Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989, which entitlement the Court is bound to give effect to in the distribution of the estate.

37. To permit the Applicants to retain the benefit of the Respondent's detriment while denying him the agreed allocation would amount to unjust enrichment and offend the maxim that equity regards as done that which ought to be done.

3) Distribution of Plot No. 13 Nyamaiya Market

38. The starting point in determining distribution is whether Plot No. 13 Nyamaiya Market formed part of the free property of the deceased available for distribution under the Law of Succession Act.

39. Although the plot was listed among the assets during mediation, no documentary evidence was produced before the Court to establish that the plot was registered in the name of the deceased, allocated to him by the relevant local authority, or otherwise owned by him at the time of his death.

40. In the absence of proof of ownership, the Court cannot find that Plot No. 13 Nyamaiya Market formed part of the estate of the deceased.

41. It therefore follows that the Court is not in a position to determine the distribution of Plot No. 13 Nyamaiya Market on the evidence on record.

Disposition

42. From the foregoing analysis, it is hereby ordered that:

1)the Agreement dated 06th December 2000 is recognised as a valid family arrangement, acted upon by the parties and giving rise to equitable rights enforceable in this succession cause

2)Land Parcel No. WEST MUGIRANGO/NYAMAIYA SETTLEMENT SCHEME/2989 shall vest absolutely in the Respondent, John Nyamboga Moriasi

3)The issue of distribution of Plot No. 13 Nyamaiya Market is not determined, the Court having found that ownership of the said plot by the deceased was not proved

4)Certificate of Confirmation of Grant to issue

5) Each party shall bear its own costs, the dispute having arisen within the family in the course of succession proceedings

6) File closed

**DELIVERED AT NYAMIRA THIS 05th DAY OF
February 2026**

WAMAE.T. W. CHERERE
JUDGE
Appearances

Court Assistant - Hilda

**For Applicants - Mr. Nyachiro for Nyachiro Nyagaka &
Co. Advocates**

**For Respondent - Mr. Okemwa for Okemwa Elijah & Co.
Advocates**