



**In re Estate of Cheptoo Arap Koisum (Deceased) (Succession Cause 97 of 1999) [2025] KEHC 6087 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6087 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 97 OF 1999  
RN NYAKUNDI, J  
MAY 16, 2025**

**IN THE MATTER OF THE ESTATE OF CHEPTOO ARAP KOISUM (DECEASED)**

**BETWEEN**

**MONICA JEPKEMOI CHERUIYOT ..... 1<sup>ST</sup> PETITIONER**

**RAPHAEL KIPKIRUI KIPTOO ..... 2<sup>ND</sup> PETITIONER**

**AND**

**ANNA KIMOI KIPTOO ..... OBJECTOR**

**AND**

**KIMOI TABYOTIM KIPLALAM ..... BENEFICIARY**

**RULING**

1. This court vide its ruling dated 15<sup>th</sup> November, 2024 directed the administrator to file an accurate and comprehensive inventory of all properties forming part of the estate so as to clear out the issue of the allegedly sold properties. The petitioners filed an inventory dated 28<sup>th</sup> November, 2024 in which they advanced their case in a table tabulated as follows:

Properties Sold By The Deceased But Still In The Name Of The Deceased (not Transferred)

TABLE

TR

TC[style border: 1px solid #000; width: 5%]

No

TC[style border: 1px solid #000; width: 44%]

Asset



TC[style border: 1px solid #000; width: 24%]

Purchaser

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Status

TR

TC[style border: 1px solid #000; width: 5%]

1.

TC[style border: 1px solid #000; width: 44%]

Irong/Iten/1xx4

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Kapkessum Women Group Sold On 8<sup>th</sup> January, 1990 By The Deceased At Kshs. 8,000/=.

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No Development On The Land

TR

TC[style border: 1px solid #000; width: 44%]

Irong/Iten/1xx4

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Andrew K. Cherangan

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Title Issued No Development

TR

TC[style border: 1px solid #000; width: 44%]

Irong/Iten/1xx7

TC[style border: 1px solid #000; width: 24%]

Thomas Keitany

TC[style border: 1px solid #000; width: 24%]

Developed With Buildings (photographs Annexed)

TR

TC[style border: 1px solid #000; width: 5%]

4

TC[style border: 1px solid #000; width: 44%]

Irong/Iten/1xx9

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Samuel Chebogi



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Developed With Buildings (see Photographs)

TR

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5.

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Irong/Iten/1x82

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Africa Inland Church (aic)

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Church Building

TR

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6.

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Irong/Iten/1x87

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Africa Inland Church (aic)

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Church Building

TR

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7.

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Irong/Iten/1x88

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Africa Inland Church (aic)

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Church Building

TR

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8.

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Irong/Iten/1xx5



TC[style border: 1px solid #000; width: 24%]  
Thomas K. Kosgei  
TC[style border: 1px solid #000; width: 24%]  
Not Developed  
TR  
TC[style border: 1px solid #000; width: 5%]  
9.  
TC[style border: 1px solid #000; width: 44%]  
Irong/Iten/1xx6  
TC[style border: 1px solid #000; width: 24%]  
Martin Chelimo  
TC[style border: 1px solid #000; width: 24%]  
Developed With Building  
Prior Benefits Received By Beneficiaries  
TABLE  
TR  
TC[style border: 1px solid #000; width: 5%]  
No  
TC[style border: 1px solid #000; width: 32%]  
Assets  
TC[style border: 1px solid #000; width: 37%]  
Beneficiary  
TC[style border: 1px solid #000; width: 23%]  
Status  
TR  
TC[style border: 1px solid #000; width: 32%]  
Irong/Sergoit/7x2  
TC[style border: 1px solid #000; width: 37%]  
Anne Kimoi  
TC[style border: 1px solid #000; width: 23%]  
Title Issued Land Developed  
TR  
TC[style border: 1px solid #000; width: 32%]  
Irong/Sergoit/7x3



TC[style border: 1px solid #000; width: 37%]

Kiptoo Arap Koisum (brother to deceased)

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Title issued developed with buildings.

Various Development On Various Properties

TABLE

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No

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Asset

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Size

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Status

TR

TC[style border: 1px solid #000; width: 5%]

1.

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Irong/Iten/20X5

TC[style border: 1px solid #000; width: 13%]

8.0 Ha

TC[style border: 1px solid #000; width: 48%]

Developed with buildings including main house, stores, children houses fenced with mature trees.

Developed by JSCM

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Irong/Iten/2XX6

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6.0 Ha

TC[style border: 1px solid #000; width: 48%]

Developed with 6 buildings including main house, stores children and grandchildren houses also fenced with mature trees developed by FKK



TR

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3.

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Irong/Iten/2XX7

TC[style border: 1px solid #000; width: 13%]

2.0 Ha

TC[style border: 1px solid #000; width: 48%]

Developed with buildings store houses and children house by Raphael Chepkurui Kiptoo

TR

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4.

TC[style border: 1px solid #000; width: 32%]

Irong/Sergoit/7X2

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3.65 Ha

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Developed with buildings title issued to Anne Kimoi.

Assets of the Estate

Irong/Iten 20X5

Irong/Iten 2XX6

Irong/Iten 2XX7

Irong/Iten 1XX5

Irong/Iten 19X6

Irong/Iten 1XX8

Irong/Iten 1XX1

That no property was sold after the death of the deceased.

Status Of The Above Properties

Irong/Iten/20X5

Occupied by the family of JCM developed with various buildings fenced with mature trees.

Irong/Iten/2XX6

Occupied by family of Francis Kiptoo with buildings, fenced with mature trees.

Irong/Iten/2XX7

Occupied by family of Raphael Kiptoo with buildings and fenced with trees.

Irong/Iten/1XX5



Its centre plot, not developed was earmarked for JCM.

Irong/Iten/1XX8

Its also centre plot, not developed was earmarked for Anne Kimoi.

Irong/Iten/19X6

Its centre plot, not developed was earmarked for Raphael Kipkurui Kiptoo.

Irong/Iten 1XX1

It is centre plot, not developed was earmarked for Francis Kipkosgei Kiptoo01<sup>st</sup> Degree dependants of the deceased (CAK)JCM (son deceased)Raphael Kipkurui Kiptoo (son)FKK (son deceased)Anne Kimoi (daughter deceased)Tapyotim Kemoi (daughter)

2. The inventory finally indicated that the only beneficiary who need to be provided for from the above is Tapyotim Kemoi who can be provided from properties Irong/Iten 1XX5, 19X6 and 1XX1. That originally she had sought for land parcel 1XX4 which land the deceased had sold and transferred to a 3<sup>rd</sup> party.
3. In response to the application, Emmanuel Kiptoo being a grandson to the deceased swore a replying affidavit in which he stated as follows:
  - a. That I am a grandson of deceased Cheptoo Koisum.
  - b. That I am the son of AKK a daughter of the deceased who passed on before the conclusion of these proceedings.
  - c. That in respect of plot number Irong/Iten/1XX4, no evidence of purchase is shown either by Kapkesum Women Group or Andrew Cherangan as alleged. The plot was transferred in 2000 by John Maika before confirmation of grant.
  - d. That it is not true that land parcels number Irong/Iten/1XX4, Irong/Iten/1XX7, Irong/Iten/1XX9, Irong/Iten/1X82, Irong/Iten/1X87, Irong/Iten/1X88 had been sold by the deceased to persons named during his life time as no sale agreements were shown.
  - e. That there is no agreement exhibited to support the allegations of sale of any of the parcels.
  - f. That on prior benefits received by beneficiaries, Irong/Sergoit/7X3 is still an asset of the estate and is ear-marked for the deceased's brother. Land parcel number Karuna/Meibeki/X6 belonged to the deceased but is now registered in the name of Raphael Kipkurui Kiptoo as a prior benefit.
  - g. That the said John Sirma Cheruiyot as a son had no authority to sell the property of the deceased to third parties.
  - h. That the deceased had also sold off land parcels number Irong/Iten/1XX6 to the late Flomena Jepkemboi Chemwetich who constructed a commercial building which is currently being utilized by her nephew and parcel number Irong/Iten/1XX8 to the late William Chesang Cheptalam who also constructed a residential house which is currently occupied by the widow Coreti Chesang, all of which were disclosed to court.
  - i. That as earlier stated land parcel number Irong/Iten 1XX4 was sold by the applicant's father, JCM, after the death of the deceased and he transferred it on 20/11/2000 before confirmation of the grant earlier made to him.
  - j. That parcel number Iron/Sergoit/7X2 was transferred by the deceased to Anna Kimoi during his lifetime and does not form part of the estate.



- k. That the assets of the estate are incomplete. The full inventory is as follows:
- a. Irong/Iten/20X5 b. Irong/Iten/2XX6 c. Irong/Iten/2XX7 d. Irong/Iten/1XX5 e. Irong/Iten/19X6 f. Irong/Iten/1XX8 g. Irong/Iten/1XX1 h. Irong/Iten/1X82 i. Irong/Iten/1XX9 j. Irong/Iten/1XX7 k. Irong/Iten/1XX4 l. Irong/Iten/1973 m. Irong/Iten/1X87 n. Irong/Iten/1XX5 o. Irong/Iten/1XX6 p. Irong/Iten/1X88
- l. That land parcel number Irong /Iten/1XX8 is occupied by Goreti Chesang, Widow of the late William Cheptalam.
- m. That land parcel number Irong/Iten/1XX6 is occupied by the nephew of the late Flomena Chemwetich.
- n. That land parcel number Irong/Iten/1XX5 which is alleged to belong to Thomas Kimutai Kosgei is not true. Thomas Kimutai Kosgei is a grandson to the late Cheptoo Koisum and does not qualify to inherit directly from the grandfather.
- o. In respect of land parcel number Irong/Iten/X5 now 20X5, 2XX6 and 2XX7, he stated as follows:
- i. That it is not true that the deceased had willfully sub-divided the land as alleged. The truth is that it is JCM who spearheaded the sub-division after forcefully getting hold of the title deed.
  - ii. That there was no application for the Land Control Board signed by the deceased.
  - iii. That the deceased did not sign the mutation forms.
  - iv. That the deceased had in fact placed a restriction on the parcel of land to stop the intended sub-division by JCM.
  - v. That when the deceased learnt of the fraudulent sub-division and creation of new titles, he went with me to the Land Registrar where he made a complaint but he was advised to collect the new titles now 20X5, 2XX6 and 2XX7 which were in his name and later apply for consolidation.
  - vi. That the deceased died suddenly before he could do the consolidation.
  - vii. That the alleged mutation forms cannot even be traced.
  - viii. That the fraudulent sub-division of Irong/Iten/X5 now 20X5, 2XX6 and 2XX7 does not account for 0.8Acre of the mother title.
4. The Respondent further stated that during the lifetime of the deceased Anna Kiptoo Kimoi lived with her children and the deceased on part of land parcel Irong/Iten/X5 now known as land parcel number Irong/Iten/2XX7 but following the death of the deceased Raphel Kiptoo forcefully came and ploughed a portion of the land and eventually evicted Anna Kimoi and her children from the parcel. That the original title deed for Iron/Iten/2XX7 is not lost but was in the custody of the deceased Anna Kiptoo Kimoi who gave it to her advocate for safe custody.
5. Further that land parcel number Karuna/Meibeki/Block1(Tilalil)/X6 measuring 10 acres which belonged to the deceased and formed part of his estate had been given by deceased to Raphael Kipkurui Kiptoo.
6. The following were listed as prior benefits:



TABLE

TR

TC[style border: 1px solid #000; width: 59%]

1. Irong/Sergoit/7X2

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AKK

TR

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2. Karuna/Meibeki/X6 (Tilatil)

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Raphael Kipkurui Kiptoo

7. The Respondents proposed their mode of distribution as hereunder:

TABLE

TR

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1.

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Irong/Iten/2XX7

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Anna Kimoi

TR

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2.

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Irong/Iten/20X5

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John S.C Maika - 8 Acres

Raphael Kipkurui Kiptoo - 8 Acres

AKK - 3 Acres

Tapyotin Kimoi Kiptalam - 1 Acre

TR

TC[style border: 1px solid #000; width: 4%]

3.

TC[style border: 1px solid #000; width: 36%]



Irong/Iten/2XX6

TC[style border: 1px solid #000; width: 58%]

Tapyotin Kimoi Kiptalam - 7 Acres

FKK - 8 Acres

TR

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4.

TC[style border: 1px solid #000; width: 36%]

Irong/Iten/1XX7

Irong/Iten/19X6

TC[style border: 1px solid #000; width: 58%]

Tapyotin Kimoi Kiptalam – 0.05 Ha

- 0.05 Ha

TR

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5.

TC[style border: 1px solid #000; width: 36%]

Irong/Iten/1XX9

Irong/Iten/1X82

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Raphael Kipkurui Kiptoo – 0.05 Ha

- 0.05 Ha

TR

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6.

TC[style border: 1px solid #000; width: 36%]

Irong/Iten/1XX1

TC[style border: 1px solid #000; width: 58%]

FKK – 0.05 Ha

- 0.05 Ha

TR

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7.

TC[style border: 1px solid #000; width: 36%]



Irong/Iten/1XX5

Irong/Iten/1973

TC[style border: 1px solid #000; width: 58%]

AKK – 0.05 Ha

- 0.05 Ha

TR

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8.

TC[style border: 1px solid #000; width: 36%]

Irong/Iten/1XX4

Irong/Iten/1X88

TC[style border: 1px solid #000; width: 58%]

John S.C Maika – 0.05 Ha

- 0.05 Ha

TR

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9

TC[style border: 1px solid #000; width: 36%]

Irong/Iten/1XX5

TC[style border: 1px solid #000; width: 58%]

Cecilia Koech - 0.05 Ha

TR

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10.

TC[style border: 1px solid #000; width: 36%]

Irong/Iten/1XX6

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Flomena J. Chemwetich – 0.05 Ha

TR

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11.

TC[style border: 1px solid #000; width: 36%]

Irong/Iten/1XX8

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William Chesang Cheptalam – 0.05 Ha

TR

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12.

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Irong/Iten/1X87

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To be sold by the family to cater for succession costs.

### **Analysis and determination**

8. This succession matter presents two competing visions of property distribution, each reflecting different interpretations of the [[>/akn/ke/act/1972/14 Law of Succession Act]] and different family narratives about the deceased's wishes. On one hand, the petitioners advance a distribution scheme that recognizes certain properties as already sold by the deceased during his lifetime, acknowledges prior benefits received by some beneficiaries, and proposes allocating the remaining estate primarily among first-degree dependents. Their approach emphasizes the deceased's purported intentions as demonstrated by alleged sales and allocations made during his lifetime, along with the practical reality of which beneficiaries have already developed and occupied specific parcels.
9. On the other hand, the objectors present a more inclusive distribution model that questions the validity of alleged sales, challenges the subdivision of the larger parcels as potentially fraudulent, and seeks to ensure all beneficiaries, including grandchildren who claim dependency on the deceased, receive equitable portions of the estate. Their approach prioritizes the legal framework of equal distribution among houses and beneficiaries as prescribed by Sections 35-40 of the [[>/akn/ke/act/1972/14 Law of Succession Act]], while disputing claims that would reduce the distributable estate.
10. At the heart of this dispute lies not only competing claims over specific land parcels, but fundamentally different views of what constitutes fair distribution in a polygamous family structure, how to honour the deceased's intentions when they are contested, and how to balance claims of prior allocation against the statutory requirements of intestate succession. This court must now navigate these competing claims while adhering to the principle that succession is ultimately about providing for dependents and honouring the deceased's legacy through equitable distribution of his estate.
11. Section 40 of the [[>/akn/ke/act/1972/14 Law Succession Act]] deals with the distribution of the estate of a polygamous family and provide as follows: -
  - a. Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
  - b. The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”



12. [\[>/akn/ke/judgment/kehc/2020/10481 In Re Estate of Michael George Tendwa Said \(Deceased\)\]](#) [2020] [\[\[abbr\[title electronic Kenya Law Reports\] eKLR\]\]](#), Section 40 above is the applicable law where there is no agreement on distribution of the estate. He sated as follows:

“any proposed mode of distribution ought to be compatible with and in accordance with the provision thereby leaving no room for distribution based on the whim of the holder of the grant or his/her sentimental feelings”

13. Regarding “equality” in distribution as mentioned in Section 40 above, Court of Appeal in the case of Stephen Gitonga M’murithi –v- Faith Ngira Murithi [2015] eKLR, observed as follows:

“Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried.

Section 40 on the other hand enjoins the inclusion of a surviving spouse as an additional unit to each house hold of a polygamous deceased. Applying the above principles ..... it is our finding that the learned trial Judge fell into an error when he failed to accord equal distribution to all the children of the deceased in violation of section 38 of the [\[>/akn/ke/act/1972/14 Law of Succession Act\]](#) by discriminating against the married daughters of the deceased...”

14. Additionally, in the case of in Re Estate of John Musambayi Katumanga – (Deceased) [2014] eKLR Musyoka J stated as follows:

“Under Section 40 of the Act, if the deceased had several wives, as opposed to households, the estate would devolve depending on the number of children. Ideally, the estate would be divided equally among all the members of the entire household, lumping the children and the surviving spouses together. After that the family members would retreat to their respective houses where Section 35 of the Act would be put into effect, so that if there was a surviving spouse in a house she would enjoy life interest over the property due to her children. The house without a surviving spouse would split its entitlement in terms of Section 38 of the [\[>/akn/ke/act/1972/14 Law of Succession Act\]](#), the children would divide the estate equally amongst themselves. Section 40 was not designed for the circumstances of the instant estate, but it would appear more appealing for the purpose of distribution of the said estate than Section 35. The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is “equally” as opposed to “equitably”. This is the plain language of the provisions. The provisions are in mandatory terms - the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”

15. The primary role of this court in succession matters is twofold: first, to identify the lawful beneficiaries according to the provisions of the [\[>/akn/ke/act/1972/14 Law of Succession Act\]](#), and second, to determine the free estate available for distribution so that it may be shared equally among those beneficiaries in accordance with the law.



16. The deceased, CAK, was a polygamous man with two houses established under customary law. The first house under Soti Kiptoo produced two children: JSCM (now deceased) and Julian Lelmet. The second house under Maria Kabon Kiptoo bore eleven children including Tapyotin Kimoi Kiptalam, Raphael Kipkurui Kiptoo, FKK (deceased), AKK (deceased), and seven other daughters. These children constitute first-degree beneficiaries entitled to equal shares according to Section 38, with distribution first occurring between houses as prescribed in Section 40, which counts each surviving wife as an additional unit.
17. The matter becomes complex where first-degree beneficiaries have passed away, as is the case with JSCM, FKK, and AKK. Generally, their shares would pass to their respective heirs. However, the status of grandchildren as direct inheritors from their grandfather's estate remains contested. The court must therefore carefully examine claims by grandchildren asserting dependency status, particularly those of Emmanuel Kiptoo, Gladys Kiptoo, and Maurice Kiptoo.
18. Turning to the free estate available for distribution, competing narratives emerge. The larger parcels; Irong/Iten/20X5, 2XX6, and 2XX7 form the core of the estate, with smaller center plots surrounding them. However, there remains substantial disagreement regarding numerous smaller parcels allegedly sold to third parties. The petitioners claim that parcels including Irong/Iten/1XX4, 1XX7, 1XX9, 1X82, 1XX5, 1XX6, 1X87, and 1X88 were sold by the deceased during his lifetime though titles remain in his name. The objectors dispute these sales, suggesting that some transactions occurred after the deceased's death without proper authority, while asserting that properties genuinely sold during the deceased's lifetime were properly transferred and are not part of the current distribution dispute.
19. Adding a layer to the complexity, there are prior benefits allegedly received by some beneficiaries. Irong/Sergoit/7X2 was reportedly transferred to AKK during the deceased's lifetime, while Karuna/Meibeki/X6 was purportedly given to Raphael Kipkurui Kiptoo. The law requires that such prior benefits be taken into account when calculating each beneficiary's entitlement to ensure overall equality among children. However, for the prior benefits such as in this case to fully be recognized, they must have been completed. The [\[\[>/akn/ke/act/1972/14 Law of Succession Act\]\]](#) recognizes that during their lifetime, a person may make gifts or advancements to their children or other potential heirs.
21. Gift inter vivos are provided under Section 42 of the [\[\[>/akn/ke/act/1972/14 Law of Succession Act\]\]](#). It provides:
  - “Where-
  - (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
  - (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.”
22. The characteristics of the gifts inter vivos are that they are made and settled during the lifetime of the deceased and have been identified, awarded and settled for the person to whom it has been given. It is a gift made to a beneficiary when the deceased was alive and is considered when distributing the net intestate estate so that person who received it may be considered as having received his share and may reduce or diminish any entitlement to the net intestate estate. The gift which is transferred and settled for the beneficiary during the life-time of the deceased, will not form part of his estate but it



will be taken into account in determining the share of the net intestate estate finally accruing to that beneficiary.

23. In Halsburys Laws of England 4<sup>th</sup> Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:

“Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor’s subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.”

24. Adherence to the rule based-model on transfer of immovable property involves an inquiry on the Law of gifts inter vivos or causa mortis featuring in Odunga’s Digest on Civil Case Law and Procedure Vol (III) Page 2417 at paragraph 5484 (d) e – 1 thus:

“Generally speaking the moment in time when the gift takes effect is dependent on the nature of the gift; the statutory provisions governing the steps taken by the donor to effectuate the gift. (See in *Re Fry Deceased* [1946] CH 312 *Rose: and Trustee Company Ltd v Rose* [1949] CL 78 *Re: Rose v Inland Revenue Commissioners* [1952] CH 499 *Pennington v Wulfe* [2002] 1WLR 2075 *Maledo v Beatrice Stround* [1922] AC 330 Equity will not come to the aid of volunteer and therefore, if a donee needs to get an order from a Court of equity in order to complete his title, he will not get it. If, on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee need no assistance from equity and the gift is complete. It is on that principle that in equity it held that a gift is complete as soon as the donor has done everything that the donor has to do that is to say as soon as the donee has within his control all those things necessary to enable him, complete his title. Where the donor has done all in his power according to the nature of the property given to vest the legal interest in the property in the donee, the gift will not fail even if something remains to be done by the donee or some third person. Likewise, a gift of registered land becomes effective upon execution and delivery of the transfer and cannot be recalled thereafter even though the donee has not yet been registered as a proprietor. (See *Shell’s Equity* 29ED Page 122 paragraph 3)”

25. For a gift inter vivos to be effective, the donor must have performed all necessary acts to perfect the transfer according to the nature of the property. In the case of land, this typically requires not only an intention to transfer but also actual execution of transfer documents and their registration. Where this process remains incomplete at the time of death, the property generally remains part of the distributable estate, though the court may recognize the deceased’s intentions in appropriate circumstances.

26. In this case, the evidence regarding alleged transfers is inconsistent. While the petitioners claim various parcels were sold by the deceased, they acknowledge that formal transfers were not completed in many instances. The respondents dispute these sales entirely, suggesting some were unauthorized post-death transactions. Without clear documentary evidence such as sale agreements, transfer documents, or Land Control Board consents signed by the deceased, the court cannot definitively establish which transactions were legitimate inter vivos dispositions and which were not.



27. Similarly, the subdivision of Irong/Iten/X5 into parcels 20X5, 2XX6, and 2XX7 is contested, with respondents alleging fraud in the process. The absence of mutation forms or Land Control Board applications signed by the deceased raises serious questions about the legitimacy of this subdivision, particularly in light of allegations that the deceased had placed a restriction to prevent such action.
28. The court must be guided by the principle that distribution of intestate property is governed by the [[>/akn/ke/act/1972/14 Law of Succession Act]], and not by unverified claims about the deceased's intentions. While respecting genuine inter vivos transfers is important, allowing unsubstantiated claims to remove property from the distributable estate would undermine the statutory scheme designed to protect all beneficiaries.
29. After careful consideration of the evidence and submissions, I must determine which properties form part of the distributable estate. Regarding the properties claimed to have been sold by the deceased, I note there are competing narratives. While the respondent contends that no valid sales occurred and points to the absence of formal sale agreements, I find that the physical evidence of substantial development on certain parcels provides compelling corroboration of the petitioners' claims. Specifically, parcels Irong/Iten/1XX7 (Thomas Keitany), Irong/Iten/1XX9 (Samuel Chebogi), Irong/Iten/1X82, 1X87, and 1X88 (Africa Inland Church), and Irong/Iten/1XX6 (Martin Chelimo) all demonstrate significant construction by the purported purchasers, as evidenced by photographs annexed to the petitioners' inventory. These physical developments strongly suggest that the respective occupants have been in possession for considerable time with an expectation of ownership, which would be unlikely without some form of transaction with the deceased. While formal transfers were not completed and documentation may be lacking, the court recognizes that rural land transactions do not always follow strict formalities. The substantial developments on these parcels constitute compelling evidence that the deceased had indeed alienated these properties during his lifetime, though the process of formal transfer remained incomplete. Accordingly, I direct the administrators to facilitate proper transfer to the respective occupants who have demonstrated long-standing possession and development, with any outstanding payments to be added to the distributable estate.
30. However, for parcels Irong/Iten/1XX4 and 1XX5, I find insufficient evidence of completed sales. These properties show no development, and no convincing documentation has been produced to verify the alleged transactions. These parcels shall therefore remain part of the distributable estate.
31. Regarding the subdivision of Irong/Iten/X5 into parcels 20X5, 2XX6, and 2XX7, I note serious concerns about the legitimacy of this process. The respondents have alleged that JCM conducted this subdivision without proper authorization, claiming the deceased had not signed the necessary mutation forms or Land Control Board applications and had even placed a restriction to prevent such action. While these allegations raise doubts about the subdivision's legality, I must also acknowledge the practical reality that beneficiaries have developed and occupied these parcels for a considerable period. In balancing these concerns, I will not order consolidation but will instead treat these as separate parcels for distribution purposes.
32. Turning to prior benefits, I find that Irong/Sergoit/7X2 was validly transferred to AKK during the deceased's lifetime and constitutes a completed prior benefit that must be accounted for in distribution. The claimed transfer of Karuna/Meibeki/X6 to Raphael Kipkurui Kiptoo lacks sufficient documentation to establish a completed prior benefit and would only have been counted as such if documentary evidence of completed transfer during the deceased's lifetime was provided.
33. Having established the contours of the distributable estate, I now turn to its proper division according to law. The deceased had two houses established under customary law: the first house (Soti Kiptoo) with two children, and the second house (Maria Kabon Kiptoo) with eleven children. Section 40



of the [[>/akn/ke/act/1972/14 Law of Succession Act]] provides guidance on distribution between houses according to the number of children in each, with any surviving wife counted as an additional unit. While the Act suggests a proportional approach that would yield a ratio of 2:11 between the houses, I am mindful that equitable distribution does not demand mathematical precision. Rather, it requires a balanced consideration of both legal principles and practical realities. The court must ensure fairness in substance rather than rigid numerical equality. Nevertheless, this general proportion, with the first house receiving a smaller share than the second house, roughly in proportion to their respective members provides a useful framework for a just distribution.

34. Guided by this framework and the principle of equitable distribution, I now turn to the specific allocation of properties. For the First House, I find it appropriate to allocate Irong/Iten/20X5 (8.0 Ha) between the two beneficiaries as follows: 6.0 hectares to the heirs of JSCM and 2.0 hectares to Julian Lelmet. This allocation acknowledges several important factors: First, John's heirs have established significant permanent structures on this parcel, including a main house, stores, children's houses, and mature tree fencing, representing substantial investment that would be impractical and wasteful to disturb. Second, Julian Lelmet will also receive the additional allocation of the center plot Irong/Iten/1XX5, providing further balance to her overall share. Third, this arrangement minimizes disruption to existing family settlements while still ensuring both branches of the First House receive meaningful portions of land. The distribution within the First House thus achieves equity when viewed holistically across all allocated properties rather than requiring strictly equal division of each individual parcel.
35. Turning to the Second House, I am guided by both the general proportion of their entitlement and by practical considerations of existing occupation, development, and family needs. In this spirit, I direct the following allocations:
36. Irong/Iten/2XX6 (6.0 Ha), which has been developed with six buildings including a main house, stores, and houses for children and grandchildren, shall be divided with 2.5 hectares allocated to Tapyotin Kimoi Kiptalam and 3.5 hectares to the heirs of FKK. This arrangement recognizes the existing development by FKK's family while ensuring Tapyotin Kimoi Kiptalam, who appears to have received no prior benefit, also receives a substantial allocation.
37. Regarding Irong/Iten/2XX7 (2.0 Ha), I must carefully weigh competing claims while recognizing prior benefits. The evidence indicates that Anna Kimoi and her children previously resided on a portion of this parcel before allegedly being displaced by Raphael Kipkurui Kiptoo, who subsequently developed parts of the land. However, I must also consider that Anna Kimoi received a substantial prior benefit through Irong/Sergoit/7X2 (3.65 Ha), which has been developed with buildings and had its title issued to her. Taking all factors into account, I direct that Irong/Iten/2XX7 be allocated entirely to Raphael Kipkurui Kiptoo, who has invested in its development. This allocation recognizes that Anna Kimoi's heirs have already received significant provision through the prior benefit of Irong/Sergoit/7X2, which is larger than the parcel in question.
38. The center plots shall be distributed as follows: a) Irong/Iten/1XX5 is allocated to Julian Lelmet of the First House, respecting the original earmarking for this house. b) Irong/Iten/19X6 is allocated to Raphael Kipkurui Kiptoo as originally earmarked. c) Irong/Iten/1XX8 is allocated to the heirs of Anna Kimoi as originally earmarked, providing additional compensation for their displacement from Irong/Iten/2XX7. d) Irong/Iten/1XX1 is allocated to the heirs of FKK as originally earmarked. e) Irong/Iten/1XX4 and Irong/Iten/1XX5, which remain part of the distributable estate due to insufficient evidence of completed sales, are allocated to Tapyotin Kimoi Kiptalam who has received no prior benefit and requires additional allocation to achieve equity.



39. Land parcel Karuna/Meibeki/Block 1(TILALIL)/X6 measuring 10 acres, claimed to have been given to Raphael Kipkurui Kiptoo, shall remain part of the distributable estate due to insufficient evidence of completed transfer during the deceased's lifetime. However, in recognition of Raphael's allocation of Irong/Iten/2XX7 and Irong/Iten/1XX6, this parcel shall be divided equally among the remaining beneficiaries of the Second House who have received lesser allocations, specifically: 5 acres to Tapyotin Kimoi Kiptalam and 5 acres to be divided among the seven other daughters of the Second House who have not been specifically mentioned in previous allocations.
40. In making these allocations, I have sought to balance multiple considerations: the guidance provided by Section 40 of the [Law of Succession Act], the practical realities of existing occupation and development, the prior benefits received by certain beneficiaries, and the overarching principle that succession is fundamentally about providing for dependents in a manner that honors both the deceased's legacy and family bonds. While no distribution can perfectly satisfy every competing claim, I believe this approach achieves substantial justice for all concerned.
41. The administrators are directed to implement this distribution with sensitivity to family dynamics and particular attention to protecting vulnerable beneficiaries. They shall complete all necessary transfers within 90 days, facilitate the formal transfer of parcels validly sold by the deceased within 60 days. They must ensure no beneficiary is dispossessed or denied access to their allocated property and that any outstanding succession costs are paid from the proceeds of property sales or proportionally from all beneficiaries.

TABLE

TR

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Property

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size

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Beneficiary

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First House (Soti Kiptoo)

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Irong/Iten/20X5 (portion)

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6.0 Ha

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Heirs of JSCM

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Irong/Iten/20X5 (portion)  
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2.0 Ha  
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Julian Lelmet  
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Irong/Iten/1XX5  
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Center plot  
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Julian Lelmet  
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Second House (Maria Kabon Kiptoo)  
TR  
TC[style border: 1px solid #000; width: 43%]  
Irong/Iten/2XX6 (portion)  
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3.5 Ha  
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Heirs of FKK  
TR  
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Irong/Iten/2XX6 (portion)  
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2.5 Ha  
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Tapyotin Kimoi Kiptalam  
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Irong/Iten/2XX7  
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2.0 Ha

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Raphael Kipkurui Kiptoo

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Irong/Iten/19X6

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Center plot

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Raphael Kipkurui Kiptoo

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Irong/Iten/1XX8

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Center plot

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Heirs of AKK

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Irong/Iten/1XX1

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Center plot

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Heirs of FKK

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Irong/Iten/1XX4

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Center plot

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Tapyotin Kimoi Kiptalam

TR

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Irong/Iten/1XX5



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Center plot  
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Tapyotin Kimoi Kiptalam  
TR  
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Karuna/Meibeki/X6 (portion)  
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5 acres  
TC[style border: 1px solid #000; width: 40%]  
Tapyotin Kimoi Kiptalam  
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Karuna/Meibeki/X6 (portion)  
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5 acres  
TC[style border: 1px solid #000; width: 40%]  
Seven other daughters (shared)  
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Properties Sold by Deceased  
TR  
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Irong/Iten/1XX7  
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Center plot  
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Sold to Thomas Keitany  
TR  
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Irong/Iten/1XX9  
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Center plot  
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Sold to Samuel Chebogi

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Irong/Iten/1X82

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Center plot

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Sold to Africa Inland Church

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Irong/Iten/1X87

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Center plot

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Sold to Africa Inland Church

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Irong/Iten/1X88

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Center plot

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Sold to Africa Inland Church

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Irong/Iten/1XX6

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Center plot

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Sold to Martin Chelimo

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Prior Benefits

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Irong/Sergoit/7X2

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3.65 Ha

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AKK (already received)

Orders accordingly.

**DELIVERED, DATED AND SIGNED THROUGH CTS AND E-MAILS AT ELDORET ON THIS  
16<sup>TH</sup> DAY OF MAY 20X5**

**R. NYAKUNDI**

**JUDGE**

