



REPUBLIC OF KENYA



**Masoin & 2 others v Lagat & another (Probate & Administration  
76 of 2021) [2025] KEHC 5798 (KLR) (9 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 5798 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 76 OF 2021**

**JRA WANANDA, J**

**MAY 9, 2025**

**IN THE MATTER OF THE ESTATE OF CHELAGAT CHEBASA  
RIBINSON ALIAS CHELAGAT CHEBASA (DECEASED)**

**BETWEEN**

**MARIA JEBET ARAP MASOIN ..... 1<sup>ST</sup> PETITIONER**

**KIPKEMBOI EMMANUEL TOROITICH ..... 2<sup>ND</sup> PETITIONER**

**RICHARD KIPROTICH SAWE ..... 3<sup>RD</sup> PETITIONER**

**AND**

**KIPKOECH LAGAT ..... 1<sup>ST</sup> ADMINISTRATOR**

**TOROITICH LAGAT ..... 2<sup>ND</sup> ADMINISTRATOR**

**JUDGMENT**

1. Before this Court for determination is basically the identification of the rightful heirs/beneficiaries of the deceased herein, and the distribution of his estate amongst them.
2. The background of the matter is that the deceased, Chelagat Chebasa Ribinson, died on 10/10/1999 at the age of rarely achieved advanced age 110 years. On 14/07/2021, through a Petition impressively and quite professionally prepared by Messrs Kutto & Ngaira Nabasenge Advocates, Maria Jebet Arap Masoin and Kipkemboi Emmanuel Toroitich, as daughter-in-law and alleged step-grandson son of the deceased, respectively, jointly applied for a Grant of Letters of Administration over the estate of the deceased. It is evident that the said Maria Jebet Arap Masoin was permitted vide a Citation which she filed in Eldoret High Court Succession Cause No. 22 of 2016, to take out the Letters of Administration in place of the sons of the deceased, Kipkoech Lagat and Toroitich Chelagat Busienei, whom she claimed had neglected to act and sued as Citees. Listed as survivors in the Petition were 7 people, including the 2 Petitioners, and listed as assets comprising the estate were two parcels of land, namely,



Cheptiret/Cheplaskei/Block 1 (Kipchamo)/58 and Cheptiret/Cheplaskei/Block 1 (Kipchamo)/59. The Grant was then given to the Petitioners on 28/09/2021. By the Summons dated 18/11/2021, the Petitioners then applied for Confirmation of the Grant.

3. However, by the Summons dated 24/11/2021 and filed through Messrs Bundotich Korir & Co. Advocates, the said Kipkoech Lagat and Toroitich Chelagat jointly filed an Application seeking revocation of the Grant, striking out of the Petition and transfer to the High Court, of proceedings described as Eldoret Chief Magistrate's Court Succession Cause No. 236 of 2017, and its consolidation with this Cause.
4. The grounds alleged were that the said other proceedings involving the same estate were already in existence before this instant one was commenced, and that the Petitioners had obtained the Grant fraudulently by concealment of the fact that the deceased was survived by children who legally rank first in priority insofar as issuance of grant of Letters of Administration is concerned.
5. Fortunately, by consent of the parties recorded before Nyakundi J on 25/11/2021, the Grant was amended to the effect that the said Kipkoech Lagat and Toroitich Chelagat were appointed and/or substituted as joint Administrators, in place of the Petitioners. As directed by the Court, the new Administrators then filed the fresh Summons for Confirmation of Grant dated 7/11/2021 but filed on 9/12/2021. In the Summons for Confirmation of Grant, the Administrators stated that the deceased was survived by only themselves and stated that some of the beneficiaries, without specifying, desire that their shares be transmitted directly to their children. They then proposed that the two properties comprising the estate be registered in the names of the two Administrators. The Petitioners therefore became the Objectors.
6. It was subsequently directed that the issues herein be determined by way of viva voce evidence. Pursuant thereto, the Petitioners and a 3<sup>rd</sup> Applicant, Richard Kiprotich Sawe, jointly filed the Summons dated 31/10/2022 seeking provision for dependents.
7. The parties then filed and exchanged Witness Statements and bundles of documents. I will recite the Witness Statements that were adopted at the trial and thus forming part of the witnesses' respective evidence-in-chief. On their part however, the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners did not file Statements but relied on their various Affidavits filed herein. For them, I will recite the Affidavit sworn by the 1<sup>st</sup> Petitioner on 18/11/2021 in support of the Petitioners' Summons for Confirmation of Grant which seems to be the all-inclusive and most elaborate.

#### **1<sup>st</sup> Petitioner/Objector's Affidavit sworn on 18/11/2021**

8. The 1<sup>st</sup> Petitioner deponed that the deceased was her father-in-law and died "partially" intestate, that she was married to one Kili Arap Masoin who died around 1971 and is one of the sons of the deceased and as such, she is entitled to inherit. She deponed further that their marriage was blessed with 2 children, namely, the 2<sup>nd</sup> Petitioner and one Magarina Cheptoo. She then referred to earlier Citation proceedings which she filed together with the 2<sup>nd</sup> Petitioner, as Eldoret Chief Magistrates Court P&A No. 236 of 2017 but which was struck out for lack of pecuniary jurisdiction.
9. She deponed that that the Administrators have locked her out of the estate, that the deceased, that prior to his death, the deceased had given her a gift inter vivos of 30 acres of the parcel of land Cheptiret/Cheptiret Block 1 (Kipchamo)/58, that on 9/09/2016, and that the Administrators demolished her house newly built on the said parcel of land causing her to suffer damages amounting to Kshs 88,700 and which malicious damage act she reported to the police but for which no action has been taken to date. She urged that the Administrators have never resided on the 2 parcels of land comprising the estate



and which parcels were given to her and her husband, Kili Arap Masoin. She contended that the 1<sup>st</sup> Administrator resides at Kamolo area, Kaptagat on over 100 acres of land where he has established his homestead and which land was given to him by the deceased, that similarly, the deceased also gave the 2<sup>nd</sup> Administrator about 30 acres of land in Tendwa Farm, Elgeyo Border where he has also established his home. She contended further that the deceased also gave one Chesire Chelagat, the 1<sup>st</sup> born child of the deceased, 20 acres of land at Toror Farm where he, too, has established his home. She therefore contended that the Administrators should not be given any of the 30 acres portion already given to her in Cheptiret/Cheptiret Block 1 (Kipchamo)/58, by the deceased. She then deponed that her beneficial interest on the estate is two-fold, first, as a daughter-in-law and secondly, as a recipient of gift inter vivos. For the 2<sup>nd</sup> Petitioner and 3<sup>rd</sup> Objectors, she deponed that their claim is also two-fold, first, by being grandsons and secondly, having stayed on the land together with their family for all of their lives and having depended on the deceased prior to his death. She then gave her proposed 3 options in respect to distribution of the estate as follows:

1. 1<sup>st</sup> Option

Cheptiret/Cheptiret Block 1 (Kipchamo)/58 measuring approx. 17.818 (44.5 Acres)		
i)	Maria J. Arap Masoin	30 Acres (gift inter vivos)
ii)	Kili Arap Masoin	10 Acres (heir)
iii)	Kipkemboi Emmanuel Toroitich	2.5 Acres (dependent)
iii)	Richard Kiprotich Kiplagat	2 Acres (dependent)
	Total	44.5 Acres
Cheptiret/Cheptiret Block 1 (Kipchamo) 59 measuring approx. 9.16 (22.5 Acres)		
i)	Chesire Chelagat	7.6 Acres (heir)
ii)	Toroitich Chelagat	7.6 Acres (heir)
iii)	Kipkemboi Emmanuel Toroitich	7.6 Acres (heir)
	Total	22.9 Acres

2. 2<sup>nd</sup> Option



Cheptiret/Cheptiret Block 1 (Kipchamo)/58 measuring approx. 17.818 (44.5 Acres)		
i)	Chesire Chelagat	11 Acres (heir)
ii)	Kili Arap Masoin	11 Acres (heir)
iii)	Kipkemboi Emmanuel Toroitich	14 Acres (dependent)
iii)	Richard Kiprotich Kiplagat	8 Acres (dependent)
	Total	44.5 Acres
Cheptiret/Cheptiret Block 1 (Kipchamo)/59 measuring approx. 9.16 (22.5 Acres)		
i)	Toroitich Chelagat	11 Acres (heir)
ii)	Kipkoech Chelagat	11 Acres (heir)
	Total	22 Acres

3. 3<sup>rd</sup> Option

Cheptiret/Cheptiret Block 1 (Kipchamo)/58 measuring approx. 17.818 (44.5 Acres) and Cheptiret/Cheptiret Block 1 (Kipchamo)/59 measuring approx. 9.16 Ha (22.9 Acres)	
Chesire Chelagat	Heir

10. The 1<sup>st</sup> Petitioner however added the rider that notwithstanding, she urges the Court to consider the 1<sup>st</sup> option which has taken care of her gift inter vivos.

**Statements of Petitioners' other Witnesses**

11. Joseph Malakwen Serem, in his Statement, stated that the deceased was his neighbour as their parcels of land bordered each other, and that he knew the deceased in the year 1963. He listed names of the deceased's 6 children, including the late Kili Arap Masoin. He also stated that Kili Arap Masoin was the 1<sup>st</sup> Petitioner's husband and with whom the 1<sup>st</sup> Petitioner got 2 children, namely, the 2<sup>nd</sup> Petitioner and one Margaret Jeptoo and that the parcel of land is occupied by the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors who stayed with the deceased till his death till in 1999 and still stay thereon. He urged the Court to provide for the Petitioners as dependents of the deceased.
12. Milka Chemutai stated that she is the 2<sup>nd</sup> Petitioner's wife and she knew the deceased even before she got married in his home as he was also her neighbour. She stated that she got married to the 2<sup>nd</sup> Petitioner around 1990 under Nandi customary law during which time the deceased was still alive and that the 2<sup>nd</sup> Petitioner was staying on the deceased's farm. She stated further that the deceased used to stay at both Kaptagat and also on the suit land where they stayed with him. She also urged that she has 3 children with the 2<sup>nd</sup> Petitioner and that when she got married, she found the 3<sup>rd</sup> Objector residing with his



brother, the 2<sup>nd</sup> Petitioner. She agreed that some of the Administrators' children cultivate on the said farm. In conclusion, she prayed that the Court grants her and her husband a share of the suit land.

13. Richard Kiprotich Sawe, the 3<sup>rd</sup> Objector stated that he is a son of the 1<sup>st</sup> Petitioner who was married to the late Kili Arap Masoin, that he was born around 1971 in Kaptagat but he does not know his father, that around 1978, her mother and himself came to reside with the deceased on the suit land, the deceased is Kili Arap Masoin's father, his foster grandfather and who welcomed them to the home, and that at that time he (3<sup>rd</sup> Objector) was aged 11 years old. He stated further that later around 1981, the 1<sup>st</sup> Administrator had a conflict with the 3<sup>rd</sup> Objector's mother and chased her away from the homestead, all along the Administrators have been living on their respective farms at Kenmosa Farm and Elgeyo border-Tendwo, respectively. He stated that after the 1<sup>st</sup> Petitioner chased her mother away as aforesaid, they went to Kaptagat at a well-wisher's home and this was around 1981-1982, that he later went to Baringo and subsequently returned to the home of the deceased around 1989 and was welcomed by the deceased who stayed with him until his death, he got married in 1993 when the deceased was still alive and the deceased died later in 1999. He stated that he has all along been living on the said land with his family to date. He, too, prayed that the Court provides for him as a dependent of the deceased.
14. Grace Chepkurui stated that she is a daughter-in-law to the 1<sup>st</sup> Petitioner as she got married to the 3<sup>rd</sup> Objector around 1993 under customary law. She stated that by the time she got married to the 3<sup>rd</sup> Objector, the deceased had already relocated to Kaptagat and the 3<sup>rd</sup> Objector was residing with his brother, the 2<sup>nd</sup> Petitioner on the suit land. She stated that she has 5 children, she has known the said farm at Chebasa Chelagat as their ancestral land and prayed to the Court to allocate them a share thereof.

#### **Administrators' Witness Statement**

15. I have carefully gone through the Court file and also the Judiciary Case Tracking System (CTS) online portal but have not managed to trace the Witness Statement of the Administrators' sole witness who testified. Despite this Court's Administration's reaching out to the Administrator's Advocates' office about this fact, no copy was supplied. I therefore presume that none was filed and that the witness therefore relies on his Affidavits on record.
16. The matter then proceeded to trial. At the hearing, the Objectors called 6 witnesses while the Administrators called 1. All the witnesses testified before me.

#### **Oral Testimonies of Petitioners/Objector's Witnesses**

17. PW1 was the 1<sup>st</sup> Petitioner, Maria Jebet Arap Masoin. She testified on 27/02/2023, adopted her Affidavits referred to above and basically reiterated the matters already stated therein including that she is the wife of the late Kili Arap Masoin who died in 1971. Led in her evidence-in-chief by Mr. Nabasenge, she stated that she left the home of the deceased when the deceased was still alive but she later returned. Under cross-examination by Mr. Korir, she agreed that she had no Marriage Certificate to prove her marriage to the late Kili Arap Masoin and also no witnesses to the marriage ceremony conducted. She also conceded that she never attended the burial of Kili Arap Masoin in Singoi when he died and also did not have any Certificates of Birth for any of her children. When referred to the alleged Gift inter vivos Instrument dated 22/9/1987 produced by her, she agreed that it was now 30 about years old and conceded that it had no witnesses, and neither does it state the Land Reference number. Regarding her claim of being a dependent of the deceased, she conceded that she did not have any receipts or documents to prove that the deceased was supporting her financially. She insisted that the deceased told her to stay on the land but agreed that the late Kili Arap Masoin, predeceased Chelagat



Chebase Ribinson, by about 27 years. She also agreed that the 2 Administrators are the only 2 surviving sons of the deceased.

18. PW2 was the 2<sup>nd</sup> Petitioner, Kipkemboi Emmanuel Toroitich. He, too, testified on 27/02/2023 and he, too, adopted his Affidavit. In cross-examination, he reiterated his names despite some noted discrepancy in the name appearing in some of his documents. He, too, conceded that he did not have any documents to prove that he was a dependent of the deceased nor Birth Certificate and also conceded that in his Affidavit, he did not state the Land Reference number. In re-examination, he testified that he was 10 years old when Kili Arap Masoin died and insisted that it is the deceased who took care of him. Regarding proof that the deceased paid for his school fees, he stated that he never went to school and as such, the issue of such proof does not arise.
19. PW3 was Joseph Malakwen Serem. He testified on 6/03/2023 and adopted his Statement and reiterated that the deceased was his neighbour and that he knows his children. He then mentioned 4, namely, Chesire, Busienei, Kipkoech and Maria Chelal. He reiterated that he knew the 1<sup>st</sup> Petitioner around 1978 and stated that the deceased used to tell them that the 1<sup>st</sup> Petitioner was the wife of the deceased's late son, Kili Arap Masoin. He testified that the 1<sup>st</sup> Petitioner was therefore brought to the home in 1978 and had 2 children, Margaret Cheptoo and Emmanuel Kipkemboi, and that she also came with Kiprotich Sawe who however was not the son of the late Kili Arap Masoin. In cross-examination, he stated that the deceased did in 1998 at Kaptagat but stated that he did not attend his funeral. He stated that the deceased left the Plateau area around 1987 about 10 years earlier and that the 1<sup>st</sup> Petitioner was not living in the Plateau land when the deceased left for Kaptagat. He conceded that he never saw the late Kili Arap Masoin whom, he stated, did not have even a house at the home, and nor did he witness the late Kili Arap Masoin living with the 1<sup>st</sup> Petitioner but stated that the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors live there. He conceded that in his Witness Statement, he did not indicate the Land Reference number of any parcel of land but insisted that the Petitioners/Objectors were dependents of the deceased because the deceased was taking care of them. He however conceded that he did not produce any receipts to prove the alleged dependency and agreed that they, during the last 10 years before the deceased died, were not such dependents.
20. PW4 was Milka Chemutai who also testified on 6/03/2023. However, before she could testify, Mr. Korir, Counsel for the Administrators objected pointing out that the witness had been sitting in Court when PW1, PW2 and PW3 all testified. However, after some consultations, Mr. Korir agreed, and I directed, that the witness would be permitted to testify and the parties would be at liberty to take up the issue of the witness's credibility and the weight of her evidence at the stage of submissions.
21. With the above directions, PW4 adopted and reiterated her Witness Statement. and reiterated that she is a daughter-in-law of the deceased as she is the 2<sup>nd</sup> Petitioner's wife and that she was married in 1990 and before that she was living in the neighbouring area. She stated that she moved into the homestead of the deceased when she got married and that even before that, the deceased and her father were friends. She testified that the 2<sup>nd</sup> Administrator lives in Kaptagat and insisted that both Administrators have never lived in the suit land. She stated that she and her husband cultivate 2 acres of the land but agreed that the Administrators and their sons also cultivate thereon because they have money. She also reiterated that the 3<sup>rd</sup> Objector is her brother-in-law and has always lived on the same land with his wife and children. In cross-examination, she stated that when she got married to the 2<sup>nd</sup> Petitioner in 1990, the deceased was not in the home as he had already left in 1987 for Kaptagat where he was buried. She also conceded that she never saw Kili Arap Masoin. She insisted that she lives on the land in a house which was built by her husband and that she witnessed the house being built around 2008 but that before that, they had a smaller house (singira) next to the deceased's house. She agreed that the Administrators' sons also still live there and cultivate the same land. She testified that the entire land is



about 40 acres in which she and her husband cultivate about 2 acres and their house occupies about 0.3 acres and agreed that the 1<sup>st</sup> Petitioner has never lived there nor cultivated the land. She stated that the 3<sup>rd</sup> Objector also has a house on the same land and has also planted trees on another portion and that he occupies about 3 acres and that he settled there permanently after finishing school. She claimed that the deceased used to support her and her husband, showed them their portion and allowed them to the ones paying land rates. In re-examination, she testified that the Administrators' sons only came to the land recently, some just about 2 years back, and that the deceased left the land for Kaptagat after being frustrated by the Administrators who about 3 years ago brought down the deceased's house. She claimed that they only cultivate a small portion of the land because they do not have money and that the Administrators even blocked their walking paths.

22. PW5 was the 3<sup>rd</sup> Objector, Richard Kiprotich Sawe. He testified on 10/05/2023, also adopted his Statement and also reiterated the matters already stated therein including that the 1<sup>st</sup> Petitioner is his mother, that the late Kili Arap Masoin was her mother's husband and that he does not know his own father. He mentioned the names of some of the children of the deceased and stated that it is the deceased who took care of him and that the deceased was the father of the said Kili Arap Masoin. He reiterated that he knew the deceased in 1978 at which time he was about 8 years old. He stated that it is Bot Chela (a daughter of the deceased) who brought them to the home. He further stated that he still lives there with his wife and children, he has a house there, he never saw the late Kili Arap Masoin and that he does not know where they came from with his mother. In cross-examination, he testified that they came to the home in 1978 and stayed until 1981 when they were chased away, that they stayed away for about 8 years and returned about 1989 by which time the deceased had moved to the home of his son (1<sup>st</sup> Administrator) in Kaptagat which is about 7 kilometres away where he stayed until his death. He testified that the deceased, even as he was away, was aware of their return, that he was told so by his brother, the 2<sup>nd</sup> Petitioner, and that he never met the deceased again when they returned. He conceded that he only lived with the deceased between 1978 to 1981, a period of only 3 years but stated that he attended his burial. He stated that he occupies 0.2 acres and cultivates about 2 acres, and that only 1 son of the 1<sup>st</sup> Administrator is on the suit land but agreed that for the 2<sup>nd</sup> Administrator, there are several of his children who occupy plot No. 59. He stated that himself, he occupies plot number 58. He then agreed that although only one son of the 1<sup>st</sup> Administrator lives there, there are others who, although they do not live there, nonetheless cultivate the land and they have been doing so since the deceased died. He testified that when they were chased away as aforesaid, they went to live in Kesses where their mother (1<sup>st</sup> Petitioner) has a home and still lives to date. In re-examination, he pointed out that there were two versions of the Death Certificate for the deceased as produced by the rival parties. He then gave a complete list of the family members who either live or cultivate on the land.
23. PW6 was Grace Chepkurui who testified on 20/07/2023 and who, too, adopted her Statement. She reiterated matters stated therein including that she is the 3<sup>rd</sup> Objector's wife and that the 1<sup>st</sup> Petitioner is thus her mother-in-law. She stated that she got married to the 3<sup>rd</sup> Objector when he was already living on the suit land, that they have children and also grandchildren and the land is the only place they know as home. She insisted that the 1<sup>st</sup> Administrator has never lived on the land. In cross-examination, she agreed that by the time she got married, the deceased had already moved and that she never therefore lived there again. She testified that the 2<sup>nd</sup> Petitioner was however already there with the 3<sup>rd</sup> Objector but she could not explain how they settled there, whether they invaded it forcefully or not. She stated that herself and her husband, they occupy 2 acres which they live on and also cultivate. She agreed that she never saw the deceased give out any clothes or any other form of assistance to any of the Petitioners/Objectors. When asked whether she was aware that the 1<sup>st</sup> Petitioner was married to one Mosoine Kili, she testified that she only heard so and stated that the said Mosoine Kili was the son of the deceased. In re-examination, she stated that the Administrators' sons, although they only came much later to the



land, have by now been there for about 10 years. She then reiterated the conflicts that have been on the land and stated that the Administrators have been trying to get them out thereof.

### **Administrators' Testimony**

24. The 1<sup>st</sup> Administrator, Kipkoech Lagat, DW1, testified on 23/11/2023 and 30/07/2024 and he, too, adopted his Statement. In cross-examination, he reiterated the matters contained therein. He then stated that the late Kili Arap Masoin was his late brother but insisted that he died in the 1950s in Moiben even before independence and never got married although he had one child, namely, Magarina Cheptoo. He denied that the Petitioners had ever lived with the late Kili Arap Masoin nor that they were dependents of the deceased. In cross-examination, he testified that she came to know the 1<sup>st</sup> Petitioner when she reported him to the Chief and he met her for the first time at the Chief's office in Plateau, and that the 1<sup>st</sup> Petitioner was claiming a share of his father's land in Plateau. He agreed that he had himself never lived on the Plateau land as he was born in Kaptagat.
25. He testified that he does not know where the late Kili Arap Masoin was born but stated that before his death, he used to live in Chepkor but died in Moiben. He denied that Kili Arap Masoin was living at the Plateau Farm and testified that it is the deceased who used to live there since the 1960s. He insisted that Kili Arap Masoin died even before independence and he never married nor get any children. He stated that although Kili Arap Kili was living elsewhere, still, he would have known had he gotten married. He then clarified that although in his Statement he had stated that the 1<sup>st</sup> Petitioner came with 2 children, the correct fact is that she came while pregnant and after she gave birth there, she again got pregnant while there. He agreed that the 2<sup>nd</sup> Petitioner currently lives on the land but denied any knowledge of the 3<sup>rd</sup> Objector. He however then also conceded that the 3<sup>rd</sup> Objector is also on the suit land in Plateau but insisted that they all came forcefully and live there with their families.
26. He conceded that at some point when the 1<sup>st</sup> Petitioner was being built for a house, he (DW1) brought it down but he insisted that this was even before the commencement of these proceedings and that the 1<sup>st</sup> Petitioner reported him to the Chief. He insisted that the 1<sup>st</sup> Petitioner is an outsider and cannot be a beneficiary as she was never married in their family and only met his brother in the forest. He conceded that the 1<sup>st</sup> Petitioner's 2<sup>nd</sup> born child, Magarina Cheptoo, is his brother Kili Arap Masoin's child but insisted that the rest are not. He agreed that both he and his brother, the 2<sup>nd</sup> Administrator live in Kaptagat, each in his own farm and that both parcels of land were inherited from their father. Regarding the Plateau land, he stated that 3 grandchildren of the deceased lived there. In re-examination, he reiterated that at no time did his father ever support the Petitioners/Objectors, whether materially or financially.

### **Directions on Filing of Submissions**

27. Pursuant to directions given on 30/07/2024, the parties filed written Submissions. The Petitioners/Objectors filed their Submissions dated 20/11/2024 and the Administrators filed theirs dated 20/09/2024.

### **Petitioners/Objector's Submissions**

28. Counsel for the Objector, Mr. Nabasenge, submitted that the Petitioner's testimony was corroborated by PW3, an independent witness, Joseph Malaken Serem, and also urged that the deceased had expressed his will through the gift inter vivos instrument dated 22/09/1987 by gifting the 1<sup>st</sup> Petitioner 30 acres of land. He cited the case of *In re Estate of The Late Gedion Manthi Nzioka (Deceased) [2015] eKLR, H.C. at Machakos Succession Cause No. 122 of 2010*. He submitted further that it is clear that both the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners/Objectors were raised by the deceased, that the 2<sup>nd</sup> Objector's father,



Kili Arap Masoin, who is a son of the deceased died while the 2<sup>nd</sup> Objector was of tender age and hence the deceased took care of him until his demise in 1998 and that he has since settled on the suit land and is married with 3 children. He submitted that the 1<sup>st</sup> Petitioner testified that his brother-in-law, the 1<sup>st</sup> Administrator, chased her away from the matrimonial home after the demise of her late husband, Kili Arap Masoin, but she later came back and at that time, she came with her own child who happens to be the 3<sup>rd</sup> Objector, that the deceased welcomed them and took care of the 3<sup>rd</sup> Objector until his demise and that he has since settled on the suit land and is also married with 5 children.

29. According to Counsel, the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors have demonstrated that at the time of the demise of the deceased, they depended on him as they lived with him and when he died he left them on the suit property where they have settled and raised their families, that the two depended on the deceased by virtue of staying on his land until he passed on and are therefore qualified to be dependants pursuant to the provisions of Section 26 of the Law of Succession Act as read with Sections 27, 28 and 29 thereof and are entitled to inherit. He cited the case of *Morris Mwiti Mburugu Vs Denis Kimanthi M'Mburugu* [2016] eKLR H.C at Nairobi Succession Cause No. 43 of 2015. He submitted further that the estate is vast, the parcel of land L.R Cheptiret/Cheptiret Block 1 (Kipchamo)/58 is 44.5 acres while Cheptiret/Cheptiret Block 1 (Kipchamo)/59 is 22.9 acres, the total acreage is therefore approximately 67 acres and there is no reason as to why the two dependants should not get a share of the two parcels of land which parcels they have lived on and taken care of to date.
30. He also pointed out that while the Administrators in their Summons for Confirmation dated 7/11/2021 listed themselves as the only beneficiaries, they have not been consistent since in their Summons dated 24/11/2021 whereof they sought revocation of the Grant, they listed 7 beneficiaries and, in their Petition dated 13/07/2017 filed in Eldoret Chief Magistrates Court vide CMCC P & A 236 of 2017, they listed 4 beneficiaries. According to Counsel therefore, the Administrators are malicious and their sole intention is to disinherit other beneficiaries and have on several occasions concealed material facts. He also pointed out that according to the Chief's letter dated 2/05/2017 that was relied upon by the Administrators in filing their Petition in the Chief Magistrates Court, the beneficiaries of the deceased were listed as Chesire Chelagat (deceased), Kili Masoin (deceased) and the 2 Administrators while according to the Chief's letters dated 16/05/2018 and 2/07/2020, they have listed only themselves as the only 2 beneficiaries.
31. According to Counsel therefore, the beneficiaries are Chesire Chelagat (deceased), Kili Masoin (deceased) and the 2 Administrators while the dependents are the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors. He however pointed out that it is not clear whether the said Chesire Chelagat was survived by any children as there is no evidence produced to that effect but it is apparent that the late Kili Arap Masoin was survived by the widow herein, the 1<sup>st</sup> Petitioner and her 2 two children, the 2<sup>nd</sup> Objector and Magarina Cheptoo. He also pointed out that the 1<sup>st</sup> Administrator testified that he has never stayed on the suit land and stays at Kaptagat farm on 100 acres of land whereas his brother, the 2<sup>nd</sup> Administrator, stays at Elgeyo Border on 30 acres of land, and that the 1<sup>st</sup> Administrator testified that the 100 acres land at Kaptagat at Kamolo area that the 1<sup>st</sup> Administrator resides in was given to him by the deceased. According to Counsel therefore, the intention of the deceased was to allocate the two parcels of land in question and that this is so because he settled his 2 sons, the Administrators, on their respective parcels of land at Kaptagat and Elgeyo border respectively. He therefore urged that the two parcels of land herein be distributed to the late Kili Arap Masoin as beneficiary and to the dependents, the 2<sup>nd</sup> and 3<sup>rd</sup> Objectors as dependents, and in the alternative, if the Court is inclined to distribute the same to the Administrators, then it should consider the fact that the two had already been allocated land elsewhere by their father as aforesaid. He cited Section 42 of the Law of Succession Act.



## Administrators' Submissions

32. On his part, Mr. Korir, Counsel submitted that the first issue to be determined is whether the [Law of Succession Act](#) is applicable to Kili Arap Masoin's estate considering that he died in 1981. According to him, since Section 2(2) thereof limits the applicability of the Act to the estates of persons dying after 1/07/1981, thus the Objectors cannot invoke provisions of the Act to lay claim to the estate of Kili Arap Masoin. According to him therefore, what is applicable to that estate is customary law. He also pointed out that Kili Arap Masoin died sometime in 1958 and the deceased herein died in 1998 and the question is therefore whether the estate of Kili Arap Masoin is entitled to a share of the estate of the deceased. He then submitted that in any event, in respect to their claims under Section 38 and 41 of the [Law of Succession Act](#), the Petitioners/Objectors have not tendered any grant of representation to the estate of Kili Arap Masoin which would have enabled them to agitate or speak on behalf of the estate. He cited the case of re Estate of Francis Andachila Luta (Deceased) (Succession Cause No 875 of 2012) [2022] KEHC 16900 (23 December 2022) and also the case of Nairobi Succession Cause No. 2015/2012 in the matter of the estate of Joshua Orwa Ojode (deceased) [2014] eKL. He also urged that the 1<sup>st</sup> Petitioner was never married to Kili Arap Masoin as she never tendered any evidence to that effect.
33. He cited Section 107 of the [Evidence Act](#) on the burden of proof and also the case of Njoki vs Mathara and Others, Civil Appeal No. 71 of 1989, the case of [Hortensiah Wanjiku Yawe vs The Public Trustee, Civil Appeal No. 13 of 1976](#) and several others. He then cited Section 29 of the [Law of Succession Act](#) on the definition of a "dependent" and submitted that it was admitted by the Petitioners/Objectors that the deceased had left his home and went to stay with the 1<sup>st</sup> Administrator 10 years into and/or prior to his death, that they also admitted that by the time the Petitioners/Objectors came to occupy the land at Plateau, the deceased had already left his home. According to Counsel therefore, the Objectors do not meet the threshold set out in Section 29 of the Act to qualify as "dependents" as there was no evidence led that they were being maintained immediately prior to the intestate death. In conclusion, he submitted that the Administrators being the only surviving sons of the deceased and the deceased having died without a spouse, in accordance with Section 38 of the Act, the estate should be distributed exclusively to them.

## Determination

34. The broad issue herein, in my view, is "whether this Court should recognize the Petitioners/Objector as beneficiaries and/or dependents of the deceased and therefore whether they should inherit from the estate of the deceased".
35. In answering the said questions, I must state that that although the estate in contention herein is the estate of the deceased, Chelagat Chebasa Ribinson, the basis of the Petitioners/Objector's claims is their alleged relationship or nexus to the separate estate of Kili Arap Masoin whom they claim to have been the 1<sup>st</sup> Petitioner's husband and thus, the 2<sup>nd</sup> Petitioner's father and the 3<sup>rd</sup> Petitioner's step-father. The Administrators' Counsel, Mr. Korir has raised the issue that the [Law of Succession Act](#) is not applicable to the separate estate of the late Kili Arap Masoin considering that he died in the 1950s. This is because Section 2(2) of the [Law of Succession Act](#) limits the applicability of the Law of the Succession Act to the estates of persons who died after 1/07/1981. Mr. Korir has therefore submitted that the Petitioners/Objectors cannot invoke provisions of the [Law of Succession Act](#) to lay claim to the estate of Kili Arap Masoin to which estate the applicable law is customary law. While I agree with Mr. Korir on this general observation of the law, I do not find it relevant to the issues before me since in this case, the Court is not dealing with the estate of Kili Arap Masoin but that of the deceased herein, Chelagat



Chebasa Ribinson. In any event, no customary law practice was presented to the Court for the Court to determine whether it was contrary or different from the law or arguments presented by the Objectors.

36. There is also the question whether the estate of Kili Arap Masoin is entitled to a share of the estate of the deceased considering that Kili Arap Masoin died either sometime around 1958 as alleged by the Administrators or 1971 as alleged by the Petitioners/Objectors, and the deceased (his father) died much later in 1998. From the foregoing, it is clear that Kili Arap Masoin predeceased his father, the deceased herein. According to Mr. Korir, for this reason, the estate of Kili Arap Masoin is not entitled to a share of the estate of the deceased since no right of survivorship accrued to the estate. Again, while this may be a debatable point, the Petitioners/Objectors claim is multi-pronged and the issue of Kili Arap Masoin pre-deceasing his father, alone, may not have any significant effect on the case.
37. What I will agree with Mr. Korir on is that the limb of the Petitioners/Objector's claim, particularly the claim by the 1<sup>st</sup> Petitioner as an alleged daughter-in-law, brought in the name of the estate of Kili Arap Masoin may meet headwinds since the Petitioners/Objectors did not tender any grant of representation given to them by any Court donating to them the legal right to make claims on behalf of the estate of Kili Arap Masoin.
38. The 1<sup>st</sup> Petitioner has alleged that the deceased had given her a gift inter vivos of 30 acres of the parcel of land Cheptiret/Cheptiret Block 1 (Kipchamo)/58 before he died. She however conceded that the handwritten alleged gift inter vivos instrument dated 22/9/1987 that she produced is unhelpful as it does not even state the particulars, including Land Reference number, of the parcel of land concerned. There is also no evidence that it is even registered against the title to any parcel of land. There are also no witnesses to it. I find it highly unlikely that the deceased would transmit a substantial 30-acre parcel of land in such casual and informal manner without informing or involving any of the concerned people. I am not at all satisfied that the alleged casual handwritten document, with no corroboration in support, is capable of justifying a Court of law to declare a whole 30 acres portion of land as having been given out as gift inter vivos.
39. Regarding the limb of the claim brought on the basis of the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners being grandchild and/or step-grandchild of the deceased, respectively, the entitlement of grandchildren to inherit from their grandfather, their fathers having predeceased them, is recognized under Section 41 of the [Law of Succession Act](#) which provides that where one of the children of the deceased is himself/herself deceased, and such deceased child is survived by a child or children of his/her own, then the share due to him/her ought to devolve upon his/her said child. The Section is premised in the following terms:

“ 41. Property devolving upon child to be held in trust

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.”

40. On its part, Section 38 provides as follows:

“ 38. Where intestate has left a surviving child or children but no spouse



Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.”

41. The Court of Appeal, in the case of Christine Wangari Gachege v Elizabeth Wanjiru Evans & 11 Others [2014] eKLR, in dissecting the above provisions, held as follows:

“ Although Sections 35 and 38 of the Laws of Succession Act is silent on the fate of surviving grandchildren whose parents’ pre-deceased the deceased, the rate of substitution of a grand child for his/her parent in all cases of intestate known as the principle of representation is applicable. The law on this is section 41. If a child of the intestate has pre-deceased the intestate then that child’s issue alive or en ventre sa mere on that date of the intestate’s death will take in equal shares per stirpes contingent on attaining the age of majority. Per stirpes means that the issue of a deceased child of the intestate takes between them the share their parents would have taken had the parent been alive at the intestate’s death.”

42. Further, A. Mrima J, in the case of Cleopa Amutala Namayi vs. Judith Were, Succession Cause 457 of 2005 [2015] eKLR, while following the decision of W. Musyoka J in the case of Re Estate of Wahome Njoki Wakagoto (2013) eKLR, observed as follows:

“ Be that as it may, under Part V of the Act grandchildren have no automatic right to inherit their grandparents (sic)..... The argument behind this position is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents (sic) indirectly through their own parents, the children of their grandparents. The children to the grandparents inherit first and thereafter the grandchildren inherit from their parents. The only time where the grandchildren can inherit directly from their grandparents is when the grandchildren’s own parents are dead. Those grandchildren can now step into the shoes of their parents and take directly the share that ought to have gone to the said parents. Needless to say, such grandchildren must hold appropriate representation on behalf of their parents.” (emphasis mine)

43. Although therefore Mrima J recognized grandchildren’s right to inherit from their grandparents, he brought in the angle of the need to hold grant of legal representation. Although I am aware of Court decisions to the contrary, if the view advanced by Mrima J is to be applied, then the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners, by not holding any grant of representation, may be deemed as not even possessing the legal right or locus standi upon which they can represent or approach the Court under the name of the estate of Kiili Arap Masoin.

44. Regarding the 1<sup>st</sup> Petitioner’s claim that she was married to the late Kili Arap Masoin under customary law, in the case of Gituanja vs Gituanja (1983) KLR 575, the Court of Appeal held that the existence of a marriage is a matter of fact which must be proved with evidence. The Court of Appeal, in the case of Hortensia Wanjiku Yawe vs The Public Trustees, Civil Appeal 13 of August 6, 1976 is also to the same effect. In this case, the 1<sup>st</sup> Petitioner’s alleged brothers-in-law, her alleged husband’s brothers, have vehemently denied that the 1<sup>st</sup> Petitioner was married to their brother. According to them, Kili Arap Masoin died around 1958 and never got married at all. The 1<sup>st</sup> Petitioner did not however tender or lead any evidence whatsoever to prove her alleged customary marriage to the late Kili Arap Masoin. She did not even disclose the community or tribe whose customary law the alleged marriage was conducted. She did not produce any documentation whatsoever, and no birth certificates for her children, nor did



she even call a single witness who attended the payment of dowry or the marriage ceremony itself nor did she even take the Court through how the alleged marriage was conducted or who attended. She did not even allege long-cohabitation leading to the presumption of marriage. In any event, not a single witness, not even her own children (the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners), testified that the 1<sup>st</sup> Petitioner at any time even lived with Kili Arap Masoin. She also admits that she did not even attend the burial of Kili Arap Masoin. Her alleged customary marriage therefore remains woefully unproven.

45. I however note that the 1<sup>st</sup> Administrator, in his testimony, admitted that Kili Arap Masoin did have a daughter by the name Magarina Cheptoo, whose mother was none other than the 1<sup>st</sup> Petitioner although he insisted that the two never got married. I agree since indeed siring of a child by a man does not mean that the man was married to the mother of that child. Marriage has to be proved and paternity cannot be proof of marriage.
46. In any case, it is trite law that “he who alleges must prove”. This is the principle of the “burden of proof” and which is codified in Section 107 of the [Evidence Act](#) as follows:
- “ 107 (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”
47. Under Section 107 of the [Evidence Act](#) therefore, the 1<sup>st</sup> Appellant bore the burden of proving her alleged marriage to Kili Arap Masoin, at least on a balance of probabilities, which burden however she totally failed to discharge. She did not even attempt to do so.
48. Regarding paternity, the Petitioners/Objectors have admitted that the 3<sup>rd</sup> Objector is not a biological son of the late Kili Arap Masoin. This explains why his claim is based entirely on his alleged “dependency” on the deceased.
49. It is only the 2<sup>nd</sup> Petitioner who therefore, besides claiming as a “dependent” of the deceased, also claims as an alleged biological son of the late Kili Arap Masoin. Questions have however been raised in regard to even this claim insofar as his paternity is concerned. Regarding the provisions of the [Law of Succession Act](#) guiding the handling of a claim of paternity for purposes of inheritance from the estate of a deceased person, the Court of Appeal, in the case of *E.M.M v I.G.M & Another* [2014] eKLR, stated as follows:
- “The real issue before us on this appeal is whether the appellant proved before the High Court on a balance of probabilities that he is a child of the deceased. Under section 29(a) of the [Law of Succession Act](#), if the appellant is able to prove that he is a biological child of the deceased, he would be a dependant of the deceased without having to prove that he was maintained by the deceased immediately prior to his death.
- Independent of being a biological child of the deceased, and therefore an automatic dependant, the appellant would also qualify as a dependant of the deceased if he can prove that he is a child whom the deceased had taken into his family as his own, and who was being maintained by the deceased immediately prior to his death. Unlike the dependant under section 29(a), the dependant under section 29(b) has to establish that the deceased had taken him or her into his family as his own child and that he or she was being maintained by the deceased immediately prior to his death.
50. As aforesaid, the 2<sup>nd</sup> Petitioner’s claim is brought on both the two alternative fronts referred to above, namely, first, that he is a biological child of the late Kili Arap Masoin, and thus a grandchild of the



deceased herein, and secondly, independent of being a biological child, that he is a grandchild whom the deceased had taken into his family and was maintaining “immediately prior to his death”, thus a dependent.

51. In echoing the explanations given by the Court of Appeal above, in respect to a “child” or “children”, the answer as to their “dependency” in the context herein is addressed in Section 29 of the Law of Succession Act which provides that a “dependant” means-

- “(a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased’s parents, step-parents, grandparents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) .....

52. It is therefore settled that, unlike Section 29(a) of the Law of Succession Act, proof of “dependency” is a condition precedent to the exercise of the Court’s powers under Section 29(b) thereof. In respect to this meaning ascribed under Section 29(b), Mabeya J, in the case of Beatrice Ciamutua Rugamba. vs. Fredrick Nkari Mutegi & 5 Others, 2016 eKLR, held as follows:

“From the foregoing, a dependent under section 29 (b) and (c) must prove that he/she was being maintained by the deceased immediately prior to his demise. It is not the mere relationship that matters, but proof of dependency.”

53. In this case, as in all other cases of this nature, it was incumbent upon the Petitioners/Objectors to prove their claim of “dependency”. In regard to this “burden of proof”, the Supreme Court in the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 3 Others (2014) eKLR, the Supreme Court guided as follows generally:

“The person who makes such allegation must lead evidence to prove the fact. She or he bears the initial legal burden of proof which she or he must discharge. The legal burden in this regard is not just a notion behind which any party can hide. It is a vital requirement of the law. On the other hand, the evidential burden is a shifting one, and is a requisite response to an already discharged initial burden. The evidential burden is the obligation to show, if called upon to do so, that there is sufficient evidence to raise an issue as to the existence or non-existence of a fact in issue”.

54. In a Succession Cause in which similar claims of paternity arose as herein, Mativo J (as he then was), in the case of In re Estate of Patrick Mwangi Wathiga - Deceased [2015] eKLR, held that:

“In my view, the practice of persons emerging after the demise of a deceased person purely to claim a share of properties of the deceased person should be discouraged unless the alleged claimant can demonstrate that there were attempts to have him or her recognized as a beneficiary/member of the family during the deceased’s life time, or the deceased left clear instructions to that effect, or his claim can be reasonably inferred from the express or implied circumstances of the case including the conduct of the deceased or from such reasonable or probable circumstances that can be proved by way of evidence. Alternatively, such a claim can also be admitted if the claimant demonstrates that he was prevented from associating



with the deceased during the deceased's life time by either infirmity of body or mind or both or any other reasonable circumstances. In my view, where someone remains delinked from a family or the person he claims to be a parent for 24 years and only emerges after his/her death, the burden lies on him/her to establish his claim to the deceased's estate and to tender such evidence as may be necessary to establish his claim beyond reasonable doubt.

I am clear in my mind that the burden of proof lies on the objector to prove paternity or his claim to be a beneficiary of the deceased's beyond reasonable doubt. In *Kimani Mathenge Muriuki vs Patricia M. Muriuki & Another*[5] the court of Appeal emphasised on the need for the person alleging paternity to prove it on a balance of probabilities. The case becomes even more difficult where no medical evidence is adduced to prove paternity or to prove that the deceased was step father or lawful guardian. No other evidence was adduced except what the objector states. The position is complicated by the fact that the objector emerged only after the deceased's death and 24 years after the Petitioner had been married to the deceased.

It is trite law that the burden of establishing all the allegations rested on the objector and in law he was under an obligation to discharge the said burden. It's not enough to state that the deceased was his father. He ought to have supported the said allegation by adducing the necessary supporting evidence.”

55. The Petitioners, in respect to their claim of being “dependents” of the deceased herein, also fail solely under the definition of “dependency” under Section 29 of the *Law of Succession Act*. This is because they admitted that they stayed in the same home as the deceased only between 1978 when they came there and 1981 when they were chased away. That is only about 3 years. They also stated that although they returned around 1989, they did not find the deceased as he had by that time, already left the home and went to stay with the 1<sup>st</sup> Administrator at Kaptagat where he lived until his death in 1999 at the age of 110 years. There is no allegation or evidence that they were in touch with the deceased when the deceased was living in Kaptagat such that there was any possibility that the deceased was the one maintaining them “immediately prior to his death”. In any event, there is also no evidence that the deceased had any income of his own during his last days such that he would use it to maintain the Petitioners/Objectors. Considering his advanced age, all indication is that he was himself a dependent of the Administrators. The Petitioners/Objectors have therefore also totally failed to prove their alleged dependency on the deceased and cannot therefore meet the threshold set out in Section 29 of the Act to qualify as “dependents” “maintained by the deceased immediately prior to his death”. In any case, they never presented any evidence whatsoever to demonstrate how they were “being maintained by the deceased immediately prior to his death”.
56. The Administrators, being the only 2 surviving sons of the deceased who have approached the Court, no other survivor having come forward, and the deceased having died without a surviving spouse, in accordance with Section 38 of the *Law of Succession Act*, the estate should be distributed between the two them.
57. However, from the evidence on record, it is apparent that the Petitioners/Objectors have been in occupation of a total of about 4-5 acres of a parcel of land comprising the estate of the deceased, amongst themselves. It does not however seem clear to all the parties which of the two parcels of land comprising the estate the Petitioners/Objectors are occupying part of. This is because all along the two parcels of land seem to have been treated as one and no clear demarcation seems to be known to the parties. According to the 1<sup>st</sup> Petitioner, she was allowed by the deceased to settle on the said portion of land because the paternity of at least one of her children, namely, Magarina Cheptoo as being the biological daughter of Kili Arap Masoin was not disputed. There is evidence that the Petitioners/Objectors started living on the said portion about 1978 up to 1981 when they were



allegedly chased away by the Administrators but then returned around 1989 and have since then remained in occupation thereon. That is now about 36 years since then. Although there is indication that the 1<sup>st</sup> Petitioner has since moved to Kesses where she is said to be having her current home, there is undisputed evidence that at least, the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners/Objectors have built their homes on the estate land and have been cultivating the same for all these 36 years and according to them, it is the only place they call home. To this end therefore, I do not accept the theory that the 1<sup>st</sup> Petitioner and her children simply emerged from nowhere and invaded the land and have remained in occupation to date. They must have been permitted to settle there.

58. Under the above circumstances, in the interest of justice, I do not think it will fair to now evict the Petitioners/Objectors from the suit land after all these years.
59. Having agonized at length over the fate of the Petitioners/Objectors, I have reached the decision that justice will be better served by allowing them to retain the portion (approximately 4-5 acres) that they are currently occupying, and have been occupying for almost 36 years. The two parcels of land comprising the estate, namely, Cheptiret/Cheplaskai/Block 1 (Kipchamo)/58 and Cheptiret/Cheplaskai/Block 1 (Kipchamo)/59, measure, in aggregate, a total of about 67 acres. The estate is therefore vast. There is also evidence that the two Administrators already have other vast parcels of land in Kaptagat and Elgeyo Marakwet border where they in fact have built their respective homes and settled. The Administrators, by ceding only the approximately 4-5 acres portion occupied by the Petitioners/Objectors, will not therefore be seriously prejudiced.

### **Final orders**

60. The upshot of my findings is that I rule and order as follows:
- i. The Petitioners/Objectors have failed to prove, on a balance of probabilities, their claims of being beneficiaries to the estate of the deceased herein, Chelagat Chebasa Ribinson or being dependents of the deceased immediately prior to his death, and are not therefore entitled to inherit from the estate of the deceased under either of those aforesaid bases.
  - ii. The Petitioners have also failed to prove, on a balance of probabilities, their claim that the deceased, Chelagat Chebasa, before his death, gave to the Petitioner, as a gift *inter vivos*, 30 acres of land comprising part of the parcel of land known as Cheptiret/Cheptiret Block 1 (Kipchamo)/58 or any other parcel of land comprising his estate.
  - iii. However, there being no dispute that the Petitioners/Objectors have been in long occupation of about 4-5 acres aggregate portion of the estate land falling either on the parcel of land known as Cheptiret/Cheplaskai/Block 1 (Kipchamo)/58 or on Cheptiret/Cheplaskai/Block 1 (Kipchamo)/59, on which they also live and cultivate together with their families, it is hereby ordered that such portion of land shall be retained jointly by the Petitioners/Objectors, thus the same shall be carved out and title(s) be issued to the Petitioners/Objectors.
  - iv. Apart from the said 4-5 acres (approximately) hereinabove allocated to the Petitioners/Objectors, the rest of the estate of the deceased shall be distributed between the 1<sup>st</sup> and 2<sup>nd</sup> Administrator.
  - v. The Court having ruled as above, to give the parties the opportunity to amicably identify the exact area (approximately 4-5 acres) now allocated to the Petitioners/Objectors and which shall be carved out and title(s) issued to the Petitioners/Objectors as aforesaid, and to enable the Administrators to also agree on the manner of distribution of the rest of the estate as between the two of them, I refer this matter to Court Annexed Mediation for that purpose.



- vi. If after the 60 days Court Annexed Mediation window, the parties are unable to reach a settlement, and no extension is granted, this Court shall proceed to rule on the said matters.
- vii. The Court shall now fix a Mention date when the progress of the Court Annexed Mediation proceedings shall be reported to the Court.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 9<sup>TH</sup> DAY OF MAY 2025**

.....

**WANANDA J. ANURO**

**JUDGE**

Delivered in the presence of:

Mr. Korir for the Administrators

Mr. Nabasenge for the Petitioners/Objectors

Court Assistant: Edwin Lotieng

