



REPUBLIC OF KENYA



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**In re Estate of the Late Rosemary Nabusali Boen (Probate & Administration  
27 of 2014) [2025] KEHC 8748 (KLR) (20 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8748 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PROBATE & ADMINISTRATION 27 OF 2014**

**JRA WANANDA, J**

**JUNE 20, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE ROSEMARY NABUSALI BOEN**

**BETWEEN**

**EUNICE JEPKOSGEI KITUR ..... PETITIONER**

**AND**

**BENJAMIN MAIYO BOEN ..... OBJECTOR**

**JUDGMENT**

1. Before this Court for determination is basically the mode of distribution to be applied in sharing out the estate of the deceased herein amongst the beneficiaries, which estate is comprised of only one property, a parcel of land said to measure 9 acres.
2. The deceased, Rosemary Nabusali Boen, died on 20/10/2013 at the age of 83 years. On 3/02/2014, the Petitioner, Eunice Jepkosgei Kitur, as a daughter-in-law of the deceased, petitioned for Grant of Letters of Administration Intestate in respect to the estate. In the Petition, she stated that the deceased was survived by 5 beneficiaries, all her own children. However, no specific asset was, at that time, disclosed as comprising the estate. The Letters of Administration was then granted to the Petitioner on 27/05/2014.
3. On 3/05/2015, the Petitioner, through Messrs Kamau Lagat & Co. Advocates, filed the Summons dated 26/02/2015 seeking Confirmation of the Grant. This time, she indicated the parcel of land described as Plot No. P.I.800 (new No. 92) Ndalat Extension Settlement Scheme, as the sole asset comprising the estate. The mode of distribution she proposed was that the entire suit land be allocated to one of her children, namely, Patrick Kipchirchir Boen.
4. However, before the Summons could be heard, the Objector herein, Benjamin Maiyo Boen emerged, and through Messrs Kariuki Mwaniki & Co. Advocates, filed the Summons dated 16/07/2015 seeking



revocation and/or annulment of the Grant. The grounds he allege was that the Petitioner had excluded other children of the deceased, including the Objector, from the list of beneficiaries.

5. On 16/02/2017, Beatrice Cherotich Boen and Margaret Eroda Kimaiyo aka Joyce Boen, through Messrs Mwinamo Lugonzo & Co. Advocates, also joined the fray. In their Affidavits, they stated that they were sisters-in-law of the Petitioner and were entitled to inherit from the estate but were never consulted about or informed of the filing of these proceedings.
6. A consent was then recorded on 26/10/2015 before Kimondo J in which the Grant was revoked and the Summons for Confirmation of grant marked as withdrawn, and instead, a fresh grant was issued to the Petitioner and the Objector, jointly as co-Administrators. On the issue of distribution, it was agreed that beneficiaries present their respective proposals.
7. Pursuant thereto, the Petitioner, through Messrs Kamau Lagat & Co. Advocates, filed the Affidavit which she swore on 26/06/20218, in which she deponed that the deceased was survived by 5 children and proposed that the suit land be distributed as follows:

i)	Eunice Jepkosgei Kitur	1/5 acre (to incorporate deceased's house and compound)
ii)	Jane Migiro Morara	1/5 acre
iii)	Margaret Eroda Kimaiyo (alias Joyce Boen)	1/5 acre
iv)	Benjamin Maiyo Boen	1/5 acre
v)	Beatrice Cherotich Boen	1/5 acre
Total	1.0 acre	

8. The suit land being 9 acres, and since her above allocations amounts to only 1 acre, she does not then state what should happen to the rest of the 8 acres. Be that as it may, she deponed further that as regards one Anthony Kiplagat, introduced to the Court, is a grandson of the deceased, thus not a direct dependent but is currently occupying 2 acres of plot No. 494 (new No. 65) that is adjacent to the suit land and which was not included in the Petition herein and which was purchased by the deceased and identified as his inheritance hence adequate provision has already been made for him and he can keep the 2 acres. She also deponed that she holds the Letters of Administration in respect to the estate of the late Michael Boen who was a son of the deceased hence she is entitled to a share of the estate by virtue of being the widow and Administrator of the late Michael Bowen. She deponed further that Michael Boen (her husband) was the youngest son to the deceased and under Kalenjii (Nandi) customary laws, his family is entitled to inherit the house of the deceased and compound. She also deponed that the deceased was buried in the deceased's (his mother's) compound and he used to reside in the said house during his lifetime but his children were displaced by the Objector who is his brother.
9. The parties then filed respective Witness Statements and Lists (bundles) of documents and agreed that the matter do proceed for viva voce trial. At the trial, a total 3 witnesses testified. I took over the matter when it first came before me on 29/01/2024, by which time 2 witnesses had already testified. I therefore took only the testimony of the 3<sup>rd</sup>, the last one.



10. Several Witness Statements have been filed herein but I will only recite those made by the witnesses who eventually testified as only those were admitted and adopted as evidence.

### **Petitioner's Witness Statements**

11. The Petitioner, Eunice Jepkosgei Kitur, in her Statement dated 25/03/2019, reiterated that she is the widow of the late Michael Boen who was the son of the deceased, that the deceased had 7 children, 2 sons (Michael Boen and the Objector, Benjamin Maiyo Boen) and 5 daughters, that Michael Boen was the younger of the 2 sons. She stated that the deceased, while alive, used to live with the said Michael Boen (as the younger son), herself (Petitioner) as his wife and their children, that Michael Boen made extensive renovations and extensions to the house knowing well that the same would be his inheritance and that this position can be attested by the area Chief's letter dated 31/12/2013. She stated further upon the death of Michael Boen (her husband), she continued living with the deceased until her demise in 2001 after which however, the Objector (Benjamin Maiyo Boen) decided to take up the deceased's house and by extension, his actions effectively displaced the Petitioner's family. She reiterated that under the laws of the Kalenjin (Nandi), the parent's house devolves to the youngest son and thus her husband is the one entitled to inherit it. She contended further that her husband was buried in the deceased's compound since he resided there during his lifetime, that his grave has since become inaccessible to her, her children and grandchildren. She further stated that her husband, before he died, made a Will which was witnessed by his sister, Jane Migiro and whom he also appointed the executor and by which Will, he proposed that the house be taken over by his son, Kipchichir Boen Patrick and his brothers, but that the Objector has since disparaged those wishes as he has chosen to disinherit the Petitioner's family and deal with her husband's possessions without regard to the above matters. She stated that she has no problem with the suit land being distributed equally amongst her children but she wishes that the house devolve to her (Petitioner's) sons in line with the customary law. She averred that she is opposed to the distribution schedule proposed by the Objector for the reason that the Petitioner was not present during the meeting that was held on 16/06/2018 and that although she was present in the subsequent meeting held on 1/12/2018, there was no consensus on the mode of distribution since no justifiable reasons were given for suggesting unequal shares of the deceased's estate, and also, no justifiable reasons were given for departure from the customary law that the parent's house and compound is inherited by the youngest son.
12. One Kibet Melii, in his Statement dated 29/03/2019 urged that he is a Nandi from the Kaptalam clan, he was born in 1942 and is thus 77 years old. He stated that he is conversant with the Nandi customary law under which, upon the death of the parents, their house (considered a family home) is inherited by the last born.

### **Objector's Witness Statements**

13. The Objector, Benjamin Maiyo Boen, in his Statement dated 29/03/2019, urged that he is the 3<sup>rd</sup> born child of the deceased, who had 7 children in total, as listed in funeral programme. The children he listed in his Statement are however 9, as follows:



i)	Jane Rhoda Morara	vi)	Gladys Murgor (deceased)
ii)	Margaret Eroda Kimaiyo	vii)	Beatrice Cherotich Boen
iii)	Benjamin Maiyo Boen (Objector)	viii)	Musyangu (deceased)
iv)	Michael Boen	ix)	Nelima (deceased)
v)	Rhoda Nadala (deceased)		

14. He stated further that he made a contribution in helping the deceased (his mother) to acquire the suit land, that he is the one who escorted her to Nairobi and assisted her in making the Application for allotment letter, and that he made financial contribution and also cleared the land for cultivation and used his own resources to fence the same. He added that it is not true that his late brother, Michael Boen, the Petitioner's estranged husband did extensive renovations and extensions to the house as at that time Michael Boen was in Uganda. He also denied that the Petitioner lived with the deceased, denied that he chased her away and also denied that the Petitioner was the last-born child. He then contended that although the Petitioner was not present at the meeting of 16/06/2018, she was present in the second meeting of 1/12/2018 which deliberated on the distribution of the suit land, and in which it was agreed that distribution be as per contributions made towards its acquisition and that the main house (comprising ½ acre) be co-owned by everyone. According to him, it was also decided that no beneficiary shall be allowed to dispose of his/her share to a third party and that the distribution was agreed to be as follows:

i)	Jane Morara	3 acres	vi)	Rhoda Nadala	½
i)	Margaret Eroda Kimaiyo	½ acres	vi)	Gladys Murgor	Nil
ii)	Benjamin Maiyo	2½ acres	vii)	Beatrice Boen	1 acre
iii)	Michael Boen	1 acre			

15. Regarding Margaret Eroda Kimaiyo, he stated that in the said meeting, she suggested that her ½ acre be given to the Petitioner's son, Patrick Kipchirchir. He averred that although each beneficiary gave suggestions, it was resolved unanimously that the suit land be distributed as above. He stated further that the minutes were signed but the Petitioner and the said Margaret Eroda Kimaiyo, disowned the agreement and now demanded that the land be distributed equally. He stated that he currently cultivates 3 acres, Jane cultivates 1 ½ acre and the rest is fallow. He termed the Petitioner as having



never been sincere considering her past attempt to pass the whole suit land to her said son, Patrick Kipchirchir. According to him, the suit land should be distributed in accordance with the wishes of the majority as stipulated above. Further, according to him, the Petitioner has no interest in residing on the suit land rather her intention is to acquire then sell it off.

### **Viva Voce Trial**

16. Upon close of the pleadings, the matter proceeded for viva voce trial in which, as aforesaid, a total of 3 witnesses testified.

### **Petitioner's Oral Testimony**

17. PW1, Eunice Jepkosgei Kitur (Petitioner), testified before Sewe J on 2/04/2019. Led by his Counsel, Ms. Khadambi, she adopted her Statement and reiterated the matters already stated therein. She referred to her Marriage Certificate and stated that her husband (Michael Boen) died before the deceased in 2013. She reiterated that she and her husband had all along lived in the deceased's house but that the Objector, immediately after the death of the deceased, moved into the house and continued to harass the Petitioner and after sometime, she reported the matter to the Chief and then moved out. She reiterated the holding of the meetings and what transpired therein and reiterated her agreement that the suit land may be distributed equally but she insisted that the house, in accordance with Nandi customary law, should remain with the last-born son. Under cross-examination by Mr. Kariuki, she agreed that she has been a Prison Officer and as such, worked in various places in Kenya and although she conceded that the land is in Kapteber in Turbo, she insisted that she would go there whenever she was on leave or on her off-days. She also agreed that the deceased was also a public servant, an Administration Police Officer and similarly, served in various stations in Kenya but would also live in the deceased's house whenever he was on leave. She agreed that the suit land was purchased in 1970 before she got married in the family. She however denied that any of the deceased's children contributed to the purchase of the land and stated that when she got married, she found the deceased living alone in the house. She agreed that there was a time she had a dispute with her husband but denied that she separated from him. She also denied that she got married to another man and stated that although her husband had many girlfriends, he, similarly, never married any other woman. She reiterated the reasons why she had, in these Succession proceedings, sought to give the whole land, including the house, to her son alone. She denied that she lied to the Chief and thus obtained a false letter from him.
18. Regarding the meeting that she attended, she reiterated that the family members only abused her, no discussions took place, no agreement was reached, and no minutes were taken. She however then stated that minutes were taken by her son but that he did not sign the minutes because they were of a different opinion. She agreed that she has been proposed to be given 1 acre but urged that since the land is 9 acres, she is entitled to 1 ½ acres as there are 5 beneficiaries. She stated that she would be happy to receive 1 ½ acres plus the deceased's house which the Objector is currently residing in with his children.
19. PW2 was the said Kibet Arap Melli who testified before Sewe J on 12/07/2019. He, too, adopted his Statement and reiterated the matters already urged therein. Led by Ms. Chesoo, he adopted his Statement and reiterated matters already contained therein, including that under Nandi customary law, the last-born son inherits the parent's house. He reiterated that although the rest of the suit land can be shared out amongst the beneficiaries, the house and the grave have to go the last-born, in this case, the Petitioner's late husband. Under cross-examination by Mr. Mwaniki, he stated that he knew the deceased as she was the widow of "Boen" and denied that the deceased was from Uganda, although he agreed that the name "Nabusali" was not a Kalenjin name. He then stated that he knew one "Chepkasi". He also agreed that the family house belongs to the man of the home, thus the deceased's husband in this case, the said "Boen". He stated that where a deceased had no children or



grandchildren, the family would discuss and agree on who should inherit the house. He however then contradicted his earlier answer that he knew the deceased by conceding that he did not her personally. He conceded that he had heard that the said “Boen” was a Luhya from Turbo and agreed that he did not know whether the said “Boen” was a Kalenjin. He however insisted that the said “Chepkasi” was a Kalenjin. He then stated that “Chepkasi” was married to “Boen”. Regarding cultural practices, he stated that they observe them to avoid evil and bad luck.

### **Objector’s Oral Testimony**

20. DW1, Benjamin Maiyo Boen, testified before me on 7/10/2024. Led by his Counsel, Mr. Mwaniki, he adopted his Statement and reiterated the matters already stated therein. Under cross-examination by Ms. Chesoo, he stated that one of his sitters, Gladys, is deceased and her family is not interested in inheriting from the estate of the deceased, and that the home is where the graveyard lies. He agreed that the family is Nandi by tribe. Regarding inheritance of the parent’s house under Nandi customary laws, he agreed that the last born inherits it but this does not apply if that last born is not alive. He stated that the mode of distribution that he proposes is what was agreed upon in the family meeting.
21. On why he and one sister, Jane, were given bigger shares, he explained that it was because it is them who built the house for their mother although he agreed, he had not produced documents to prove that fact. He stated that his brother, Anthony, already has 2 acres elsewhere given by the deceased and as for Margaret, she donated her ½ share to Kipchichir, the Petitioner’s son. He denied that he chased the Petitioner away from the home or that he has been cultivating the same. According to him, the Petitioner left on her own accord even before the deceased died in 1992. In re-examination, he reiterated that the deceased used to live alone in the house and that the Petitioner and her husband only used to visit. He stated that the second family meeting of 1/12/2018 was even attended by one Advocate Lemayan, that the Petitioner also attended and that the Petitioner’s son, Patrick, was the Secretary therein. He reiterated that he and his sister, Jane made contributions to acquisition of the suit land. He stated that they convened the meetings because the Court had asked them to go and negotiate. He stated that all family members agreed that the house shall remain with 2 acres to be accessible to the whole family and that it is only the Petitioner who is complaining.

### **Written Submissions**

22. After close of the trial, the parties filed written Submissions. The Petitioner filed the Submissions dated 5/02/2025 while the Objector’s Submissions is dated 5/03/2025.

### **Petitioner’s Submissions**

23. The Petitioner, through Messrs Kamau Lagat & Co. Advocates, recounted the testimonies and evidence presented and reiterated that the suit land measures approximately 9 acres, and urged further that the family house erected in the suit land should be allocated to the Petitioner but the suit land should, in general, in accordance with the provision of Section 38 of the *Law of Succession Act*, be distributed in equal shares between the beneficiaries. He also reiterated that the Court should take into consideration previous benefits allocated to the late Rhoda Nandala survived by her son Anthony Kiplagat Boen, namely, plot No. 494 (New No. 65) measuring 2 acres, in accordance with the provisions of Section 42 of the *Law of Succession Act*. He then referred to Section 29 of the Act and submitted that the definition of “dependent” therein includes wives and children of the deceased. He then submitted that it is agreed by all the parties that the children of the deceased are as follows:



i)	Jane Mikilo alias Jane Migiro Morara alias Jane Rhoda Morara
ii)	Joyce Boen alias Margaret Eroda Kimaiyo
iii)	Benjamin Maiyo Boen
iv)	The late Michael Boen, survived and represented by Eunice Jepkosgei Boen (Petitioner)
v)	The late Rhoda Nandala, survived by her son Anthony Kiplagat Boen
vi)	The late Gladys Murgor who was not survived by any heirs
vii)	Beatrice Cherotich Boen

24. Counsel then dismissed the claim by the Objector that he be allocated 2.5 acres and Jane alias Rhoda Migiro Morara, 3 acres in accordance with minutes of the family meetings minutes signed by 3 other beneficiaries on the basis that they made monetary contributions towards purchase of the suit land. He pointed out that the documentary evidence on record demonstrates that the deceased is the absolute and sole owner of the suit land and therefore the two beneficiaries have no superior claims over the suit land. He cited Article 27 of *the Constitution* on equality and the right not to be discriminated against, and also Article 60(1)(f) on prohibition against gender discrimination. He also urged the Court to recognize the proposal by Margaret Eroda Kimaiyo that her share be given to Patrick Kipchichir, the son of Michael Bowen with the Petitioner. On recognition of the right of one beneficiary to donate his/her land to another person, he cited the case of *Re Estate of M'Mboroki M'Rintari (Deceased)* [2019] eKLR. On application and upholding of the Nandi customary law recognizing the last-born as the custodian of the family home and thus requiring that he inherits the it, he cited Article 2(4) of *the Constitution*, Section 3(2) of the *Judicature Act*, the case of *Re Estate of M'Mboroki M'Rintari (supra)* and also the case of *Re Esttae of Kipkoech Arap Kisorio (Deceased)* [2014] eKLR. He then cited 10 further cases on the issue of prohibition of discrimination on account of gender. In conclusion, he averred that the Petitioner had provided sufficient material and discharged her evidentiary burden in accordance with Section 107, 108 and 109 of the *Evidence Act* and is therefore deserving of the adoption of her proposed mode of distribution.

### Objector's Submissions

25. On his part, the Objector, in the Submissions filed through Messrs Kariuki Mwaniki & Co. Advocates, submitted that before the filing of the modes of distribution, the Court encouraged negotiations and upon which, the family meeting of 16/06/2018 was convened and unanimously resolved to distribute the suit property in the manner proposed herein by the Objector in his Affidavit filed on 28/09/2018. He reiterated that this position was confirmed in the follow-up meeting held on 1/12/2018 but which position the Petitioner disagreed with. He pointed out that it is only the Petitioner who disagreed and insisted that the proposal is the one that is fair as it takes the need of each beneficiary. According to him,



a blanket sharing of the suit land equally will lead to acrimony and in any case, there are beneficiaries who do not want any share.

26. He urged that while the Petitioner did not give any justifiable reason for distribution under customary law, the Objector has demonstrated that he assisted and contributed in acquisition of the suit land. He reiterated the resolution that the house be collectively owned. He observed that it is clear that the Petitioner is not in good standing with the rest of the family and neither does she live on the suit land with the rest of them. He also reminded the Court that the Petitioner is the one who initiated these proceedings with a view of distributing the estate in the absence of the other beneficiaries and hence lost their trust and her proposals cannot therefore be in their interest. He submitted that majority of the beneficiaries depend on the suit land for their livelihood and are thus dependents within the meaning of Section 27 of the *Law of Succession Act*. He cited the case of John Maina Gakuro & Rachel Wamboi Gakuro v Veronica Wanjiru, which he urged, was followed in the case of Nkatha & Another v Gatuma & 2 Others (Succession Cause No. 294 of 2012 [2022] KEHC 13683 (KLR)).

### **Determination**

27. It is evident that the issue for determination herein is “who are the beneficiaries of the estate herein, and what mode of distribution should the Court apply in distributing the estate”.
28. In this case, the deceased died intestate, and after her husband. Distribution of her estate is therefore governed by Section 38 of the *Law of Succession Act* which 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.”

29. In this case, the property to be distributed is only one, namely, the parcel of land described as Plot No. P.I.800 (new No. 92) Ndalat Extension Settlement Scheme, which also comprises the family house (parent’s house). The Objector urges that pursuant to the Court’s directions that they attempt amicable settlement, the family convened two meetings. He testified that the Petitioner did not attend the 1<sup>st</sup> meeting held on 28/09/2018 but nonetheless, the family agreed on the mode of distribution that he has now presented to the Court. He stated that the family, recognizing that some members of the family assisted in the acquisition of and development of the suit land and in construction of the house, agreed to share it out in accordance with such contributions. He stated that since the family acknowledged that himself and one sister, Jane Morara, gave the most contribution, under the arrangement, the two were allocated larger shares than the rest. He stated that the Petitioner attended the second follow-up meeting but she did not agree with the said proposal.
30. On her part, the Petitioner confirms the foregoing account but contends that she did not attend the 1<sup>st</sup> meeting because she was not invited or informed. Regarding the said proposal, she testified that she disagrees with the same because there is no evidence that some of the beneficiaries contributed towards acquisition of the suit land as alleged. I understand her further argument to be that, in any event, such unequal mode of distribution would be unjust and discriminatory to her and, by extension, her late husband. She strongly contends that the suit land should be distributed equally amongst the beneficiaries and that even as the suit land is being distributed equally, the portion comprising the parent’s house, and by extension, the house itself, should be allocated to her. Her basis for advancing this argument is that she is the widow of the last-born son and under Nandi customary law, to which



the family subscribes, the parent's house always remains with the last-born son. She even called a witness, DW2, who testified that he is an elder from the Nandi tribe and confirmed this custom. About the family being from the Nandi tribe, there were rival contentions on the real origin of the deceased and her late husband but at the end of the day, the Objector agreed that they all subscribe to the Nandi tribe.

31. Weighing the two rival proposals above, I am constrained to accept and adopt the one proposed by the Objector. First, as indicated in the said minutes of the family meetings, this is the proposal that was accepted by all the family members. Only the Petitioner is opposed to it. It is clear that the only motivation for the Petitioner's arguments herein is that it then assures her inheritance of the parent's house. Although she has strived to support her proposed mode of distribution with arguments that, I agree, are not far-fetched, the stance taken by her seems to be a selfish and materialistic one as it is only driven by the urge to inherit the house.
32. The proposal adopted in the family meetings, that the suit land be distributed in accordance with the contributions made by the beneficiaries makes a lot sense in my view. Although, granted, the suit land is exclusively registered in the name of the deceased, only the family members know how it was acquired, how the purchase price was raised and which family members contributed or assisted in the endeavour. It would be different where the family members themselves disagree on whether any such contributions were made, and if so, the extent thereto, in which case the Court would then have to determine the mode of distribution to be applied. In this case, the case is different as the entire family is in agreement. The Petitioner has not denied that the suit land had already long been acquired by the time she got married into the family and the parent's house had also already been constructed. It is therefore clear that she would not know how the suit land was acquired and how the house was built, whether the family members made contributions in the acquisition and construction of the house, and if so, in what manner or extent. Only the siblings would know. To this extent, her arguments against the unanimous family resolution on the basis that there is no evidence of contributions made by the children of the deceased, seems wholly misplaced. I call it unanimous because although not all family members signed the minutes, none came forward to testify in Court in opposition to the resolutions.
33. Regarding the alleged Nandi customary law culture that the parent's house always remains with the last born, I must say that inasmuch as I have no issue with such culture which, in any case, was well thought out and ensured, at that time, smooth family order and the apportioning of responsibility thus ensuring protection and continuity of the parent's name, it must also be appreciated that times have really changed and a lot has evolved over the years. The above custom is obviously not a repugnant one, but blind application of a custom such as the one above, if not well considered, may turn out to be of serious harm to the interests of other beneficiaries in some circumstances. This is because of the ever-evolving dynamics of life that keep changing day by day due to various variables, such as economic factors, religious choices, urbanization, appreciation in value of land, gender considerations, intermarriages, marital choices, the ever-shrinking availability of land, choice of investments, effect of immigration, and such other factors that continue to force changes on almost all aspects of life. Under these circumstances, I do not think that it will be right to continue insisting on strict, narrow or blanket or blind application of customary law or cultures to all circumstances that arise, without taking into account all these other factors. In my view, where application of customary law and culture does not cause injustice or inequalities, by all means, it should be applied. However, where such application would lead to obvious injustice and lead to a situation of inequity or discrimination, nothing should stop the Court from refusing to apply it. I find the circumstances herein to be one such situation. It is this kind of progressive thinking that put to rest the application of the customary law culture that barred daughters from inheriting parcels of land from their parents on the sole account of their gender.



34. In this case, the family having unanimously resolved that the family (parent's) house should remain accessible to all family members, and that the rest of the suit land be distributed in accordance with the contributions made by the respective siblings, and having agreed on the proportions applicable, there being no justifiable reasons advanced to overrule this family resolution, I find no good reason to decline it or interfere.
35. Although the Petitioner's Counsel has attempted to introduce the gender discrimination argument in this case, my take is that she failed to demonstrate that the Petitioner has been discriminated against, or disadvantaged in any way on account of her gender.
36. Although the word used in Section 38 of the *Law of Succession Act* is "equal", I do not think that it means that "equal" distribution is what must always, in all circumstances, as a mandatory requirement, be applied. If that were the case, it would lead to situations of absurdity in many cases. Omollo JJ, in the case of *Mary Rono v Jane Rono & Another* [2005] eKLR, Omollo JJ, although dealing with the application of Section 40 of which relates to distribution in polygamous families, advanced the spirit that that the *Law of Succession Act* does not provide that "equality" in distribution means necessarily that each child must receive the same or equal portion. This is how he put it:

"My understanding of that section is that while the net intestate estate is to be distributed according to houses, each house being treated as a unit, yet the Judge doing the distribution still has a discretion to take into account or consider the number of children in each house. If Parliament had intended that there must be equality between houses, there would have been no need to provide in the section that the number of children in each house be taken into account.

Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work an injustice particularly in case of a young child who is still to be maintained, educated and generally seen through life. If such a child, whether a girl or a boy, were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied the Act does not provide for that kind of equality."

37. I fully associate myself with the above view.
38. Counsel for the Objector has also observed that from the proceedings, it is clear that the Petitioner is not in good standing with the rest of her husband's siblings and neither does she live on the suit land with the rest of them. Counsel also rightly observed that the Petitioner is the one who initiated these Successions proceedings but instead of involving other members of the family, she secretly moved the Court to apportion the entire suit land to only one beneficiary, her own son. She even proceeded to procure the letter dated 31/12/2013 from the area Chief which gave misleading information to the Court and on the basis of which the Court granted her the Letters of Administration. This act, for all intents and purposes, must have been meant to misrepresent facts. It was not until after her husband's siblings discovered this fact and rushed to Court and filed an Objection, did the Petitioner own up and quickly consented to the revocation of the Grant. The Petitioner did not therefore come to Court with clean hands in the first place. It is even more comical that subsequently, the Objector procured the letter dated 15/07/2015 apparently written by the same Chief, Kaptebee Location, Turbo Division, Eldoret West District (one David Lagat) this time giving a totally different list of beneficiaries.
39. It is therefore true, as observed by Counsel for the Objector, that the Petitioner, by her above acts alone, which she does not even seem to have any apologies for, completely lost the trust of the rest of the family members. All her moves are now being watched with so much suspicion by other family members and



they are now cautious of her intentions. In fact, according to the Objector, since the Petitioner and her children do not live in the suit land, all the Petitioner wants to do, after acquiring the family house, is to sell it off to strangers. Of course, this suspicion has not been supported by any evidence but under these circumstances, my view is that making the Petitioner the sole occupant of the family home is a sure recipe for acrimony within the family, and will not doubt cause serious resentment against her.

40. Before I pen-off, I also note the family's unanimous acknowledgment that one of the beneficiaries, Margaret Eroda Kimaiyo, donated the ½ share allocated to her to the Petitioner's son, one Patrick Kipchichir. I also note the seemingly agreed position that one daughter, Gladys Murgor, left no children or heirs and that therefore, no share was allocated to her. I will therefore adopt and apply these further resolutions captured in the respective family meetings.

### Final Orders

41. In the premises, I direct and order as follows:
- i. The distribution of the parcel of land described as Plot No. P.I.800 (new No. 92) Ndalat Extension Settlement Scheme, is hereby adopted as follows:

i)	Jane Mikilo alias Jane Migiro Morara alias Jane Rhoda Morara	3 acres
ii)	Patrick Kipchichir (son of Eunice Jepkosgei Kitur). Share voluntarily donated by Margaret Eroda Kimaiyo alias Joyce Boen	½ acre
iii)	Benjamin Maiyo Boen (Objector)	2 ½ acre
iv)	Eunice Jepkosgei Kitur-Petitioner (widow of the late Michael Boen)	1 acre
v)	Anthony Kiplagat Boen (son of the late Rhoda Rosebella Nandala)	½ acre
vi)	Beatrice Cherotich Boen	1 acre
vii)	Parent's house and its compound (to be accessible to all beneficiaries)	½ acre
Total	9 acres	

- ii. Regarding the position that the parent's house, comprising ½ acre of the suit land, remains accessible to all beneficiaries as ordered above, I grant the parties thirty days (30) to discuss and inform the Court



whether they wish that the said ½ share be registered in the joint names of all the beneficiaries, or to present any other proposed mechanism that will secure such accessibility to all the beneficiaries.

- iii. Regarding the proposal that none of the beneficiaries should sell the shares given to them hereinabove, I also grant the parties a similar thirty days (30) to discuss and inform the Court whether they wish that the said condition be included as part of the Court orders herein.
- iv. The parties being members of one family, each shall bear his/her own costs of the Cause.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 20<sup>TH</sup> DAY OF JUNE 2025.**

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**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

Ms. Kesei h/b for Mr. Kamau for the Petitioner

N/A for the Objector

Court Assistant: Edwin Lotieng

