



REPUBLIC OF KENYA



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In re Estate of the Late Simion Kiprop Cheruiyot (Deceased) (Succession Cause 64 of 2010) [2025] KEHC 10162 (KLR) (14 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10162 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 64 OF 2010
RN NYAKUNDI, J
JULY 14, 2025**

IN THE MATTER OF THE LATE SIMION KIPROP CHERUIYOT (DECEASED)

BETWEEN

HELLEN CHERUTO LELEI 1ST PETITIONER

RAEL JEPKOECH SANGA 2ND PETITIONER

AND

MARGARET JELAGAT CHEPTALAM OBJECTOR

JUDGMENT

1. The matter herein relates to the estate of the late Simon Kiprop Cheruiyot who died on 16th January, 2009. The deceased left behind two widows with the following as their descendants:
 1. Hellen Jeruto Lelei 1st Wife
 - a. Vivian Jeptoo Cheruiyot
 - b. Florian Chebet Kiprop
 - c. Susan Chepkosgei Cheruiyot
 - d. Alfayo Kirwa Cheruiyot
 - e. Elisha Kiprop Cheruiyot
 2. Margaret Jelagat Cheptalaam – 2nd Wife
 - a. Kelvin Kipchirchir
 - b. Daniel Kiptoo
 - c. Ruth Jepchumba



3. The deceased left behind the following properties:
 - a. Moi's Bridge/Ziwa block 11 Kipsigak/205 – 6.47 Ha
 - B. Moi's Bridge /Ziwa block 11 (Kipsigak) 201 – 1.85
 - C. Moi's Bridge /Ziwa block 3 (Ziwa) 333 – 0.04 Ha.
 - D. Moi's Bridge /Ziwa block 3 (Ziwa) 331 – 0.12 Ha.
 - E. Soy/kapsang block 5 (Ziwa) 3 – 93.72 Acres
 - F. School – Mengech Academy – Established 2001 From 1-8.
 - G. Plot At Mti Moja – ½ Acre
 - H. Shares At Kokwata Investment Paid Kshs. 30,000/= Hellen.
 - I. Plot At Ziwa Centre ½ An Acre.
 - J. Plot Adjacent To School Mengich 0.1 Acres.
 - K. Plot At Ziwa Machine – Developed With A Building Shop Shared With Nathan.
 - L. Plot At Kipsigak Centre – Centre Developed With Shops.
 1. Machinery
 - i. Combine Harvester John Deere
 - ii. Lorry – Izuzu Direct – KWD 662
 - iii. Motor Vehicle Nissan Sunny KZT 003
 - iv. Toyota Saloon – KRV 194
 - v. Toyota Pick Up KUN 974
 - vi. Canter KLU – 748
 - vii. Tractor – Styre KYB 738
 - viii. Ford Max KMX 768
 - ix. Grinding Mill Chaff cutter
 - x. Grinding Mill for Animal Feed
 - xi. Sheller Grinding Maize
 - xii. Planter- Maize and Wheat
 - xiii. Plough
 - xiv. Harrow
 - xv. Trailer.
 - xvi. Tiller.
 - N. Livestock 40 cows – given out 11 to repay debts



- M. Dairy Cattle Feeds Calves
 - 2. Bank Accounts
 - i. Barclays Account – Shares
 - ii. Standard Bank
 - iii. Co-operative Bank
 - iv. Kenya Commercial Bank – shares

- O. Shares
 - Safaricom shares
 - Eveready
 - Ken-Chick
 - Kenya Airways
 - N.S.S.F
 - British American

- p. Benefits from Medical Training School
- q. 300 Bags of Maize – Harvest for 2008.

- 4. Hellen Cheruto Lelei & Rael Jepkoech petitioned for a Grant of Letters of Administration which was issued by Justice F. Azangalala on 7th February 2011, there being no objection to the issuance of the said Grant.
- 5. Margaret Jelagat Cheptalaam later through an application dated 11th July, 2011 applied for revocation of the Grant on grounds that the Grant was obtained through concealment from the court of matters material to the case herein. The application was later on compromised through a consent dated 12th May, 2012 with the following agreed schedule on the mode of distribution:



Asset	Beneficiaries	Shares
Moi's Bridge/Ziwa block 11 Kipsigak/205 (measuring 6.47 Ha)	I. To Hellen Cheruto Lelei ii. To Margaret Chelagat Cheptalam In Trust For The Children Namely: 1. Kevin Kipchirchir. 2. Daniel Kiptoo 3. Ruth Jepchumba	7 Acres 5 Acres
Moi's Bridge/Ziwa block 11 (Kipsigak)/201	To Hellen Cheruto Lelei	1.85 Ha. Whole
Moi's Bridge/Sirikwa block 3 (Ziwa)/333	To Margaret Chelagat Cheptalam In Trust For Daniel Kiptoo	0.04 Ha. Whole
Moi's Bridge/Sirikwa block 3 (Ziwa)/331	To Hellen Cheruto Lelei In Trust For Vibian Cheptoo Cheruiyot	0.12 Ha
Soy/kapsang block 5 (Ziwa)/3 (measuring Approximately 93.72 Acres)	A. To Hellen Cheruto Lelei In Trust For: - 1. Vibian Cheptoo Cheruiyot. 2. Philovian Chebet Kiprop. 3. Alfayo Kirwa Cheruiyot. 4. Susan Chepkosgei Cheruiyot. 5. Elishah Kiprop Cheruiyot. In Equal Share. B. To Margaret Chelagat Chetalam In Trust For: 1. Kelvin Kipchirchir 2. Daniel Kiptoo 3. Ruth Jepchumba In Equal Share	60 Acres 33.72 Acres
Moi's Bridge/Sirikwa block 3 (Ziwa)/329 (shares In Mengech School)	(housing Mengech School) A. To Helen Cheruto Lelei	2.07 Ha. 17 Shares 17 Shares




	B. To Margaret Chelagat Cheptalam In Trust For Ruth Jepchumba	
Shares At Kokwatai Investment Paid To Hellen Cheruto Lelei In Trust For The Children	To Hellen Cheruto Lelei	Whole
Plot At Ziwa Centre	To Hellen Cheruto Lelei	½ Acre Whole
Plot Adjacent To School Mengich	To Hellen Cheruto Lelei	0.1 Acres
Eldoret Municipality block 9/ (kapSoya Plot)	A. Hellen Cheruto Lelei B. Margaret Chelagat Cheptalam	½ Share ½ Share
Combine Harvester (1) John Deer	To Hellen Cheruto	Whole
Motor Lorry – Isuzu Direct Injection Registration No. Kwd 662	To Hellen Cheruto Lelei	Whole
Motor Vehicle Nissan Sunny Registration No.kzt 003	To Margaret Chelagat Cheptalam	Whole
Motor Vehicle Toyota Saloon Registration No.krv 194	To Hellen Cheruto Lelei	Whole
Motor Vehicle Toyota Pick-up Registration No. Kun 974	To Margaret Chelagat Cheptalam In Trust For Ruth Chepchumba	Whole
Motor Vehicle Canter Registration No.klu 748 Motor Tractors	To Margaret Chelagat Cheptalam In Trust For Daniel Kiptoo	Whole
Registration No.kyb 738 (styre)	To Margaret Chelagat Cheptalam In Trust For Daniel Kiptoo	Whole
Registration No.kmx 768 (ford)	To Alfayo Kirwa Cheruiyot	Whole



Registration No.135 (mersey Ferguson)	To Margaret Chelagat Cheptalam In Trust For Kelvin Kipchirchir	Whole
Implements		
Grinding Mill Chaff Cutter (2 In No.)	1. ½ Alfayo Kirwa Cheruiyot. 2. ½ Margaret Chelagat Cheptalam In Favour Of Daniel Kiptoo	Whole
Grinding Mill For Animal Feed	To Margaret Chelagat Cheptalam In Trust For Daniel Kiptoo	Whole
Shelter For Grinding Maize	To Hellen Cheruto Lelei	Whole
Boon Sprayer	To Hellen Cheruto Lelei	Whole
Planters (2 In No.) For Maize And Wheat	A) To Hellen Cheruto Lelei In Trust For Elishah Kiproprop Cheruiyot.	Whole
Ploughs (3 In No.) – 1. Baldan 2. Nardi 3. Sungura	A. To Hellen Cheruto Lelei In Trust For Elishah Kiproprop Cheruiyot. B. To Margaret Chelagat Cheptalam In Trust For Daniel Kiptoo. C. To Margaret Chelagat In Trust For Daniel Kiptoo.	Whole Whole Whole
Harrows (2 In No.) A. Baldan B. Light Harrow	To Alfayo Kirwa Cheruiyot To Margaret Chelagat Cheptalam Kelvin Kipchirchir	Whole Whole
Trailers:- A. Bigger B. Smaller	To Hellen Cheruto Lelei In Trust For Elishah Kiproprop Cheruiyot. To Margaret Chelagat Cheptalam Kelvin Kipchirchir.	Whole Whole
Manure Spreader	To Susan Chepkosgei Cheruiyot	Whole



Bank Account at: -		
Standard chartered Bank	To Hellen Cheruto Lelei	Whole
Barclays Bank	To Hellen Cheruto Lelei	Whole
Shares at:		
 Co-operative Bank Kenya Commercial Bank Safaricom Eveready Ken-chick Kenya Airways N.S.S.F. British American	To Hellen Cheruto lelei	Whole

6. The prepared schedule formed the foundation of the Certificate of Confirmation of Grant dated 23rd July, 2013, issued by Justice G.W. Ngenye Macharia. Despite remaining unchallenged, this Confirmation Certificate sat dormant as the appointed administrators neglected their duty to properly distribute the estate. Faced with this administrative standstill, the Objector submitted a formal application dated 18th February, 2021, urging the court to authorize the Deputy Registrar to finalize all necessary transfer documentation in place of the uncooperative petitioners. The application sought recognition that any documents executed by the Deputy Registrar would constitute valid and binding instruments for estate transfer purposes.
7. This court vide its ruling dated 22nd April, 2021 considered the aforementioned application which was unopposed and made the following findings:
 - a. The Deputy Registrar of this Honorable Court is hereby directed to execute the completion/transfer documents on behalf of the Petitioners who have since declined to honor the Certificate of confirmation of Grant issued on 23rd July, 2013.
 - b. Upon execution by the Deputy Registrar of this Honorable Court of the completion documents, the same be deemed as sufficient instrument for completion/transfer documents.



- c. The administrators are directed to render full and final accounts in respect of the estate in compliance with sections 83(f) and (g) of the Law of Succession Act and the same to be filed in court within 60 days from the date of issuance of titles deeds as per the confirmed Grant.
 - d. This being a succession cause and which involves family members, each of the parties shall bear their own costs.”
8. These findings were challenged by yet another application by the 1st Petitioner dated 28th January, 2022 in which the petitioner sought orders as follows:
- a. Spent
 - b. There be a stay of execution of the ruling and orders made herein on 22nd April, 2021 pending the hearing and determination of the application interparties
 - c. This court be pleased to review and set aside the orders issued on 22nd April, 2021 and to give the applicant a hearing on the issue of distribution of the deceased estate herein more specifically that:
 - i. The Certificate of Confirmation be amended to assign:
 - 1. Parcel No. Moi's Bridge/Sirikwa block 3 (Ziwa) 333 measuring approximately 0.04 Ha to Hellen Cheruto Lelei instead of Margaret Chelagat Cheptalam
 - 2. For Parcel No. Moi's Bridge/Sirikwa block 3 (Ziwa) 331 to be given to Vibian Cheptoo Cheruiyot the daughter to Hellen Jeruto Lelei instead of Margaret Chelagat Cheptalam
 - ii. The Certificate of Confirmation of Grant be amended to include parcels of land known as Soy/Kapsang block 4 (Ziwa)/240 and Plot No. 55 at Ziwa machine and the same be distributed in favor of Margaret Chelagat Chetalam.
 - d. The Certificate of Confirmation of Grant be amended to include parcels of land known as Soy/Kipsang block 4 (Ziwa) 240 and Plot No. 55 at Ziwa Machine and the same be distributed in favor of Margaret Chelagat Cheptalam.
 - e. The Plot at KapSoya Eld/Mun/block 9/2379 be equally shared in 2 parts between Hellen Cheruto Lelei Margaret Chelagat Cheptalam.
9. This court considered the application and made the following findings through its ruling dated 1st March, 2023:
- “On the facts before the court the present application to vary or to set aside certain substantive orders has merit in view of the averments in the affidavit in support. To put the matter in the correct perspective, it is necessary the impugned consent be varied on ground mistake or error apparent in the Grant as deposed by the applicant. I do not find any sufficient reasons raised by the objector given the anomalies in the proceedings leading up to and including the consent judgment in issue. I need to point out that the objector has not addressed the critical issues pleaded by the applicant rendering the consent order untenable.
- It follows that the summons dated 28th January, 2022 is meritorious and is allowed as prayed with no orders as to costs.”



10. A status conference was held on 1st August, 2023 with both counsel present and the following orders were issued:
 - a. That the County Surveyor Uasin Gishu County do visit Moi's Bridge/Ziwa block 11 Kipsigak/201 and Moi's Bridge/Ziwa block 11 Kipsigak/205 to undertake a survey, prepare a report on the acreage with footnotes on the earlier allocation done to the beneficiaries on the green card as a guide to restructure redistribution of the assets.
 - b. That as for Moi's Bridge/Sirikwa block 3 (Ziwa)/333 it shows that a legal issue arises.
 - c. That the learned counsels to deal with it whether there is a justiciable issue.
 - d. That Parcel No. 13 Eldoret Municipality block 9/2379 was to be shared equitably that it was subdivided without involving the administrators.
 - e. That it is plausible that the surveyor provides a paramount survey of the property parcel No. 13 Eldoret Municipality block 9/2379.
 - f. That there is a farm Kapsang block 5 (Ziwa)/201 there is a mutation 2.4 Ha the same to be included in the amended Grant to be filed.
 - g. That shares allocated to Margaret Chelagat Cheptalam and Hellen Cheruto Lelei in respect of Mengech School each has 17 shares that the deceased was the founder that is governance issue.
11. Yet again, the Objector filed another application dated 8th February, 2024 where the applicant sought orders as follows:
 - a. That this Honorable Court be pleased to review the Certificate of Confirmation of Grant dated 23rd July, 2013 to include land parcel Moi's Bridge/Ziwa block 11 Kipsigak/201 measuring 1.638 hectares.
 - b. That upon grant of prayer (1) in the instant application, this Honorable Court be pleased to allocate the said parcel to the applicant herein.
 - c. That this Honorable Court be pleased to order that the excess of 2.43 Hectares in Soy Kipsang/ block 5 (Ziwa)/201 previously Soy/Kipsang/block 5 (Ziwa)/3 be carved out from the said Soy/ Kipsang/block 5 (Ziwa)/201 and the same be allocated to the applicant.
 - d. That this Honorable Court be pleased to order that the excess of 3 acres in property land registration number Moi's Bridge/Ziwa block 11 Kipsigak/205 measuring approximately 6.47 Hectares be allocated to the applicant.
 - e. That this Honorable Court be pleased to order the Respondents to pay half of the costs incurred in distribution exercise.
12. On 13th June, 2024 this court delivered a ruling on the said application and made orders as follows:
 - a. That the administrator to this estate are steering at Section 76 of the Succession Act which provides for grounds under which the appointment of administrators can jointly or severally be revoked for reason of not acting with due diligence to proceed and administer the estate of the deceased. In the same breadth the revocation of the administrators can be carried out by this court for reason that has persona representative have failed to produce to the court within the time prescribed under Section 83 (g) the probate account of administration on material particulars of the estate within six months after issuance of certificate of confirmation of grant.



- b. That by implication an order be and is hereby made that the administrators or personal representatives duly appointed by this court are hereby commanded to comply with the law and the various orders issued by this court at various levels and the administration of the estate to do so within ninety (90) days from today's date by first convening an all-inclusive implementation status conference of all the beneficiaries with the legal counsels seized of this matter to design a strategic plan to meet the set timelines.
 - c. That the Deputy Registrar of the High Court in exercise of her ministerial powers be part of the convener of the initial conference to ensure compliance with clause (b) of this order.
 - d. That in default of compliance by the administrators /personal representatives to the orders of transmitting and conveyance of the entire estate to the defined beneficiaries and located shares a revocation order of the administrators so appointed shall take effect and in their place the Public Trustee under the supervisory jurisdiction of the Deputy Registrar of the High Court shall commence, to lay out a plan of execution to transmit and implement the decree of this court on the model of distribution of this estate.
 - e. That both the administrators or as the case may be the ordained Public trustee and Deputy Registrar shall draw their inspiration from the provisions of Article 159 (2) (C) of *the constitution* of closing in on any administrative gaps which may arise during implementation of the designed plan on distribution of the estate of the beneficiaries. The purpose of this is to assist the administrators and the Public Trustee /Deputy Registrar at an opportune time to effectively oversight and manage the distribution expeditiously and safeguards the rights of the beneficiaries.
 - f. That in view of the lengthy and inordinate delay occasioned in complying with the court orders whenever they have been issued with the constitutional pens of the various courts properly constituted under Article 50 (1) of *the constitution* interim freezing orders are hereby granted in terms of section 1(A), 1(B) 3(A) of the *Civil Procedure Act* and Rule 73 (1) of the probate and administration rules and as read with constitutional scheme in article 50(2) (E) on the rights to have a trial begin and concluded without unreasonable delay, Article 47 on fair administrative action that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair and Article 159(2)(b) that justice shall not be delayed.
 - g. That generally speaking in full measure of this proceedings the courts have complied and rested their vested jurisdiction within the constitutional mandate.
 - h. That the doctrine of res-judicata defined properly so under section 7 of the *Civil Procedure Act* protects this court from having to adjudicate any more issues in this estate arising from the same cause of action and same parties /beneficiaries. The weight of this judicial authority readily lends this court to exercise inherent jurisdiction that any such interlocutory applications impeaching the final decree of this court be solely with leave properly applied for and granted.
13. On 11th February, 2025 Hellen Cheruto Lelei swore an affidavit in which she deposed as follows:
- a. That pursuant to the orders of the court issued on 18/12/2025 I facilitated the surveyor to move to the ground and to excise a portion measuring 5acres on favor of the respondent out of Parcel no. MoisBridge/Ziwa block 11(Kipsigak)/201 and 205. Annexed herein is a copy of the map and the report respectively.
 - b. That from the ground it was noted that parcel no 205 measures 5.937ha (approx. 14.67acre) but not 6.47 as indicated. The respondent got 5acres Marked As "A". 1 Acre to Anthony



marked "B". this is a claimant, the deceased's brother who had bought 1acre from him and has all along been in occupation of his portion and we acknowledged his claim. out of the balance of 8.67acres, there is still a need to give 2 other people who are whom the deceased had promised a portion each time of his death namely Naum (sister to the deceased) and Aron formerly and employee of the deceased.

- c. I decided that it was fair to retain them at my portion of parcel no 201(1 acre each) partly because that is where they have occupying and further because the remaining part of the 205 is swampy.
 - d. That I wish the court to note that parcel no 201 measures 1.85ha acreage. Then I take the 8.67 acres even if that means I am less my as per title but not as claimed by the respondent in the surveyors report.
 - e. That I pray that the certificate of confirmation be amended at paragraph 3 to read MoiSBridge Ziwa block 11(Kipsigak)201 measuring 1.85ha, instead of 205.
 - f. That having so complied with the court order as directed. I pray that the court considers my prayer that parcel no MoiSBridge/Sirikwa block 3(Ziwa)/333 be restored to me as allowed by the court on 1st march 2023.
 - g. I also pray that this court pronounce itself and grant me an order for a resurvey of parcel no Eldoret Mun block 9/2379 for an equitable partition into two equal parts as opposed to the respondent's ill action of subdividing it and taking a valuable usable area but left the rocky part to me.
14. The Objector's affidavit followed suit in which she deposed as follows:
- a. That I am widow to the deceased herein and I had three (3) children with him.
 - b. That I have read the contents of the 1st Petitioner's Affidavit dated 11th February, 2025 and I wish to state as follows in response.
 - c. That as acknowledged in Paragraph 2 and 3 of the said Affidavit, Property Land Registration Number Moi's Bridge/ Ziwa block 11 (Kipsigak)/ 201 which measures approximately 4.5 acres was not included in the Certificate of Confirmation of Grant despite the same being property of the deceased.
 - d. That the Petitioners herein have brought in strangers and now want them to be allocated that property as evidenced in their Paragraph 2 of the Affidavit dated 11th February, 2025 despite them not being beneficiaries to the Estate of the deceased.
 - e. That I am opposed to the said attempt to distribute the said Estate to the people listed in the Affidavit.
 - f. That I reiterate that the people listed in the said paragraph *para 1 subpara e subpara 2 2* (Anthony, Naum and Aron) are strangers to me, and to the Estate of the deceased, and are not beneficiaries to the said Estate, and are therefore not entitled to any portion of the deceased land.
 - g. That having been allocated lesser acreage in the distribution exercise, I humbly pray that the said property, being Property Land Registration Number Moi'S Bridge/ Ziwa block 11 (Kipsigak)/ 201 be allocated to me wholly.



- h. That in response to Paragraph *para 6 6*, the said property was regularly issued to me in the Certificate of Confirmation of Grant, and title deed subsequently processed in my name.
- i. That I am further advised by Counsel, that the said prayer in Paragraph 5 of the Petitioner's Affidavit dated 11th February, 2025 is therefore overtaken by events on account of the title deed and therefore, the Petitioner's remedy (if at all) lies in the Environment and Land Court.
- j. That in response to Paragraph 7 of the Petitioner's Affidavit dated 11th February, 2025, in respect to Property Land Registration Number Eldoret Municipality block 9/2379 where the Court conducted a site visit, I wish to state that the allocation of that property was done in the presence of both parties and the Petitioners agreed to the shares allocated to them.
- k. That I wish to urge the Court to take note of the fact that the property changed hands and new occupants who have invested heavily on that land are in occupation.
- l. That the Petitioners have always had the powers as Administrators to administer the land and to take necessary actions to stop the new occupants from taking possession of the land, but they have never raised any objection since the year 2013, and their plea to this Court at the last minute is likely to cause immense loss.
- m. That the costs of re- survey, and the losses likely to be suffered by the third parties are unbearable, and there is a risk that such exercise may subject the Estate to additional liabilities.
- n. That notably, and following the orders of this Honourable Court through a certificate of confirmation of grant issued on 23rd July 2013 and consequently through an order issued on 22nd April, 2023 the petitioners were required to distribute and render a full and final account in respect of the estate in compliance with section 83[f] and [g] of the *Law of Succession Act* and the same to be filed in court within 60 days from the date of issuance of title deeds as per the confirmed grant. To this day, they have not complied with the said Orders.
- o. That further, the Petitioner have been allocated an equal portion of land in the said Eldoret Municipality block 9/2379 which land can be improved and developments carried on, as I did.
- p. That that notwithstanding, and without prejudice, and by the fact that the 1st Petitioner has already been allocated a huge portion of land in the Estate of the deceased, and for the interest of justice my humble plea to this Court is that I be allocated that land being Eldoret Municipality block 9/2379 in its entirety.
- q. That notably, the 1st Petitioner herein, who is my co- wife was in the Certificate of Confirmation of Grant, given close to 73 acres of land in the Estate of the deceased, while I was given only 39 acres.
- r. That further, and in the Certificate of Confirmation of Grant, I was allocated 5 acres in Property Land Registration Number Moi'S Bridge/ Ziwa block 11 Kipsigak/ 205 measuring approximately 6.47 Hectares and Hellen Cheruto Lelei was allocated 7 acres. The said property measures 6.47 Hectares which is an equivalent of 15.98 acres, and therefore there is an excess of 3 acres which has not been distributed.
- s. That I therefore pray, in the interests of justice, that this Court finds it fit to Order that:
 - i. Property Land Registration Number Moi'S Bridge/ Ziwa block 11 (Kipsigak)/ 201 measuring 1.638 Hectares which was erroneously not included in the grant, be so included and the same be allocated to me.



- ii. Property Land Registration Number Eldoret Municipality block 9/2379 be allocated to me.
 - iii. The excess of 2.43 Hectares in Soy/ Kipsang/ block 5 (Ziwa)/ 201 previously Soy/ Kipsang/ block 5 (Ziwa)/ 3 be carved out from the said Soy/ Kipsang/ block 5 (Ziwa)/ 201 and the same be allocated to me.
 - iv. The excess of 3 acres in Property Land Registration Number Moi'S Bridge/ Ziwa block 11 Kipsigak/ 205 measuring approximately 6.47 Hectares be allocated to me.
 - v. The Respondents be Ordered to pay half of the costs I have incurred in the distribution exercise, or the Court does find it fit to Order that part of the property not allocated in the Certificate of Confirmation of Grant be sold to recover the costs of distribution.
15. At present, the Objector has again filed an application dated 6th March, 2025 expressed to be brought under the provisions of section 1A, 1B, 3, 3A of the *Civil Procedure Act*, Order 40 Rules 3 of the Civil Procedure Rules seeking orders as follows:
- a. That this Honorable Court be please to appoint Margaret Chelagat Cheptalam as a co-administrator herein.
 - b. That an order be issued against the administrators herein Hellen Cheruiyot Lelei And Rael Chepkonga Sanga summoning them to court to show cause why disciplinary measures should not be taken against them for willfully subverting the law and failing to Honor the order by Honorable Justice Githinji issued on 22nd April, 2021, requiring them to provide a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings in respect of the estate
 - c. That costs of the application be borne by the Petitioners/Respondents.
16. The parties filed brief submissions on the parcels of land in contention, which largely reflected on the averments made in their affidavit evidence. I have therefore gone through and considered the submissions by the Petitioners dated 19th June, 2025 and those of the applicant dated 3rd July, 2025.

Analysis and Determination

17. This succession matter has taken far too long to resolve. The late Simon Kiprop Cheruiyot died on 16th January 2009, yet sixteen years later, his estate remains undistributed. What should have been a simple administration has become an endless stream of applications and disputes. Meanwhile, the true victims, the children of the deceased continue waiting for their inheritance.
18. This Court acknowledges that these proceedings have been marked by persistent challenges in implementation. While court orders have been issued and distribution schedules confirmed, the practical administration of this estate has stalled repeatedly. The result has been significant prejudice to the beneficiaries and unnecessary strain on judicial resources. What concerns this Court most is that a matter that was settled by consent over a decade ago continues to be revisited through fresh applications, preventing the finalization that all parties and particularly the children of the deceased need.



19. Regarding distribution of the estate of a polygamous intestate, Section 40 of the *Law of Succession Act* provides as follows:

- “(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children;
- (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38”.

20. As it was in *Re Estate of Michael George Tendwa Said (Deceased)* [2020] eKLR, Section 40 above has remained the applicable law where there is no agreement on distribution of the estate. Hon Justice J.K. Karanja sated as follows:

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

21. On the question of equality, in the case of *In Re Estate of John Musambayi Katumanga – (Deceased)* [2014] eKLR Musyoka J stated as follows:

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

22. While these provisions provide the default framework for distribution in polygamous estates, the present case presents a unique circumstance where the parties themselves reached a comprehensive agreement on how the estate should be distributed. The consent agreement of 12th May 2012, which formed the foundation of the Certificate of Confirmation of Grant, represents a deliberate departure from the strict application of Section 40 of the *Law of Succession Act*. This Court finds that such consensual arrangements should be respected and upheld, as they reflect the considered wishes of the



parties and serve to prevent the very kind of protracted. Parties in a litigation are permitted to agree on alternative distribution mechanisms, and where such agreements are freely entered into with full knowledge of the estate's assets, they should be given effect to promote finality and family harmony.

23. The fundamental principle that must guide this Court is that the Certificate of Confirmation of Grant issued on 23rd July 2013 by Justice G.W. Ngenye Macharia represents the final and binding determination of how this estate shall be distributed. This Certificate was based on a comprehensive consent agreement reached between the parties on 12th May 2012, after full consideration of all assets and their appropriate allocation. While this Court acknowledges that it entertained various subsequent applications and even granted some variations in its ruling of 1st March 2023, the comprehensive directions issued on 13th June 2024 provided the necessary clarity and finality. Those directions established that any further applications seeking to vary or relitigate the distribution matrix must be brought only with proper leave of Court, invoking the doctrine of res judicata to protect against endless relitigation of settled matters.
24. The principles of judicial finality and the efficient administration of justice require that there must be an end to litigation. The doctrine of finality in litigation serves the important purpose of ensuring that judicial determinations are respected and implemented rather than subjected to endless challenge. In this matter, sufficient judicial pronouncements have been made to guide the distribution of this estate, and the time has come to focus on implementation rather than further litigation.
25. The Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* (2017) eKLR held that:

“The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”
26. The present application dated 6th March 2025 seeks the appointment of Margaret Chelagat Cheptalam as a co-administrator and disciplinary measures against the current administrators. This application, however, runs contrary to the clear framework established by this Court's ruling of 13th June 2024. That ruling invoked the doctrine of res judicata to prevent the endless adjudication of issues arising from the same cause of action between the same parties. More specifically, it required that any applications challenging the Court's final determinations must first obtain proper leave of Court, a requirement that has not been satisfied in the present instance.
27. No leave has been sought or obtained for the current application. However, this Court recognizes that certain property-related issues have continued to generate confusion and require definitive clarification. Rather than allow these unresolved matters to perpetuate further litigation, this Court considers it prudent to address them comprehensively and conclusively. The beneficiaries of this estate, particularly the children deserve clarity on every aspect of the distribution. Therefore, while this application lacks proper procedural foundation, this Court shall examine each contested property to provide final and binding directions that will clear any remaining ambiguity. Each of the contested property is addressed as hereunder:



Moi'S Bridge/Ziwa block 11 (Kipsigak)/201

28. I have carefully reviewed the record and I take note that this property measuring approximately 1.85 hectares was indeed part of the original estate inventory and was included in the Certificate of Confirmation of Grant dated 23rd July 2013. Upon examination of the official search documents presented during the initial stages of these proceedings, it is clear that there were two distinct properties: Moi'S Bridge/Ziwa block 11 (Kipsigak)/205 measuring 6.47 hectares and Moi'S Bridge/Ziwa block 11 (Kipsigak)/201 measuring 1.85 hectares.
29. The confusion appears to have arisen from what can only be described as a typographical error in the Certificate of Confirmation, where property 201 may have been inadvertently referred to as property 205 in certain sections of the distribution schedule. This does not, however, create a new property or justify the endless applications seeking reallocation. The property was allocated to Hellen Cheruto Lelei in the original distribution matrix, and this allocation stands confirmed. Any excess acreage discovered through subsequent surveys shall benefit the original beneficiary.

Moi'S Bridge/Ziwa block 11 Kipsigak/205

30. This property was allocated in the original Certificate of Confirmation with 7 acres to Hellen Cheruto Lelei and 5 acres to Margaret Chelagat Cheptalam in trust for her children. The Court notes that subsequent surveys have revealed additional acreage beyond the originally contemplated 6.47 hectares. Consistent with the principle of benefiting the original beneficiaries, any such excess acreage shall be distributed proportionally between the two beneficiaries in accordance with their original allocation ratio.
31. Section 82(b)ii [Law of Succession Act](#) provides that: -
- “No immovable property shall be sold before confirmation of the grant.”
32. Though the Act protects purchaser of properties from the estate of the deceased, the protection does not extend to person who purchased immovable property of the deceased before the grant of letters of administration was confirmed. Section 93(1) of the Act provides for the protection of purchaser from the estate. Section 93(1) of the Law of Succession Provides: -
- “(1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.”
33. For purposes of giving directions to the alleged third parties of the subject estate, it suffices to cite Musyoka J In re Estate of Stone Kathuli Muinde (Deceased) [2016] eKLR that:
- “Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the [Civil Procedure Act](#) and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favor of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.”



34. The Court firmly rejects any attempt to introduce third parties such as Anthony, Naum, and Aron as beneficiaries to this estate. These individuals are strangers to the succession proceedings and have no legal standing to claim any portion of the deceased's estate, regardless of any alleged promises or agreements made during the deceased's lifetime.

Soy/Kipsang block 5 (Ziwa)/201 and Associated Excess

35. The original allocation of this 93.72-acre property between the two families stands as confirmed in the Certificate of Confirmation, with 60 acres allocated to Hellen Cheruto Lelei's children and 33.72 acres to Margaret Chelagat Cheptalam's children. Through subsequent mutation, an additional 2.43 hectares has been discovered on this property. Considering that Margaret Chelagat Cheptalam received a smaller initial allocation and to promote equitable distribution between the two families, this Court orders that the excess 2.43 hectares be allocated entirely to Margaret Chelagat Cheptalam in trust for her children. This allocation serves to address the imbalance in the original distribution while maintaining the integrity of the confirmed grant.

Eldoret Municipality block 9/2379

36. This property was clearly allocated for equal sharing between Hellen Cheruto Lelei and Margaret Chelagat Cheptalam in the original Certificate of Confirmation. The Court reaffirms this equal allocation. Any practical challenges in achieving equal physical division can be addressed through resurvey and subdivision to ensure each party receives an equal share of equivalent value. The Court will not entertain arguments seeking to allocate this property entirely to one party, as such arguments are directly contrary to the binding consent agreement.
37. This decision would be incomplete without mentioning the failure by the administrators to abide by the oath of office within the scope of the law to faithfully administer according to law all the estate which by law devolves upon and vests in his or her personal representative of the deceased and I will render a just and true account of such estate whenever required by law so to do and I will when required by this court deliver there to the said grant.
38. The record shows that there has been multiplicity of interlocutory applications without distribution of the estate to the heirs. The delay is inordinate and in excusable. There is no sufficient cause why this estate remains undistributed to the detriment and prejudice of the beneficiaries who have a legitimate expectation to secure the rights to property under Article 10 of *the constitution*. In the case of estate of Re-Estate of Julius Mimamo (deceased) (2019) eKLR the administrators appointed under the *law of succession Act*, are responsible for managing and distributing a deceased person's estate. The core-duties include: gathering the deceased's assets, settling debts if any, and taxes. The other pre-dominant duty of the administrators or administrator is to ultimately distribute the remaining assets to the rightful heirs. This is the ratio decidendi of the above authority in which the court observed as follows:

- “ 58. The personal representative of a deceased person holds a unique position in law. The property of the dead person is vested in them by virtue of section 79 of the *Law of Succession Act*. The effect of section 79, read together with section 82 of the Act, is that the same puts the personal representative on the same footing with an owner of the property, in the sense that he exercises the powers that the legal owner of the property would have exercised were they alive, and suffered the same burden of duties and obligations over the property as the legal owner would have been under were they to be alive. Yet, the property, although vested in them by law, would not be theirs. Although the personal representative has



legal title akin to that of an owner, the property does not belong to them. They only hold it in trust for the eventual beneficiaries thereof, that is those named in the will, in cases of testate succession, and those identified at confirmation of grant, in cases of intestacy. They would also be holding it for the benefit of creditors and any other persons who might have a valid claim against the estate. That would mean that they are trustees of the estate, and, indeed, the Trustee Act, Cap 167, Laws of Kenya, defines trustees to include executors and administrators. In the circumstances, therefore, the personal representative would stand in a fiduciary position so far as the property is concerned, and owes a duty to the beneficiaries to render an account to them of their handling of the property that they hold in trust for them. The duty to render accounts to beneficiaries arises from the trust created over estate property when the same vests in the personal representative to hold on behalf of the beneficiaries.

39. Having considered the history of this case it is indeed unjust to the beneficiaries not to have the shares identified by the court going back to the decision by Justice Ngenye as she then was and thereafter the decision by Githinji J to ensure that the determinants which may stand on the way of distribution are all settled. The law of Succession Act under Section 76 empowers this court to revoke the certificate of confirmation of grant which has become inoperative for reason of indolence on the part of the administrators. I therefore put the administrators on notice in the first instance that nothing will bar this court from invoking the provisions of Section 76 of the Act if there is non-compliance in the transmission of the estate fairly and proportionately.
40. Having said that, the following orders do abide:
- a. The Certificate of Confirmation of Grant dated 23rd July 2013 issued by Justice G.W. Ngenye Macharia shall serve as the foundational framework governing the distribution of the estate of the late Simon Kiprop Cheruiyot. All property allocations in this ruling are guided by and derive from the distribution matrix established in that Certificate. To address certain property discrepancies and measurement variations that have emerged through subsequent surveys and mutations, this Court makes the following clarifications and adjustments while preserving the essential distribution principles of the original Certificate.
 - b. Moi'S Bridge/Ziwa block 11 (Kipsigak)/201 measuring 1.85 hectares, including any excess acreage revealed by survey, is allocated to Hellen Cheruto Lelei absolutely.
 - c. Moi'S Bridge/Ziwa block 11 Kipsigak/205 remains allocated as originally confirmed: 7 acres to Hellen Cheruto Lelei and 5 acres to Margaret Chelagat Cheptalam in trust for her children. Any excess acreage discovered through subsequent surveys shall benefit Hellen Cheruto Lelei as the larger original allocatee.
 - d. Soy/Kipsang block 5 (Ziwa)/201 maintains its original allocation of 60 acres to Hellen Cheruto Lelei's children and 33.72 acres to Margaret Chelagat Cheptalam's children. The additional 2.43 hectares discovered through mutation is hereby allocated entirely to Margaret Chelagat Cheptalam in trust for her children.
 - e. Eldoret Municipality block 9/2379 shall be divided equally between Hellen Cheruto Lelei and Margaret Chelagat Cheptalam through subdivision to ensure each party receives a half share of equivalent value.



- f. The current administrators are directed to complete all transfers in accordance with these orders within sixty (60) days from the date of this ruling. Failure to comply shall result in automatic revocation of their appointment and substitution with the Public Trustee.
- g. That a declaration is hereby made that the role of the Deputy Registrar would be to oversight the administration of the estate by the administrators and in default the clause on having the Public Trustee based at Eldoret Town to take over the administration of the estate.
- h. That the expenses incurred by the Public Trustee shall be met from the estate account.
- i. That inconformity with the findings made by this court an amended certificate of confirmation of grant be issued by the Deputy Registrar for endorsing and sealing as an instrument providing the basic structure on distribution of the estate.
- j. That for the KapSoya prime property a surveyor be contracted to re-draw the dimensions in compliance with this judgement.
- k. That the infrastructure development and improvement of permanent buildings on this property shall be valued by the county valuer during the pendency of this transmission to inform whether the beneficiaries need to compensate each other for the resources expended hitherto
- l. The costs of this litigation shall be shared equally save for the legal expenses which can be accommodated from the estate account.

41. Orders accordingly.

DATED SIGNED AND DELIVEED AT ELDORET THIS 14TH DAY OF JULY, 2025

.....

R. NYAKUNDI

JUDGE

In the Presence of:

Mr. Oyaro & Co. Advocates for the Objector

Hellen Cherutto Lelei- Petitioner

Margaret Jelagat Cheptalam- Objector

