In re Estate of Kipkemei Sanga (Deceased) (Succession Cause E010 of 2024) [2025] KEHC 12548 (KLR) (15 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12548 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE E010 OF 2024

RN NYAKUNDI, J

SEPTEMBER 15, 2025

IN THE MATTER OF THE ESTATE OF KIPKEMEI SANGA ALIAS KIPKEMEI SANGA (DECEASED)

BETWEEN

DOUGLAS KIPKERING CHEPTABOK ..... 1ST PETITIONER

LENA CHEROTICH CHEPKWONY ..... 2ND PETITIONER

AND

PAUL KIPKERING TUWEI ..... 1ST PROTESTOR

SIMEON KIMUTAI LELEI ..... 2ND PROTESTOR

SELLY JEPNGETICH MALAKWEN ..... 3RD PROTESTOR

DENNIS KIPCHUMBA ..... 4TH PROTESTOR

RULING

1. The deceased herein Kipkemei Sanga Alias Kipkemei Sanga died on 23rd November, 2020 leaving behind three households with beneficiaries as hereunder:

    1st Household

    Douglas Kipkering Cheptabok – son

    Kimurei Kemei – Son (deceased)

    2nd Household

    Lena Cherotich Chepkwony – daughter

    Hellen Jerono Samoei – daughter

3rd Household

Salina Ngososei – daughter (deceased)

Paul Tuwei – son

David Ngetich – son (deceased)

Selly Malakwen – daughter

Simion Lelei – son

2. The petitioners lodged the instant petition with a view to have the estate distributed across the stated beneficiaries. They identified only one asset being Kapsaret/Simat Block 1(Mutwot)/53 available for distribution with no liabilities. The cause was gazetted on 8th March, 2024 and the petitioners were issued with a grant on 12th April, 2024.

3. The petitioners through counsel filed summons for confirmation of the Grant seeking to have the estate distributed as per the proposed model in the summons, to which the protestors filed an affidavit in protest. The objectors protested the inclusion of the (1st house) 1st petitioner and his deceased brother Jackson Kimurei who had been allocated their share by the deceased father while he was still alive and that the entire portion of Kapseret/Simat Block 1 (Mutwot)/53 being the only asset left by their deceased father should be distributed equally to the beneficiaries who had not been gifted of their share of deceased land as per the deceased wishes as communicated to his brother William Kirwa, Kipkering Kamarei Nango and their son Joseph Sawe, Paul Tuwei and Simion Lelei in meeting he had summoned them in 2016 where minutes were done by one of his step son Joseph Sawe, and that the deceased kept reminding them and the oral will made by the deceased kept reminding them and the oral will made by the deceased a month before he died in October, 2020 having summoned the same people he has summoned in the 2016 meeting.

4. The parties gave evidence in court, which is captured as hereunder:

The Protestors' case

5. The protestors in establishing their case called seven witness in discharging their burden as to the validity of the oral Will in question. PW1 was Simon Lelei who is the last born son of the deceased from the third house. He adopted his witness statement dated 5th February, 2025 as his evidence in chief and stated that he is an ordained pastor of the SDA church and that he speaks the truth. He told the court that his father was one of the 41 original members of Mutwot Farm and that his father was allocated approximately 33 acres. PW1 further told the court that the sons from the first house particularly Jackson Kimurei (deceased) and the 1st petitioner Douglas Cheptabok were gifted their respective shares by their deceased father and issued with title deed to that effect while their deceased father was still alive since they were older siblings in the family. He testified that the deceased summoned his two brothers William Kirwa and Kipkering Kamarei, his Cousin brother (Joseph Sawe) and David Kering (son of Kipkering Kamare) and suggested how the land would be distributed to the remaining sons from the 3rd house whom he said should allocate 5 acres each for his 3 sons as he had allocated the same to his 2 sons (Jackson Kimurei and Douglas Cheptobok) from the first house and that his daughter each be allocate 0.5 acres and indicated to them how he wanted his remaining estate be distributed among his sons and daughters noting that he had already gifted the sons from the first house. He told the court that he bought 0.5 acres from his step sister Lena Chepkwony where he made progressive payment but the 1st protestor interfered with clearance of balance for he had already paid Kshs. 163,000/= with outstanding balance of Kshs. 76,000/=. He further told the court that it was

the 1st petitioner who misled his step sisters by convincing them to deny the amount given the value of the property.

6. During cross examination, PW1 stated that there was a letter from the chief that listed all the children of the deceased correctly. He informed the court that he did not remember when the oral Will was made but he confirmed that there was a difference of 4 years from making the oral Will to the death of the deceased. He gave evidence that he did not remember the exact date when the Oral Will was made but confirmed that there was a difference of 4 years from making the Oral Will to the death of the deceased.

7. PW2 was Paul Kipkering Tuwei testified and adopted his affidavit dated 5th February, 2025 and 7th March, 2025 as evidence in chief. He testified that at the time of making of the Will, the deceased called his two brothers, cousin brother, himself and David Kering and suggested how the land would be distributed.

8. During cross examination, he testified that the deceased died in 2020 leaving an oral Will that was made in 2016 and 2020. He did not produce anything to establish that there was another meeting in 2020. He confirmed that they had initiated intestate succession proceedings Eldoret MCSUCC No. 399 of 2023. He confirmed that they had an advocate and its true that their documents reflected that their father left no Will. He stated that the sisters from the 2nd household were not entitled to anything as they sold their portion to him and his brother. He did not produce any sale agreement to that effect. He only relied on 2021 minutes that showed he bought Hellen's portion in 2016 after the father made an Oral Will. He confirmed that Hellen did not sign on the above minutes and nothing shows that she attended the meeting.

9. Next in line was Kimisoi Kibarwa Rotich who testified as PW3. He told the court that he was a close friend to the deceased. He adopted his statement dated 4th February, 2025 as his evidence in chief. He testified that they were neighbours to the deceased and that he was present the morning before his death and reminded him his oversight role and the distribution of his estate to the remaining sons and daughter after his death. PW3 gave evidence that he witnessed when the deceased allocated his 2 sons from the first house their portion of land. He told the court that the deceased called him and told him that his 3 sons from the 3rd house to be allocated each 5 acres as was the case in the first house.

10. During cross examination the witness told the court that he does not remember when the deceased made an oral Will but he could remember that he was with Jackson Kimurei, the daughter to Kimurei, sons from the 3rd household and a daughter from the 3rd wife and no one else.

11. PW4 was Selah Sitienei who told the court that she is a grandchild to the deceased herein. She testified that their Grandfather made an Oral Will in 2016 and 2021 before he died.

12. During Cross examination, PW4 stated that she had no evidence to prove that she is a grandchild of the deceased. she admitted that she had no authority from the other 9 children of the late Jackson Kimurei to testify on their behalf. It was her testimony that she was still a minor and did not participate in the process of acquisition of the subject parcels of land.

13. PW5 was Paul Kiptoo Maiyo who told the court that he is a village elder at Simat. He confirmed that the name of Douglas, the 1st Petitioner, is in the Register of Mutwot Farm. He testified that he was the son of the original 41 members and further stated that the deceased was one of the 41 original members who jointly purchased Mutwot farm between 1967 to 1970 from a white man. That around 1973 some local surveyors subdivided the land and the 41 original members were each allocated approximately 35 acres which was equal share. He told the court that the first petitioner Douglas Cheptobok and his brother Jackson Kimurei were among the six children who were allocated land directly and title issued in the names directly, other who received title deed directly like Douglas and Jackson Kimurei included

Job Sitienei, Thomas Chumo and Daniel Chumo. He testified that after the deceased had transferred to Douglas and Jackson, and that the deceased sold some portion to some people and was left with approximately 17.5 Acres to be distributed to the 3rd Household with each son getting approximately 5 acres.

14. When cross-examined, he admitted that the subject parcel of land does not fall under his jurisdiction as a village elder. He admitted that he is not among the purchasers of Mutwot Farm and that he was just 10 years at the time of purchase of the subject land. He further stated that it is his father who purchased land at Mutwot farm. He admitted that his father did not give either him or his brothers a portion from his share even though at that time he was 33 years.

15. PW6 was Kipkering Kamarei Nango who have evidence as a brother to the deceased. He adopted his testimony dated 5th February, 2025 as evidence in chief and told the court that he was aware that his deceased brother Kipkemei Sanga bought his share together with other 41 members. He also stated that the deceased had 3 households and had settled the first household. He further testified that the deceased had already settled the 2 sons from the first house by allocating each of the 5 acres each.

16. During cross examination he admitted that he did not participate in the purchase and does not know how the parcels were purchased. It was his evidence that he was told by the deceased together with Jackson Kimurei, William Kirwa, Joseph Sawe, Mr. Lelei and Simon Tuwei. He did not produce anything to show that the subject parcels of land were bought in 1968 when Douglas was still.

17. When cross-examined he testified that the oral will was made a long time ago when Jackson Kimurei was alive. He did not refer to any other subsequent Oral Will.

18. Lastly, PW7 (Joseph Sawe Nango) took the stand and testified that the Will was made in 2016 in the presence of Paul Tuwei, David Ngetich, Simon Lelei, William Kirwa and Kipkering Kimarei but the deceased used to remind them. He told the court that the deceased communicated of his statement of how his estate should be distributed and that he had settled the first house and that the 17.5 acres be distributed to the second and third households and that the three sons from the third house to each be allocated 5 acres and that 0.5 acres for the four daughters that is 0.5 Acres to Hellen Samoei and Lena Chepkwony (2nd Household) and 0.5 acres for 2 daughters from the 3rd household.

19. During cross examination he stated that he does not own land at Mutwot farm and does not know how they were being purchased as he was young. He testified that during the purchase of the land, the petition as a teacher and was able to buy land.

The petitioners' case

20. The Petitioners called three witnesses whose testimony is as follows:

21. DW1 (Douglas Cheptabok) adopted his witness statement dated 19th November, 2024 together with a supplementary affidavit dated 18th March, 2025 as his evidence in chief. He testified that he is a son to the deceased that the deceased left behind one property for distribution. That their late father died without a Will and that the protestors commenced intestate proceedings vide Eldoret CMCC Succession Cause No. E399 of 2023 and therefore confirming the fact that their father did not leave a Will behind. He gave evidence that the allegations that they are not entitled to inherit a portion of the estate asset for the reason that they had been provided for during the lifetime of their deceased father is baseless. He testified that he bought the land from Mutwot Farm and was not given land by his father during his lifetime. He told the court that he is not aware of any oral will. He informed the court that there was no meeting that was held in 2016. He stated that he did not attend the 2021 meeting since he was not invited. He further stated that he allocated a portion of his own portion to his advocate

as he had no money to pay the legal fee. That in 1960's his father was in Tanzania and couldn't have purchased land then.

22. According to DW1, the Mutwot farm was initially owned by a settler farmer who offered it for sale in the year 1981. That they pulled together as residents of Nandi and Uasin Gishu Counties and incorporated Mutwot Farmers Company Limited in the year 1981 or thereabouts with a view of purchasing the said parcel of land. He testified that he paid a sum of Ksh. 450 in 1981 or thereabouts towards purchase of shares in the above-mentioned company and that entitled him to the membership.

23. It was also his evidence that his father deceased herein and his brother equally purchased their shares in the company. He maintained that the deceased did not distribute the estate during his lifetime hence his estate should be distributed in this cause under the rules governing intestacy.

24. The next witness was Lenah Cherotich Chepkwony who testified as DW2. She told the court that she is the daughter of the deceased from the 2nd household. She adopted her witness statement and stated that she wanted the estate of her father to be divided equally among all the children. During cross examination, she stated that she was not aware that her father had given a portion of his land to her step-brothers, Jackson and Douglas. She gave evidence that she did not know about the oral will. According to her, she never agreed with the protestors or any other beneficiary to sell my inheritance and she has never received money as alleged by the protestors. That it would be unconscionable that she would sell her inheritance for a mere sum of Kshs. 240,000/= when her rightful share is worth in excess of Kshs. 6,000,000/=.

25. The last witness to take the stand was Hellen Samoei who testified as DW3 and adopted her witness statement as her evidence in chief. She gave evidence that she wanted her father's land to be shared equally among all his children. During Cross examination he stated that she is from the 2nd household. That she has no knowledge of any land given to the 1st household. further that she has never received money from Paul Tuwei. She denied being given land by the father.

26. The parties filed their respective submissions which I have briefly summarized as hereunder:

The petitioners' written submissions

27. Learned Counsel Mr. Kenei appearing on behalf of the petitioners filed written submission in which he couched the following issues as proper for determination:

    a. Whether the deceased left a valid Oral Will.

    b. Whether the deceased made a Gift Intervivos in favour of the 1st petitioner during his lifetime.

    c. What is the just mode of distribution?

28. Regarding the first issues, it was submitted for the petitioners that the deceased herein died without a Will and that the protestors' claim in these proceedings is an afterthought only aimed at depriving the children of the 1st and 2nd Household of their rightful inheritance. Learned counsel maintained that if the deceased had left an Oral Will, the existence of the Will would have been a matter within their knowledge in 2023 when they commenced the succession proceedings before the subordinate court. On this counsel cited the decision in Re Estate of Peter Gachiri Ichura (deceased).

29. As to the 2016 Will, counsel submitted that the Oral Will allegedly made on 11th January, 2016 as alleged by the protestors became void or ineffective within three months from that date noting that the deceased died on 23rd November, 2020 which was four years after the date of the alleged Oral Will. On this Mr. Kenei cited the decision in Grace Nyambura Mbugua & Another v. Felix Kimani Mbugua

(2017) KEHC 3690 (KLR) where the court considered the provisions of section 9(1) of the *Law of Succession Act* regarding the lapse of time being a three months period within which an oral Will should be valid.

30. Counsel invited this court to look at the testimony of the protestors to ascertain that their witnesses were unable to agree on who were present in the said meeting that was held in 2016. It was submitted for the petitioners that the protestors were unable to prove vide the minutes of the meetings held on 11th January, 2016, that the deceased called for that meeting where he distributed his assets in view of the fact that it does not bear the signature of the deceased. That they failed to provide anything to show that the words were said by the deceased to operate as a Will. Mr. Kenei maintained that the protestors were unable to explain why the deceased never transferred land to them in the four years he was alive if he distributed his land parcel No. Kapsaret/Simat Block 1 (Mutwot) 53 measuring 17.49 acres in 2016.

31. In submitting on the 2020 Will, learned counsel argued that from the onset the affidavit in protest only captured the 2016 Oral Will with no mention of the 2020 Will which shows that if at all the deceased never uttered anything in relation to the Will then it was in 2016. He further submitted that the protestors who alleged that the deceased repeated the 2016 Will in 2020 were not able to agree on a specific date when the Will was repeated and who were present, which raises concerns on whether there was an independent witness at the time of the making of the Oral Will as envisaged under Section 9 of the *Law of Succession Act*. Counsel further added that in view of the fact that the deceased was sick at the time of making, he was in no capacity to make a Will and therefore the Oral Will is invalid.

32. On the issue of Gift Inter Vivos, learned counsel Mr. Kenei submitted that the 1st Petitioner (Douglas Cheptabok) was not gifted during the lifetime of their father, the late Kipkemei Sanga. He argued that the land parcel number Kapsaret/Simat Block 1(Mutwot)/51 was purchased by Douglas Cheptabok using his own money, as evidenced by a receipt marked as Annexure 'DC 3' produced before the Honorable Court. This receipt demonstrated that Douglas made payments towards the purchase of shares in Mutwot Farm Limited, which entitled him to membership and land ownership on his own accord.

33. Counsel submitted that there was no nexus between Douglas's parcel of land and the deceased's land, either regarding allocation or payment of the purchase price. He emphasized that no evidence had been presented to the court to prove that the land owned by Douglas was hived off from the deceased's land at any point.

34. Mr. Kenei further submitted that it was important for the court to recognize that the 1st Petitioner was a teacher employed by the Teachers Service Commission at the time of purchasing the subject parcel of land. He was able to purchase land as evidenced in Annexure DC6 through his witness affidavit and witness testimonies. The late Kipkemei Sanga and his eldest son (Jackson Kimurei Kemei) equally purchased their shares from the same company at the same time. Counsel argued that there was no way the deceased would have gifted or transferred land to Douglas and his brother, noting that one cannot gift that which he doesn't own.

35. He anchored his argument in the case of re Estate of the Late Gedion Manthi Nzioka (Deceased) [2015] eKLR, where Lady Justice Nyamweya held that gifts are of two types: gifts made between living persons (gifts inter vivos) and gifts made in contemplation of death (gifts mortis causa). For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing, or by delivery, by way of declaration of trust by the donor, or by way of resulting trusts or presumption. Gifts of land must be by way of registered transfer, or if the land is not registered, it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid, and

it is not necessary for the donee to give express acceptance, as acceptance of a gift is presumed until or unless dissent or disclaimer is signified by the donee.

36. Counsel submitted that the Protestors had not proffered any evidence to demonstrate that the beneficiaries from the 1st Household were given their share of the deceased's estate during the lifetime of the deceased. None of the Protestors' witnesses participated in the transactions relating to the acquisitions of Mutwot Farm by the deceased and his two sons, and their testimonies with respect to the Gift Inter Vivos were founded on hearsay.

37. He further cited the case of Munyole v Munyole (Civil Appeal 21 of 2017) [2022] KECA 373 (KLR) (18 February 2022), where it was held that for the court to conclude that a deceased person had made a gift inter vivos to a beneficiary, evidence must be led to this effect. Additionally, he referenced Kerich v Nandi County Government (Environment & Land Case 41 of 2021) [2023] KEELC, where the Court quoted a Court of Appeal decision in Kagina vs Kagina and 2 others, stating that a deceased person has capacity to divest himself of property during his lifetime through gift inter vivos, which are protected under the Act and are actionable by a Court of law irrespective of whether they are perfect or imperfect. The Court distinguished between perfect gifts (meaning complete transfer of the gift inter vivos in favour of the beneficiary, effected and completed during the lifetime of the deceased) and imperfect gifts (meaning the transfer was incomplete at the time of the demise of the deceased).

38. Mr. Kenei emphasized that PW1 and PW2 confirmed that the receipt issued to the 1st Petitioner was from Birech, who was the Chairman of Mutwot Farm Limited. PW1 confirmed that he had not lodged a complaint that Douglas had forged a receipt, and PW2 admitted that the portion of land belonging to Douglas was registered before their father's land, which showed that there was no way the land belonging to Douglas was hived from their father's portion.

39. On the issue of the just mode of distribution of the Estate, learned counsel Mr. Kenei submitted that the Petitioners had filed a proposed mode of distribution vide Summons for Confirmation of Grant dated 25th April, 2025. He argued that all the children had been listed and the property had been shared equally among all the children of the deceased. The Petitioners had hived off 0.4 acres each of their shares to their advocate as legal fees and costs for commencing and prosecuting the cause.

40. He submitted that the proposed mode of distribution by the Protestors was discriminatory to the daughters and excluded children from the 1st and 2nd Households. No justifiable reason had been given as to why daughters were to inherit 0.5 acres while the sons were being allocated 5 acres each, which was tenfold.

41. Counsel anchored his argument in the case of Stephen Gitonga M'Murithi vs. Faith Ngiramurithj [2015] eKLR, where it was held that Section 38 enshrines the principle of equal distribution of the net intestate estate to the surviving children of the deceased irrespective of gender and whether married and comfortable in their marriage or unmarried. He emphasized that a son will not have priority over a daughter of the deceased simply because he is male, as all male and female siblings are equal before the law and are entitled to equal protection of the law, referencing Article 27 of *the Constitution*.

42. Counsel argued that the 3rd Administrator and her children who were claiming the inheritance of late Festus K. M'Ngaruthi (the son of the deceased) were only entitled to the share of their late father and were not entitled to more share than the distinct share of each of the two daughters of the deceased simply because the late Festus M'Ngaruthi was the son. He submitted that the three children of the deceased were entitled to share the net intestate estate of the deceased equally.

43. Regarding the Protestors' annexure of Minutes of a purported meeting held in 2021, Mr. Kenei submitted that those Minutes only showed deliberations on how the estate of the deceased was to be

distributed. However, the Petitioners contested the alleged meeting, indicating that they were never invited and never attended. He argued that there was no way the Protestors would have purchased shares belonging to the daughters from the 2nd Household without their consent. On this he cited the case of the Estate of Francis Mwangi Mbaria (Deceased) (2018) eKLR.

44. In conclusion, Mr. Kenei urged the Honourable Court to dismiss the Protest and allow the Summons for Confirmation of Grant dated 25th April, 2024. He submitted that the Petitioners had demonstrated beyond peradventure that the deceased did not distribute his estate during his lifetime, hence the estate should be distributed under the Law of Intestacy. He argued that it was evident from the pleadings and evidence that the allegation on the existence of an Oral Will and Gift Inter Vivos was mischievously aimed at vesting an unfair advantage to the 3rd Household to the detriment of the 1st and 2nd Households.

Protestors' written submissions

45. Learned Counsel Mr. Bett in submitting on behalf of the protestors couched the following issues for determination:

    a. Whether the deceased left a valid Oral Will.

    b. Whether the deceased made a gift in favour of the first household during his lifetime.

    c. What is the just distribution?

46. On the first issue, Mr Bett submitted that the deceased had left an Oral Will before he passed on. It was submitted that it is true that the deceased summoned his two brothers and his son's brother in 11th January, 2016 where he gave his wishes on how his estate should be distributed and the same was recorded in form of minutes by the family secretary Joseph Sawe who is a witness.

47. Learned Counsel submitted that the protestors were able to demonstrate to the court that the deceased was in sound mind when he made his Will and made before competent witnesses and gave his mode of distribution.

48. On the second issue regarding gift intervivos, learned counsel submitted that the deceased gifted the first household that is the petitioner and his brother Jackson Kimurei during his lifetime and title were issued.

49. As to the just mode of distribution of the estate, counsel submitted that the estate should be distributed fairly and equally as was the wishes of their deceased father as follows:

    a. Paul Kipkering Tuwei (son) – 5 acres

    b. David Kipleting Ngetich (deceased) (son) – 5 acres

    c. Simeon Kimutai Lelei (son) – 5 Acres

    d. Lena Cherotich Chepkwony (daughter) – 5 acres

    e. Hellen Jerono Samoei (daughter) – 0.5 Acres

    f. Salina Jepsongok Malakwen (daughter) – 0.5 Acres.

    g. Selly Jepngetich Malakwen (daughters) – 0.5 Acres.

50. Mr. Bett concluded urging the court to consider the wishes of the deceased person and confirm the Grant.

Analysis and determination

51. I have had the advantage of evaluating the evidence by the Petitioners and also the Protesters. This is a matter mainly hinged on an oral will and gift inter-vivos. In view of the aforesaid the question which follows is whether the Protesters managed to prove their case on both issues. According to Section 107 (1) of the *Evidence Act* he who alleges must prove. This was initially emphasized in the persuasive case from the Republic of Tanzania in Paulina Samson Ndawavya v Theresia Thomas Madaha, Civil Appeal No. 53 of 2017 where the Court stated that:

> " ...It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other ..."

In establishing the standard and burden of proof on a balance of probabilities which is implicit in civil cases but an import to the realm of succession law the yardstick and measure of which is the evidence available on record and whether on consideration of it by both parties it tilts the balance on one way or the other. A clear understanding of these issues are very fundamental and prerequisite in making a determination on the subject matter before this court. In our jurisdiction, the Courts have endeavoured to plug in by providing insights on the applicable principles and guidelines on the standard of proof on a balance of probabilities. Thus in the case of Evans Nyakwana v Cleophas Bwana Ongaro [2015] eKLR it was held:

> " As a general proposition, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of Section 107 (i) of the *Evidence Act*, Chapter 80 Laws of Kenya. Furthermore, the evidential burden ... is cast upon any party, the burden of proving any particular fact which he desires the court to believe in its existence. That is captured in Section 109 and 112 of the law that proof of that fact shall lie on any particular person ... The appellant did not discharge that burden and as Section 108 of the *Evidence Act* provides the burden lies in that person who would fall if no evidence at all were given as either side."

52. It is also in the same vein the Court in William Kabogo Gitati v George Thuo & 2 Others [2010] 1 KLE 526 stated that:

> " In ordinary civil cases, a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely than not to be what took place. In percentage terms, a party who is able to establish his case to a percentage of 51% as opposed to 49% of the opposing party is said to have established his case on a balance of probabilities. He has established that it is probable than not that the allegations that he made occurred."

53. This is where the rubber meets the road whether any Judge or Magistrate likes or not, the legal burden of proof is consciously and unconsciously the acid test applied when coming to the decision-making process in any particular case which has been filed before court for adjudication. The comparative case of Britestone Pte Ltd v Smith & Associates Far East, Ltd ("Britestone") [2007] 4 SLR (R) 855 at [59] stated:

> " The court's decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him. Since the terms 'proved'.

'disproved' and 'not proved' are statutory definitions contained in the *Evidence Act* (Cap 97, 1997 Rv Ed) ('EA'), the term 'proof', wherever it appears in the EA and unless the context otherwise suggests, means the burden to satisfy the court of the existence or non-existence of some fact, that is, the legal burden of proof: (See Sections 107 (1), 108 & 109 of the *Evidence Act* Cap 80 of the Laws of Kenya). (Underlined emphasis mine).

54. The *Evidence Act* in the aforementioned provisions places the burden of proving a fact in any Court of law on the party who claims to have a cause of action against an adversarial party to assert the existence of any fact in issue or relevant fact respectively so that judgment can be ruled in his or her favour concerns the legal than the evidential burden of proof. Whereas the evidential burden while not expressly defined in the *Evidence Act* exists in form of a tactical onus to contradict, or weaken or controvert the evidence that has been led by either the Claimant, Applicant, Petitioner or Plaintiff to the suit. In applying this principle to the facts of this case, the position of the Petitioners was to the effect that there was no oral will or gift inter vivos so as to discharge the burden of proof as asserted by the Protesters. In Miller v Minister of Pensions [1947] 2 All ER 372 at 374 it was stated:

> "If at the end of the case the evidence turns the scale definitely one way or the other, the tribunal must decide accordingly, but if the evidence is so evenly balanced that the tribunal is unable to come to a determinate conclusion one way or the other, then the man must be given the benefit of doubt. This means that the case must be decided in favour of the man unless the evidence against him reaches the same degree of cogency as is required to discharge a burden in a civil case. That degree is well settled. It must carry a reasonable degree of a probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say, 'We think it more probably than not', the burden is discharged, but, if the probabilities are equal, it is not."

55. This is what one must discern in the upcoming analysis as to whether who among the two protagonists in this succession battle will carry the day and judgment be entered in his favour.

56. Having considered all the evidence before this court including all the parties' affidavits and attached documentation, the witness called by either parties and the parties' submissions, the issues of determination before this court and as deciphered by the Petitioners' Counsel include:

    a. Whether the deceased died testate and whether the oral will is valid.

    b. Whether the deceased made a gift intervivos in favour of the 1st Petitioner during his lifetime.

    c. What is the just Model of Distribution?

Whether the deceased died testate and whether the oral will is valid

57. First and foremost, the Protesters are put on notice by the guidelines set out in the case of Nutt v Nutt [2018] EWHC 851 in which the Court summarised the law on the burden of proof as follows:The burden is on the person seeking to establish the will ('the propounder') to establish capacity;Where a will is duly executed and appears rational on its face, then the court will presume capacity;An evidential burden then lies on the objector to raise a real doubt as to capacity;Once a real doubt arises there is a positive burden on the propounder to establish capacity.

What is expected of the Protesters?

58. Before this court they swore affidavits and witness statements urging this court to approve the contents of the Testator's oral will saying that the Will as set out from their evidence and other witnesses not

summoned before this court represented the testamentary intentions of the deceased. The court in Gill v Woodall [2010] EWCA Civ 1430 [2011] Ch 380 at [14-22] had this to say on the holistic approach by which a Probate Court should proceed to analyse the evidence of propounding the Will:

> "... consider all the relevant evidence available and then, drawing such inferences as it can from the totality of that material, it has to come to a conclusion whether or not those propounding the Will have discharged the burden of establishing that the testatrix knew and approved the contents of the document which is put forward as a valid testamentary disposition. The fact that the testatrix read the document, and the fact that she executed it, must be given the full weight apposite in the circumstances, but in law those facts are not conclusive, nor do they raise a presumption.

59. This is going to be a threshold issue on this high voltage legal contest on the making of the oral Will during the survivorship of the deceased in bequeathing his property to the heirs under Section 29 of the Succession Act.

60. The Protestors claim that the deceased made an oral Will in 2016, which was allegedly repeated in 2020. This claim forms the cornerstone of their case. It is trite law that he who alleges must prove. In law, the burden of proof lies upon the party who asserts the existence of a fact or set of facts. Section 107 of the *Evidence Act* provides as follows:

> "(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."

61. The *Law of Succession Act* provides for what an oral Will is and how it is to be proved. At section 9 it states:

> ""Oral Wills
>
> (1) No oral Will shall be valid unless—
>
> (a) it is made before two or more competent witnesses; and
>
> (b) the testator dies within a period of three months from the date of making the will:
>
> Provided that an oral Will made by a member of the armed forces or merchant marine during a period of active service shall be valid if the testator dies during the same period of active service notwithstanding the fact that he died more than three months after the date of making the will.
>
> (2) No oral Will shall be valid if, and so far as, it is contrary to any written will which the testator has made, whether before or after the date of the oral will, and which has not been revoked as provided by sections 18 and 19.

At Section 10 it provides the manner in which oral Wills may be proved.

If there is any conflict in evidence of witnesses as to what was said by the deceased in making an oral Will, the oral will shall not be valid except so far as its contents are proved by a competent independent witness."

62. The evidence reveals significant inconsistencies among the protestors' witnesses regarding the alleged 2016 oral will. PW1 (Simon Lelei) testified that his father summoned his two brothers and other witnesses in 2016 where he distributed his assets. However, during cross-examination, PW1 admitted that he did not remember the exact date when the oral will was made but confirmed that there was a difference of four years between the making of the oral will and the death of the deceased.

63. It is sufficient to note that the detailed evidence of the witnesses summoned by the Protesters as a sample size of the seventeen allegedly put together provides a mirror to what must have transpired in the two significant occasions when this oral testamentary was pronounced as a legal instrument to be applied to distribute the net estate of the deceased. The terms of those instructions have been amplified by the witnesses but interestingly they failed to tell the Court who was to be the executor of the terms of the oral Will.

64. One of the fundamental aspects is that a testamentary or as commonly referred to a Will is always made in contemplation of death or if not, it is written and thereafter the Testator might then move to revoke the previous one by inserting the words, 'Last Testamentary'. Here, the evidence drawn from the witnesses before this Court on behalf of the Protesters in a way the circumstances in which the Testator pronounced his oral Will raises question to afford a very grave and strong presumption as whether he knew and approved all the contents of the subject matter of this litigation. Therefore, the burden in this case is a heavy one. It is a heavy burden upon the Protesters who came to this Court to say in addition with their witnesses that I agree that the Testator was in every way to make a oral Will. Further, I agree that the oral Will which he had made is perfectly clear and an ambiguous in its terms. In addition to the evidence by each of the witnesses, yes I agree that it contains a revocatory clause, yes in simple terms nevertheless is say that they did not really intend to revoke the earlier bequests in the earlier oral Will. Quite obviously in my view, in analyzing the evidence the burden must be heavy upon any witness who comes to assert a proposition of that kind. When one looks at the two periods when the impugned Will was alleged to have been made there are certain gaps in evidence which are not easily reconcilable to give legality and legitimacy to that Will as a legal instrument to be used in the distribution of the Deceased's estate.

65. This admission disadvantaged the Protestors' case. The deceased died on 23rd November 2020. If the oral Will was made in 2016 as alleged, this would be well beyond the three-month period stipulated under Section 9(1)(b) of the *Law of Succession Act*.

66. PW2 testified that the deceased died in 2020 leaving an oral Will that was made in 2016 and 2020. However, no tangible evidence was produced to establish that there was another meeting in 2020. Significantly, he confirmed that they had initiated intestate succession proceedings in Eldoret MCSUCC No. 399 of 2023 and that their documents reflected that their father left no Will.

67. PW3 testified that he witnessed when the deceased allocated his two sons from the first house their portion of land. However, during cross-examination, this witness could not remember when the deceased made an oral Will. He stated that he could remember being with Jackson Kimurei and others but was vague about the details.

68. Additionally, the Protestors' witnesses were unable to agree on who was present during the alleged will-making event. This inconsistency raises serious doubts about the veracity of their testimony. PW6 (Kipkering Kamarei Nango) testified that the oral will was made "a long time ago" when Jackson

Kimurei was alive, without reference to any subsequent oral Will. When cross-examined, he did not refer to any other subsequent oral Will.

69. The evidence regarding the alleged 2020 oral Will is even more tenuous. The original affidavit in protest only captured the 2016 oral Will with no mention of any 2020 will. This would reasonably enough suggest that the 2020 Will was an afterthought introduced during the proceedings.

70. I also take note that the Protestors failed to produce any credible documentary evidence supporting their claim. The purported minutes of meetings do not bear the signature of the deceased, and there is no evidence that the words recorded therein were actually uttered by the deceased to operate as a will. The 2021 minutes relied upon by the protestors show deliberations among family members but do not constitute evidence of an oral will made by the deceased.

71. Better still, I find it significant that the protestors initially commenced intestate succession proceedings before the subordinate court. PW2 confirmed that they had an advocate and that their documents reflected that their father left no will. This conduct is entirely inconsistent with their current claim of the existence of an oral will. Having considered all the purchases from the evidence from each of the witnesses by the Protesters and other independent witnesses I remain unpersuaded that they provide any cogent, credible, truthful and probative evidence in support for the submission that the Testator made an oral Will which this Court should give legal effect in the Succession Cause to devolve the estate to the beneficiaries. I find the proposition of law in re Harrison (1885) 30 Ch D 390 at 393-4 relevant to the facts of this case in which Lord Esher MR said:

> " There is one rule of construction, which to my mind is a golden rule, viz., that when a testator has executed a will in solemn form you must assume that he did not intend to die intestate when he has gone through the form of making a will. You ought, if possible, to read the will so as to lead to a testacy, not an intestacy. This is a golden rule."

72. An oral Will is a threshold issue of the law under Section 9 of the *Law of Succession Act*. This questionable oral Will raises a point of statutory construction spanning the year 2016 and 2020 when the alleged testamentary is stated to have taken effect. It is settled law be either a written or oral Will it shall be treated as properly executed if its execution conformed to the Succession Law in force in Kenya. This was not the case here, just to mention but a few elements, the Testator never died three months after the making the alleged Oral Will under Section 9 of the Succession Act. If indeed he was in the period between 2016 and 2020 he had formed the intention of distributing the estate in compliance with the provisions of Section 9 and not Section 11 of the applicable Statute, then he may have been under some undue influence or coercion from some quarters amongst his children. This is what the court envisaged in Hall v Hall (1865-69) LR 1 P&D 481 when it observed as follows:

> " To make a good will a man must be a free agent. But all influences are not unlawful. Persuasion, appeals to the affections or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like, - these are all legitimate, and may be fairly pressed on a testator. On the other hand, pressure of whatever character, whether acting on the fears or the hopes, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats, such as the testator has not the courage to resist, moral command asserted and yielded to for the sake of peace and quiet, or of escaping from distress of mind or social discomfort, these, if carried to a degree in which the free pay of the testator's judgment, discretion or wishes, is overborne, will constitute undue influence, though no force is either

used or threatened. In a word, a testator may be led but not driven; and his will must be the offspring of his own volition, and not the record of someone else's."

73. For the evidence of these witnesses who testified on behalf of the protesters to be included this court must find it relevant to the intention of the testator or transferor of a portion of the estate to the beneficiaries.

Whether the deceased made a gift inter vivos in favour of the 1st Petitioner during his lifetime

74. The Protestors contend that Douglas Cheptabok and his deceased brother Jackson Kimurei were gifted land by their father during his lifetime. The legal requirements for valid gifts inter vivos are well established.

75. In Dan Ouya Kodwar v Samuel Otieno Odwar & Another [2016] eKLR while quoting Her Ladyship Nyamweya, P. in Re Estate of the Late Gedion Manthi Nzioka (Deceased) (2015) eKLR the court expressed itself as follows:

> " For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing of by delivery, by way of a declaration of trust by the donor, or by way resulting trusts or the presumption of. Gifts of land must be way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be completed for the same to be valid. In this regard it is not necessary for the done to give express acceptance, and acceptance of a gift is presumed until or unless dissent or disclaimer is signified by the done. See in this regard Halsburys Laws of England 4th Edition Volume 20(1) at paragraph 32 to 51."
>
> In Halsbury Laws of England 4th Edition Volume 20(1) at paragraph 67 it is stated as follows with respect to incomplete gifts:
>
> "Where a gift rests merely in promise, whether written or oral, or in unfulfilled intention, It is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where donor's subsequent conduct gives the done a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprises in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do."

76. The 1st petitioner Douglas Cheptabok alleges that he purchased his land independently using his own funds. He testified that he paid KSh. 450 in 1981 towards the purchase of shares in Mutwot Farmers Company Limited. He produced Receipt Annexure 'DC 3' demonstrating a payment of Kshs. 200/= and not 450/= as stated. He alleged that he made payments towards the purchase of shares in Mutwot Farm Limited.

77. The evidence reveals that Douglas was employed as a teacher by the Teachers Service Commission at the time of purchasing the land and he alleged that he had the financial capacity to make such a purchase. PW5 (Paul Kiptoo Maiyo) confirmed that Douglas's name was in the Register of Mutwot Farm, indicating his independent membership in the company.

78. It is settled law that for a gift to be valid and enforceable it must be perfected. In other words, the donor herein the deceased must have done everything necessary and in his power to effect the transfer of property subject matter of this succession cause. In general, the test is whether the critical elements

concerned with gift inter vivos have been satisfied for this Court to rule in favour of the protesters. If one was to analyze documentary evidence touching on Mutwot farm to understand the nature of the act by the deceased and its effect in so far as gift inter vivos is concerned a more logical conclusion would be that there are gaps between the testimonies of the witnesses in court and the four corners of the recorded evidence on the exact acreage which devolved the 1st Petitioner and also his late father. There is therefore the question which remains unanswered which is the extent of the property of which his late father was free to devolve the Petitioners as gift inter vivos and the one sought to be retained by him exclusively for use during his lifetime. The learned Author John Poyser, Capacity and Undue Influence (Toronto Carswell, 2014), at p. 438 addresses what I think could have been an unconscionable bargain if indeed it was to turn out that a share was gifted to the first Petitioner and his deceased brother all from the 1st household. Why do I say so?;

> Equity protects the vulnerable from unconscionable bargain. A gift or other voluntary wealth transfer is prima facie unconscionable where:
>
> 1. The maker suffers from a disadvantage of disability, such as limited capacity, lack of experience, poor language skills, or any other vulnerability that renders the maker unable to enter the transaction while effectively protecting the maker's own interests; and
>
> 2. The transaction effects a substantial unfairness or disadvantage on the maker.

79. A critical examination of the registration timing reveals definitive evidence that fundamentally alters this court's analysis of the gift inter vivos question. The documentary evidence shows that Douglas Cheptabok's title was registered on 25th July 1994 and Jackson Kimurei Kemei's title to Kapsaret/Simat Block 1(Mutwot)/49 was registered on 27th July 1994, both during the deceased's lifetime and just two days apart. These constitute incontrovertible documentary evidence of completed gifts inter vivos to both brothers from the first household, as the legal requirements for perfection of such gifts were satisfied through registered transfers. In any event, looking at the original register with the names of the members of Mutwot farm, the deceased herein was allocated a share of 33.5 acres which explains the narrative as fronted by the protestors.

80. The registration dates of 25th and 27th July 1994 respectively, occurring just two days apart, strongly corroborate the consistent witness testimony that both Douglas and Jackson received their allocations simultaneously during the original farm subdivision process. This temporal proximity of registrations indicates a coordinated transfer process, representing the deceased's systematic distribution of portions of his land to his eldest sons from the first household.

81. In light of this definitive evidence, the court must now determine what constitutes the actual net estate available for distribution. The deceased died holding title to Kapsaret/Simat Block 1(Mutwot)/53 measuring 17.49 acres (7.080 hectares). Both Jackson Kimurei Kemei and Douglas Cheptabok had already received their inheritance through the documented 1994 gifts inter vivos and therefore have no claim whatsoever to the remaining estate. The first household has been fully provided for during the deceased's lifetime.

82. This finding fundamentally alters the distribution calculus. The estate of 17.49 acres must now be distributed solely among the beneficiaries from the second and third households who have not yet received their inheritance. This approach ensures compliance with the deceased's apparent testamentary intention as evidenced by his lifetime gifts, while maintaining equitable treatment among the remaining beneficiaries.

What is the just mode of distribution?

83. Having considered the evidence on the first two issues, I must now determine the appropriate mode of distribution of the deceased's estate. The estate must be distributed in accordance with the provisions of the *Law of Succession Act* governing intestacy.

84. 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 estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

85. *The Constitution* of Kenya 2010 at Article 27 enshrines the principle of equality and non-discrimination. Article 27(3) specifically provides that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

86. While Article 27(3) of *the Constitution* and Section 38 of the *Law of Succession Act* establish the fundamental principle of gender equality in inheritance, this court recognizes that true equality in estate distribution extends beyond mere mathematical precision. The constitutional guarantee of equal treatment does not mandate a rigid 50/50 distribution in every circumstance, but rather demands that no beneficiary be disadvantaged solely on the basis of gender, marital status, or other prohibited grounds of discrimination.

87. True equality in inheritance law requires the court to consider the totality of circumstances affecting each beneficiary while ensuring that the distribution process itself remains free from discriminatory practices. This means that while sons and daughters must be treated with equal dignity and have equal access to inheritance rights, the practical application may involve considerations of individual circumstances, family contributions, and demonstrated need, provided these considerations are applied consistently across genders.

88. The court in Re Estate of Godana Songoro Guyo (Deceased) eKLR the court held thus:-

> " *The Constitution* of Kenya 2010 as well as the *Law of Succession Act* frowns upon the discrimination of women as far as their entitlements are concerned in inheritance matters. I also find useful guidance from the work of W. M. Musyoka," Law of succession" at page 118 in relation to reference to children in the *Law of Succession Act* that:-
>
> 'Non-discrimination of daughters' reference to children does not distinguish between sons and daughters, neither is there distinction between married and unmarried daughters'
>
> Apart from the foregoing, I'm inclined to cite Article "27(3) of" *the Constitution* which "specifically provides that:"
>
> "Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres."

89. Likewise in the case of Stephen Gitonga M'murithi Vs Faith Ngiramurithi [2015] eKLR the Court of Appeal held that:-

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

Therefore, a son will not have priority over a daughter of the deceased simply because he is male; all male and female siblings are equal before the law and are entitled to equal protection of the law.

90. The mode of distribution of the estate of a person who dies 'intestate' is provided for by Sections 66 and 39 of the *Law of Succession Act* as follows: -

Section 66 of the Law of Succession provides that: -

> When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall without prejudice to that discretion, accept as a general guide the following order of preference –
>
> a. surviving spouse or spouses, with or without association of other beneficiaries;
>
> b. other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
>
> c. the Public Trustee; and
>
> d. creditors
>
> Provided that, where there is partial intestacy, letters of administration in respect of the intestate shall be granted to any executor or executors who prove the will.

Section 39 of the Act provides:

1. Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority -

   (a) Father; or if dead

   (b) Mother; or if dead

   b. Brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none.

   c. Half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none.

   d. The relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the state, and be paid into the Consolidated Fund.

91. The petitioners have proposed equal distribution among all beneficiaries. The protestors on the other hand have proposed a distribution model that allocates 5 acres to sons and 0.5 acres to daughters. The protestors claimed that the daughters from the second household sold their portions to them. However, DW2 (Lena Cherotich Chepkwony) and DW3 (Hellen Jerono Samoei) both categorically denied selling their inheritance or receiving any money from the protestors.

92. Having established that both Douglas Kipkering Cheptabok and Jackson Kimurei Kemei received completed gifts inter vivos through their respective title registrations on 25th July 1994 and 27th July

1994, this court now proceeds to distribute the remaining estate of 17.49 acres among the beneficiaries who have not yet received their inheritance.

93. The estate available for distribution consists solely of Kapsaret/Simat Block 1(Mutwot)/53 measuring 17.49 acres (7.080 hectares). This property shall be distributed equally among the seven (7) remaining beneficiaries in accordance with the constitutional principle of non-discrimination and the statutory provisions governing intestate succession.

94. Before I pen off, I note that the petitioners have proposed to allocate 0.4 acres each of their shares to their advocate as legal fees and costs for commencing and prosecuting this cause. While I appreciate the practical need to compensate legal representation, this matter falls outside the purview of this probate court.

95. The duty of a probate court in succession matters is limited to identifying the rightful beneficiaries and determining the net estate available for distribution. Questions of legal costs and advocate fees are matters that should be addressed separately between the beneficiaries and their legal representatives, or through appropriate cost orders in contentious proceedings.

96. The proper approach therefore is for this court to determine equal distribution among all beneficiaries, leaving each beneficiary free to make arrangements for payment of their legal representatives from their individual shares if they so choose.

97. In the end, the estate shall be distributed as hereunder:

No	Beneficiary	Property	Share
Lena Cherotich Chepkwony	Kapseret/Simat Block 1 (Mutwot)/53	2.50 Acres	
Hellen Jerono Samoei	Kapseret/Simat Block 1 (Mutwot)/53	2.50 Acres	
Paul Kipkering Tuwei	Kapseret/Simat Block 1 (Mutwot)/53	2.50 Acres	
Simeon Kimutai Lelei	Kapseret/Simat Block 1 (Mutwot)/53	2.50 Acres	
Selly Jepngetich Malakwen	Kapseret/Simat Block 1 (Mutwot)/53	2.50 Acres	
Estate Of David Ngetich	Kapseret/Simat Block 1 (Mutwot)/53	2.50 Acres	
Estate Of Salina Ngososei	Kapseret/Simat Block 1 (Mutwot)/53	2.50 Acres	

98. The court notes that for practical implementation of this distribution order, the administrators shall coordinate with each beneficiary based on their respective habitual residences to facilitate the subdivision, survey, and transfer processes. The administrators are directed to engage a qualified surveyor to demarcate the 17.49-acre parcel into seven equal portions of approximately 2.50 acres

each, with appropriate access roads and boundaries. Each beneficiary shall be entitled to select their preferred portion through a fair allocation process, taking into account their individual circumstances and proximity to their places of residence where practicable. The estates of deceased beneficiaries David Ngetich and Salina Ngososei shall be represented through their respective legal representatives or administrators in accordance with succession law. Upon completion of the survey and allocation, individual title deeds shall be issued to each beneficiary or their legal representatives, with all costs associated with subdivision, survey, and title registration to be borne proportionally by the beneficiaries from their respective allocations.

99. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 15TH DAY OF SEPTEMBER, 2025

.....

R. NYAKUNDI

JUDGE