



REPUBLIC OF KENYA



In re Estate of Chebochok Mitei alias Chebochoka Mitei (Deceased) (Succession Cause E031 of 2023) [2025] KEHC 12506 (KLR) (9 September 2025) (Ruling)

Neutral citation: [2025] KEHC 12506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E031 OF 2023
RN NYAKUNDI, J
SEPTEMBER 9, 2025
IN THE MATTER OF THE ESTATE OF THE LATE CHEBOCHOK
MITEI ALIAS CHEBOCHOKA MITEI (DECEASED)**

RULING

Representation

M/s Keter, Nyolei & Co Advocates

M/s Kitiwa & Partners Advocates

1. What is pending before this court for determination is Summons for Confirmation of Grant dated 22nd April 2025 in which the Applicant is seeking the following orders;
 - a. The grant of Letters of administration made to the said Chebochok Mitei also known as Chebochoka Mitei in this matter on the 10th March 2025 be confirmed.
 - b. Costs of this application.
2. The summons is supported by the annexed affidavit sworn by David Malakwen Tuikong who deponed as follows;
 - a. A grant of letters of administration of the said estate was made to me in this matter on the 10th day of March 2025.
 - b. The deceased was survived by the following dependents:
 - a. Esther Chepkurui Lelei Widow Adult
 - b. Milka Kipchirchir Cheruiyot Son Adult
 - c. Susan Jepkurgat Lagat Daughter (dcd) Adult
 - d. David Malakwen Tuikong Son Adult
 - e. Monica Jeptoo Daughter Adult



- f. Rodah Jelagat Tuikong Daughter Adult
 - g. Jonah Seroney Mitei Son Adult
 - h. Edinah Jelimo Maiyo Daughter Adult
 - i. Jepketer Tabutany Sambu Daughter Adult
 - j. John Kipsang A Cheruiyot Son Adult
 - k. Stephen Sitienei Tuikong Son (dcd) Adult
 - l. Joseph Kipkosgei Cheruiyot Son Adult
 - m. Sammy Kipkoech Cheruiyot Son Adult
- c. The identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows:

Land Parcel Number: Moi's Bridge/Ziwa Block 9 (Lemorugency)/268

Beneficiary Share of heir

- a. Esther Chepkurui Lelei 2.4 Acres
- b. Mika Kipchirchir Cheruiyot 4.5 Acres
- c. David Malakwen Tuikong 4.5 Acres
- d. Jonah Seroney Mitei 4.5 Acres
- e. Monica Jeptoo
- f. Rodah Jelagat Tuikong
- g. Susan Jepkurgat Lagat
- h. Edinah Jelimo Maiyo 15.9 Acres to be shared by the following members of the first house
 - i. Jepketer Tabutany Sambu
 - j. John Kipsang A Cheruiyot
 - k. Stephen Sitienei Tuikong
 - l. Joseph Kipkosgei Cheruiyot
 - m. Sammy Kipkoech Cheruiyot

Response to the Summons

3. The summons is opposed by the Affidavit dated 6th May 2025 sworn by Ben Kirwa Rotich who deponed as follows:
- a. That I am a Retired Senior Assistant Chief of Koisagat Sub-location.
 - b. That the Late Chebochok Mitei and his family resided in my sub-location.
 - c. That sometime in November 2008, the second wife of the late Chebochok Mitei visited my office and informed me that she had previously left the matrimonial home she shared with the



late Mzee Chebochok Mitei. She further stated that she had returned to the home around the year 1993 and had since been living with Mzee Chebochok Mitei. She indicated that she had been apportioned a portion of land on which she resided, but expressed a desire to be allocated a larger portion of the land to the late Chebochok Mitei.

- d. That upon noting the issue raised, I summoned the late Mzee Chebochok Mitei to my office together with his second wife and a few elders in order to address the concerns that had been raised by the second wife.
 - e. That among the village elders who accompanied them to my office were William Seroney Maiyo, Samuel Rono and Others.
 - f. That the meeting proceeded and each party was given the opportunity to present their views regarding the proposed division of land.
 - g. That during the meeting Mzee Chebochok Mitei stated that the second wife had deserted the matrimonial home for a period exceeding twenty (20) years.
 - h. That he indicated he was willing to allocate only five (5) Acres of land to the second family.
 - i. That following a discussion with the village elders, Mzee Chebochok Mitei agreed to allocate an additional one (1) acre to the second family, making the total allocation to six (6) acres.
 - j. That the second wife was informed of Mzee Chebochok Mitei's decision to allocate six (6) acres of land to her family.
 - k. That the second wife did not raise any objection to the apportionment made by Mzee Chebochok Mitei.
 - l. That as part of the meeting's conclusions, the family was advised to engage a surveyor to visit the land and demarcate the boundaries, clearly indicating the portion allocated to each family.
 - m. That the family subsequently engaged a surveyor, wherein beacons were placed on the land portions that were allocated to the 2 houses and the matter was thereby concluded by the two houses.
4. The summons is also opposed by an affidavit dated 6th May 2025 sworn Sammy Kipkoech Cheruiyot who deponed as follows:
- a. That I am the Administrator in the estate of the late Chebochok Mitei alias Chebochoka Mitei (Deceased) and representing the 1st House.
 - b. That the deceased died intestate and left the following surviving him:
 - a. Esther Chepkurui Lelei Wife
 - b. Jepketer Tabutany Sambu Daughter
 - c. John Kipsang A Cheruiyot Son (Deceased)
 - d. Stephen Sitienei Tuikong Son
 - e. Joseph Kipkosgey Cheruiyot Son
 - f. Sammy Kipkoech Cheruiyot Son
 - g. Mika Kipchirchir Cheruiyot Son



- h. Susan Jepkurgat Lagat Daughter (Deceased)
 - i. David Malakwen Tuikong Son
 - j. Monica Jeptoo Daughter
 - k. Rodah Jelagat Tuikong Daughter
 - l. Jonah Seroney Mitey Son
 - m. Edinah Jelimo Maiyo Daughter
- c. That the following is a full inventory of all the assets and liabilities of the Deceased at the date of his death (including such assets if any) as have arisen or become known since that date; Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268 (Approximately 32.5 Acres)
 - d. That my late father acquired this property using the dowry paid for my sister.
 - e. That during his lifetime, my father had apportioned his estate such that the 1st house was entitled to 26.5 acres, and the 2nd House was entitled to 6 acres, out of land known as Land Title Number Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268 measuring approximately 32.5 acres in total.
 - f. That furthermore, my father attended meetings at the chief's office wherein he stated that the land will be shared as aforementioned portions.
 - g. That he had even started the process of subdivision of the property wherein he intended to divide the land.
 - h. That both families convened a family meeting on the 21st day of March 2020 during which they mutually agreed upon the proposed mode of distribution of the deceased's estate as aforementioned.
 - i. That identification of shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows:

Beneficiary Share

1st House

- a. Jepketer Tabutany Sambu
- b. John Kipsang A Cheruiyot (deceased) 6.625 Acres
- c. Stephen Sitienei Tuikong 6.625 Acres
- d. Joseph Kipkosgey Cheruiyot 6.625 Acres
- e. Sammy Kipkoech Cheruiyot 6.625 Acres

2nd House

- f. Esther Chepkurui Lelei
- g. Mika Kipchirchir Cheruiyot
- h. Susan Jepkurgat Lagat (Deceased) 6 Acres to be shared by the beneficiaries of the 2nd House



- i. David Malakwen Tuikong
 - j. Monica Jeptoo
 - k. Rodah Jelagat Tuikong
 - l. Jonah Seroney Mitey
 - m. Edinah Jelimo Maiyo
 - j. That this Honourable Court reserves the discretion to allow this mode of distribution as prayed which discretion we hereby urge it to exercise.
 - k. That it is in the interest of justice that this mode of distribution is allowed.
5. The summons is also opposed by an affidavit dated 6th May 2025 sworn by Kipsang Arap Sitienei who deponed as follows;
- a. That I am an adult of sound mind, well versed with the facts of this case, and competent to swear this affidavit.
 - b. That I am a brother to the late Chebochok Mitei.
 - c. That I resided at the home of the deceased during his lifetime and continue to do so to date.
 - d. That with regard to the division of property known as Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268, registered in the name of the late Chebochok Mitei, I wish to state as follows:
 - e. That at the time the parcel of land was being purchased, the deceased's second wife had separated from him and was living elsewhere.
 - f. That the deceased used his personal funds to purchase ten (10) acres of the said land.
 - g. That in order to acquire the remaining portion of the land, the deceased sold cows that had been given as dowry for his daughter, Jepketer Tabutany Sambu.
 - h. That the proceeds from the sale of those cows were used by the deceased to purchase an additional portion of approximately twenty-two acres.
 - i. That during his lifetime, the deceased confided in me that the second family would be allocated only five (5) acres of the land.
 - j. That the deceased went ahead and divided the land between his two families, and each family was allocated and settled on their respective portions and stated that the said division was final.
 - k. That being dissatisfied with the deceased's decision, the second family brought the matter before village elders for reconsideration. During the meeting, the village elders attempted to persuade the deceased to alter the division; however, the deceased firmly maintained his original decision.
 - l. That furthermore, the 2nd family being dissatisfied with the deceased's decision, took the deceased to the village elders for the purpose of the division of the land. During that meeting, the village elders persuaded the deceased on the division of the land. The deceased maintained his decision that the 2nd family would only be allocated 6 acres of the land, as he added the 2nd family an additional 1 acre from the total acreage of the land.



- m. That the deceased only added the acre after the meeting as he had bought only 10 acres of the land using the money that he had obtain from his personal work. These 10 acres were to be divided equally among the two families. For the remaining acres, the land was to be divided among the members of the first house.
 - n. That at the time of his death, the deceased has already divided the property into the two portions, with the 1st family having 26.2 Acres of the land and the 2nd family having 6 acres of the land.
6. The Summons is furthermore opposed vide an affidavit dated 6th May 2025 sworn by Silvester Kibet who deponed as follows;
- a. That I am an adult of sound mind, well versed with the facts of this case and hence competent to swear this affidavit.
 - b. That I am a Mzee wa Mtaa in Lemorungeny.
 - c. That with regard to the division of the property known as Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268, belonging to the Late Chebochok Mitei, I wish to state as follows:
 - d. That at the time of purchasing the parcel of land, we were part of a group together with the deceased, in which all members contributed money to acquire different parcels of land.
 - e. That within the group, the deceased contributed an amount of money sufficient to purchase only ten (10) acres of land.
 - f. That the deceased, however, acquired more acres of land, approximately thirty-two (32) acres in total.
 - g. That in order for the deceased to acquire the remaining acres of land, he sold cows that had been paid as dowry for his daughter, Jepketer Tabutany Sambu. It was only after selling the cows that the deceased used the money obtained from the sale to purchase the remaining acres of land, approximately twenty-two (22) acres.
 - h. That at the time of purchasing the land, the 2nd House had left the family home for a period of over twenty (20) years.
 - i. That the 2nd Family only came back after the deceased had already bought the land.
 - j. That during his lifetime, the deceased expressed his decision that the 2nd Family would be allocated only five (5) acres of the land.
 - k. That furthermore, the 2nd House took the deceased to the chief and village elders for the purpose of the division of the property. During that meeting, the deceased expressed his wish that the 2nd House would only be allocated five (5) acres of the land, and it was only after the meeting discussions that he allocated the 2nd House an additional one (1) acre from the total acreage of the land, making a total of six (6) acres for the 2nd House.
 - l. That the deceased only added the acre after the meeting as he had bought only ten (10) acres of the land using money that he had obtained from his personal work. These ten (10) acres were to be divided equally among the two families. For the remaining acres, the land was to be divided among the members of the first house.



- m. That at the time of his death, the deceased had already divided the property into two portions, with the 1st Family having 26.2 acres of the land and the 2nd Family having six (6) acres of the land.
7. The summons is moreover opposed by an affidavit sworn by William Maiyo Seroney dated 6th May 2025 who deponed as follows;
- a. That I am an adult of sound mind, well versed with the facts of this case and hence competent to swear this affidavit.
 - b. That I am the neighbour and was a friend to the deceased.
 - c. That at the time the deceased was buying this land, Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268, the 2nd wife had left the matrimonial home. During that period the deceased bought land and even built a house on the land.
 - d. That after the deceased had built his house, he called me and we went with him to look for his 2nd wife as she had deserted the home. The deceased at that time wanted to bring back the 2nd wife to the home. However, she refused to come back home.
 - e. That later on, the 2nd wife came back and stated that she also wanted a portion of the land for her children and herself. It was at that point that the deceased allocated the 2nd House five (5) acres of land, which land the 2nd family have stayed in up to date.
 - f. That after some time, the 2nd family indicated that they wanted the land to be divided equally and even proceeded with the matter at the Chief's office whereby the deceased and the 2nd family attended the meeting with the Chief.
 - g. That I was present in the meeting that was held at the Chief's office.
 - h. That during the meeting, the deceased added the 2nd family an additional one (1) acre, making the total number of acres apportioned to the 2nd family six (6) acres.
 - i. That the deceased indicated that he had completed the division of the land among the two families as had been discussed in the meeting.
 - j. That at the time of the death of the deceased, he had already divided the land into two portions with the 2nd House being apportioned only six (6) acres of the land.
 - k. That it was only after the death of the deceased that the 2nd family brought the issue of division of the land again.
8. The summons is also responded by an affidavit dated 6th May 2025 sworn by Benjamin Kipchumba Maiyo who deponed as follows;
- a. That I am an adult of sound mind, well versed with the facts of this case and hence competent to swear this affidavit.
 - b. That I am a neighbor of the family.
 - c. That sometime towards the end of 2003, I met the deceased at home and he informed me to meet him in town. I later met the deceased and one Joseph Yego in town around the National Bank building. The deceased informed us that he wanted to divide his land, namely Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268.



- d. That the deceased took us to an advocate, one Cheruiyot, who had an office in the National Bank building.
 - e. That while at the office, the deceased indicated that he wanted to divide his land between the two houses. He stated that he would divide 10 acres of the land equally among the families since the money that he had used to buy the land was his personal money and therefore, each family was allocated 5 acres.
 - f. That for the remaining 22.2 acres, he indicated that the portion would be allocated to the 1st family as he had bought the parcel from the money obtained from the proceeds of the cows that were paid as dowry for his daughter, Jepketer Tabutany, to purchase that portion.
 - g. That the advocate proceeded and drafted the document as had been directed by the deceased, and Joseph Yego and I witnessed the same.
9. The summons is also responded to by an affidavit dated 6th May 2025 sworn by Wilson Kipngetich who deponed as follows;
- a. That I am an adult of sound mind, well versed with the facts of this case and hence competent to swear this affidavit.
 - b. That I am the Mzee wa Mtaa in Moiben-Gaa Village from 1997 to date.
 - c. That I was present at the meeting held in the Chief's office, whereby the 1st House and 2nd House were present.
 - d. That in the meeting, the deceased indicated that he had already apportioned the 2nd House 5 acres of land, and it was only after the deceased was persuaded that he agreed to add the 2nd House an additional one (1) acre.
 - e. That at the meeting, the 2nd House never objected to the decision of the deceased.
 - f. That as a result of the meeting, the Chief directed that a surveyor be brought to place the boundary marks on the land.
 - g. That the two houses contributed money for payment of the surveyor's fee.
 - h. That I was present when the surveyor came to place the boundary marks on the land.
 - i. That the surveyor came and the land boundary was placed, with the 2nd House getting 6 acres of the land and the remaining acres going to the 1st House. During the process, David Malakwen Tuikong, a son of the 2nd House, was the person placing the marks indicating the boundary as was being directed by the surveyor.
 - j. That the 2nd House never complained to the deceased after the process was done and remained on their apportioned parcel of land.
 - k. That this subdivision was done more than 15 years prior to the death of the deceased, and the 2nd House never objected to the same. It was only after the death of Chebochok Mitei that the 2nd House raised this issue again.
 - L. That the 2nd House has consistently been aggressive towards the members of the 1st House as they have been moving the boundary that had already been placed on the land.



10. The summons is further responded to by an affidavit dated 6th May 2025 sworn by Samson Malakwen Mundui who deponed as follows;
- a. That I am an adult of sound mind, well versed with the facts of this case and hence competent to swear this affidavit.
 - b. That I am a cousin of the family.
 - c. That I was present at the meeting held in the Chief's office on 25th October 2024, whereby members of the 1st House and 2nd House were present.
 - d. That in the meeting, the family discussed the issue of subdivision of the land.
 - e. That it was agreed in the meeting that the deceased had distributed the land prior to his death and allocated the 2nd House 6 acres of land.
 - f. That in the meeting, the 2nd wife, widow to the deceased, agreed to the subdivision that had been done by the deceased prior to his death and accepted her allotted portion.
 - g. That in the meeting, the 2nd House never opposed the said distribution of the land.

Further Affidavits to the summons

11. The replying affidavits are responded to by a supplementary affidavit dated 14th May sworn by Esther Chepkurui Lelei in which she deponed as follows;
- a. That I swear this affidavit in response to the affidavits in protest sworn and filed by the 1st administrator.
 - b. That I wish to state that the deceased died intestate leaving behind land parcel number Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268 measuring approximately 32.5 acres.
 - c. That I recall that after his death, we went to the chief's office where the children of the first house alleged that the deceased had left behind a will. On being asked to produce it by the chief, they said it would be produced in court.
 - d. That it is not true that we agreed on the distribution of the estate at the chief's office, as the chief said he had no capacity to share out the estate.
 - e. That the discussions before the chief only dealt with harmonious use of the property on a temporary basis pending filing of succession proceedings.
 - f. That it is not true that the deceased purchased 22.5 acres using dowry from the first house. To the contrary, the entire parcel of land was purchased by the deceased and registered in his name.
 - g. That the deceased did not share out his property by setting aside 22.5 acres to the exclusive use of the first house and sub-dividing the remaining 10 acres equally between the two houses as alleged.
 - h. That the truth of the matter is that the children of the first house led by the first born one John Kipsang Cheruiyot who was a Provincial Criminal Investigation Officer (P.C.I.O) and Joseph Cheruiyot forcefully sub-divided the property according to their own wishes.
 - i. That I lived with the deceased in my house until the time of his death; he died in my house.



- j. That during his lifetime, the deceased was always telling me and my children that he bought the land through his own efforts and did not receive any assistance or use the proceeds of dowry to do so.
 - k. That no evidence has been shown to the court that there was any dowry used to purchase part of the land.
 - l. That the 1st petitioner concedes that the land acquired by the deceased ought to be shared equally between the two houses and as such, since there is no evidence that part was acquired using dowry, the whole land ought to be shared as proposed by the 2nd administrator.
12. The replying affidavits are responded to by a supplementary affidavit dated 14th May dated 14th May 2025 sworn by David Malakwen Tuikong in which he deponed as follows;
- a. That I am the 2nd administrator of the estate of the deceased hence competent and authorized to swear this affidavit.
 - b. That I swear this affidavit in response to the affidavits in protest sworn and filed by the 1st administrator.
 - c. That I wish to state that the deceased died intestate but left property being Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268 measuring approximately 32.5 acres.
 - d. That the deceased was polygamous with two houses.
 - e. That I recall that after his death, we went to the chief's office to discuss on occupation rights over the parcel of land while there the members of the first house alleged that the deceased left behind a will but on being asked by the chief to produce it they did not do so alleging it will be produced in court.
 - f. That we were surprised to learn later that the 1st administrator had clandestinely proceeded to file these succession proceedings without informing us the members of the second house.
 - g. That it is not true that the deceased had in his lifetime sub-divided his property between the two houses.
 - h. That to the contrary, it is the children of the first house led by my step brothers, John Kipsang Cheruiyot and Joseph Cheruiyot who had forcefully subdivided the land according to their own wishes but not that of the deceased.
 - i. That it is not true that at the chief's office, we agreed on distribution of the property. What was discussed was temporary occupation pending from succession proceedings.
 - j. That with regard to the allegation that the deceased bought a portion of land measuring 22.5 acres through proceeds of dowry from the first house, I deny that fact and state that the deceased used to tell me that he bought the entire land through his own income without any assistance from anyone nor from proceeds of dowry.
 - k. That no evidence has been shown that part of the land was paid for using dowry proceeds such the entire land is available for distribution.
 - l. That as the 1st administrator concedes that the free property of the deceased ought to be shared equally between the two houses in the first instance, I pray that the land be distributed as per my affidavit in support of the summons for confirmation of grant.



- m. That the first house lay exclusive claim over 22.5 acres of the land on the basis that it was purchased using dowry without evidence of that fact.

Analysis and Determination

13. From the above, the basis of this case is on summons for confirmation of Grant pursuant to section 71 of the *Law of Succession Act* where that the Applicant seeks orders confirming the grant issued on 10th March 2025 in respect of the estate of the late Chebochok Mitei (also known as Chebochoka Mitei). The Applicant proposes distribution of Land Parcel No. Moi's Bridge/Ziwa Block 9 (Lemorungeny)/268, measuring approximately 32.5 acres, in the manner set out in his supporting affidavit.
14. The Summons is opposed through various replying affidavits filed by the 1st Administrator and several deponents, including neighbours, relatives, and village elders. The objectors' common position is that during his lifetime, the deceased subdivided his land allocating 26.5 acres to the 1st House and 6 acres to the 2nd House in line with his wishes and consistent with community deliberations. On the other hand, the Applicant and supporters from the 2nd House dispute this claim. They argue that the deceased did not effect any formal subdivision during his lifetime, that allegations of dowry-funded purchase of 22.5 acres are unproven and that the estate should be shared equally between the two houses under the law. From the above, 2 issues arise for determination;
- a. Whether the deceased had during his lifetime lawfully and conclusively subdivided his estate between the two houses?
- b. What is the proper mode of distribution of the estate under the *Law of Succession Act*?

Whether the deceased had during his lifetime lawfully and conclusively subdivided his estate between the two houses?

15. From the evidence, it is clear that the deceased was polygamous and left 2 houses. The estate of the deceased comprises of Moi's Bridge/Ziwa Block 9 (Lemorungeny)/268 measuring approximately 32.5 acres. It is also not in dispute that the deceased was survived by the following;
- 1st House
- a. Tabarno Jerop Miteli 1st Wife (deceased)
- b. Jepketer Tabutany Sambu Daughter
- c. John Kipsang A Cheruiyot Son (deceased)
- d. Stephen Sitienei Tuikong Son
- e. Joseph Kipkosgey Cheruiyot Son
- f. Sammy Kipkoech Cheruiyot Son
- 2nd House
- g. Esther Chepkurui Lelei 2nd Wife (widow)
- h. Mika Kipchirchir Cheruiyot Son
- i. Susan Jepkurgat Lagat Daughter (deceased)
- j. David Malakwen Tuikong Son



- k. Monica Jeptoo Daughter
- l. Rodah Jelagat Tuikong Daughter
- m. Jonah Seroney Mitey Son
- n. Edinah Jelimo Maiyo Daughter

16. Conflicting evidence was presented on whether the deceased subdivided the land during his lifetime. Witnesses from the 1st House insist he allocated 26.5 acres to them and 6 acres to the 2nd House. Witnesses aligned to the 2nd House contest this arguing that the alleged subdivision was neither formalized nor reduced into writing. In particular, witnesses from the 1st House protested and deponed as follows: -

1. Ben Kirwa Rotich deponed as follows:

- a. That I am a Retired Senior Assistant Chief of Koisagat Sub-location; that sometime in November 2008, the second wife of the late Chebochok Mitei visited my office and informed me that she had previously left the matrimonial home she shared with the late Mzee Chebochok Mitei. She further stated that she had returned to the home around the year 1993 and had since been living with Mzee Chebochok Mitei. She indicated that she had been apportioned a portion of land on which she resided, but expressed a desire to be allocated a larger portion of the land to the late Chebochok Mitei; that upon noting the issue raised, I summoned the late Mzee Chebochok Mitei to my office together with his second wife and a few elders in order to address the concerns that had been raised by the second wife; that among the village elders who accompanied them to my office were William Seroney Maiyo, Samuel Rono and Others; that the meeting proceeded and each party was given the opportunity to present their views regarding the proposed division of land; that he indicated he was willing to allocate only five (5) Acres of land to the second family; that following a discussion with the village elders, Mzee Chebochok Mitei agreed to allocate an additional one (1) acre to the second family, making the total allocation to six (6) acres; that the second wife was informed of Mzee Chebochok Mitei's decision to allocate six (6) acres of land to her family; that the second wife did not raise any objection to the apportionment made by Mzee Chebochok Mitei; that as part of the meeting's conclusions, the family was advised to engage a surveyor to visit the land and demarcate the boundaries, clearly indicating the portion allocated to each family and that the family subsequently engaged a surveyor, wherein beacons were placed on the land portions that were allocated to the 2 houses and the matter was thereby concluded by the two houses.

2. Sammy Kipkoech Cheruiyot deponed as follows:

- a. That I am the Administrator in the estate of the late Chebochok Mitei alias Chebochoka Mitei (Deceased) and representing the 1st House; that the following is a full inventory of all the assets and liabilities of the Deceased at the date of his death (including such assets if any) as have arisen or become known since that date; Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268 (Approximately 32.5 Acres); that my late father acquired this property using the dowry paid for my sister; that during his lifetime, my father had apportioned his estate such that the 1st house was entitled to 26.5 acres, and the 2nd House was entitled to 6 acres, out of land known as Land Title Number Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268 measuring approximately



32.5 acres in total; that furthermore, my father attended meetings at the chief's office wherein he stated that the land will be shared as aforementioned portions; that he had even started the process of subdivision of the property wherein he intended to divide the land and that both families convened a family meeting on the 21st day of March 2020 during which they mutually agreed upon the proposed mode of distribution of the deceased's estate as aforementioned.

3. Kipsang Arap Sitienei deponed as follows;

a. That I am a brother to the late Chebochok Mitei; that with regard to the division of property known as Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268, registered in the name of the late Chebochok Mitei, I wish to state as follows: that at the time the parcel of land was being purchased, the deceased's second wife had separated from him and was living elsewhere; that the deceased used his personal funds to purchase ten (10) acres of the said land; that in order to acquire the remaining portion of the land, the deceased sold cows that had been given as dowry for his daughter, Jepketer Tabutany Sambu; that the proceeds from the sale of those cows were used by the deceased to purchase an additional portion of approximately twenty-two acres; that during his lifetime, the deceased confided in me that the second family would be allocated only five (5) acres of the land; that the deceased went ahead and divided the land between his two families, and each family was allocated and settled on their respective portions and stated that the said division was final; that being dissatisfied with the deceased's decision, the second family brought the matter before village elders for reconsideration. During the meeting, the village elders attempted to persuade the deceased to alter the division; however, the deceased firmly maintained his original decision; that furthermore, the 2nd family being dissatisfied with the deceased's decision, took the deceased to the village elders for the purpose of the division of the land. During that meeting, the village elders persuaded the deceased on the division of the land. The deceased maintained his decision that the 2nd family would only be allocated 6 acres of the land, as he added the 2nd family an additional 1 acre from the total acreage of the land; that the deceased only added the acre after the meeting as he had bought only 10 acres of the land using the money that he had obtain from his personal work. These 10 acres were to be divided equally among the two families. For the remaining acres, the land as to be divided among the members of the first house and that at the time of his death, the deceased had already divided the property into the two portions, with the 1st family having 26.2 Acres of the land and the 2nd family having 6 acres of the land.

4. Silvester Kibet deponed that he is a Mzee wa Mtaa in Lemorungeny echoing what Kisang Arap Sitienei above had stated.

5. William Maiyo Seroney deponed as follows;

a. That I am the neighbour and was a friend to the deceased; that at the time the deceased was buying this land, Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268, the 2nd wife had left the matrimonial home. During that period the deceased bought land and even built a house on the land; that after the deceased had built his house, he called me and we went with him to look for his 2nd wife as she had deserted the home. The deceased at that time wanted to bring back the 2nd wife to the home. However, she refused to come back home; that later on, the 2nd wife came back and stated that she also wanted a portion of



the land for her children and herself. It was at that point that the deceased allocated the 2nd House five (5) acres of land, which land the 2nd family have stayed in up to date; that after some time, the 2nd family indicated that they wanted the land to be divided equally and even proceeded with the matter at the Chief's office whereby the deceased and the 2nd family attended the meeting with the Chief; that I was present in the meeting that was held at the Chief's office; that during the meeting, the deceased added the 2nd family an additional one (1) acre, making the total number of acres apportioned to the 2nd family six (6) acres; that the deceased indicated that he had completed the division of the land among the two families as had been discussed in the meeting; that at the time of the death of the deceased, he had already divided the land into two portions with the 2nd House being apportioned only six (6) acres of the land and that it was only after the death of the deceased that the 2nd family brought the issue of division of the land again.

6. Benjamin Kipchumba Maiyo deponed as follows;

- a. That I am a neighbor of the family; that sometime towards the end of 2003, I met the deceased at home and he informed me to meet him in town. I later met the deceased and one Joseph Yego in town around the National Bank building. The deceased informed us that he wanted to divide his land, namely Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268; that the deceased took us to an advocate, one Cheruiyot, who had an office in the National Bank building; that while at the office, the deceased indicated that he wanted to divide his land between the two houses. He stated that he would divide 10 acres of the land equally among the families since the money that he had used to buy the land was his personal money and therefore, each family was allocated 5 acres; that for the remaining 22.2 acres, he indicated that the portion would be allocated to the 1st family as he had bought the parcel from the money obtained from the proceeds of the cows that were paid as dowry for his daughter, Jepketer Tabutany, to purchase that portion and that the advocate proceeded and drafted the document as had been directed by the deceased, and Joseph Yego and I witnessed the same.

7. Wilson Kipngetch deponed as follows;

- a. That I am the Mzee wa Mtaa in Moiben-Gaa Village from 1997 to date; that I was present at the meeting held in the Chief's office, whereby the 1st House and 2nd House were present; that in the meeting, the deceased indicated that he had already apportioned the 2nd House 5 acres of land, and it was only after the deceased was persuaded that he agreed to add the 2nd House an additional one (1) acre; that at the meeting, the 2nd House never objected to the decision of the deceased; that as a result of the meeting, the Chief directed that a surveyor be brought to place the boundary marks on the land; that the two houses contributed money for payment of the surveyor's fee; that I was present when the surveyor came to place the boundary marks on the land; that the surveyor came and the land boundary was placed, with the 2nd House getting 6 acres of the land and the remaining acres going to the 1st House. During the process, David Malakwen Tuikong, a son of the 2nd House, was the person placing the marks indicating the boundary as was being directed by the surveyor; that the 2nd House never complained to the deceased after the process was done and remained on their apportioned parcel of land; that this subdivision was done more than 15 years prior to the death of the deceased, and the 2nd House never objected to the same. It was only after the death of Chebochok Mitei that the 2nd House raised this issue again; that



the 2nd House has consistently been aggressive towards the members of the 1st House as they have been moving the boundary that had already been placed on the land.

8. Samson Malakwen Mundui deponed as follows;
 - a. That I am a cousin of the family; that I was present at the meeting held in the Chief's office on 25th October 2024, whereby members of the 1st House and 2nd House were present; that in the meeting, the family discussed the issue of subdivision of the land; that it was agreed in the meeting that the deceased had distributed the land prior to his death and allocated the 2nd House 6 acres of land; that in the meeting, the 2nd wife, widow to the deceased, agreed to the subdivision that had been done by the deceased prior to his death and accepted her allotted portion and that in the meeting, the 2nd House never opposed the said distribution of the land.

17. The evidence from the 2nd House in proposition of the summons was as follows;
 1. Esther Chepkurui Lelei deponed as follows;
 - a. That I wish to state that the deceased died intestate leaving behind land parcel number Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268 measuring approximately 32.5 acres; that I recall that after his death, we went to the chief's office where the children of the first house alleged that the deceased had left behind a will. On being asked to produce it by the chief, they said it would be produced in court; that it is not true that we agreed on the distribution of the estate at the chief's office, as the chief said he had no capacity to share out the estate; that the discussions before the chief only dealt with harmonious use of the property on a temporary basis pending filing of succession proceedings; that it is not true that the deceased purchased 22.5 acres using dowry from the first house. To the contrary, the entire parcel of land was purchased by the deceased and registered in his name; that the deceased did not share out his property by setting aside 22.5 acres to the exclusive use of the first house and sub-dividing the remaining 10 acres equally between the two houses as alleged; that the truth of the matter is that the children of the first house led by the first born one John Kipsang Cheruiyot who was a Provincial Criminal Investigation Officer (P.C.I.O) and Joseph Cheruiyot forcefully sub-divided the property according to their own wishes; that I lived with the deceased in my house until the time of his death; he died in my house; that during his lifetime, the deceased was always telling me and my children that he bought the land through his own efforts and did not receive any assistance or use the proceeds of dowry to do so; that no evidence has been shown to the court that there was any dowry used to purchase part of the land and that the 1st petitioner concedes that the land acquired by the deceased ought to be shared equally between the two houses and as such, since there is no evidence that part was acquired using dowry, the whole land ought to be shared as proposed by the 2nd administrator.

 1. David Malakwen Tuikong deponed as follows;
 - a. That I am the 2nd administrator of the estate of the deceased; that I wish to state that the deceased died intestate but left property being Moi's Bridge/Ziwa Block 9 (Lemorungeny) 268 measuring approximately 32.5 acres; that the deceased was polygamous with two houses; that I recall that after his death, we went to the chief's office to discuss on occupation rights over the parcel of land while there the members



of the first house alleged that the deceased left behind a will but on being asked by the chief to produce it they did not do so alleging it will be produced in court; that we were surprised to learn later that the 1st administrator had clandestinely proceeded to file these succession proceedings without informing us the members of the second house; that to the contrary, it is the children of the first house led by my step brothers, John Kipsang Cheruiyot and Joseph Cheruiyot who had forcefully subdivided the land according to their own wishes but not that of the deceased; that it is not true that at the chief's office, we agreed on distribution of the property. What was discussed was temporary occupation pending from succession proceedings; that with regard to the allegation that the deceased bought a portion of land measuring 22.5 acres through proceeds of dowry from the first house, I deny that fact and state that the deceased used to tell me that he bought the entire land through his own income without any assistance from anyone nor from proceeds of dowry and that no evidence has been shown that part of the land was paid for using dowry proceeds such the entire land is available for distribution.

18. I would like to discuss the aspect of gifts inter vivos from the evidence presented above. 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 a declaration of trust by the donor, or by way of resulting trusts or the presumption of. 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. In this regard it is not necessary for the donee to give express acceptance, and acceptance of a gift is presumed until or unless dissent or disclaimer is signified by the donee. Reference is made to section 42 of the [Law of Succession Act](#) provides that: -

Previous benefits to be brought into account

Where-

- a. an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
 - b. property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.
19. Section 42 of the [Law of Succession Act](#) embodies the concept of gifts inter vivos- gifts made between living persons. Making understanding of the law on gifts inter vivos the functional foundation for resolution of these claims. In re Estate of the Late Gedion Manthi Nzioka (Deceased) [2015] eKLR Nyamweya J (as she then was) explained gifts inter vivos as follows:

“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 a declaration of trust by the donor, or by way of resulting trusts or the presumption of. 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. In this regard it is not necessary for the donee to give express acceptance, and acceptance of a gift is presumed until or unless dissent or disclaimer is signified by the donee.



In Halsbury's 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 the donor's subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however, binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do.’

20. Further indents Halsbury's Laws of England, 4th edition, volume 20(1) para 70 states that: -

The subsequent acts of the donor may give the intended donee a right to enforce an incomplete gift. Thus, if a donor puts the donee into possession of a piece of land and tells him that he has given it to him so that he may build a house on it, and the donee accordingly, and with the donor's assent, expends money in building a house, the donee can call on the donor or his representatives to complete the gift.

21. It is argued by the 1st House through several affidavits that the deceased already subdivided the land during his lifetime, giving the 2nd House 6 acres and the 1st House 26.5 acres. They claim the deceased involved elders, chiefs, and even surveyors in placing boundaries. On the other hand, the 2nd House disputes this asserting that: the deceased never transferred title to anyone; he kept ownership in his name until his death and that the subdivision was forcefully done by the sons of the 1st House after his death.
22. There is evidence that the deceased intended to apportion 6 acres to the 2nd House as shown in several meetings with elders and the Chief. However, there is no evidence that he intended to immediately and irrevocably gift the land. Moreover, no title deeds or registered subdivisions were executed in favour of either house. The land remained registered in the name of the deceased at death. It is my considered view that unless there is transfer of ownership, an alleged gifts inter vivos is incomplete.
23. It is also apparent that the deceased retained ownership of the entire 32.5 acres until death. The alleged “division” was more in the nature of instructions or arrangements rather than a perfected gift. On the issue of dowry, while several deponents claim that 22 acres were purchased from dowry proceeds of a daughter, no documentary or corroborative proof has been provided. Allegations of dowry-funded purchases remain speculative and cannot lawfully disinherit one house of its rightful statutory entitlement. The Court is persuaded by the holding in *Rono v Rono & Another* [2005] eKLR, where the Court of Appeal stressed that distribution must be guided by the principles of equality and fairness, unless clear evidence shows otherwise.
24. In a civil case, the burden of proof refers to the responsibility of a party (usually the plaintiff) to present enough evidence to prove their claim, while the standard of proof is the level of evidence required to meet that burden, which is typically preponderance of the evidence meaning that the evidence must show it is more likely than not that the claim is true, exceeding a 50% certainty threshold. In civil cases in Kenya, the burden of proof lies with the plaintiff, and the standard of proof required is on a balance of probabilities, meaning they must prove their case is more likely to be true than not, which is a lower standard than the beyond a reasonable doubt standard used in criminal cases.



25. The standard of proof relates to the evidential threshold required for a claim to be considered as having been proved. The issue of the burden of proof has two facets. There are the legal burden of proof and the evidential burden of proof. Sections 107(1), (2) and 109 of the Evidence Act, Cap. 80 of the Laws of Kenya deals with the burden of proof. They state as under: -

Sections 107(1) and (2): 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. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person and

Section 109: Proof of particular fact. The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

26. It is my considered view that the deceased's estate was not lawfully subdivided during the lifetime of the deceased and that the claim of dowry contribution is unsubstantiated. Based on the facts discussed above, the doctrine of gift inter vivos is not applicable because the deceased did not transfer title or legally divest himself of the land, what exists are informal arrangements or wishes not perfected gifts and hence, the entire 32.5 acres remains part of the free estate to be distributed under Section 40 of the Law of Succession Act.

What is the proper mode of distribution of the estate of the deceased under the Law of Succession Act?

27. It is not disputed that the deceased had married more than once during his lifetime and thus the applicable law for distribution is section 40 of the Law of Succession Act. this section provides for inter alia;

40. Where intestate was polygamous

- (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 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.
- (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.

28. There were 2 proposed mode of distributions provided to this court from the supporting affidavits as follows; Sammy Kipkoech Cheruiyot who deponed that he is the Administrator in the estate of the late Chebochok Mitei alias Chebochoka Mitei (deceased) and representing the 1st House gave the following mode of distribution: -

Beneficiary Share

1st House

- a. Jepketer Tabutany Sambu
- b. John Kipsang A Cheruiyot (deceased) 6.625 Acres
- c. Stephen Sitienei Tuikong 6.625 Acres
- d. Joseph Kipkosgey Cheruiyot 6.625 Acres



- e. Sammy Kipkoech Cheruiyot 6.625 Acres
2nd House
- f. Esther Chepkurui Lelei
- g. Mika Kipchirchir Cheruiyot
- h. Susan Jepkurgat Lagat (Deceased) 6 Acres to be shared by the beneficiaries of the 2nd House
- i. David Malakwen Tuikong
- j. Monica Jeptoo
- k. Rodah Jelagat Tuikong
- l. Jonah Seroney Mitey
- m. Edinah Jelimo Maiyo

29. David Malakwen Tuikong from the 2nd House who deponed that a grant of letters of administration of the said estate was made to him in this matter on the 10th day of March 2025 gave the following mode of distribution;

Land Parcel Number: Moi's Bridge/Ziwa Block 9 (Lemorugency)/268

Beneficiary Share of heir

- a. Esther Chepkurui Lelei 2.4 Acres
- b. Mika Kipchirchir Cheruiyot 4.5 Acres
- c. David Malakwen Tuikong 4.5 Acres
- d. Jonah Seroney Mitei 4.5 Acres
- e. Monica Jeptoo
- f. Rodah Jelagat Tuikong
- g. Susan Jepkurgat Lagat
- h. Edinah Jelimo Maiyo 15.9 Acres to be shared by the following members of the first house
- i. Jpketer Tabutany Sambu
- j. John Kipsang A Cheruiyot
- k. Stephen Sitienei Tuikong
- l. Joseph Kipkosgei Cheruiyot
- m. Sammy Kipkoech Cheruiyot

30. I take note that the 2 proposed modes of distribution of the intestate estate of the deceased are conflicted. The first mode of distribution preferred by Sammy Kipkoech Cheruiyot is based on the unsubstantiated claims without evidence which I discussed elsewhere in this ruling. The second mode of distribution preferred by David Malakwen Tuikong is discriminatory in nature in that it has left



all the women of the second house namely: Monica Jeptoo; Rodah Jelagat Tuikong; Susan Jepkurgat Lagat and Edinah Jelimo Maiyo out of the distribution matrix while there is no evidence on record that they had rescinded their right to inheritance.

31. With the above, I would like to refer to Article 27 of *the Constitution* of Kenya 2010 which provides as follows:

Equality and freedom from discrimination.

27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

32. Article 2(5 & 6) of *the Constitution* of Kenya 2010 provides as follows: (5) The general rules of international law shall form part of the law of Kenya; (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) provides clear guidance on this matter. Article 21 on the Right to Inheritance states unequivocally:

“ 1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.

2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.”

33. Furthermore, Article 2(1) of the Protocol mandates that 'States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures.' Article 2(2) requires States Parties to 'commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men. These provisions, read together with Article 8 on Access to Justice and Equal Protection before the Law, which provides that 'Women and men are equal before the law and shall have the right to equal protection and benefit of the law,' create a robust framework for protecting women's inheritance rights.

34. The Constitutional framework establishes a clear position regarding discriminatory practices in Kenya. *The Constitution*, as the supreme law of the land, explicitly prohibits any form of discrimination and it binds every citizen, organs of the state in any aspect of their lives that includes inheritance rights. In Art. 3(1) of *the constitution*, every person has an obligation to respect, uphold and defend this constitution.



35. The legislative intent of the Succession Act, enacted way back in 1981 must be primarily ascertained from the language used in the statute itself. In 1981 Kenya was still a multi-racial and multi-ethnic society enjoying our diversity at all levels as a member of community of Nations. The drafters of the Succession Act imported the National values and principles of governance of human dignity, equity, Social Justice, inclusiveness, equality, Human Rights, non-discrimination and protection of the marginalized now enshrined in Art. 10 of our constitution. Why is this important to Succession Law on inheritance Rights? The components of culture and customary law on inheritance rights amongst individual families cannot oust the constitutional imperatives. It is now 15 years since we promulgated *the constitution* it must therefore intentional for every citizen to familiarize him or herself what the words in *the constitution* mean. We cannot run away from it and hide in the conclaves of culture and customary law.
36. Learned Author Aharon Barak in his book Purposive Interpretation in Law had this to say “ That constitutional language like the language of any legal text plays a dual role. On the one hand, it sets the limits of interpretation. The language of *the constitution* is not clay in the hands of the interpreter, to be molded as he or she sees fit. A constitution is neither a metaphor nor a non-binding recommendation. On the other hand, the language of *the constitution* is a source for its purpose. There are other sources, to be sure, but constitutional language is an important and highly credible source of information. The fact that we may learn the purpose of constitution from sources external to it does not mean that we can give a constitution a meaning that is inconsistent with its explicit or implicit language. Interpretation cannot crate a new constitutional text” (See Aharon Barak, Purposive Interpretation in Law, (Sari Bashi transl). Princeton Princeton University Press, 2005).
37. Kenya prouds itself as a Republic with a transformative constitution in reaction to our past there was clamor for the citizens to create a new constitution order by fighting in the fields, in the streets, and hording vigil in Synagogues, mosques, and churches for the new dawn to be speeded up and their prayers were answered on 27th August 2010 and there was re-birth of the current Republic. The constitutional Right to equality before the law are deeply foundational to the creation of the new constitutional order. In my view unfair discrimination on inheritance rights in refence to the beneficiaries positively identified under Section 29 of the Act as having a legitimate expectation to have part of the shares of the intestate estate devolved to each one of them principally means treating persons differently in a way which impairs their fundamental rights to property, dignity as well Social Economic Rights which facilitates them to happy living.
38. This principle has also deep historical roots, dating back to the 1963 independence Constitution, and was reinforced in Article 27 of the 2010 Constitution, which specifically addresses discrimination based on gender and marital status.
39. In our jurisdiction, in Mary Rono Vs Jane Rono & another [2005] eKLR, the Court of Appeal observed as follows:

“ As a member of the international community, Kenya subscribes to international customary laws and has ratified various international covenants and treaties. In particular, it subscribes to the international Bill of Rights, which is the Universal Declaration of Human Rights (1948) and two international human rights covenants: The Covenant on economic, social and cultural rights and the Covenant on civil and political Rights (both adopted by the UN



General Assembly in 1966). In 1984 it also ratified, without reservations, the Convention on the Elimination of All Forms of Discrimination Against Women, in short,

“CEDAW”. Article 1 thereof defines discrimination against women as: -

“Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social cultural, civil or any other field.

” In the African context, Kenya subscribes to the African Charter of Human and Peoples’ Rights, otherwise known as the Banjul Charter (1981), which it ratified in 1992 without reservations. In Article 18, the Charter enjoins member States, inter alia, to: - “.....ensure the elimination of every discrimination against women and also ensure the protection of rights of the woman and the child as stipulated in international declarations and conventions.”

40. Given this constitutional foundation and provisions of the international instruments which Kenya is a party, the mode of distribution advanced by David Malakwen Tuikong denies inheritance rights to women thus, it is deemed discriminatory as it directly contravenes these fundamental constitutional protections as discussed above. I also take note that section 38 of the [Law of Succession Act](#) provides as follows;

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

41. In the case of Stephen Gitonga M’Murithi Vs Faith Ngira Murithi [2015] eKLR, the Court of Appeal stated as follows;

Section 38 of the Act 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.

42. When it comes to land rights for women, more needs to be done by escalating measures to ensure their social legitimization, implementation and reinforcement. There is need of a paradigm shift of the male gender in accepting inheritance claim resolutions in favour of women. I see this everyday as a judge adjudicating family matters, may it be interpretation of [the Constitution](#), the [Matrimonial Property Act](#) and the [Law of Succession Act](#) which fully recognize women’s equal rights to own, co-own, access, control and inherit both immovable and movable property rights but the wider social cultural and customary attitudes still act as barriers for full enjoyment of these rights.

43. I therefore find that none of the modes of distributions preferred by the 1st and 2nd House conform with the law. From the foregoing, the following orders shall abide: -

- a. The grant of Letters of administration made in this matter on 10th March 2025 be shall be confirmed as follows taking into consideration the provisions of section 40 of the [Law of Succession Act](#);



1st House

Beneficiary Share

- a. Jepketer Tabutany Sambu 2.5 Acres
- b. Estate of John Kipsang A Cheruiyot 2.5 Acres
- c. Stephen Sitienei Tuikong 2.5 Acres
- d. Joseph Kipkosgey Cheruiyot 2.5 Acres
- e. Sammy Kipkoech Cheruiyot 2.5 Acres

2nd House

- f. Esther Chepkurui Lelei (widow) 2.5 Acres (Life Interest)
- g. Mika Kipchirchir Cheruiyot 2.5 Acres
- h. Estate of Susan Jepkurgat Lagat 2.5 Acres
- i. David Malakwen Tuikong 2.5 Acres
- j. Monica Jeptoo 2.5 Acres
- k. Rodah Jelagat Tuikong 2.5 Acres
- l. Jonah Seroney Mitey 2.5 Acres
- m. Edinah Jelimo Maiyo 2.5 Acres

- b. Any shares due to deceased beneficiaries shall devolve by representation to their respective children as per the provisions of section 41 of the *Law of Succession Act*.
- c. Each party shall bear its own costs.
- d. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET VIA EMAIL THIS 9TH DAY OF SEPTEMBER 2025

.....

R. NYAKUNDI

JUDGE

info@kitiwaadvocates.co.ke

kitiwaadvocates@gmail.com

