



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Kigen Cheboi Kipchorsoi (Deceased) (Succession Cause 141 of 1991) [2024] KEHC 4964 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4964 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 141 OF 1991  
RN NYAKUNDI, J  
MAY 13, 2024**

**IN THE MATTER OF THE ESTATE OF KIGEN CHEBOI KIPCHORSOI - DECEASED**

**BETWEEN**

**CHRISTOPHER KIBIEGO A. KIGEN & ANOR ..... PETITIONER**

**AND**

**SANIEKO KIGEN ..... OBJECTOR**

**AND**

**CHRISTOPHER KIGEN ..... APPLICANT**

**RULING**

1. This is one of the oldest Succession Cause in the family division at Eldoret High Court it was initiated way initially as a grant of probate of written Will referenced as Succession Cause No. 141 of 1991. In that initial instrument, Christopher Kipyego A. Kigen and Alfred Kimutai Lagat alias Michael Kigen were appointed as personal representative to administer the estate of the deceased. On 27.8.1998 the Session Judge then on application for summons of confirmation of the Probate of a written Will dated 7.8.1990 moved to decree as follows in issuing the certificate of confirmation of a grant that I hereby certify that the above written Grant of representation to the estate of the late Kigen Cheboi Kipchorsoi issued to Christopher Kipyego A. Kigen & Alfred Kimutai Lagat alias Micheal Kigen therein named has this 27<sup>th</sup> day of August 1998 been confirmed by the Court Pursuant to the Provisions of Section 71(1) and (3) of the [Law of Succession Act](#). The schedule of property distributed as per the certificate of confirmation of grant are only share in Kenya Commercial Bank Account: No. M00238068 share as a whole to Christopher Kipyego Kigen.
2. There is no evidence in that certificate of confirmation as to what transpired on distribution of the assets identified by the deceased in the written will dated 7.8.1990. In a swift move an application was filed by the objectors one by Sanieko Kigen seeking revocation or annulment of the Certificate of



Confirmation of Grant issued to the executors on 28.2.1992. That application was heard on the merits and this court in a judgement delivered on 2.5.2023 rendered the purported will invalid for all intents and purposes as the last testamentary of the deceased. That decision placed the entire estate under the regulatory framework on distribution under the scope of intestate estate inheritance.

3. What followed was a certificate of confirmation of grant duly negotiated by the family with their legal advisers dated 12.7.2023. That partial certificate of confirmation of grant extensively distributed the estate amongst the beneficiaries with the following model in mind.



Name	Description Of Property	Share Of Heirs
1 Alfred Lagat 2 John Kiprop Tuitoek 3 Tapkili Toiyoi Kiptum	Ex-tulley Farm Plot No 10	5.5.acres 11.5 Acres 3.5 Acres
1 Christopher Kibiego Kigen 2.david Kiprono Kigen 3.Petrolina Ngeringwony 4. Luka Kimutai	Kokwapturgut Eureka Farm Plot No.95	5.1 Acres 5,1 Acres 3acres 3 Acres
1 Saniako Gigen(On her behalf and in trust joseph kipkemboi and William Kiplagat Kigen) 2. Joseph Kipkemboi Kigen 3.William Kiplagat Kigen 4. Mary Kandie Kgen 5. Salina Jerotich Kigen 6. Gladys Jepchirchir 7. Alfred Lagat	KAplogoi Farm Plot No 31	6.7acres 6.7 Acres 3 Acres 3 Acres 3 Acres 3 Acres
1 Mary Kimaiyo 2 Alfred Lagat 3 Isaac Kimaiyo	Moiben -n/moiben Block 9 (manyatta) 14	5.1acres 3.5 Acres 4. Acres
1. David Kiprono Kigen 2.Joseph Kipkemboi Kigen	Irong/kitany/173	2.5 Acres 2.5 Acres
1 William Kigen Kiplagat 2 Alfred Lagat 3 John Kiprop Tuitoek 4 Mary Kimaiyo 5 Christopher Kibiego	Irong/kitany/175	1.2acres 1.2 Acres 1.2 Acres 1.2 Acres 1.2 Acres

4. This certificate of confirmation of grant now being impugned by the Applicant came into existence by virtue of the amended consent to confirmation of grant and mode of distribution dated 12.7.2023. What is the concern raised by all these factual matrix. It is about the issues raised in the summons dated 18.9.2023 by Christopher Kigen the Administrator who averred as follows:



1. The grant of letters of administration intestate confirmed on 12.7.2023 be and is hereby rectified.
2. The rectification be as hereunder:
  - a. The name of the land parcel indicated in the grant as Ex-Taoley farm plot No 10 be amended to read Ex-tooiey farm plot No 10 to correct the misspelling.
  - b. Grace Tuitoek Kigen the widow of the first born son of the 1<sup>st</sup> house who was locked out in the certificate of grant that was confirmed on 12.7.2023 be included in the destruction.
3. Upon confirmation the following were later on noted to have occurred errors occurred.
  - i. The acreage indicated against land parcels.
    - a. Ex-Tooley farm plot No. 10 was indicated as 20.5 when the actual acreage is 18.5
    - b. Kokwobturgut Eureka Farm Plot No 95 was indicated as 16.2. when the actual acreage is 201.1
    - c. Kaplogoi Farm Plot No 31 was indicated as 25.4 when the actual acreage is 29.5
    - d. Moiben/Moiben Block 9(Manyatta) 14 was erroneously indicated as 12.6 acres when the actual acreage is 10.5
  - ii. The certificate of grant dated 12.7.2023 has the effect of displacing some beneficiaries from their respective places of abode though they have lived there for over 30 years and have made enormous developments. In particular the displacement is as hereunder
    - a. Joseph Kipkemboi Kigen is to move from Kokwbturgut Eureka Farm plot No 95 to Kaplogoi farm plot No 3. I thereby being required to bring down his house and other development
    - b. Christopher K. Kigen to move from Ex-Tooley Farm Plot No 10 to Kokwobturgut eureka farm Plot No 95 to bring down his permanent house and other developments
    - c. Mary Chemutai Maiyo to move from Ex-Tooley farm plot No 10 to Moiben /Moiben Block 9 Manyatta farm to bring down her house and other developments
    - d. Alfred Lagat to move from Kaptagat from Kaplogoi farm plot NO 31 to Ex-Tooley farm plot No. 10.
    - e. John /tuitoek to move from Kaplagat Farm plot No 31 to Ex-today farm Plot No. 10.
4. In case the grant is to be enforced the way it is then the beneficiaries will be made to undergo enormous hardship and substantial loss as opposed to enjoying the estate left to them by the deceased.
5. There is danger of great injustice being meted against the beneficiaries in case the certificate of confirmed is not amended.



6. That Tembelio/Elgeyo Border block 5 (Ex-tooley)10 & Tembelio/Elgeyo Border Block 5(Ex-tooley) measuring 3.74 Ha each approximately 18.48 acres and not 20.5 acres as per the confirmed grant dated 12/7/2023 is proposed to be distributed as follows:
  - i) Christopher Kipyego Kigen - 7.4 acres
  - ii) Mary Chemutai Maiyo - 7.4 acres
  - iii) Luka Kimutai - 0.7 acres
  - iv) Petrolina Ngerigwony Chemjor - 3.0 acres
7. That Tembelio/Elgeyo Border Block 4(Kokwop Turgut)/95 measuring 8.12 Ha approximately 20.06 acres and not 16.2 acres as per the certificate of confirmed grant dated 12/7/2023 is proposed to be distributed as follows;
  - i) David Kiprono Kigen - 7.8 acres
  - ii) Luka Kimutai - 2.3 acres
  - iii) Joseph Kipkemboi Kigen - 7.0 acres
  - iv) Mary Kandie Kigen - 3.0 acres
8. That Tembelio/Elgeyo Border Block 13 (Kaplogoi)/31 measuring 11.95 Ha approximately 29.5 acres or thereabouts and not 29.4 acres as per the confirmed certificate of grant dated 12/7/2023 is proposed to be distributed as follows:
  - i) Alfred Lagat - 8.3 acres
  - ii) John Kiprop tuitoek - 4.2 acres
  - iii) Grace tuitoek - 4.2 acres
  - iv) Tapkili Toyoi Kiptum - 3.0 acres
  - v) Sanieko Kigen (on her behalf and in trust of Joseph Kipkemboi Kigen and William Kiplagat Kigen) -4.0 acres
  - vi) William Kiplagat Kigen - 5.8 acres
9. Moiben/Moiben Block 9 Manyatta measuring 4.278 Ha (approximately (10.5 acres) and not 12.6 acres as per the certificate of confirmed grant dated 12/7/2023 is proposed to be distributed as follows:
  - i) Isaac Kimaiyo - 4.5 acres
  - ii) Salina Jerotich Kigen - 3.0 acres
  - iii) Gladys Jepchirchir Cheruiyot - 3.0 acres
10. Irong/Kitany/173 measuring 5 acres and in consonance with the contents of the certificate of confirmed grant dated 12/7/2023 is proposed to be distributed in the following manner:
  - i) David Kiprono Kigen - 2.5 acres
  - ii) Joseph Kipkemboi Kigen - 2.5 acres
11. Irong/Kitany/175 measuring approximately 6 acres and in consonant with the contents of the certificate confirmed grant is proposed to be distributed as follows:



- i) William Kiplagat Kigen - 1.5 acres
  - ii) Alfred Lagat - 1.5 acres
  - iii) Mary Chemutai Maiyo - 1.5 acres
  - iv) Christopher Kipyego Kigen 1.5 acres
  - ii) The certificate of grant dated 12/7/2023 has the effect of displacing some beneficiaries from their respective places of abode though they have lived there for over 30 years and have made enormous developments. In particular the displacement is as hereunder:
    - a) Joseph Kipkemboi Kigen is to move from Kokwobturgut Eureka Farm Plot No. 95 to Kaplogoi Farm Plot no. 31 thereby being required to bring down his house and other developments
5. The anticipated amendments will assist the administrators distribute and wind up the estate without causing hardship to the beneficiaries. The application is premised on the grounds set out therein and the contents of the affidavit in support of the same sworn by the applicant.

### **Replying Affidavit**

6. The application was opposed *vide* a replying affidavit sworn by William Kiplagat on 28/03/2024. He deponed that the application is devoid of merit as during one of the trial sessions the court directed that they have a formal discussion among the beneficiaries which they did. Subsequently on 12<sup>th</sup> July 2023, when the matter came up for mention, the parties amicably resolved issues touching on distribution of the estate including distribution. The formal discussion resulted on a settlement which was adopted as an order of the court and the certificate of confirmation of grant was issued.
7. All the beneficiaries were provided for in the settlement and have all assumed occupation and ownership of their respective shares save for Alfred Kigen whose share is being forcefully used by the applicant. He stated that the present application has been brought to scuttle the implementation of the certificate of confirmation of grant.

### **Applicants' submissions**

8. The applicant filed submissions dated 12<sup>th</sup> April 2024. Counsel urged that Section 74 of the [Law of succession Act](#) which provides inter alia that:
- “... may be rectified by the court and a grant of representation, whether before or after confirmation, may be altered and amended accordingly...”
9. In the matter herein, the applicant being one of the administrators has found it difficult to proceed with the administration of the estate without the rectification of the amendments sought herein. In the circumstance, the Respondent cannot purport that the confirmed grant subject of this application was obtained through consent of all the parties. It is in the interest of justice that the summons be considered by the court and the amendments sought be rectified.
10. Counsel submitted that rectification of grant is provided for in Section 74 of the [Law of succession Act](#) and Rule 43(1) of the Probate and Administration Rules. The scope of section 74 of the [Law of Succession Act](#) and rule 43 (1) of [Probate and Administration rules](#) relates to errors in names and descriptions. It is our submissions that the prayers sought in the application herein is covered by the provision herein.



11. Counsel submitted that the description of property and acreage in the grant dated 12/7/2023 is erroneous and not the complete description of the stated properties. The same ought to be rectified. Similarly, the error of having the five heirs being displaced from their place of abode ought to be corrected to avoid unnecessary financial losses of demolition of structures and distortion of the developments that are already ongoing on the respective parcels. It is also within this court's jurisdiction to correct the inadvertent error of exclusion of interest of the 1st house of the deceased having been locked out from the grant, that is Grace Tuitoek the widow of the first born son of the 1<sup>st</sup> house. He urged the court to allow the application as prayed.

### **Analysis & Determination**

12. The following issues emerge for determination;

### **Whether the rectification of grant should be allowed**

13. Rectification for grant is provided for under section 74 of the *Law of succession Act* which provides that:  
“... may be rectified by the court and a grant of representation, whether before or after confirmation, may be altered and amended accordingly...”
14. Rule 43 of the *Probate and Administration Rules* provides ;  
“... where the holder of a grant seeks pursuant to the provisions of section 74 of *the Act* rectification of an error in the grant as to the names or description of any person or thing or as to the time or place of death of the deceased or, in the case of limited grant, the purpose for which the grant was made, he shall apply by summons in for, 1 JO for such rectification through the registry and in the cause in which the grant was made...”
15. From the provisions of section 74 of the *Law of Succession Act* and Rule 43(1) of the *Probate and Administration Rules*, the scope of rectification of grants of representation is limited to errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant.
16. I have considered the fact that the grant and the distribution of the properties in this matter were arrived at upon the discussions between the family members and further, that the proposed rectification shall have the effect of retaining possession of the parties where they had previously settled and developed. Additionally, it allows the beneficiaries to get equal shares. I therefore invoke the inherent jurisdiction of Rule 73 of the *Probate and Administration Rules* and allow the application with some modifications which will come clear as I further delve into the controversy of the matter.
17. This is an intestacy estate which came about the nullification of the will of Probate by this court for many reasons stated in the ruling dated 2.5.2023. From the affidavit evidence and the entire record as sworn by the administrators the deceased was survived by a polygamous family with close knitted siblings sons and daughters. It is trite that the specific law that applies to intestacy succession in polygamous setting is Section 40 of the *law of Succession Act* (cap.160, Laws of Kenya (*the “Act”*)) which provides as follows “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.



The Act further defines a “house” as “a family unit comprising a wife, whether alive or dead at the date of the death of the husband and the children of that wife. Further in the case of *Scholastic Ndululu Sura versus Agnes Nthenya Sura* (2019) eKLR the court of Appeal held that: “although section 40 of the *Law of Succession Act* provides a general provision for the distribution of the estate of a polygamous deceased person, the court has the discretion to take into account factual circumstances of the particular case that may be relevant in ensuring equitable and fair distribution of the estate.”

The rights of children are encapsulated in section 35(2) (3) (5) and (38) of the *Law of Succession Act*. Section 35(2) (3) (5) provides as follows:

- (2) A surviving spouse shall during the continuation of the interest provided by subsection (1) have a power of appointment of all or any part of the capital of the net intestate estate by way of fit taking effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.
- (3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or if a minor his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made

Subject to the provision of section 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or in the case of a widow, re-marriage of surviving spouse, devolve upon the surviving child, if there be any one or be equally divided among the surviving children.

18. In addition Section 3 (5) the *Succession Act* enables subsequent women(wives) and their children to inherit the estate of the deceased as expressly stated to capture the letter and spirit of the issues surrounding inheritance. “Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of *this Act* and in particular Section 29 and to thereof, and her children are accordingly children within the meaning of *this Act*.
19. It is important at this point to also take into account our cultural diversity as a people of this constitutional democracy. There is a range of historical and ethnographic accounts based on our customs and culture that indicate women as producers had primary rights to arable land, strong rights to property of their married houses which came to be known as matrimonial property within the extended family. That women and including married women, could be and were allocated land in their own right.
20. It is also right to state that within that customary cultural set-up there are accounts of women inheriting land in their own right. This therefore suggest that any paradigm shift to actually deprive widows and other women of their inheritance rights is a man made invention underpinned on patriarchal typologies. Arguably in this case, Sanieko Kigen widow to the deceased recognised as a senior ranking member has had to file objection proceedings to the estate which she is entitled to an inheritance but her rights apparently have been delegated to the lowest part of the pyramid seeking leave of this court to enforce them.
21. In Section 66 of the *Law of Succession Act* the widow is recognised as the head of a family following the demise of her husband. The codification of the *Succession Act*, which incorporates the common law intestacy is based on a nuclear family and also the imperatives outlined in section 29 of *the Act*. Contrary to the perspectives held in some quarters which I take judicial notice as an adjudicator under Article 50 (1) of the *constitution* polygamous relationships in our African culture and customs are not



entirely discriminatory against widows. There is very little evidence to suggest that during the lifetime of the head of the family or the husband for that matter conducted himself in a manner tailored to discriminate any of his wives. Nonetheless upon his demise the widows intestacy rights discrimination generally occurs and it is propagated by members of the same nuclear family.

22. If indeed Sanieko was excluded from inheritance on the grounds of gender it is a clear violation of the Kenyan constitution. It is evident by the application dated 18. 11. 2020 Sanieko Kigen filed an application seeking revocation of the certificate of confirmation of grant dated 28.2.1992 in which Christopher Kipyegon Kigen and Alfred Kimutai Lagat were appointed as executors to administer the estate of Kigen Cheboi Kipchorsoi the deceased in this cause of action. The decision by Olga J dated 20.9.2021 entrenches what has been the inconsistencies in embracing the guarantees of equality on distribution of this estate. Further the optional protocol to the [African Charter on Human and people's Rights of the Rights of women in Africa](#), 2003, Article 2 enjoins state parties to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. Similarly Article 21 of the protocol provides that a widow shall have the right to an equitable share in the inheritance of property of the husband. It is also true that a widow shall have the right to continue to live in her matrimonial house. Therefore, in distributing the estate of the deceased, the surviving spouse must be entitled to the marital home upon the death of his or her spouse to the full extent of the deceased's ownership rights.
23. The current intestate distribution matrix starting from the primary probate grant issued on 27.8.1998 is silent on the shares that accrued to the various beneficiaries survived of the deceased. Undoubtedly, there was every reason for this court to invalidate the will as it was not purposed within the common law principles in the making of the will. Thereafter the purported negotiated certificate of confirmation of grant dated 12.7.2023 has also been impeached by the summons for rectification dated 18.9.2023 by the administrator Christopher Kigen. In his own words if that grant is implemented in its original form it will occasion prejudice and an injustice. If the record is anything to go by This family since 1991 following the demise of the deceased has remained in limbo on matters of distributing the estate to themselves and for their own benefit. Looking for evidence to prove historical injustices one has only to appreciate the surrounding circumstances of this probate cause. Looking at the affidavit of William in response to the affidavit in support by Christopher Kigen he has also adopted a different parallel position as to what hails the inheritance of the properties survived of the deceased. This is a cause of action in which this court is empowered to invoke Section 76 of the [Law of Succession Act](#) to revoke the appointment of the administrators who have absolutely done nothing to administer the estate as covenanted in the instruments that they have undertaken faithfully to administer such estate according to law and to render a just and through account there of whenever required by law so to do
24. In considering the various affidavits as relates as to whether the differential entitlement of the beneficiaries are at risk of being dissipated one has to take a judicial notice to the length of time taken by the beneficiaries to comply with the timelines for distribution of the estate expressly provided for in the Succession Act. In interpreting Section 35, 36, 27, 38, & 40 of the [Succession Act](#) and give it meaning one wonders what is the dispute between these beneficiaries for not a single movable or immovable assets have changed hands from the Administrators to the rest of the heirs. They seem to be having misgiving and grievances only designed to delay the administration of the estate.
25. The broad perspective for this probate court is to decide on the issues touching on the distribution of the estate with special safeguards on the provisions of the [constitution](#) and the codifications of the law as premised in the [Succession Act](#).
26. The present application by the administrator Christopher Kigen is challenging the certificate of confirmation of grant on many grounds coached in the form of rectification. However closer look



on the proposals in the affidavits by the administrator once adopted by the court they change the entire character of the certificate of confirmation. It is also instructive to note that on 12.7.2023 an amended consent to confirmation of grant and mode of distribution was filed before this court. I therefore in this respect hold the view that in restructuring distribution of the estate that amended consent of confirmation of grant and mode of distribution of 12.7.2023 forms the basic structure in which the beneficiaries ought to draw the entire matrix. Why do I say so, there are issues to do with other assets which also must be accounted for by the administrators as captured in paragraph (iii) (iv) (v) (ii) (iii) (iv) and the Bank Accounts namely: STD Bank Eldoret 01/02/01/52949/100/4, Transnational ELD 0030100429001, NBK ELD 404-037921, K.C.B Bank ELD 17004795, K.C.B Iten Branch 175040032. The ultimate test therefore remains the same for the court must do justice to the parties to avoid re-litigation of the same issues over and over again. This discretion as for reaching judicial considerations to appropriately determine the real issues on this intestate estate. Some of the issues qualify for rectification under Section 74 of *the Act* while others on judicial evaluation are more to do with amendment of certificate of confirmation of grant. It is therefore a case before me of both rectification and amendment to enhance the resolution of this dispute. As pointed earlier there is no dispute as to the beneficiaries /dependants to the estate as defined in Section 29 of the *Succession Act*. As regards the nature, character, and the legal test of what constitutes free estate survived of the deceased there is also no disputed at all, In the aforesaid context no compelling or exceptional circumstances exist in respect of the cause of action, identifying the beneficiaries and the shares to be distributed with a approval of the administrators for this estate to remain an administered.

27. Why the necessity of amendment of the certificate of grant of confirmation? The answer is in the case of *Kasandas Rupchand & Anr. V Rachappa Vitboba Shilwant and Ors* reported in ILR (1909) 33 Bom 644 the court laid down the principles that: “ All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties.

It is clear from the foregoing summary of the record and affidavits there sufficient cause for the amendment of the initial certificate of confirmation of grant to be effected to give the beneficiaries an opportunity to meet the exact situations on distribution resulting from the amendments which are intended from the point view of the administrator to promote the ends of justice in the matter.

28. Bringing equality home Section 40 of the *Law of Succession Act* be the anchor provisions in which this estate should be distributed applying the formulae known in law as unit where each heir to the estate including the spouse is considered as a single unit. This discards the doctrine of house to house being a polygamous family. There are many things which the administrator Christopher Kigen has alluded to in his affidavit for rectification of grants. But I need to point out that the amended consent to confirmation of grant and mode of distribution dated 12.7.2023 should form the primary instrument in distributing this estate. The only rider to bring reality home is to comprehensively include both the movable and immovable assets and after amendment in one instrument bearing in mind the legal principles discussed elsewhere in this ruling that fresh instrument be the one to be used in transmitting the estate. The administrators should refrain from engaging in any act or practice of discriminating against the spouse to the deceased or any such other siblings of the female gender. The right of the marital estate to the surviving spouse should not be interfered with in allocating her shares in consonant with the unity model as opposed house to house.
29. Though this application by the Administrator Christopher Kigen is moved under the doctrine of rectification, the substance of it is on amendment for it changes the character and the text of the certificate of confirmed grant. The question to be answered therefore, is whether the court in generating the impugned certificate of confirmation of grant committed any material irregularity or



jurisdictional error going to the root of the matter in signing the impugned certificate of confirmation of grant. In advertent to the rival contentions canvassed on either side before me I am of the considered view that it is in the interests of justice that the initial certificate of confirmed grant be amended but be grounded on the amended consent of confirmation of grant dated 12.7.2023. I think the cause adopted by the administrator in the latest application should bear in mind that the rectification should not fundamentally alter intention of the parties more specifically in changing the position of the established homesteads. At best such arrangements by the administrator working with the surveyor should make it possible that the beneficiaries feel identified with his or her established residences. In addition, the significant shares due to each beneficiary as established by the administrators must be in conformity with the unit model of distribution in Section 38 & 40 of the Succession Act.

30. Aside from the benefit to the individual sons and daughters of the deceased the surviving spouse be entitled to a life interest, part of immovable assets and cash at bank as she ranks in priority to her children survived of the deceased. The first question which this court must rule on is that the administrator cannot on his own motion interfere with the consent on distribution as negotiated and signed by the beneficiaries on 12.7.2023. In reality, both the affidavit and the consent the by the beneficiaries are *prima facie* similar in character and it may be simply be a question of semantics as appreciated by the administrator but opposed by a majority of the beneficiaries. The obvious remedy therefore, to settle this 1991 Probate cause of action is to order the legal counsels seized of these proceedings together with the administrators to generate a final amended certificate of confirmation taking into account the following parameters.
- a. The movable and immovable assets survived of the deceased
  - b. That the consent of 12.7.2023 be the primary instrument in aligning the distribution of the estate to the beneficiaries.
  - c. That the amended grant based on the application filed by the administrator Christopher Kigen incorporate such features from the survey report that will seamlessly transmit identified shares without any barriers of usage or occupation as originally and legitimately established in line with historical lineage.
  - d. That the marital estate of the surviving spouse Sanieko Kigen be accorded priority including a matrimonial home as a senior ranking member to the deceased family
  - e. That in completeness of this distribution matrix the doctrines of equity and equality must apply to the administration and distribution of this estate in accordance to Section 38,40, & 41 of the Succession Act and in all respect in accordance with Article 27 & 28 of the constitution.
  - f. That the application on rectification but more substantively on amendment partially succeeds in so far as inclusion of the intestate estate omitted in the certificate of confirmed grant dated 12.7.2023.
  - g. That the amended grant of letters of administration which does not occasion irreparable prejudice to any of the beneficiaries of divest anyone of them of an advantage of estate which it had divested and secured as a result of the amended consent to confirmation of grant and mode of distribution dated 12.7.2023 be shared with the court by administrators for signature and endorsement. This shall then remain be legal instrument in the transmission and conveyance of the intestate estate with the beneficiaries as settled in Section 29 of the Succession Act
  - h. However, given the scope and ambit of this estate the administrator be and are hereby ordered to transmit the entire estate within 45 days from today's ruling unless there is stay from a superior court or in any event on exceptional circumstances by this court.



- i. That whether or not any beneficiary has a grievance capable of being litigated before a court of concurrent jurisdiction under Article 48 & 50 of the constitution leave to apply must be sought by any such heir or beneficiary. This is to avoid multiplicity of proceedings which do not go to the root of the law on distribution of the estate.
- j. That repeated default by the administrators to act within the legal mandate conferred upon them this court under Rule 73(1) of the Probate and Administration Rules appoint the Deputy Registrar of the High Court to execute all the necessary instruments to transmit and convey all the movable and immovable assets to the beneficiaries within a period of 30 days from the date of default by the appointed administrators. The instrument applicable for the registrar to transmit the estate shall be founded from the declarations made elsewhere in this ruling.
- k. This being a family matter I declaim to exercise discretion to award any costs.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 13<sup>TH</sup> DAY OF MAY 2024**

.....

**R. NYAKUNDI**

**JUDGE**

**[Ikprotich7@gmail.com](mailto:Ikprotich7@gmail.com), [srono71@yahoo.com](mailto:srono71@yahoo.com)**

SUCCESSION CAUSE NO 141 OF 1919	0
---------------------------------	---

