



**In re Estate of Alfred Kiplamai Bor (Deceased) (Succession Cause
E017 of 2018) [2024] KEHC 10957 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 10957 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE E017 OF 2018
RN NYAKUNDI, J
SEPTEMBER 20, 2024**

IN THE MATTER OF THE ESTATE OF THE LATE ALFRED KIPLAMAI BOR - (DECEASED)

BETWEEN

**NAUMY JEROB BOR 1ST PETITIONER
EMMANUEL KIPTOO LAMAI 2ND PETITIONER
BENJAMIN KIPTANUI LAMAI 3RD PETITIONER**

AND

**IRENE ZIPPY C. KALAMAI 1ST BENEFICIARY
LYNETTE NGAULO RONO 2ND BENEFICIARY
AGNES ACHIENG AND MARY NASHIPAI LEGAL REPRESENTATIVES IN
THE ESTATE OF PAUL KIPKOECH LAMAI (DCD) 3RD BENEFICIARY
ALLAN KIPRUTO AND BRENDA CHEPKOECH LEGAL REPRESENTATIVE
IN THE ESTATE OF TERESA CHEPTANUI BOR (DCD) 4TH BENEFICIARY
BERNADETTE CHERUBET BOR 5TH BENEFICIARY
GILBERT LAMAI BOR 6TH BENEFICIARY
ANTONINA KOSSY BOR 7TH BENEFICIARY
RUTH CHEPCHIRCHIR LEGAL REPRESENTATIVE IN THE ESTATE OF
CLEMENT KIPKEMEI LAMAI (DCD) 8TH BENEFICIARY
SUSAN JEPKEMEI LAMAI LEGAL REPRESENTATIVE IN THE ESTATE OF
RICHARD KIRWA LAMAI (DCD) 9TH BENEFICIARY
KENNETH KIPROTICH KOECH 10TH BENEFICIARY**



RULING

Representation:

M/s Kalya & Co. Advocates

M/s Tororei & Co. Advocates

M/s Kamau Lagat & Co. Advocates

1. Before me for determination are summons for confirmation dated 1st February, 2024 filed by the Petitioners. The summons is expressed to be brought under the provisions of Section 71(1) of the Law of Succession Act and Rule 40(1) of the Probate and Administration Rules. The Petitioners sought confirmation of the Grant of letters of administration intestate of the estate of the late Alfred Kiplamai Bor issued on 7th August, 2023 to Naumy Jerob Bor, Emmanuel Kiptoo Lamai, Benjamin Kiptanui Lamai and Felix Lamai.
2. The Petitioners averred that the grant should be confirmed since most of the beneficiaries being of age have consented to the confirmation.
3. In the consent to confirm the grant, the Petitioners identified the following properties:
 - a. Ngeria/Kabongo Block 1 (BOR)/1
 - b. Ngeria/Kabongo Block 1 (BOR)/2
 - c. Ngeria/Kabongo Block 1 (BOR)/3
 - d. Ngeria/Kabongo Block 1 (BOR)/4
 - e. Ngeria/Kabongo Block 1 (BOR)/5
 - f. Ngeria/Kabongo Block 1 (BOR)/6
 - g. Ngeria/Kabongo Block 1 (BOR)/7
 - h. Ngeria/Kabongo Block 1 (BOR)/8
 - i. Ngeria/Kabongo Block 1 (BOR)/9
 - j. Ngeria/Kabongo Block 1 (BOR)/11
 - k. Ngeria/Kabongo Block 1 (BOR)/12
 - l. Ngeria/Kabongo Block 1 (BOR)/13
 - m. Ngeria/Kabongo Block 1 (BOR)/14
 - n. Ngeria/Kabongo Block 1 (BOR)/20
 - o. Plot in Langas
 - p. Shares NO. M00754986 at KCB Bank
 - q. Shares Account No. 38956 at Standard Chartered Bank
 - r. Shares No. M00038075 at KCB Bank



- s. Shares at Sirgoi Holdings Limited
 - t. Shares at EMO investment limited
 - u. Shares at Wareng Negoi Limited
 - v. Account balance at Co-operative Eldoret Branch Account number 01109046216800.
4. The Petitioners proposed that the properties be distributed as hereunder:
- a. Item a-n) be amalgamated and shared equally among the 3 houses. Each house shall thereafter record separate consents on individual distribution.
 - b. Item 0-u) be shared equally among the three houses.
 - c. That the account balance at Co-operative Bank Eldoret Account Number 0110xxxxxxxxx to be vested on the widow, Naumy Jerob Bor.
5. The 1st, 2nd, 3rd, 4th, 5th and 7th Beneficiaries filed an affidavit in protest of the summons for confirmation. Bernadette Cherubet Bor swore an affidavit on behalf of the other beneficiaries and stated as hereunder:
- a. That all the estate properties were singlehandedly acquired by the deceased.
 - b. On the issue of distribution, the deceased died intestate since there is no evidence that he had made a will and that prior to his demise he had legally distributed his land.
 - c. The deceased had married
6. The 10th Beneficiary filed an affidavit of protest to the summons for confirmation, which averments are similar to those of the other beneficiaries and deposed as hereunder:
- a. That I am a dependant pursuant to the Section 29 of the Law of Succession Act herein and the 10th Beneficiary to the estate of Alfred Kiplamai Bor (deceased) hence competent to make and swear this affidavit.
 - b. That all the estate properties were singlehandedly acquired by the deceased.
 - c. On the issue of distribution, the deceased died intestate since there is no evidence that he had made a will and that prior to his demise he had legally distributed his land.
 - d. That the deceased had married 3 wives under the Nandi system of law which permitted polygamy namely Rosebella Chepsongok Bor, Divinah Cherotich Bor and Naumy Jerob Bor.
 - e. The deceased left only 1 surviving spouse the 1st Petitioner herein Naumy Jerob Bor and twenty-one (21) children from the respective house. The other two wives Rosebella Chepsongok Bor and Divinah Cherotich Bor are deceased.
 - f. That the Petitioners have failed under Section 83(e) of the Law of Succession Act within 6 months from 07-08-2023 (which lapsed on 07-02-2024) to produce to the court a full and accurate inventory of the assets and liabilities of the deceased.
 - g. That I confirm as follows in relation to the L.R NO. 7946/4 (IR NO. 10041/42) measuring approximately 227.5 Ha (562.15)
 - i. The deceased herein did surrender the certificate of title for L.R No. 7946/4 (IR NO. 10041/42) to the Government of Kenya for change of tenure from leasehold into freehold;



- ii. Pursuant to the above surrender and scheme plan by the deceased a register was opened at Uasin Gishu County Land Registry known as Ngeria/Kabongo Block 1 (BOR)
 - iii. Based on the scheme plan L.R. NO. 7946/4 (IR NO. 10041/42) was subdivided into 15 Blocks of varying acreages under the Register Ngeria/Kabongo Block 1 (BOR)
 - iv. Hence L.R NO. 7946/4 (IR NO. 10041/42) is currently reflected in parcel registry known as Ngeria/Kabongo Block 1(BOR) Block 1-15.
- h. That to my knowledge a full inventory of the assets and liabilities of the deceased are as hereunder particularized: -
- i. L.R NO. 7946/4 (IR NO. 10041/42 currently reflected in parcel registry known as Ngeria/Kabongo Block 1(BOR) Block 1-15 measuring 227.5 Ha.
 - ii. Plot No. Eldoret Municipality Block 14/8500 Kisumu Ndogo Estate, Langas Eldoret Municipality measuring 1 acre with developments thereon.
 - iii. Tractor FORD-KSA 176 with sprayer, Jacto and plough.
 - iv. Motor Vehicle – KCK 053P
 - v. 2 trailers
 - vi. 2 millers
 - vii. 2 wheat planters
 - viii. Water browser
 - ix. Co-operative Bank A/C No. 01109046216800
 - x. Shares in the following companies Standard Chartered Bank share certificate NO. 38956, Kenya Breweries Shares, Kenya Commercial Bank Share Certificate NO. M00754986, Kenya Commercial Bank Share Certificate NO. M00038075, Sirgoi Holdings Ltd shares and Wareng Sacco shares currently known as Noble Sacco.
- i. That I am aware the estate has liabilities to be excised out of L.R NO. 7946/4 (IR NO. 10041/42) currently reflected in parcel registry known as Ngeria/Kabongo Block 1(BOR) Block 1-15.
- i. 3.12 Ha be excised from Ngeria/Kabongo Block 1 (BOR)/12 measuring 12.14 Ha to National Land Commission.
 - ii. 2.608 Ha to be excised from Ngeria/Kabongo Block 1 (BOR)/13 measuring 55.13 Ha to National Land Commission.
 - iii. 0.902 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/14 measuring 4.86 Ha to National Land Commission.
 - iv. 2 acres donated by the deceased to the Catholic Church who have erected a church who are in current occupation and possession.
 - v. 6 acres encompassing a dam.
- j. The estate dependants as per Section 29 of the Succession Act include:



House No & Name of wife/widow	Name of Beneficiaries
Rosebella Chepsongok Bor (dcd) House No. 1	Irene Zippy Kalamai
Rosebella Chepsongok Bor (dcd) House No. 1	Lynette Ngaulo Rono
Rosebella Chepsongok Bor (dcd) House No. 1	Paul Kipkoech Lamai (Dcd) Survived by Agnes Achieng & Mary Nashipai Lamai and their children
Rosebella Chepsongok Bor (dcd) House No. 1	Teresa Cheptanui Bor (dcd) survived by Brenda Chepkoech & Allan Kipruto
Rosebella Chepsongok Bor (dcd) House No. 1	Bernadette Cherubei Bor
Rosebella Chepsongok Bor (dcd) House No. 1	Emmanuel Kiptoo Lamai
Rosebella Chepsongok Bor (dcd) House No. 1	Gilbert Kipchirchir Lamai
Rosebella Chepsongok Bor (dcd) House No. 1	Antonina Kossy Bor
Divinah Cherotich Bor (Dcd) – House No. 2	Clement Kipkemei Lamai (dcd) survived by Ruth Chepchirchir
Divinah Cherotich Bor (Dcd) – House No. 2	Richard Kirwa Tot (Dcd) survived by Susan Chepkemei
Divinah Cherotich Bor (Dcd) – House No. 2	Benjamin Kiptanui Lamai
Divinah Cherotich Bor (Dcd) – House No. 2	Romana Jebichii Bor
Divinah Cherotich Bor (Dcd) – House No. 2	Ernest Kiprono Lamai
Naumy Jerob Bor – 3 rd House	Surviving widow
Naumy Jerob Bor – 3 rd House	Kenneth Kiprotich Koech
Naumy Jerob Bor – 3 rd House	Margaret Chepchumba Bor



Naumy Jerob Bor – 3 rd House	Shadrack Kimtai Bor
Naumy Jerob Bor – 3 rd House	Consolata Jeruto Bor
Naumy Jerob Bor – 3 rd House	Felix Lamai
Naumy Jerob Bor – 3 rd House	Faith Chelagat Bor
Naumy Jerob Bor – 3 rd House	Regina Chemeli Bor
Naumy Jerob Bor – 3 rd House	Julius Kibet Koriko

- k. That a perusal of the summons for confirmation of grant of letters of administration intestate issued on 07.08.2023 excludes the following beneficiaries:
- i. Agnes Achieng and Mary Nashipai legal representative in the estate of Paul Kipkoech Lamai (DCD), Alan Kipruto and Brenda Chepkoech legal representative in the estate of Teresa Cheptanui Bor (DCD), Ruth Chepchirchir legal representative in the estate of Clement Kipkemei Lamai (DCD) and Susan Jepkemei Lamai Legal representative in the estate of Richard Kirwa Lamai (DCD) are excluded from the list of rightful heirs /dependants without just cause and in contravention to the law.
 - ii. That Agnes Achieng and Mary Nashipai widows to Paul Kipkoech Lamai (DCD), Ruth Chepchirchir widows to Clement Kipkemei Lamai (DCD) and Susan Jepkemei Lamai widows to Richard Kirwa Lamai (DCD) being wives to the deceased sons maintained by the deceased immediately prior to his death qualify to be dependents under Section 29 of the [Law of Succession Act](#).
 - iii. That Paul Kipkoech Lamai, Clement Kipkemei Lamai and Richard Kirwa Lamai are buried within the resultant subdivisions of LR NO. 7946/4 (IR NO. 10041/42) measuring 227.5 Ha currently reflected in parcel registry known as Ngeria/Kabongo Block 1 (Bor) Block 1-15 and their matrimonial home currently erected thereon.
 - iv. That Alan Kipruto and Brenda Chepkoech children to Teresa Cheptanui Bor (DCD) are Grandchildren to the deceased and were maintained by the deceased immediately prior to his death. They qualify to be dependants under Section 29 of the [Law of Succession Act](#).
 - v. Agnes Achieng and Mary Nashipai, Alan Kipruto and Brenda Chepkoech, Ruth Chepchirchir and Susan Jepkemei Lamai as per Section 29 of the [Law of Succession Act](#) are entitled to inherit from the deceased.
 - vi. That there is no dispute that the petitioners recognize the above beneficiaries since they were each allocated an equal share of the sum of Kshs. 57,709,380/= from the National Land Commission proceeds pursuant to the Amended order issued on 29.08.2023.
 - vii. My dispute is that Agnes Achieng and Mary Nashipai widows to Paul Kipkoech Lamai (DCD), Alan Kipruto and Brenda Chepkoech children of Teresa Cheptanui Bor (DCD), Ruth Chepchirchir widow to Clement Kipkemei Lamai (DCD) and Susan Jepkemei Lamai widow to Richard Kirwa Lamai are entitled to inherit from the deceased just like the 2nd, 3rd and 4th Petitioners are the children of the deceased.



- viii. That should the summons dated 01-02-2024 be confirmed as is, the above beneficiaries will stand disinherited yet they are legitimate heirs.
- l. Further that, having perused the proposed mode of distribution in the summons dated 01-02-2024, I vehemently oppose the same and aver as follows:
- i. The proposed distribution in the summons does not comply with the *Law of Succession Act* hence there is a valid basis for departing from the proposal.
 - ii. The Petitioners did not consult all heirs/beneficiaries on the mode of distribution because the purported distribution of the estate made by the Petitioners is contrary to the law and how the deceased treated all his children.
 - iii. The shares indicated in the mode of distribution will greatly disadvantage me and other beneficiaries as the 3 beneficiaries listed on behalf of the 2nd house, that is Benjamin Kiptanui Lamai, Romana Jebichi Bor and Ernest Kiprono Lamai will benefit more than the other houses/beneficiaries.
 - iv. The Petitioners have not proposed a mode of distribution as envisioned under *the Constitution*. Section 71 of the *Law of Succession Act* and Rule 41 of the Probate and Administration Rules.
 - v. The Hon. Court in the Ruling dated 7-08-2023 noted Section 66 of the *Law of Succession Act* does not accord the petitioners preferential treatment on distribution of the estate but the petitioners are just recognized by the law as first among equals to administer the estate on behalf of the deceased.
 - vi. That the Petitioners propose to distribute the estate piece meal and appear to suggest that a trust be created within the units.
 - vii. That the Petitioners have ignored the principles for distribution under the Law.
 - viii. That the consent by the beneficiaries accompanying the Affidavit in support of the summons for confirmation, a primary document on distribution was not executed by 8 beneficiaries listed thereon and 4 beneficiaries not listed in the consent.
- m. The Deponent further stated that he has perused the minutes as indicated in the affidavit in support of summons by Emmanuel Kiptoo lamai which prima facie indicate as follows:
- i. Margaret Bor, Bernadette Kosgei and Kossy Bor were absent in the said meeting.
 - ii. That MIN/01/18 highlights the individuals who had leased L.R. NO. 7946/4 (IR NO. 10041/42) currently reflected in parcel registry known as Ngeria/Kabongo Block 1 (Bor) Block 1-15. It confirms Daniel Kimitei owed the deceased Kshs. 200,000/= which he paid to the Petitioners herein.
 - iii. MIN/02/18 confirms Advocate W.K. Kalya has been instructed to follow up on the title deed for L.R NO. 7946/4 (IR NO. 10041/42). Currently Advocate W.K. Kalya implemented the deceased instructions and L.R NO. 7946/4 (IR NO. 10041/42) is currently reflected in parcel registry known as Ngeria/Kabongo Block 1 (Bor) Block 1-15. The plots allegedly in Kapsoya, Cheplasgei, Langas, Hill school and shauri yako were rescheduled for discussions to another date. The Administrators should provide an inventory of these assets.



- iv. MIN/03/18 distributes movable assets of the deceased. This was unlawfully done and without the endorsement of the court.
- v. MIN/04/18 resolves that an account is opened at Co-operative Bank Deposit proceeds from: - Rental income collected from unregistered plot No. Eldoret Municipality Block 14/8500 Kisumu Ndogo Estate, Langas measuring 1 acre. The administrators should give an account of the monies collected herein from 28-12-2017 to the date of giving accounts.
- vi. That as per MIN/04/18 it confirms that the beneficiaries did not agree on any distribution as averred by the Petitioners but rather the elders superimposed their decision upon the beneficiaries.
- vii. MIN/05/18 gives a list of the shares the family believed was owned by the deceased. The shares are listed as Standard Chartered Bank, Kenya Breweries, KCB, Sergoi and Kurget. The Petitioners are mandated to give account of these shares.
- viii. MIN/06/18 details the estate liabilities as Advocate Zephania Yego and payment of this liability is discussed and agreed that it be raised from rental income from the Langas plot. Zephania paid school fees worth KES 42,000/= for Redemptor Cheron, in addition to KES 3,000/= pocket money and KES 4,000/= for the purchase of barbed wire.
- ix. That it is therefore clear that the minutes can therefore not form a basis of distribution of the assets of the deceased.
- x. There is nothing to show that there was a family or clan meeting that discussed the issue of distribution of the immovable asset of the deceased.
- xi. The court has not been told the locus standi of the alleged elders to deliberate the distribution of the immovable assets of a deceased person outside the confines of the Succession Act.
- xii. That it is trite that during distribution, there are processes to be followed before the immovable property is shared. The court is not told in spite of the attendance of Advocate Zephania Yego and Justice Limo in the meeting held on 28-12-2017 if *the Constitution* and the Succession Act were ever followed and what the final conclusion was. In this regard, even if there was any clan/elders decision on distribution of the deceased immovable properties, the decision/resolution does not supersede the legal effect of the rights of the beneficiaries or the authority of the Hon. Court to hear, determine and distribute the estate herein.
- xiii. It is crystal clear from the foregoing that the meeting held on 28-12-2017 had nothing to do with distribution of L.R. of L.R No. 7946/4 (IR NO. 10041/42) currently reflected in parcel registry known as Ngeria/Kabongo Block 1 (Bor) Block 15
- xiv. That the meeting was about opening of accounts, identifying the deceased's estate and management of rental income and lease income pending distribution of the estate by the court. Also, the resolutions therein were by the clan elders according to the Nandi custom and not the beneficiaries.
- xv. That I did attend the meeting held on 28-12-2017 and confirm the immovable properties of the deceased were not distributed.



- n. The deponent submitted a counter-proposal which is captured as follows:
- i. L.R NO. 7946/4 (IR NO. 1004/42) currently reflected in parcel registry known as NGERIA/KABONGO 1 (BOR) CLOCK 1-15 be distributed as follow:
 - a. Life interest in her matrimonial home and 5 acres surrounding the home to Naumy Jerob Bor the estate widow and the 1st Petitioner herein.
 - b. The balance of 542.56 Ha to be excised out of NGERIA/KABONGO BLOCK (Bor) Block 1-15 share in the following portions
 - i. 406.92 acres to be share among Paul Kipkoech Lamai (deceased) represented by Agnes Achieng and Mary Nashipai Lamai, Emmanuel Kiptoo Lamai, Gilbert Kipchirchir Lamai, Clement Kipkemei Lamai (dcd) survived Ruth Chepchirchir, Richard Kirwa Tot (DCD) represented by Susan Chepkemei, Benjamin Kiptanui Lamai, Ernest Kiprono Lamai, Kenneth Kiprotich Koech, Shadrack Kimutai Bor, Felix lamai and Julius Kibet Koriko taking into account the current settlement, development and value of land occupied by each of the beneficiaries.
 - ii. 135.64 acres to be shared in equal portions among the daughters of the estate known as Irene Zippy Kalamai, Lynette Ngaulo Rono, Teresa Cheptanui Bor (DCD) represented by Brenda Chepkoech and Allan Kipruto, Bernadette Cherubei Bor, Antonina Kossy Bor, Romana Jebichii Bor, Margaret Chepchumba Bor, Consolata Jeruto Bor, Faith Chelagat Bor and Regina Chemeli Bor taking into account the current settlement and development of the beneficiaries hence each person shall get 13.56 acres.
 - iii. That the court should direct the Uasin Gishu County Surveyor to survey L.R NO. 7946/4 (IR NO. 10041/42) currently reflected in parcel registry known as Ngeria/Kabongo Block 1 (BOR) Block 1-15 and take into account any settlement or occupation or development by any of the beneficiaries.
 - iv. The property known as Unregistered plot No. ELDORET MUNICIPALITY Block 14/8500 Kisumu Ndogo Estate, Langas measuring 1 acre and propose as follows:
 - A life interest in the income generated from the property absolutely to Naumy Jerob until her death to facilitate and pay for her upkeep and medical bills. These funds be jointly managed by her children Kenneth Kiprotich Koech, Consolata Jeruto Bor, Faith Chelagat Bor and Felix Lamai.
 - Upon termination of the life interest by Naumy jerob Bor, the properties be valued by the valuer – Uasin Gishu county, sold and proceeds shared in equal portion among the deceased’s children, Irene Zippy Kalamai, Lynette Ngaulo Rono, Paul Kipkoech Lamai (dcd) survived by Agnes Achieng & Mary Nashipai Lamai, Teresa Cheptanui Bor (Dcd) survived by Brenda Chepkoech & Allan



Kipruto, Bernadette Cherubei Bor, Emmanuel Kiptoo Lamai, Gilbert Kipchirchir Lamai, Antonina Kossy Bor, Clement Kipkemei Lamai (Dcd) survived by Ruth Chepchirchir, Richard Kirwa Tot (dcd) survived by Susan Chepkemei, Benjamin Kiptanui lamai, Romana Jebichii Bor, Ernest Kiprono Lamai, Naomy Jerob Bor, Kenneth Kiprotich Koech, Margaret Chepchumba Bor, Shadrack Kimutai Bor, Consolata Jeruto Bor, Felix Lamai, Faith Chelagat Bor, Regina Chemeli Bor and Julius Kibet Koriko.

- o. In so far as other properties of the deceased are concerned, the deponent proposed as follows:
- i. The Administration to establish the current balance by filing bank statements in court within 7 days for the deceased's account in co-operative bank A/C No. 01109046216800 and the amount be distributed in equal portions among the state widow Naomy Jerob Bor and the deceased children Irene Zippy Kalamai, Lynette Ngaulo Rono, Paul Kipkoech Lamai (Dcd) survived by Agnes Achieng & Mary Nashipai Lamai, Teresa Cheptanui Bor (dcd) survived by Brenda Chepkoech & Allan Kipruto, Bernadette Cherubei Bor, Emmanuel Kiptoo Lamai, Gilbert Kipchirchir Lamai, Antonina Kossy Bor, Clement Kipkemei Lamai Dcd) survived by Ruth Chepchirchir, Richard Kirwa Tot (Dcd) survived by Susan Chepkemei, Benjamin Kiptanui Lamai, Romana Jebichii Bor, Ernest Kiprono Lamai Naomy jerob Bor, Kenneth Kiprotich Koech, Margaret Chepchumba Bor, Shadrack Kimutai Bor, Consolata Jeruto Bor, Felix Lamai, Faith Chelagat Bor, Regina Chemeli Bor and Julius Kibet Koriko.
 - ii. The deceased livestock, Tractor FORD – KSA 176 with sprayer, Jacto and Plough, Motor vehicle KCK 053P, 2 millers, 2 wheat planters, 2 trailers and water browser have already been distributed among the sons and the widow.
 - iii. The Administrators to establish within 7 days the current value of the shares held in the name of the deceased being Standard Chartered Bank share certificate No. 38956, Kenya Breweries shares, Kenya Commercial Bank share certificate No. M00038075, Sirgoi Holding Ltd shares and Wareng Sacco shares currently known as Noble Sacco. Upon determination of the value it be distributed in equal portions among the beneficiaries.
- p. He further averred that the petitioners have failed under Section 83(e) of the Law of Succession Act within 6 months from 07-08-2023 (which lapsed on 07-02-2024) to produce to the court a full and accurate account of all dealings with the estate assets therewith up to date of the account.
- i. That the petitioners have leased out unregistered plot No. Eldoret Municipality Block 14/8500 Kisumu Ndogo Estate, Langas measuring 1 acre from the year 2018 to date. They must pursuant to Section 83(e) of the Law of Succession Act give a full and accurate account of all dealings therewith and the income generated thereon up to the date of the account.
 - ii. According to a valuation report by Real Appraisal Ltd. Un-registered Plot No. Eldoret Municipality Block 14/8500 Kisumu Ndogo Estate, Langas measuring 1 acre with developments the average annual rental income from this property is Kshs. 1,922,000/= . Hence the Petitioners are expected to give an account of: -



- a. A total figure of Kshs. 11,952,000/= for the year 2018, 2019, 2020, 2021, 2022, 2023.
 - b. A total figure of Kshs. 332,000/= for the month of January and February 2024 and any additional rental income up to the date of accounts.
- iii. That the Petitioners in a replying affidavit sworn on 12-07-2019 by Emmanuel Kiptoo Lamai admitted in paragraphs 5 & 6 of collecting the rental income herein. Justice H. Omondi did proceed in paragraph 21 page 6 of her ruling to state: “I think I would be failing in my duties as a court if I was to ignore the fact the respondents admit that they have been collecting rent – it is critical to know how the money has been used as this will be critical in the final distribution. In my view, this limb of the prayer is merited to the extent that accounts be rendered to this court within 21 days hereof. These funds should thereafter be distributed among the beneficiaries in equal portions.”
 - iv. That the ruling and orders of the court dated 20-06-2022 directed the administrators within 90 days to produce a full and accurate inventory of the assets and liabilities of the deceased. The 90 days lapsed on 20-09-2022. The Administrators have failed to produce a full and accurate inventory of the assets and liabilities of the deceased.
 - v. According to him, the petitioners lodged an affidavit to render accounts sworn on 13-07-2020 by Emmanuel Kiptoo Lamai. However, prior to the Beneficiaries responding, parties instructed their advocates on record to inform the Hon. Court they had agreed by consent to abandon the issue on accounts and focus on the appointment of administrators on 19.10.2020. That Lady Justice H. Omondi on 22.03.2021 directed parties to lodge affidavits on proposed administrators after an out of court negotiations failed. The parties herein duly complied with the orders issued on 22-03-2021 and the petitioner’s affidavit sworn on 28-05-2021 was lodged on 28-05-2021 and the 1st Objector and the Respondents lodged an affidavit sworn on 27-07-2021.
 - vi. Upon Lady Justice H. Omondi promotion to the Court of Appeal the file was placed before Hon. Justice O. Sewe to give directions and deliver a ruling on appointment of administrators. However, in the ruling delivered on 29-02-2022 the Hon. Court rendered itself on rendering of accounts instead of appointment of administrators.
 - vii. That Hon. Justice O. Sewe in her ruling held: - “there being no reason to doubt the accuracy of the accounts furnished herein by the respondents, it is my finding that the same suffice for purposes of prayer 4 of the summons dated 22-02-2019”. This finding was an error since parties by consent had abandoned the accounts issue and of given the opportunity they would have ably demonstrated the mismanagement of funds by the petitioners. However, Lady Justice Olga Sewe in a Ruling herein dated 29.02.2022 stated in paragraph 8 that: “there will be additional opportunities for the duly appointed administrators to account to the beneficiaries for the manner in which the estate of the deceased has been managed from inception.” At present, the law grants the administrators a statutory opportunity to render the accounts on management of the accounts from inception.
 - viii. Justice E.K. Ogola in a ruling dated 20-06-2022 directed as follows: “Naumy Jerob Bor, Emmanuel Kiptoo Lamai, Benjamin Kiptanui Lamai and Felix Lamai (the administrators herein) shall within 90 days from the date hereof produce a full and



accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of account.” That the 90 days lapsed on 20-09-2022 and the full and accurate account of all dealings therewith up to date of the account in compliance with Order iii of the Ruling dated 20-06-2022 and Section 83(e) of the Law of Succession Act.

7. Subsequently, Stanley Kibet Kogo filed an affidavit in protest sworn on 25th March, 2024 and averred that he is a dependant of the estate. He stated that when he was born, his mother Irene Kiplamai left him under the care of his grandparents, Alfred Kiplamai Bor (DCD herein) and Rosebella Jepsongok Bor.
8. He deposed that he was adopted into the family through the Nandi Customary law which allows grandparents to adopt a grandchild. That during his baptismal on 24th December, 1971 the deceased and Rosebella Jepsongok acted as his parents for the ceremony. He further stated that when he joined primary school in 1974, it was the deceased who paid his school fees. He later joined Kericho boarding primary school and sat for his KCPE in 1986. All this while, it is the deceased who paid his school fees and met all his other educational needs.
9. That during traditional initiation ceremony in the year 1984, he was initiated together with Richard Kirwa Lamai (deceased) and Emmanuel Lamai who are sons of the deceased and all of them were treated as his sons. He equally stated that when he applied for his national identity card, the deceased herein acted as his father and his late grandmother acted as his mother.
10. According to him, he is to be counted as a dependent for reasons that he has all along been recognized as a dependent. That in all family gatherings, he was always recognized as part of the family.
11. The 2nd Objector further filed submissions to buttress his arguments in the affidavit in protest. In his submissions dated 5th August, 2024, he argued that evidence was tendered to show that the deceased was listed as the 2nd Objector’s father on the marriage certificate produced in court. Additionally, during the 2nd Objector’s baptism, the deceased was listed as the 2nd Objector’s father in the baptism card.
12. Learned Counsel Mr. Kamau further submitted that it is clear beyond doubt that during his lifetime, the deceased was the one who maintained the 2nd Objector. The deceased provided all the basic needs that the 2nd Objector required. Counsel concluded that the 2nd Objector qualifies as a dependent. He cited the decisions in *Re Estate of the Late Gideon Manthi Nzioka (deceased) (2015) eKLR* and in the *Matter of the Estate of John Musambayi Katumanga – (deceased) (2014) eKLR*.
13. The rights of grandchildren to inherit were also emphasized. On this the case of *In the Matter of the Estate of Veronica Njoki Wakagoto (deceased) (2013) eKLR* and the case of *Morris Mwiti Mburugu versus Dennis Kimanthi M’Mburungu (2016)*.
14. Earlier, pursuant to the leave granted 7th August, 2023, Irene Zippy C. Kalamai filed an affidavit of proposed mode of distribution on behalf of Lynette Ngaulo Rono, Antonina Kossy Bor, Bernadette Cherubet Bor, Alan Kipruto and Brenda Chepkoech.
15. She deposed that the estate is polygamous and intestate estate hence shall be distributed in accordance with Section 35 as read together with Section 40 of the Succession Act. That the deceased left one surviving widow (Naumy Jerob Bor) and 21 beneficiaries.
16. That the estate of the deceased comprised of the following properties:
 - a. L.R NO. 7946/4 (IR NO. 10041/42) measuring approximately 227.5 Ha (562.15 acres) currently and registered into Ngeria/Kabongo Block 1 (Bor) 1 to Block 15.



- b. Unregistered developed plot No. Eldoret Municipality Block 14/8500 Kisumu Ndogo Estate, Langas measuring 1 acre.
 - c. Tractor FORD – KSA 176 with sprayer, Jacto and Plough.
 - d. Plot in Kapsoya allocated to Consolata Bor.
 - e. Motor Vehicle – KCK 053P
 - f. 2 trailers registration number
 - g. 2 millers
 - h. 2 wheat planters
 - i. Funds held in Co-operative Bank A/C No. 01109046216800
 - j. Shares in:
 - i. Standard Chartered Bank (NO. 38956)
 - ii. Kenya Breweries Limited
 - iii. Kenya Commercial Bank (NO. M00754986)
 - iv. Kenya Commercial Bank (NO. M00038075)
 - v. Wareng Sacco Shares (Noble Sacco shares)
 - vi. Sirgoi Holdings.
11. That the estate dependant as per Section 29 of the Succession Act includes: -



House No & Name of wife/widow	Name of Beneficiaries
Rosebella Chepsongok Bor (dcd) House No. 1	Irene Zippy Kalamai
Rosebella Chepsongok Bor (dcd) House No. 1	Lynette Ngaulo Rono
Rosebella Chepsongok Bor (dcd) House No. 1	Paul Kipkoech Lamai (Dcd) Survived by Agnes Achieng & Mary Nashipai Lamai and their children
Rosebella Chepsongok Bor (dcd) House No. 1	Teresa Cheptanui Bor (dcd) survived by Brenda Chepkoech & Allan Kipruto
Rosebella Chepsongok Bor (dcd) House No. 1	Bernadette Cherubei Bor
Rosebella Chepsongok Bor (dcd) House No. 1	Emmanuel Kiptoo Lamai
Rosebella Chepsongok Bor (dcd) House No. 1	Gilbert Kipchirchir Lamai
Rosebella Chepsongok Bor (dcd) House No. 1	Antonina Kossy Bor
Divinah Cherotich Bor (Dcd) – House No. 2	Clement Kipkemei Lamai (dcd) survived by Ruth Chepchirchir
Divinah Cherotich Bor (Dcd) – House No. 2	Richard Kirwa Tot (Dcd) survived by Susan Chepkemei
Divinah Cherotich Bor (Dcd) – House No. 2	Benjamin Kiptanui Lamai
Divinah Cherotich Bor (Dcd) – House No. 2	Romana Jebichii Bor
Divinah Cherotich Bor (Dcd) – House No. 2	Ernest Kiprono Lamai
Naumy Jerob Bor – 3 rd House	Surviving widow
Naumy Jerob Bor – 3 rd House	Kenneth Kiprotich Koech
Naumy Jerob Bor – 3 rd House	Margaret Chepchumba Bor
Naumy Jerob Bor – 3 rd House	Shadrack Kimtai Bor
Naumy Jerob Bor – 3 rd House	Consolata Jeruto Bor
Naumy Jerob Bor – 3 rd House	Felix Lamai
Naumy Jerob Bor – 3 rd House	Faith Chelagat Bor
Naumy Jerob Bor – 3 rd House	Regina Chemeli Bor



Naumy Jerob Bor – 3 rd House	Julius Kibet Koriko
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18. Her sworn statements were similar to those of Kenneth Kiprotich Koech and she deposed as follows:
- a. That I confirm as follows in relation to the L.R NO. 7946/4 (IR NO. 10041/42) measuring approximately 227.5 Ha (562.15)
 - i. The deceased herein did surrender the certificate of title for L.R No. 7946/4 (IR NO. 10041/42) to the Government of Kenya for change of tenure from leasehold into freehold;
 - ii. Pursuant to the above surrender and scheme plan by the deceased a register was opened at Uasin Gishu County Land Registry known as Ngeria/Kabongo Block 1 (BOR)
 - iii. Based on the scheme plan L.R. NO. 7946/4 (IR NO. 10041/42) was subdivided into 15 Blocks of varying acreages under the Register Ngeria/Kabongo Block 1 (BOR)
 - iv. Hence L.R NO. 7946/4 (IR NO. 10041/42) is currently reflected in parcel registry known as Ngeria/Kabongo Block 1(BOR) Block 1-15.
19. That a recent search confirms the 15 sub-divisions arising from L.R NO. 7946/4 (IR NO. 10041/42) now known as Ngeria/Kabongo Block 1 (BOR) are as follows:
- a. NGERIA6/KABONGO Block 1 (BOR)/1 measuring 14.57 Ha
 - b. NGERIA6/KABONGO Block 1 (BOR)/2 measuring 16.18 Ha
 - c. NGERIA6/KABONGO Block 1 (BOR)/3 measuring 12.42 Ha
 - d. NGERIA6/KABONGO Block 1 (BOR)/4 measuring 12.53 Ha
 - e. NGERIA6/KABONGO Block 1 (BOR)/5 measuring 12.16 Ha
 - f. NGERIA6/KABONGO Block 1 (BOR)/6 measuring 12.13 Ha
 - g. NGERIA6/KABONGO Block 1 (BOR)/7 measuring 13.36 Ha
 - h. NGERIA6/KABONGO Block 1 (BOR)/8 measuring 13.12 Ha
 - i. NGERIA6/KABONGO Block 1 (BOR)/9 measuring 12.65 Ha
 - j. NGERIA6/KABONGO Block 1 (BOR)/10 measuring 12.55 Ha
 - k. NGERIA6/KABONGO Block 1 (BOR)/11 measuring 12.14 Ha
 - l. NGERIA6/KABONGO Block 1 (BOR)/12 measuring 12.14 Ha
 - m. NGERIA6/KABONGO Block 1 (BOR)/13 measuring 55.13 Ha
 - n. NGERIA6/KABONGO Block 1 (BOR)/14 measuring 4.86 Ha
 - o. NGERIA6/KABONGO Block 1 (BOR)/15 measuring 4.229 Ha
20. That I confirm as follows on the occupation and possession of Ngeria/Kabongo Block 1 (BOR) BlockS 1-15:
- a. The deceased had donated approximately 3 acres to the Catholic church who have erected a church and are in occupation and possession.



- b. That several members of the family have developed homesteads on the land;
 - c. National Land commission compulsorily acquired 6.7023 Ha;
21. That L.R NO. 7946/4 (IR NO. 100041/42) is currently reflected in parcel registry known as Ngeria/Kabongo Block 1(BOR) Block 1-15 is what is available for distribution.
22. That it is my proposal that L.R NO. 7946/4 (IR NO. 10041/42) is currently reflected in parcel registry known as Ngeria/Kabongo Block 1 (BOR) Block 1-15 be distributed as follows:
- a. Life interest in her matrimonial home and 1.21 Ha surrounding the home to Naumy Jerob Bor.
 - b. 3.12 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/12 Measuring 12.14 Ha to National Land Commission.
 - c. 2.608 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/13 measuring 55.13 Ha to National Land Commission.
 - d. 0.902 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/14 measuring 4.386 Ha to National Land Commission.
 - e. 1.371 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/12 measuring 12.14 Ha set aside wet lands.
 - f. 4.229 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/15 measuring 4.229 Ha to set aside wet lands.
 - g. The balance of 214.06 Ha to be shared equally among the children of the deceased; Irene Zippy Kalamai, Lynette Ngaulo Rono, Paul Kipkoech Lamai (dcd) survived by Agnes Achieng & Mary Nashipai Lamai, Teresa Cheptanui Bor (dcd) survived by Brenda Chepkoech & Allan Kipruto, Bernadette Cherubet Bor, Emmanuel Kiptoo Lamai, Gilbert Kipchirchir Lamai, Antonina Kossy Bor, Clement Kipkemei Lamai (dcd) survived by Ruth Chepchirchir, Richard Kirwa Tot (dcd) survived by Susan Chepkemei, Benjamin Kiptanui Lamai, Romana Jebichii Bor, Ernest Kiprono Lamai, Kenneth Kiprotich Koech, Margaret Chepchumba Bor, Shadrack Kimutai Bor, Consolata Jeruto Bor, Felix Lamai, Faith Chelagat Bor, Regina Chemeli Bor and Julius Kibet Kogo taking into account the current settlement and development of the beneficiaries.
23. That on the property known as Unregistered Plot No. Eldoret Municipality Block 14/8500 KISUMU NDOGO ESTATE, LANGAS measuring 1 acre and propose as follows:
- a. A life interest in the income generated from the property absolutely to Naumy Jerob Bor until her death to facilitate and pay for her upkeep and medical bills.
 - b. Upon termination of the life interest by Naumy Jerob Bor, the properties be valued by the valuer – Uasin Gishu county, sold and proceeds shared in equal portion among the deceased’s children, Irene Zippy Kalamai, Lynette Ngaulo Rono, Paul Kipkoech Lamai (dcd) survived by Agnes Achieng & Mary Nashipai Lamai, Teresa Cheptanui Bor (Dcd) survived by Brenda Chepkoech & Allan Kipruto, Bernadette Cherubei Bor, Emmanuel Kiptoo Lamai, Gilbert Kipchirchir Lamai, Antonina Kossy Bor, Clement Kipkemei Lamai (Dcd) survived by Ruth Chepchirchir, Richard Kirwa Tot (dcd) survived by Susan Chepkemei, Benjamin Kiptanui lamai, Romana Jebichii Bor, Ernest Kiprono Lamai, Naomy Jerob Bor, Kenneth



Kiprotich Koech, Margaret Chepchumba Bor, Shadrack Kimutai Bor, Consolata Jeruto Bor, Felix Lamai, Faith Chelagat Bor, Regina Chemeli Bor and Julius Kibet Koriko.

24. That in so far as the deceased other properties are concerned I submit as follows:
- a. Plot in Kapsoya wholly to Consolata Jeruto Bor who was gifted the property by the deceased during his lifetime and which she is in possession and occupation.
 - b. The Administration to establish the current balance by filing bank statements I court within 7 days for the deceased's account in co-operative bank A/C No. 01109046216800 and the amount be distributed in equal portions among the state widow Naumy Jerob Bor and the deceased children Irene Zippy Kalamai, Lynette Ngaulo Rono, Paul Kipkoech Lamai (Dcd) survived by Agnes Achieng & Mary Nashipai Lamai, Teresa Cheptanui Bor (dcd) survived by Brenda Chepkoech & Allan Kipruto, Bernadette Cherubei Bor, Emmanuel Kiptoo Lamai, Gilbert Kipchirchir Lamai, Antonina Kossy Bor, Clement Kipkemei Lamai Dcd) survived by Ruth Chepchirchir, Richard Kirwa Tot (Dcd) survived by Susan Chepkemei, Benjamin Kiptanui Lamai, Romana Jebichii Bor, Ernest Kiprono Lamai Naomy jerob Bor, Kenneth Kiprotich Koech, Margaret Chepchumba Bor, Shadrack Kimutai Bor, Consolata Jeruto Bor, Felix Lamai, Faith Chelagat Bor, Regina Chemeli Bor and Julius Kibet Koriko.
 - c. The Administrators to establish within 7 days the current value of the shares held in the name of the deceased being Standard Chartered Bank share certificate No. 38956, Kenya Breweries shares, Kenya Commercial Bank share certificate No. M00038075, Sirgoi Holding Ltd shares and Wareng Sacco shares currently known as Noble Sacco. Upon determination of the value it be distributed in equal portions among the beneficiaries.
 - d. Irene Zippy C Kalamai to hold and manage the allocated shares on behalf of the beneficiaries of the 1st House children.
 - e. The Administrators herein irregularly and unlawfully distributed the following assets left by the deceased:
 - i. Livestock
 - ii. Tractor FORD – KSA 176 with Sprayer, Jacto and plough
 - iii. Motor Vehicle – KCK 053P
 - iv. 2 millers
 - v. 2 wheat planters
 - vi. 2 trailers.

Petitioners' submissions

25. In support of the summons for confirmation dated 1st February, 2024, the petitioners filed submissions dated 16th July, 2024. Learned Counsel for the Petitioners Mr. Tororei couched two issues for determination:
- a. Whether the Objector, one Stanley Kogo is a beneficiary of the estate and whether he should be entitled to a share of the estate.
 - b. Whether the estate should be distributed in accordance to the summons for confirmation dated 1st February, 2024.



26. Learned counsel for the petitioners did not dispute the fact that Stanley was taken care of by the deceased as a grandson. He argued that under the Nandi customs, an unmarried girl cannot stand in on her own during those ceremonies on behalf of their child and it is the norm to have the parents to the unmarried daughter or any other close relatives to stand in their place during such ceremonies.
27. Mr. Tororei expressed the view that a grandchild only becomes a direct heir to the estate of the grandparent where the parent pre-deceased the grandparent. That the grandchildren step into the shoes of their deceased parents and take the parent's share in the estate of the grandparent as was enunciated in the case of *Re Estate of Wahome Njoki Wakagoto* (2013) eKLR.
28. On the issue as to whether the estate of the deceased should be distributed in accordance to the summons for confirmation, learned counsel submitted in the affirmative. According to Mr. Tororei, the proposed mode of distribution was guided by the provisions of Section 40 of the *Law of Succession Act*. He invited this court to be guided by the case of *Mary Rono versus Jane Rono & Another* (2005) eKLR and distribute the estate accordingly.
29. Learned Counsel for the beneficiaries Ms. Chesoo filed submissions as well in support of their case. The submissions for the 6th and 10th Beneficiary dated 6th August, 2024 have well captured their case.
30. Learned Counsel Ms. Chesoo submitted that the beneficiaries to estate have been identified in paragraph 8 of the 6th and 10th Beneficiary Affidavits and properties and liabilities of the deceased have been identified in paragraphs 6 and 7 of the 6th and 10th Beneficiary affidavits.
31. Counsel submitted that the estate property belongs to the estate and it is to be utilized for settling debts and liabilities, the surplus is then distributed to the heirs and beneficiaries. Ms. Chesoo urged the court to set aside and settle the liabilities listed in the Affidavit of protest. Further, counsel prayed that the court distributes the estate herein equitably and adopt the mode of distribution as captured under paragraph 12 of the 6th and 10th Beneficiary Affidavits.

Analysis and determination.

32. What bedevils the Law of Succession and inheritance in Kenya, is the harmful cultural and customary practices within multi-ethnic communities in Kenya which seem to elevate and recognize that the male child enjoys superior property rights in comparison with the female child, though born in the same lineage of both parents. In essence, there is always a struggle of unequal property rights between the women and men birthed by the same biological parents. It is in this respect the drafters of the Kenyan Constitution 2010 taking into account the peculiar circumstances of our multi-ethnic society expressly stated in Art. 2(4) to the effect that “Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”
33. This provision does mirror the provisions of Art. 27 on equality before the law and free from discrimination of every citizen and kindred in Kenya. In essence, in providing the Human Rights framework subsection (4) provides as follows: “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.”
34. The Kenyan Constitution recognizing the importance of the International law in the promotion of the fundamental rights and freedoms enacted Art 2(5) & (6) which is very emphatic if the reading of its language is anything to go by:

“(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.”

35. In essence, general rules of international law form part of the law of Kenya. This scope covers both International and Regional instruments which courts must draw inspiration in ensuring that women property rights are not violated under the guise of social, cultural and customary practices entrenched in our multi-faceted society. It is not in dispute that International Instruments and Treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), The Universal Declaration of Human Rights, 1948 and the International Covenant and Economic, Social and Cultural Rights, 1996 have their place in developing our jurisprudence in this branch of law by virtue of Art 2(5) & (6) of *the Constitution*. In so far as the Kenyan society is concerned, it is exclusively patriarchal rendering the promotion and protection of women’s human rights to unrecognizable tier in both public and private sphere. In the case of CEDAW, Art. 14 provides as follows: “that states are obliged to ensure equal treatment of women and men in land and agrarian reform.” Therefore, land or inheritance rights under marriage or as expressly stated under the Succession Act should be based on equality. Similarly, in the Universal Declaration of Human Rights (UDHR), 1948, Art. 7 relates to the rights to equality before the law and to equal protection of the law. Whereas in Art. 17, the right to own property and Art. 25, is on the right to adequate housing. In so far as Art. 3 of the International Covenant on Economic, Social and Cultural Rights is concerned, it states that: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”

36. The Continental legal regime was not left out in propounding various provisions touching on Human and people’s rights. This is exemplified by the provisions in the African Charter on Human and People’s Rights which was adopted in June 1981 by the organization of African Union which in Art. 2 states that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. This charter by its very letter and spirit prohibits discrimination against women even on the issue of women property and inheritance rights. This treaty was followed by the declarations in the Maputo Protocol which enshrines the following key provisions:

“Art 2(1)(a) provides that States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall:

- a. include in their national constitutions and other legislative instruments, if not already done, the principle of equality between women and men and ensure its effective application;”

“Art. 3(1) & (2) provides that:

1. Every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights.
2. Every woman shall have the right to respect as a person and to the free development of her personality.”



37. In this context, Art. 21 is couched in the following language:

- “ 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.”

38. To that extent, Art. 10 of *the Constitution* as covenanted binds this court in the decision making process to attain the canons of equity and equality in the distribution of the intestate or testate estate to the beneficiaries in order to give effect to the Constitutional and International Law imperatives. In exercising this judicial authority, the National core values and principles of governance which remain a touchstone guaranteeing and protecting women property rights include:

“Human Dignity; - women should not be treated with indignity when it comes to their property rights, for example, being thrown out of her and or home, or taking away her property upon the death of her spouse.

Equity: - women must have a fair share or opportunity to inherit family land or property, or equal opportunity to acquire property and to participate in decision making organs regulation land.

Social justice: - women must not suffer any form of injustice as far as issues of land property are concerned. For example, courts or government administrators must ensure land and property issues are resolved in accordance with the rule of law.

Equality: - land and property matters must be handled or decided on the basis of the principle of equality between women and men 9Art. 27 of *the Constitution*)

Human Rights; The right to property is a human right. Women's rights are human rights too and therefore women' right to property must be protected.

Non-discrimination and protection of the marginalized; women are often marginalized and discriminated on land and property, which is now prohibited by *the Constitution*.”

39. Given this background, any of the provisions distribution and inheritance of the immovable or movable properties survived of the deceased, has also to be underpinned besides the above textual enactment in *the Constitution* and International Instruments, the vision in Art. 40 of our supreme law on protection of right to property. It provides that:

“ Art. 40(1) provides that:

Every person has a right, either individually or in association with, to acquire and own property

- a. Of any description and
- b. In any part of Kenya.

Art. 40(2) prohibits parliament from enacting any law that allows the government or any individual to:



- a.deprive a person of property of any description or of any interest in, or right over, any property of any description or
 - b. to limit or in any way restrict the enjoyment of any right under this Art. on the basis of any of the grounds specified or contemplated in Art. 27(4)”
40. This matter concerns inheritance pursuant to the death of the deceased which now requires of this court to exercise its adjudicatory powers under the Succession Act to devolve the intestate estate to both male and female descendants. The court will place its reliance on the evidential material filed by each of the beneficiaries as articulated by Learned Counsel Ms. Chesoo and Mr. Tororei within the context of Section 35,36,37,38 and 40 of the Law of Succession Act. Various parallels are to be drawn from the submissions filed by both counsels for purposes of adopting the legal framework which primarily answers the questions raised in this distribution matrix by the various beneficiaries. It would be therefore necessary to consider the difficult question of the house to house model with that of the unit module as applied in the set of rules of precedent within the terms of the Constitution, the Law of Succession Act and International Law. One of the curious questions which arises in this confirmation proceedings is whether the grandchild to the deceased is a direct heir to his intestate estate.
41. I have considered the summons for confirmation, affidavits in protest, and insightful rival submissions by Ms. Chesoo and Mr. Tororei on behalf of the beneficiaries. There is no dispute that the deceased died a polygamous man. It is also not in dispute that the deceased is survived by one wife and 21 children. It is instructive to note in the first instance as stated elsewhere that our Constitution affords our society the opportunity to jettison overt and covert patriarchal practices that still remain prevalent in the law of inheritance across the Republic. In other words, it is the duty of this court to tackle out any disinheritance submissions by either of the parties which appear to promote testamentary or intestate property distribution on grounds of gender, sex, birth or marriage for the Constitution has declared them to be unconstitutional.
42. In making a determination, two issues distil themselves for determination:
- a. Whether Stanley Kibet Kogo should be considered as a beneficiary of the Estate.
 - b. How should the estate be distributed in achieving justice in this matter?
43. Starting with the question of beneficial interest, the provisions of Section 29 of the Law of Succession Act define as dependant as follows:
- “For the purposes of this Part, “dependant” means-
- a. The wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
 - b. Such of the deceased’s parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
 - c. Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”
44. Therefore, in accordance with Section 29 of the Act, a child to a deceased person under Section 29 (supra) is automatically a dependant and as such entitled to a share of the estate, whereas a grandson



to a deceased person, has to have been maintained by the deceased prior to his demise to qualify to be a dependant within the meaning attached by Section 29 of the Act.

45. It must also be noted that grandchild only becomes a direct heir to the estate of the grandparent where the parent pre-deceased the grandparent. The grandchildren step into the shoes of their deceased parents and take the parent's share in the estate of the grandparents as was enunciated in RE Estate of Wahome Njoki Wakagoto [2013] eKLR where it was held: -

“Under Part V, grandchildren have no right to inherit their grandparents who die intestate after July 1, 1981. The argument is that such grandchildren should inherit from their own parents. This means that the grandchildren can only inherit their grandparents' indirectly through their own parents, the children of the deceased. The children inherit first and thereafter grandchildren inherit from the children. The only time grandchildren inherit directly from their grandparents is when the grandchildren's own parents are dead. The grandchildren step into the shoes of their parents and take directly the share that ought to have gone to the said parents.”

46. The question that is then up for determination is whether the Respondent had an automatic right to inherit from the deceased. That is, whether the Respondent was being maintained by the deceased at the time of his death.

47. Section 107 of the *Evidence Act* (Cap 80 Laws of Kenya) provides that;

“(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

48. Further, Section 108 of the *Evidence Act* provides that the burden of proof in a suit or proceedings lies on the person who would fail if no evidence at all were given on either side.

49. In the case of *Mbuthia Macharia v Annah Mutua & another* [2017] eKLR, the Court of Appeal in discussing the burden of proof stated thus that the legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden.

50. The 2nd objector stated that he was an ‘adopted son’ of the deceased by virtue of his dependence to the deceased. That the deceased took care of him, educated him, secured a job for him at the Kenya police and even took part in negotiating for his dowry. The Petitioners on the other hand argued that was the case only for reasons that in the Nandi customs an unmarried girl cannot stand in on her own during such monumental ceremonies and as such it is a norm to have the parents to the unmarried daughter or any other close relative.

51. In *James Munene Mugo v John Chomba & Another* [2015] eKLR the court had an opportunity of considering an application under section 3 (2) of the Act. The court stated: -

“.....The petitioner was accepted by the deceased as a child of his own upon whom he assumed permanent responsibility. He is a male child as provided by the said provision. From the evidence of the applicants, he was adopted by their father in 1974 at the tender age of 7 years. His mother was alive and it is said she left the child and went to stay in Embu



never to return again. The deceased took the young boy to school and met all his education and other expenses. The deceased stayed with the child until the death of the deceased which was 20 years after adoption in 1994. At that time the petitioner was about 37 years. He had been shown a place to live and to cultivate. It was not disputed that upon the death of the deceased, his three sons including the petitioner shared his livestock and other movable assets equally.

I come to the conclusion that the petitioner being an adopted child is a child of the deceased herein for purposes of succession as provided by the law.....”

52. A reading of section 3 (2) of the Act and the above case reveals that, for a male person to be considered to have accepted one as his child, it must be shown that such male person must have “expressly recognized or in fact accepted as a child of his own or he has voluntarily assumed permanent responsibility”.
53. In the instant case, it is not in dispute that the 2nd objector was born of a daughter of the deceased, who left him at the care and custody of the deceased. The deceased took care of the 2nd objector until he was of age when he helped him through the various significant stages in life particularly helping him to secure a job and in his dowry negotiations. The deceased put his own name together with that of his first wife in the birth certificate of the 2nd Objector. With all these, can it be said that the deceased had recognized or in fact accepted the 2nd objector as his own or had voluntarily assumed permanent responsibility?
54. This court will arrive at a just determination by examining a few factors. It is a fact that the 2nd objector was a grandson of the deceased. He was born to a daughter whose circumstances have not been revealed to this court. In the circumstances, it appears that the deceased assumed responsibility and accepted to take care of the 2nd Objector.
55. As regards his education, there was no tangible evidence attaching the said responsibility to the deceased person but he stated that it was the deceased who took care of that.
56. From the evidence on record, this court is persuaded that the 2nd objector proved that; he depended on the deceased for his upbringing throughout his childhood and while taking care of the 1st objector, the deceased put his name in his birth certificate.
57. It however comes out clear that when he became of age, the deceased empowered him by helping him to secure a job. It is expected that before the deceased’s person’s death he would have allocated a portion to the 2nd Objector but that has not come out clear from the record. It therefore implies that he was never taken in as a child but the deceased did what a reasonable grandfather would do.
58. The circumstances surrounding the 2nd Objector’s birth and eventually being left under the deceased person’s care were not clearly brought out by the parties. Presumably, the 2nd Objector’s mother might have not been in a position to take care of the him and such the deceased stepped in as a father and fill in a gap since it is averred that she was not married.
59. Having perused through the documents and considered the arguments by the 2nd Objector, I am not persuaded that he is a dependent of the estate. There was no evidence that the deceased had taken the 2nd objector as his child in terms of section 3(2) of the Act neither was he a dependant of the deceased under section 29 of the Act. What I can glean from the record is a compassionate grandfather who took up the responsibility of taking care of a grandson whose mother was unmarried and as such facing common challenges in the given circumstances. When he was of age, he let him go.



60. The 2nd objector can only inherit through his mother Irene Kiplamai under the provisions of section 42 of the Act.

61. Moving to the next issue, distribution of property in a polygamous setup is guided by the provisions of Section 40 of the *Law of Succession Act*

Section 40 (1): -

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

Section 40 (2): -

“The distribution of the personal and household effects and the residue of the net intestate within each house shall then be in accordance with the rules set out in sections 35 to 38.”

62. Case law on the subject is not static. The provision has always been applied on a case to case basis. Omollo J.A in the celebrated case of Eldoret Civil Appeal No. 66 of 2002, Mary Rono versus Jane Rono & William Rono (2005) eKLR as cited by the Petitioners while quoting Section 40(1) of the Act, he held that: -

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

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

63. Referencing the court’s decision in Rono vs Rono (supra), the court in Succession Cause No. 123 of 1999; In Re The Matter of the Estate of Kariuki Kiburu (Deceased) Rahab Njeri Kariuki v Joyce Waruguru Kariuki & 2 Others [2016] eKLR took the position below:

“The learned judges essentially espoused the principal of fairness and equity in distribution of a deceased’s estate between or amongst persons beneficially entitled to such an estate in a polygamous family set-up. While the number of children in a particular house is an important factor in the determination of the share to be allocated to each house, it is not the only factor; neither is it the controlling factor. The share each house gets is not contingent upon the number of children in any particular house; there are other considerations which will guide the court’s discretion in the distribution of the estate; for instance, the age of the children and their station in life are factors that the court will necessarily take into account.

Neither of the surviving children is a school going child or is so young that he has to be taken through the path of life; on the contrary, the deceased’s survivors are all adults who are settled



in life and therefore the question whether some are entitled to a larger share of the estate than others by virtue of age does not arise; their station or status in life does not count.”

64. In Re Estate of John Musambayi Katumanga – (Deceased) [2014] eKLR Musyoka J stated as follows;

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

65. Discussing the issue of distribution under Section 40, Onyiego J In re Estate of Elijah Kipketer Miso (Deceased) Succession Cause 401 of 1999 [2018] eKLR had this to say:

“25. What does that mode of distribution entail” In the case of John Musambayi Katumanga (deceased) (Supra), J. Musyoka held that Section 40(1) means, adding children from the houses with the addition of a surviving spouse then share the estate equally and thereafter, each house take their share and split it with their surviving mother if any having a life interest.

26. In the case of Re estate of Ikubu Kinyungu Mwaga (deceased) 2017 eKLR Justice Matheka held that:

“...the applicant’s contention that the estate of his father ought to be divided into two equal shares between the two houses is unfounded”.

Similar position was also held in the case of Saweria Wamuruoma Muchanji vs Jimano Ngare (2008) eKLR where the court held that:

“This is a plain unequivocal language meaning the estate shall be divided equally amongst the surviving children of the deceased adding surviving spouse as additional unit. It does not say that the estate should first be shared equally among the children within each house”.

There are several authorities in our legal system including Rono v Rono (Supra) in which courts have authoritatively held that Section 40(1) does



not mean equal distribution amongst the houses. The clear position is that, the estate of a deceased person who dies while married under polygamous marriage, shall be divided amongst the children with the surviving spouse as an additional unit. This does not contravene Article 27 of *the Constitution* as alluded by Mr. Arusei. To the contrary, to share the estate in accordance to houses will even be more offending to Article 27 of *the Constitution* in that there will be inequality and discrimination amongst the children.”

66. Before I formulate what I consider to be the best model of distribution of this intestate estate to the beneficiaries, I have got to perform a balancing act of the various rival submissions which seem not to drive the analogy to one precise trajectory of inheritance. This is more fundamentally lifted by the arguments agitated by the 10th Beneficiary. In my evaluation, there is no dispute about the heirs to this estate. Any omission by the Petitioners is answered by other instruments and affidavits which remain unchallenged. There can be no doubt as to who is legally rightfully and legitimately entitled to the intestate estate of the deceased. The Historical analysis shows principally the family structure survived of the deceased



House No & Name of wife/widow	Name of Beneficiaries
Rosebella Chepsongok Bor (dcd) House No. 1	Irene Zippy Kalamai
Rosebella Chepsongok Bor (dcd) House No. 1	Lynette Ngaulo Rono
Rosebella Chepsongok Bor (dcd) House No. 1	Paul Kipkoech Lamai (Dcd) Survived by Agnes Achieng & Mary Nashipai Lamai and their children
Rosebella Chepsongok Bor (dcd) House No. 1	Teresa Cheptanui Bor (dcd) survived by Brenda Chepkoech & Allan Kipruto
Rosebella Chepsongok Bor (dcd) House No. 1	Bernadette Cherubei Bor
Rosebella Chepsongok Bor (dcd) House No. 1	Emmanuel Kiptoo Lamai
Rosebella Chepsongok Bor (dcd) House No. 1	Gilbert Kipchirchir Lamai
Rosebella Chepsongok Bor (dcd) House No. 1	Antonina Kossy Bor
Divinah Cherotich Bor (Dcd) – House No. 2	Clement Kipkemei Lamai (dcd) survived by Ruth Chepchirchir
Divinah Cherotich Bor (Dcd) – House No. 2	Richard Kirwa Tot (Dcd) survived by Susan Chepkemei
Divinah Cherotich Bor (Dcd) – House No. 2	Benjamin Kiptanui Lamai
Divinah Cherotich Bor (Dcd) – House No. 2	Romana Jebichii Bor
Divinah Cherotich Bor (Dcd) – House No. 2	Ernest Kiprono Lamai
Naumy Jerob Bor – 3 rd House	Surviving widow
Naumy Jerob Bor – 3 rd House	Kenneth Kiprotich Koech
Naumy Jerob Bor – 3 rd House	Margaret Chepchumba Bor
Naumy Jerob Bor – 3 rd House	Shadrack Kimtai Bor
Naumy Jerob Bor – 3 rd House	Consolata Jeruto Bor
Naumy Jerob Bor – 3 rd House	Felix Lamai
Naumy Jerob Bor – 3 rd House	Faith Chelagat Bor
Naumy Jerob Bor – 3 rd House	Regina Chemeli Bor



67. In order to answer the questions raised in the materials and submissions filed before this court, this court has to finally anchor its decision on the provisions of *the Constitution*, international and regional instruments as read together with Section 38 and 40 of the *Law of Succession Act*. As noted above, it cannot be gainsaid that there is no differentia minimum with the two highlights in the submissions of the beneficiaries, which does not give effect to the letter and spirit of *the Constitution* and the *Law of Succession Act*. In achieving a purposeful approach in construing the proposed model of distribution, equality as a founding value in Art. 10 and 27 of *the Constitution* will stand reinforced in the decision making of this summons for confirmation of Grant. This position is reinforced for reasons that equality lies at the very heart of our Constitution. It therefore underpins our legal system and Constitutional democracy. I take it to be the bedrock of our constitutional architecture and at the core of protecting and guaranteeing our Bill of Rights in Chapter 4 of *the Constitution*. As I see it, one of the question that arises is whether the house to house model of distribution ought to be applied in achieving justice in this matter or an equal distribution amongst all the beneficiaries.
68. Learned Counsel Ms. Chesoo was of the view that the court ought to base its decision in the provisions of Section 35, Section 38 and Section 40 of the *Law of Succession Act* since an equal distribution will not work justice especially in a polygamous estate like this one where the sons have expended millions in developing part of the estate which the deceased allocated to them over 30 years ago.
69. The court however takes note of the fact that the beneficiaries as represented by Ms. Chesoo have expressed divergent views in terms of distributing the estate. Particularly, there is a difference in the share to be allocated to the surviving widow in addition to her matrimonial home.
70. Lest I forget one of the contentious issues in this matter though mentioned elsewhere is whether the grandson Kennedy Kiprotich has a right to inherit any share of the intestate estate based on the many years of support on survival rights extended by the grandfather the Late Alfred Kiplamai Bor. I have pondered over this issue only to encounter the legal answer to the Applicants concerns under part 5 of the *Law of Succession Act*. This means that in consonant with Section 38 & 40 of the Act he can only draw his heritage from his mother who is the daughter to the deceased. The letter, spirit, and the ghost of Section 29 on consanguinity and affinity first takes cognizance that the sons and daughters to the deceased enjoy superior rights entitling them a share of the assets in exclusion of any relative aligned to the 2nd, 3rd, 4th or 5th degree of consanguinity.
71. Whether one is discussing common law or African culture and customs the grand children right of inheritance flow directly from their biological parents and not grandparents. The inheritance of the grand children in the first instance may accrue in the event the grandparents make a donation, or a sale of the estate. The criteria for inheriting property within the spectrum of the succession Act include blood relationship by marriage with an addition that any child born out of wedlock is also considered as legitimately entitled to the inheritance right.
72. This doctrine can be illustrated by taking a simple example, (A) dies leaving his son, son's son and daughter's daughter. In this case the grandson and the grand daughter will inherit that share what their respective father and mother would have got if alive at the time of death of their grandfather. Undoubtedly for our case, for purpose of distribution of property among the heirs to the estate if this court formulates a proposal made to excise 5 acres for the benefit of the grandson it would be unconscionable perpetuating unjust enrichment. The legal order envisioned in our Succession Act is that the property will devolve to the grandson as close kindred and the next of kin of his mother. I



think there are no compelling reasons in the case of Kenneth Kiprotich Koech for this court to violate the fundamental principle of hierarchy of degree by which nearer in degree excludes more remote.

73. One other fundamental aspect which requires emphasis is on the emerging views that favour the distribution matrix of the intestate estate of the deceased in preference of taking into account the rights of the beneficiaries in overall reflecting the current rights of land use and occupation. It is estimated to the extent that the model meets the current needs to focus on two important social development which have taken place over the last few decades. The first is the growth of ownership by the respective beneficiaries, and their consequential impact on inheritance the family home constitutes most people major assets and that proportion in allocating the shares to each individual must be rein fenced. The 2nd government relates to the doctrine of legitimate expectation on some portions of land currently and occupation with a component of wealth creation through commercial farming. This balancing Act by the administrators working with other experts like the Land Surveyors and Registrars would stratify the inheritance rights with an expected outcome of fairness, equality, equity, and proportionality test.

DECISION

74. Having considered the various models of distribution and the number of beneficiaries in each of the houses, the justice of this matter shall be achieved if at all the estate shall be distributed as follows:
75. All shares and monies held in the deceased's accounts and rental and lease income be distributed in equal portions among the 21 children and the surviving widow.
76. Motor vehicle – KCK 053P to be allocated to the estate widow Naumy Jerob Bor
77. Tractor FORD – FSA 176 with sprayer, jacto and plough, 2 trailers, 2 millers and 2 wheat planters to be shared among the three houses.
78. L.R NO. 7946/4 (IR NO. 10041/42) as currently reflected in parcel registry known as Ngeria/ Kabongo Block 1 (BOR) Block 1-15 be distributed as follows:
- a. Life interest in her matrimonial home and 1.21 Ha surrounding the home to Naumy Jerob Bor.
 - b. 3.12 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/12 Measuring 12.14 Ha to National Land Commission.
 - c. 2.608 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/13 measuring 55.13 Ha to National Land Commission.
 - d. 0.902 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/14 measuring 4.386 Ha to National Land Commission.
 - e. 1.371 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/12 measuring 12.14 Ha set aside wet lands.
 - f. 4.229 Ha to be excised from Ngeria/Kabongo Block 1(BOR)/15 measuring 4.229 Ha to set aside wet lands.
 - g. The balance of 214.06 Ha to be shared equally among the children of the deceased; Irene Zippy Kalamai, Lynette Ngaulo Rono, Paul Kipkoech Lamai (dcd) survived by Agnes Achieng & Mary Nashipai Lamai, Teresa Cheptanui Bor (dcd) survived by Brenda Chepkoech & Allan Kipruto, Bernadette Cherubet Bor, Emmanuel Kiptoo Lamai, Gilbert Kipchirchir Lamai, Antonina Kossy Bor, Clement Kipkemei Lamai (dcd) survived by Ruth Chepchirchir, Richard Kirwa Tot (dcd) survived by Susan Chepkemei, Benjamin Kiptanui



Lamai, Romana Jebichii Bor, Ernest Kiprono Lamai, Kenneth Kiprotich Koech, Margaret Chepchumba Bor, Shadrack Kimutai Bor, Consolata Jeruto Bor, Felix Lamai, Faith Chelagat Bor, Regina Chemeli Bor and Julius Kibet Kogo taking into account the current settlement and development of the beneficiaries.

79. The property known as Unregistered Plot No. ELDORET MUNICIPALITY Block 14/8500 KISUMU NDOGO ESTATE, LANGAS measuring 1 acre be distributed as follows:
- a. A life interest in the income generated from the property absolutely to Naomy Jerob Bor until her death to facilitate and pay for her upkeep and medical bills.
 - b. Upon termination of the life interest by Naomy Jerob Bor, the properties be valued by the valuer – Uasin Gishu county, sold and proceeds shared in equal portion among the deceased’s children, Irene Zippy Kalamai, Lynette Ngaulo Rono, Paul Kipkoech Lamai (dcd) survived by Agnes Achieng & Mary Nashipai Lamai, Teresa Cheptanui Bor (Dcd) survived by Brenda Chepkoech & Allan Kipruto, Bernadette Cherubei Bor, Emmanuel Kiptoo Lamai, Gilbert Kipchirchir Lamai, Antonina Kossy Bor, Clement Kipkemei Lamai (Dcd) survived by Ruth Chepchirchir, Richard Kirwa Tot (dcd) survived by Susan Chepkemei, Benjamin Kiptanui lamai, Romana Jebichii Bor, Ernest Kiprono Lamai, Naomy Jerob Bor, Kenneth Kiprotich Koech, Margaret Chepchumba Bor, Shadrack Kimutai Bor, Consolata Jeruto Bor, Felix Lamai, Faith Chelagat Bor, Regina Chemeli Bor and Julius Kibet Koriko.
80. The Plot in Kapsoya shall be wholly given to Consolata Jeruto Bor who was gifted the property by the deceased during his lifetime and which she is in possession and occupation.
81. This being a cause amongst members of the family, there shall be no orders as to costs.

DATED SIGNED AND DELIVERED AT ELDORET, THIS 20TH DAY OF SEPTEMBER 2024

In the Presence of
Chirchir for Chesoo
Mr. Tororei

.....

R. NYAKUNDI
JUDGE

