



**In re Estate of the Late Kibet Sang (Deceased) (Succession Cause E105 of 2010) [2024] KEHC 14247 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14247 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E105 OF 2010  
RN NYAKUNDI, J  
NOVEMBER 15, 2024  
IN THE MATTER OF THE MATTER OF THE  
ESTATE OF THE LATE KIBET SANG (DECEASED)**

**BETWEEN**

**PAULINE JEPKEMBOI KIBET ..... 1<sup>ST</sup> PETITIONER  
ELIZABETH JEPCHIRCHIR SANG ..... 2<sup>ND</sup> PETITIONER  
JULIUS KIPKEMBOI KIBET ..... 3<sup>RD</sup> PETITIONER**

**AND**

**MARY CHEPYATOR KOSSOM ..... 1<sup>ST</sup> OBJECTOR  
GRACE KIBET ..... 2<sup>ND</sup> OBJECTOR  
RAEL KIBET ..... 3<sup>RD</sup> OBJECTOR  
ROSE SANG ..... 4<sup>TH</sup> OBJECTOR  
SYLVESTER KIPLAGAT KIBET ..... 5<sup>TH</sup> OBJECTOR**

**RULING**

1. On 11th December 2023, this court delivered what was intended to be a final distribution of the deceased's estate. That distribution sought to rectify errors in the certificate of confirmation of grant dated 17th November 2022, which the parties had unanimously agreed contained rectifiable errors. Chief among these was the inadvertent exclusion of Immaculate Jerotich, the deceased's daughter. The December ruling not only corrected this oversight but also incorporated crucial findings from a detailed survey that identified properties in possession of various purchasers and beneficiaries of the deceased's gifts.



2. The parties have yet again approached the court for one reason or the other through the various application filed, which I endeavour to highlight as hereunder:
3. First in, was the application dated 12<sup>th</sup> February, 2024 brought by the Objectors who essentially sought orders to the effect that the estate should be distributed as per the confirmation of grant. They particularly sought the intervention of the Deputy Registrar of the High court in executing all the appropriate and necessary documents. The application was informed by the fact that due to the past acrimony between the beneficiaries of the estate of the late Kibet Sang the three administrators have refused to fill and append their signatures on the transfer forms to enable transfer of the estate as per the distribution and certificate of grant issued by this Honourable court.
4. The interested party also filed an application dated 26<sup>th</sup> February, 2024 seeking stay of this court's judgment and decree issued on 11<sup>th</sup> December, 2023 and all consequential orders emanating therein. The interested party equally responded to the Objectors' application dated 12<sup>th</sup> February, 2024 and stated that the mode of distribution as determined by the court is unfair, improper and prejudicial to the interested party and all other beneficiaries. that the court ought not to grant prayers sought since he has substantive contestation on the mode of distribution.
5. The purchasers also put in their application dated 7<sup>th</sup> March, 2024 for orders that the grant issued on 11<sup>th</sup> December, 2023 be rectified to include the parcels of land distributed to the purchasers during partial mediation settlement of 29<sup>th</sup> February, 2020.
6. The application was premised on the fact that there was an error on the omission of properties distributed during partial mediation settlement of 29<sup>th</sup> February, 2020. That during the partial mediation settlement dated 29<sup>th</sup> February, 2020 it was agreed as follows, the following people are beneficiaries by virtue of being purchasers for value from the Estate of Kibet sang (deceased).
  - a. John Kiptum shall have 5 acres of land from Tembelio/Elgeyo Border Block 10 (Kaptuktuk 'b' Plot No. 321.
  - b. Ernest K. Olbara shall have the following parcels.
    - i. 1 acre of land parcel no. Tembeleo/Elgeyo Border Block 10 (Kaptuktuk 'b') Plot No. 359 the notice of appointment after judgment offends the provisions of Order 9 Rule 9 of the Civil Procedure Rules 2010.
    - ii. 21 acres of land parcel no Tembeleo/elgeyo Border Block 10 (Kaptuktuk 'b') Plot No. 343.
    - iii. Tembeleo/elgeyo Border Block 10 (Kaptuktuk 'b') Plot No. 365 whole.
  - c. James Chirchir Chebii shall have 5.1 Acres of land from Tembeleo/elgeyo Border Block 10 (Kaptuktuk 'b') Plot No. 343.
  - d. Julius Kipkemboi Kibii shall have Tembeleo/elgeyo Border Block 10 (Kaptuktuk 'b') Plot No. 320 and 328 as a whole.
  - e. Elizabeth Kandie shall have Tembeleo/elgeyo Border Block 10 (Kaptuktuk 'b') Plot No. 322 whole.
  - f. Luka Chebet shall have Tembeleo/elgeyo Border Block 10 (Kaptuktuk 'b') Plot No. 344 as whole.
    - i. Luka Chebet shall have 1 acre of land parcel No. Kaptagat/Kaptagat (Losirwa 116).



- g. Julius Kipkemboi Kibet shall have 1 acres of land parcel No. Kaptagat/Kaptagat (Losirwa 116).
  - h. Symon Chebon shall have 4 acres of land of parcel No. Kaptagat/Kaptgat (Losirwa 116).
    - i. Victor Yator shall have 19 acres of land parcel No. Lamaon Farm No. 54.
    - ii. That should the confirmed grant not rectified there is a likelihood of multiple suits which will not be costs effective and it will be a waste of judicial time and resource.
    - iii. That this court has power to rectify the grant and include all the purchasers.
7. The 2<sup>nd</sup> Petitioner also came in with submissions on distribution dated 29<sup>th</sup> September, 2024, in which learned counsel Mr. Mathai submitted that the grant that was issued on the 11<sup>th</sup> December, 2023 cannot be enforced due to the following reasons:
- a. The grant did not emanate from the Petitioners as directed by the court that all the administrators come up with an acceptable mode of distribution.
  - b. That as correctly observed by the court William Kiprotich Bett has a semi-permanent house at that parcel of land known as Kaptagat/Kaptagat Block1 (Losirwa) 116 and being the 1<sup>st</sup> born of the late Sally Sang he has been displaced and taken to that parcel of land known as Plateau/ Plateau Block 2 (UG) 60,61,62,84,85,88,89,90,91 & 92 which means that he is being evicted from his house at Kaptagat/Kaptagat Block 1 (Losirwa) 116 to go and build where he has been allocated as per the Grant issued on the 11<sup>th</sup> December, 2023.
  - c. The court in its ruling of 11<sup>th</sup> December, 2023 observed that there were purchasers who had purchased their respective portions from the deceased and it also observed that there was a mediation settlement that settled the issue of the purchasers and the court proceeded to direct the grant be rectified to include the purchasers as follows:

Kaptagat/Kaptagat Block (Losirwa) 116

- i. Simeon Chebon – 4 acres
- ii. Gene Masit – 2.5 acres
- iii. Jacinta Murgor – 2.5 acres

However, there is an error in terms of acreage in which Gene Masit and Jacinta Murgor are to get. It is the same parcel that Jacinta Murgor sold it to Gene Masit and therefore Jacinta Murgor does not have 2.5 acres with respect to Kaptagat/Kaptagat Block 1 (Losirwa) 116. With respect to Kapsinende/kipsinende Block 8 (Lamaon) 54 Victor Yator was given 10 acres while he is entitled to 19 acres and not 10 acres as for per the ruling.

Learned Counsel submitted that regarding Tembeleo Elgeyo/Border Block 10 (Kaptuktuk ‘B’) parcels, the following purchasers were left out;

James Chirchir 5.1 acres out of Plot No. 343

Julius Kipkemboi Kibii whole of those plot No. 320 and 328

Elizabeth Kandie Plot No. 322 whole

Luka Chebet Plot No. 344 whole

Luka Chebet 1 acre on plot No. 343



John Kiptum 5 acres out of Plot No. 321

Ernest K. Olbara 1 acre out of plot No. 329, 21 acres out of plot No. 343

Augustine Kipsany Mitei 1 acre out of Plot No. 343

8. It was further submitted for the 2<sup>nd</sup> Petitioner that there are two combine harvesters that have not been captured in the judgment, Ruling and in either of the grants, one of the combine harvesters is in a working condition and the other is immovable. These combine harvesters need to be addressed. Counsel stated that there is also a parcel of land that has not been addressed that is Kapsinendi/kipsinende Block 8 (Lama On) 60 measuring 0.5 acres has not been captured in the confirmed grants.
9. There is also misplacement of some of the beneficiaries for instance Rose Sang and Christine Jemeli Kibet who are daughters of the 2<sup>nd</sup> house and ought to inherit from the parcel of land known as Kaptagat/Lotonyok Block 3 (Ngelel Tarit)/33.
10. Learned counsel submitted that it is apparent that the Grant needs to be rectified to correct the above before the same can be enforced and the rectification be done as follows:
  - a. That all the purchasers as per the mediation agreement be included in the grant.
  - b. That the size of acreage wrongly captured in the ruling and in the Grant be corrected.
  - c. The two combine harvesters not included in the grant be captured and included in the grant.
  - d. William Kibet to be retained at that parcel of land known as Kaptagat/Kaptagat Block 1 (Losirwa) 116 where he has constructed a semi-permanent house to avoid him being evicted.
  - e. Rose Sang and Christine Jemeli Kibet be retained at their parcel of land where the 2<sup>nd</sup> house is situated being Kaptagat/Lotonyok Block 3 (Ngelel Tarit)/33
  - f. That the parcel of land Kapsinendi/kipsinende Block 8 (Lamaon) 60 be included in the Grant and be shared equally among the three houses.
  - g. That the three houses have been utilizing that parcel of land known as Kapsinendi/kipsinende Block 8 (lamaon) 54 to be equally shared among the three houses.
11. The amended distribution as proposed by the 2<sup>nd</sup> Petitioner appears in the format as hereunder:



Description Of Property	Name	Shares Of Heirs
Kapsinende/kipsinende Block 8(lamaon) 1	Gedion Kimurgor Kibet	Whole
Kipsinende Block 8 (lamon) 54	Ezekiel Kiprono Sang Grace Barbengi Josephine Kibet Tecla Kibet Eunice Kibet Immaculate Kibet Rael Kibet	10 Acres 13 Acres 13 Acres 13 Acres 13.5 Acres 5.5 Acres 7 Acres
Kapsinende/kipsinende Block 8 (lamaon) 60	Eunice Kibet	0.5 Acres
Kaptagat/lotonyok Block 2 (koilel)	Emmanuel Kemei Christopher Kibet	10 Acres 10 Acres
Kaptagat/lotonyok Block 3 Ngenyilel Tarit/33	Pauline Kibet Rael Kibet Rose Sang Christine Kibet Mary Kossom Ezekiel Kibet Emmanuel Kibet Christopher	20 Acres 6 Acres 13 Acres 13 Acres 13 Acres 4 Acres 3 Acres 3 Acres
Kaptagat/kaptagat Block 1 (losirwa) 116	William Bett Stephen Kibet Isaac Kibet Abraham Kibet Silvester Kibet Valentine Kibet	13 Acres 13 Acres 13 Acres 12.5 Acres 12.5 Acres 12.5 Acres
Plateau/plateau Block 2/85 Plateau/plateau Block 2/88 Plateau/plateau Block 2/91 Plateau/plateau Block 2/89 Plateau/plateau Block 2/88 Plateau/plateau Block 2/89 Plateau/plateau Block 2/89 Plateau/plateau Block 2/92 Plateau/plateau Block 2/90 Plateau/plateau Block 2/92 Plateau/plateau Block 2/91 Plateau/plateau Block 2/90 Plateau/plateau Block 2/60 Plateau/plateau Block 2/61 Plateau/plateau Block 2/62	Julius Kibet Elizabeth Sang Kibet Elizabeth Sang Kibet Immaculate Kibet Maxmillar Kibet Patricia Kibet Patricia Kibet Francis Kibet Francis Kibet Robert Kibet Robert Kibet Robert Kibet	16.4 Acres 9 Acres 11 Acres 11 Acres 11 Acres 5 Acres 4 Acres 9 Acres 3.25 Acres 11.25 Acres 5 Acres 1.25 Acres 6 Acres 5 Acres 4 Acres
	Centre Plots	
Naiberi Plot Developed No. 10	House A	Whole
Lamaon Farm Plot No. 1	House A	Whole



Duka Moja Plot No. 1	House A	Whole
Naibei Plot No. 23	House B	Whole
Lamaon Plot No. 1	House B	Whole
Duka Moja Plot No. 1	House B	Whole
Naiberi Plot No. 25	House C	Whole
Lamaon Plot No. 1	House C	Whole
Duka Moja Plot 1	House C	Whole
Kpsoya Plot	All Beneficiaries	To Be Sold And Proceeds To Be Shared Among The Beneficiaries
	Properties Acquired Through Mediation	
Tembelio/elgeyo Border Block 10 (kaptuktuk "b") Plot No. 321	John Kiptum	Whole
Tembelio/elgeyo Border Block 10 (kaptuktuk "b") Plot No. 359	Ernest K. Olbara	1 Acre
Tembelio/elgeyo Border Block 10 (kaptuktuk "b") Plot No. 343	Ernest K. Olbara	12 Acres
Tembelio/elgeyo Border Block 10 (kaptuktuk "b") Plot No. 365	Ernest K. Olbara	Whole
Tembelio/elgeyo Border Block 10 (kaptuktuk "b") Plot No. 343	James Chirchir Chebii	5.1 Acres
Tembelio/elgeyo Border Block 10 (kaptuktuk "b") Plot No. 320 And 328	Julius Kipkemboi Kibii	Whole
Tembelio/elgeyo Border Block 10 (kaptuktuk "b") Plot No. 322	Elizabeth Kandie	Whole



Tembelio/elgeyo Border Block 10 (kaptuktuk “b”) Plot No. 344	Luka Chebet	7.9 Acres
Tembelio/elgeyo Border Block 10 (kaptuktuk “b”) Plot No. 343	Luka Chebet	1 Acre
Kaptagat/kaptagat (losirwa 116)	Julius Kipkemboi Kibet	1 Acre
Kaptagat/kaptagat (losirwa 116)	Symon Chebon	4 Acres
Kaptagat/kaptagat (losirwa 116)	Kipyego Masit	2.5 Acres
Kaptagat/kaptagat (losirwa 116)	Anglican Church Of Kenya	0.7 Acres
Kaptagat/lotonyok Block 2 (koilel)	Salina Birgen	7 Acres
Lamaon Farm No. 54	Victor Yator	19 Acres
Lamaon Farm No. 54	Henry K. Sang	2 Acres
Lamaon Farm No. 1	Kimurgor Kibet	13.7 Acres
Plateau/plateau (ug) Farm No. 84	Julius Kipkemboi Kibet	17.4 Acres

## Determination

12. Kenya’s succession laws determine which assets pass by inheritance to a deceased person’s beneficiaries. As for intestate estate principally it is in accordance to Section 35, 36, 37, 38, 40, 41 and 42 of the Act. However, where there is a valid will, the same is tested as to its validity within the text and context of section 9 and 11 of the Act. The Kenyan Constitution and its Bill of Rights in particular under Chapter four does impact the provisions of the Succession Act when courts adjudicate on distribution of the assets of the deceased. The two provisions which provide Constitutional reshaping in succession matters falls under Art. 27(1) & (4) as can be infused with International Law which is now part of the Kenyan law as expressly articulated in Art. 2(5) & (6) of the Constitution.
13. The Constitutional imperative of Art. 27(4) raise emphasis on the application of inheritance laws that each beneficiary is equal before the law and one may not be unfairly discriminated directly or indirectly on one or more grounds including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. This may not be considered as an exhaustive list. The scope of it can be expanded dependent on the circumstances of each specific case. In my view Art. 27 is a double edged sword on equality and non-discrimination in inheritance pronouncements on a day-today-day basis made by the various levels of courts. The



- approach of this provisions is to tackle gender inequality in inheritance by focusing on both men and women.
14. However, from an African society perspective, it should be noted that the inequality in inheritance rights mostly affects women and girls due to deeply entrenched patriarchal characteristics of socio-economic, cultural, customary and religious practices within the 42 tribes in Kenya. The essence of this article read with section 38 and 40 of the *Law of Succession Act* assures the equal right of women and men to inherit from their parents. Therefore, one wonders at what stage in several respects in our inheritance model are women considered or treated as inferior or have unequal status or entitlement to the inheritance shares for their biological parents.
  15. This is the branch of law where there is still a struggle to take cognizance of the equality principle amongst the 42 tribes of Kenya. It is sometimes based on the premise that daughters of a deceased person married or unmarried should be left out of the equation of property ownership arising out of the heritage of their parents as that is a preserve of male descendants. There is a rebuttable presumption in most African society within our multi-ethnic communities, the male child is seen as the natural protector of the family property and therefore his fellow sisters have no business laying any claim over the right to property. Although the provisions of statutory law are supposed to prevail in the event of a conflict with customary law. Notwithstanding that position, the reality is that the succession Act provisions on inheritance whether within monogamous or polygamous family set up is poorly implemented and possibly completely ignored to disfavor, disadvantage or deprive entirely women's rights to inheritance of their parents' interstate estate.
  16. The right to economic and social rights premised in Art. 43 of the *Constitution* will remain a pipedream if the social customs such as those ensuring that the land of a deceased person belongs to his sons and not to his widow or daughters are not outlawed. It should not be lost in our legal system that Kenya is a member of the UN legal system given the provisions of Art. 2(5) & (6) of the *Constitution*. In the context of giving effect to this article, the International Covenant on Civil and Political rights in Art. 23 is very specific that women should have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses. On the other hand, the *Convention on Discrimination Against Women* (CEDAW) in Art. 16(h) specifically prescribes the same rights for spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. The capacity of women to own property is fashioned within the realm of International Law and those rights may not be abrogated or compromised based on any of the grounds specified in Art. 27(4) of the *Constitution*. It is in this legal framework that the Organization of African Union (OAU) oxygenated the *Maputo Protocol* which is a specific instrument targeting women rights. In Art. 2 of the Protocol it sets the standard in prohibiting all forms of discrimination against women. It calls upon the state parties where Kenya is included to combat all forms of discrimination against women, to do all appropriate legislative, institutional and other measures The Protocol takes very specific cognizance of the applicability and relevance the context of inheritance laws in so far as the stereotyping of women, widows or daughters are concerned.
  17. I have appreciated certain facts during the locus in quo by this court in which a panoramic view of the entire estate was presented by the beneficiaries and their respective learned counsels appearing on their behalf in facilitating the distribution of the estate. At the outset, it is to be noted that the administrators had moved the court to visit the intestate estate and have it review the impugned ruling and corresponding Certificate of Confirmation of Grant issued on 11<sup>th</sup> December, 2023. In the subsequent proceedings, this court requested learned counsels to make brief submissions on the perspectives captured during the scene visit. Therefore, the question which is posed before this court



for consideration is whether in the facts and circumstances in the case I am justified in reviewing a Certificate of Confirmation of Grant which is the product arising out of the impugned ruling of this court on the cause of action. It is further observed that the power of review is not an appeal in disguise but can be exercised by the court under Section 80 of the *Civil Procedure Act*, Rule 73 of the *Probate and Administration Rules* and Order 45 Rule 1 of the *Civil Procedure Rules*. For correction of a mistake, error of law on the face of the record or for any sufficient reason or may be necessitated in circumstances where there is discovery of new evidence which was not available at the time when the judgment and the order complained of was passed by the court. The interpretation of these provisions have found their way in the various authorities as exemplified herein below:

“Section 80 give the power of review and Order 45 out of the rules. The rules restricts the grounds of review. The rules lay down the jurisdiction and scope of review limiting it to the following grounds; (a) discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or; (b) on account of some mistake or error apparent on the face of the record , or (c) for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”

18. In *Pancras T. Swai v Kenya Breweries Limited* (2014) eKLR the Court of Appeal held: -

“Order 44 Rule 1 (now Order 45 Rule 1 in the 2010 *Civil Procedure Rules* gave the trial court discretionary power to allow review on the three limbs herein stated or “for any sufficient reason.....”

19. In addition, discussing the scope or review, the Supreme Court of India in the case of *Ajit Kumar Rath vs State of Orisa & Others*, 9 Supreme Court cases 596 at page 608 had this to say: -

“the power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” ..... means a reason sufficiently analogous to those specified in the rule”

20. In *Lily Thomas, Etc. Etc. vs. Union of India & Others* 2000(2) ALD Cri 686, 2000 (1) ALT Cri 363, 2001 (1) BLJR 499, 2000 CriLJ 2433, II (2000) DMC 1 SC, JT 2000(5) SC 617, 2000 (4) SCALE 176 (2000) 6 CC 224, 2000 (2) UJ 1113 SC the court stated at para 53 as follows:

“The dictionary meaning of the word “review” is “the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This court in *patel Narshi Thakersh and Ors. v Pradyunman Singh ji Arjun Singh Ji* held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It (sic, It) cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law



has to bend before justice. If the court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the court from rectifying the error.”

21. The brief facts of this case in the initial litigation contest was lack of inclusivity on inheritance of the following objectors: Mary Chepyator, Grace Kibet, Rael Kibet and Rose Sang, who were excluded from inheriting any share in the matter of the estate of their late father Kibet Sang. The court rooted its decision that any customary intestacy that allowed the discriminatory practice of the female child is a violation of the Constitution and the Succession Act. It is a form of discrimination that entrenches injustice among a vulnerable group by an old notion of patriarchal and male domination incompatible with the guarantees of equality in Art. 27 of the Constitution. Discrimination on inheritance will therefore be unfair if it impairs or is likely to impair the fundamental human dignity of any individual or adversely affects them in any comparably serious manner. That was the far cry by the objectors in this case.
22. Given this background, even as I delve into the issues canvassed by the respective legal counsels, I should not lose sight of the legal imperatives which must govern the distribution of this intestate estate of Kibet Sang.
23. It is important at this point to also take judicial notice that the court while seized of jurisdiction of this matter and having issued a Certificate of Confirmation of Grant dated 11<sup>th</sup> December, 2023 as of necessity visited the intestate estate to appraise itself on the difficulties experienced by the administrators in transmitting the estate as decreed in the instrument. Arguably, each beneficiary had a narrative why the aforesaid instrument cannot be implemented as ordered by the court. Therefore, the Probate Court needed to acquire the perception of the wide range of issues which may have heavily influenced non-compliance with the judgment by the administrators. In a nutshell, there was very little evidence to suggest that the impugned certificate of confirmation of grant on their intestacy rights was entirely bad in law. However, some of the issues of importance which may have occurred can be attributed to the information or evidential material which may have been inaccurate in the first instance. Admittedly, they will be reflected in the following discussion to progress the intestacy rights of the beneficiaries in a manner which will not compromise or undermine the nature of the respective homes established during the lifetime of the deceased. In considering some of the issues raised by the beneficiaries, it is relevant to note that the court will invoke the doctrine of legitimate expectation to address some of the concerns raised by the aggrieved parties or claimants.
24. One of the key highlights during the scene visit by the 1<sup>st</sup> Petitioner, was that Julius Kipkemboi Kibet be granted leave by this court during the distribution to have the estate approximated around 75 acres to be wholly devolved for his benefit. It was the 1<sup>st</sup> Petitioner’s contention that this portion of the intestate estate was decreed by the deceased during his lifetime. In essence, the 1<sup>st</sup> Petitioner is inviting this court to invoke section 42 of the Law of Succession Act on gift inter-vivos which provides as follows:

“Where an intestate has during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or Property has been appointed or awarded to any child or grandchild under the provisions of Section 26 or Section 35, the property shall be taken into account in determining the share of the net intestate finally accruing to the child, grandchild or house.”
25. It is clear from these provisions the gift of any share of the assets of the deceased to a beneficiary must be made during his lifetime. The effect of it is to diminish the residual net estate capable of being



distributed to the other beneficiaries, meaning that under the definition of the free property of the deceased on account of that gift it is considered be part of that equation of distribution. The concept of gift *inter vivos* is made more crystal clear in [\*Halsbury's Laws of England\*](#) 4<sup>th</sup> Edition Volume 20 (1) at para 67 which states as follows:

“Where a gift rests merely in a promise, whether written or and, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him to complete and perfect it except in circumstances where the donor’s subsequent conduct gives the donee a right to enforce the promise. A promise made by deed is however binding even though it is made without consideration. If a gift is to be valid the donor must have done everything which according to the nature of the property comprised in the gift, was necessary to be done by him in order to transfer the property and which it was in his power to do so.”

26. In the same spirit, within our local jurisdiction, the learned judge Odunga J. A. in his Book [\*Digest on Civil case law and procedure\*](#) volume 3 Page 2417 para 5484 had this to say on the same subject matter:

“Generally speaking the moment in time when the gift takes effect is dependent on the nature of the gift; the statutory provisions governing the steps taken by the donor to effectuate the gift. (See *in Re Fry Deceased* (1946) CH 312 *Rose*: and *Trustee Company Ltd v Rose* (1949) CL 78 *Re: Rose v Inland Revenue Commissioners* (1952) CH 499 *Pennington v Walve* (2002) 1WLR 2075 *Maledo v Beatrice Stround* (1922) AC 330 Equity will not come to the aide of the volunteer and therefore, if a donee needs to get an order from a court of equity in order to complete his title, he will not get it. If the on the other hand the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee need no assistance from the equity and the gift is complete. It is on that principle that in equity it held that a gift is complete as soon as the donor has done everything that the donor has to do, that is to say as soon as the donee has within his control all those things necessary to help him complete his title, no assistance from court of equity will be required by the donee. Where the donor has done all in his power according to the nature of the property given to vest the legal interest in the property in the donee, the gift will not fail even if something remains to be done by the donee or some third person. Likewise, a gift of registered land becomes effective upon execution and delivery of the transfer and cannot be recalled thereafter even the though the donee has not been registered as a proprietor.”

27. My interpretation of Section 42 of the [\*Law of Succession Act\*](#) and the above principles firmly establishes that delivery is essential to the consummation of a gift from the donor to the donee. In this case, it was claimed by the 1<sup>st</sup> Petitioner that that portion of the estate is an exclusive occupation of the 3<sup>rd</sup> Petitioner, Julius Kibet. It is quite evident that there is no cogent evidence to support that the deceased intended an actual gift at the time to pass to the 3<sup>rd</sup> Petitioner relinquishing dominion over that share so that it is never free asset to be share by the other beneficiaries. Therefore, the title did not pass to the donee. The nature of proof required to establish a gift is similar to any other question of fact under Section 107(1), 108 and 109 of the [\*Evidence Act\*](#). The intention of the parties and their acts are things or issues which must be determined by a probate court. I have endeavored to conceive and appreciate the submissions by the 1<sup>st</sup> petitioner during my scene visit but I found no evidence of any clear proof that a gift in the form of the prescription given by the 1<sup>st</sup> and 3<sup>rd</sup> petitioner created any such gift *inter vivos* or gift *causa mortis*.



28. This matter then essentially concerns the implementation of my earlier ruling delivered on 11th December 2023. Despite the court's best efforts to ensure an equitable distribution of the deceased's estate, various challenges have emerged that necessitate this review. The parties, through their counsel, have approached the court seeking review of the confirmed grant, citing several omissions and practical difficulties in implementation.
29. This being a polygamous household, the task of ensuring fair distribution while maintaining family harmony is particularly delicate. The estate of the late Kibet Sang is substantial, comprising vast land holdings across different locations, numerous agricultural machinery and various urban plots. The deceased was survived by three houses, and this court's duty is to ensure that the distribution not only meets the legal requirements but also preserves the family's social fabric.
30. The applications before me raise several crucial issues. First, there is the question of rectifying the current distribution to address implementation challenges. Second, I must incorporate previously omitted properties and correct certain acreage discrepancies. Third, there is the matter of protecting purchasers' rights and those who received gifts from the deceased. Finally, the court must determine how to distribute newly identified assets such as the two combine harvesters.
31. In addressing these issues, I am guided by Section 40 of the *Law of Succession Act*, Cap 160, which provides the framework for distribution in polygamous settings. Additionally, Section 93 of the Act safeguards the rights of purchasers, a matter of particular significance in this case. I am also mindful of applicable customary law principles, insofar as they align with written law.
32. Section 93 of the *Law of Succession Act* provides as follows:

“ 93

- (1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this act.
- (2) A transfer of immovable property by a personal representative to a purchase shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for.”

33. In *Jacinta Wanja Kamau vs Rosemary Wanjiru Wanyoike and Another* (2013) eKLR where the appellant therein unsuccessfully sought protection under Section 93, the Court of Appeal sitting in Nyeri stated:-

“Before the appellant could seek protection as a purchaser under Section 93 of the *Act*, she had first to prove that she is a purchaser. In this case, there was no prima facie evidence that she was a purchaser. In any case and as provided by Section 82(b) (11) of the *Act* it would have been illegal for Beatrice Njeri Mugondu to sell the land before the confirmation of the grant.”



34. I must also address the rights of those who purchased portions of land from the deceased. The *Law of Succession Act*, under Section 93, offers clear protection to purchasers. This section validates transfers made to purchasers whether before or after the grant of representation, and such transfers remain valid even if the grant is later revoked or varied. I am mindful of the Court of Appeal's guidance in *Jacinta Wanja Kamau vs Rosemary Wanjiru Wanyoike and Another* (2013) eKLR, where the court emphasized that for one to enjoy protection under Section 93, there must be clear evidence of purchase.
35. Looking at the matter before me, I note that through a partial mediation settlement dated 29th February 2020, the parties identified several individuals who had purchased land from the deceased during his lifetime. Unlike in the Jacinta Wanja case where purchase claims lacked prima facie evidence, I have before me clear proof of these transactions, acknowledged by all parties through the mediation process. These purchasers have been in occupation of their respective portions, and I find it both just and legally proper to protect their interests.
36. I am particularly persuaded that the mediation process, in which all parties participated, properly identified these purchasers and their specific portions. The purchasers have established their claims satisfactorily, and Section 93 compels me to protect their interests. Consequently, these purchased portions must be clearly reflected in the final distribution of the estate.
37. In matters of succession, I am deeply conscious that we are not merely distributing parcels of land, but preserving the threads that bind families together. William Musyoka, in his authoritative work on succession law (2006), wisely reminds us that existing family arrangements should be maintained wherever possible. This principle strikes me with particular force when I consider the case of William Kiprotich Bett. Here is a son who has not only built his home at Kaptagat/Kaptagat Block 1 (Losirwa) 116, but is also the custodian of sacred family ground; the final resting place of both his father, the deceased, and his mother, Sally Sang. The cultural and spiritual significance of this connection cannot be overstated. To uproot William from this land, where he maintains vigil over his parents' graves, and relocate him to Plateau farm would be to sever a profound spiritual and emotional bond. I cannot, in good conscience, direct such a disruption. This is particularly informed by the fact that the court was invited for a site visit to confirm the same. The land speaks of more than mere ownership; it whispers of family history, cultural duty, and filial devotion. Therefore, I find it not only practical but deeply appropriate that William should remain rooted where he is, continuing his role as guardian of this hallowed family ground.
38. My attention has also been drawn to Kapsinende/Kipsinende Block 8(Lamaon) 1, where the survey report confirms that Gideon Kositany, son to the second wife Pauline Jepkemboi Kibet, has established a permanent residence. While there are assertions that this parcel was gifted to him, I must be guided by the evidence before me. What is clear is that Gideon has developed and occupied this parcel, and the 2nd Petitioner's proposed distribution suggests allocating the whole parcel to him.
39. In the interest of maintaining stability and recognizing established occupation, and noting that no objections have been raised to this arrangement, I find it appropriate that this parcel, measuring 17.8 acres, be allocated to Gideon Kositany as part of his share of inheritance from the estate.
40. Additionally, from the record, I have sight of the Memorandum of understanding made on 22<sup>nd</sup> April, 2024 between the three administrators which confirms Gideon as the occupier of the said parcel of land being gifted by the deceased.
41. Further, Rose Sang and Christine Jemeli Kibet, daughters from the second house, should remain at Kaptagat/Lotonyok Block 3 (Ngelel Tarit)/33. This arrangement promotes family cohesion and respects existing social bonds.



42. I turn my attention to Kipsinende Block 8 (Lamaon) 54, a parcel that presents a complex tapestry of family occupation, purchaser rights, and inheritance claims. The survey report paints a vivid picture; here stands Ezekiel Kiprono Sang's temporary house and store, a testament to his connection to this land as a son of the second house. The land also bears witness to the reality of past transactions, with two permanent houses belonging to those who purchased portions from Henry Kipkosgei Sang, the deceased's brother.
43. In untangling these interconnected claims, I must first acknowledge Victor Yator's rightful claim to 19 acres, enhanced from the previous allocation of 10 acres, and Henry Sang's portion of 2 acres. These transactions, having been proven and acknowledged, must be honored in line with Section 93 of the *Law of Succession Act*.
44. The remaining land calls for delicate balance. The 2nd Petitioner has proposed a distribution that recognizes both existing occupation and family ties: Ezekiel Kiprono Sang, who has already established his presence there, to receive 10 acres; Grace Barbengi, Josephine Kibet, and Tecla Kibet each to receive 13 acres; Eunice Kibet allocated 13.5 acres; Immaculate Kibet 5.5 acres; and Rael Kibet 7 acres. This distribution, I note, to a larger extent acknowledges both the practical reality of current occupation and the need for equitable sharing among the beneficiaries.
45. This arrangement weaves together the threads of family unity while respecting established presence on the land. Ezekiel's existing developments are preserved, while other beneficiaries receive substantial portions that can sustain their futures. This distribution honors both the physical and emotional investments already made in the land while ensuring that each beneficiary receives a meaningful share.
46. Therefore, having carefully weighed all factors, I endorse this distribution of Kipsinende Block 8 (Lamaon) 54, satisfied that it achieves both legal compliance and family harmony. The precise acreage allocations shall be as detailed in the final schedule of distribution.
47. Regarding purchasers' rights, I have carefully reviewed the evidence of various land transactions made by the deceased. Previously, the court recognized several purchasers including Simeon Chebon (4 acres), Gene Masit (who now holds Jacinta Murgor's portion, totalling 2.5 acres), Victor Yator (whose portion I now correct to 19 acres from the previous 10 acres), Henry Sang (2 acres), and Salina Jepkorir Birgen (7 acres).
48. Through a partial mediation settlement dated 29th February 2020, several additional purchasers were identified and their rights must be protected. These purchasers acquired their portions from the deceased for value and include James Chirchir (5.1 acres from Tembelio/Elgeyo Border Block 10 (Kaptuktuk 'B') Plot No. 343), Julius Kipkemboi Kibii (Tembelio/Elgeyo Border Block 10 (Kaptuktuk 'B') Plot No. 320 and 328), Elizabeth Kandie (Tembelio/Elgeyo Border Block 10 (Kaptuktuk 'B') Plot No. 322), Luka Chebet (Tembelio/Elgeyo Border Block 10 (Kaptuktuk 'B') Plot No. 344 and 1 acre on Plot No. 343), and Ernest K. Olbara (1 acre from Plot No. 359, 21 acres from Plot No. 343, and the whole of Plot No. 365). The mediation settlement clearly identified these individuals as beneficiaries by virtue of being purchasers for value from the Estate of Kibet Sang (deceased).
49. Let me now turn to Kaptagat/Lotonyok Block 2 (Koilel), a parcel that perfectly illustrates the delicate balance between honouring past decisions and ensuring equitable distribution. The survey report before me paints a picture of established life on this land: Salina Jepkorir Birgen's semi-permanent house stands as a testament to her roots here, while the temporary dwellings of Nicholas Kemboi and Emmanuel K. Kemboi speak to the next generation's connection to this soil.
50. In my ruling of December 11, 2023, I had confirmed Salina Jepkorir Birgen's portion of 7 acres. That decision was not made in isolation but was part of a careful consideration of the family's living



arrangements and the need for stability. Considering my visit to the site and looking at the current proposed distribution, which suggests 10 acres each for Emmanuel Kemei and Christopher Kibet, I am of the view that it builds upon rather than disrupting the existing order. Salina's established presence, recognized through the previous allocation of 7 acres, is preserved, while Emmanuel's physical connection to the land through his temporary dwelling finds recognition in the new allocation. Christopher Kibet's inclusion completes this carefully balanced distribution. This acreage is as well endorsed by the memorandum of understanding made between the three administrators on 22<sup>nd</sup> April, 2024.

51. Therefore, I affirm the distribution of Kaptagat/Lotonyok Block 2 (Koilel) as follows: the 7 acres previously allocated to Salina Jepkorir Birgen shall remain undisturbed, with Emmanuel Kemei and Christopher Kibet each receiving their 10-acre portions. This arrangement honors past judicial wisdom while securing the future for the next generation of this family.
52. Two significant assets previously unaddressed are the combine harvesters. Generally speaking, when it comes to machinery as assets of the deceased estate, before any order is made in terms of distribution, it is a multi-criteria decision making model by the administrators. This decision falls on two parameters. The fixed cost and valuable cost of the assets which are used along with the number of units involved for determining the selling price of the product. The fixed costs are the amounts spent on purchasing the assets like plant and machinery. The value of such fixed assets depreciates out of the operation of a business for numerous successful periods. In the itemised machines of the estate, there is need to look at the depreciation on the decrease of decline in value of the assets due to tear and wear. Whether the approach is to dispose of the assets on the beneficiaries to share any proceeds which accrue, this cannot be a straight jacket decision by the administrators. There must be a structured report by a mechanical engineer well versed to the machines' economic life estimation based on depreciation.
53. As I turn to the Plateau/Plateau Block 2 parcels, I take note of the fact that the survey report reveals details as follows: Elizabeth Jepchirchir Sang's permanent house stands as a maternal anchor on Block 2/88, while her son Robert Kemboi Kibet has established his own legacy with a permanent home on Block 2/62. Francis Kibet Kipngetich's dwelling on Block 2/92, Julius Kipkemboi Kibet's homestead on Block 2/85, and Brian Kipleting's presence on Block 2/84 complete this portrait of a family that has literally built their lives into the soil of these blocks.
54. The 2<sup>nd</sup> Petitioner's proposed distribution in my view honors these connections while ensuring justice for all. It strikes a balance: Julius Kibet's 16.4 acres acknowledging his established presence, Elizabeth Sang Kibet's thoughtfully divided 20 acres across two blocks reflecting her position as the third wife, and carefully measured portions for Immaculate, Maxmillar, Patricia, Francis, and Robert Kibet; each receiving between 11 and 16.25 acres.
55. The previously omitted parcel Kapsinendi/kipsinende Block 8 (Lamaon) 60, measuring 0.5 acres, shall be valued and sold for the proceeds to be shared equally among the three houses.
56. In a nutshell, I take the position that having summed up the entire litigation landscape of this estate all those are reviewed to the extent of this table:

Schedule



Name	Description Of Property	Share Of Heirs
Gedion Kimurgor Kibet	Kipsinende/kipsenende Block 8(lamaon)1	13.7 Acres
William Bett Stephen Kibet Isaac Kibet Abraham Kibet Silvester Kibet Valentine Kibet	Kaptagat/kaptagat Block 1 (losirwa) 116	13 Acres 13 Acres 13 Acres 12.5 Acres 12.5 Acres 12.5 Acres
Pauline Kibet	Kaptagat/lotonyok Block 3 (ngelel-tarit)/33	20 Acres
Christopher Kibet	Kaptagat/lotonyok Block 3 (ngelel-tarit)/33	13 Acres
Emmanuel Kemei	Kaptagat/lotonyok Block 3 (ngelel-tarit)/33	8 Acres
Rose Sang	Kaptagat/lotonyok Block 3 (ngelel-tarit)/33	5 Acres
Ezekiel Kibet	Kaptagat/lotonyok Block 3 (ngelel-tarit)/33	3 Acres
Mary Kossom	Kaptagat/lotonyok Block 3 (ngelel-tarit)/33	13 Acres
Christine Kibet	Kaptagat/lotonyok Block 3 (ngelel-tarit)/33	13 Acres
Julius Kibet Elizabeth Sang Kibet Elizabeth Sang Kibet Immaculate Kibet Maxmillar Kibet Maxmillar Kibet Patricia Kibet Patricia Kibet Patricia Kibet Francis Kibet Francis Kibet Robert Kibet Robert Kibet Robert Kibet Robert Kibet	Plateau/plateau Block 2/85 Plateau/plateau Block 2/88 Plateau/plateau Block 2/91 Plateau/plateau Block 2/89 Plateau/plateau Block 2/88 Plateau/plateau Block 2/89 Plateau/plateau Block 2/89 Plateau/plateau Block 2/92 Plateau/plateau Block 2/90 Plateau/plateau Block 2/92 Plateau/plateau Block 2/91 Plateau/plateau Block 2/90 Plateau/plateau Block 2/60 Plateau/plateau Block 2/61 Plateau/plateau Block 2/62	16.4 Acres 9 Acres 11 Acres 11 Acres 11 Acres 5 Acres 4 Acres 9 Acres 3.25 Acres 11.25 Acres 5 Acres 1.25 Acres 6 Acres 5 Acres 4 Acres



To Be Sold And Proceeds Shared Equally Among The Beneficiaries	Kapsinende/kipsinende Block 8 (lamaon) 60 Measuring 0.5 Acres	Whole
Rael Kibet	Lamaon Block 54	13 Acres
Josephine Kibet	Lamaon Block 54	13 Acres
Eunice Kibet	Lamaon Block 54	13 Acres
Tecla Kibet	Lamaon Block 54	13 Acres
Ezekiel Kibet	Lamaon Block 54	10 Acres
Immaculate Kibet	Lamaon Block 54	5 Acres
Rose Kibet	Lamaon Block 54	8 Acres
Grace Kibet	Koilel Farm (kapnori Block 2)	15.25 Acres
Emmanuel Kemei	Koilel Farm (kapnori Block 2)	5.75 Acres
1 <sup>st</sup> House	Kapsoya Plot Naiberi Plot No. 10 Developed Lamaon Farm Plot No. 1	50x100 50x100 50x100
2 <sup>nd</sup> House	Naiberi Plot No. 23 Lamaon Plot No. 1 Duka Moja Plot	50x100 50x100 50x100
3 <sup>rd</sup> House	Duka Moja Plot Naiberi Plot No. 25 Lamaon Farm Plot No. 1	50x100 50x100 50x100
Valued, Sold And Proceeds Shared Equally	Duka Moja Plot	50x100
Shared Equally	Equity Bank Account No. 0300190813211	
John Kiptum	Tembelio/elgeyo Border Block 10 (kaptuktuk "b") Plot No. 321	Whole
Ernest K. Olbara	Tembelio/elgeyo Border Block 10 (kaptuktuk "b") Plot No. 359	1 Acre



Ernest K. Olbara	Tembelio/elgeyo Border Block 10 (kaptuktuk “b”) Plot No. 343	12 Acres
Ernest K. Olbara	Tembelio/elgeyo Border Block 10 (kaptuktuk “b”) Plot No. 365	Whole
James Chirchir Chebii	Tembelio/elgeyo Border Block 10 (kaptuktuk “b”) Plot No. 343	5.1 Acres
Julius Kipkemboi Kibii	Tembelio/elgeyo Border Block 10 (kaptuktuk “b”) Plot No. 320 And 328	Whole
Elizabeth Kandie	Tembelio/elgeyo Border Block 10 (kaptuktuk “b”) Plot No. 322	Whole
Luka Chebet	Tembelio/elgeyo Border Block 10 (kaptuktuk “b”) Plot No. 344	7.9 Acres
Augustine Mitei	Tembelio/elgeyo Border Block 10 (kaptuktuk “b”) Plot No. 343	1 Acre
Julius Kipkemboi Kibet	Kaptagat/kaptagat (losirwa 116)	1 Acre
Symon Chebon	Kaptagat/kaptagat (losirwa 116)	4 Acres
Kipyego Masit	Kaptagat/kaptagat (losirwa 116)	2.5 Acres
Anglican Church Of Kenya	Kaptagat/kaptagat (losirwa 116)	0.7 Acres
Victor Yator	Kapsinende/kipsinende Block 8 (lamaon) 54	19 Acres
Henry Sang	Kapsinende/kipsinende Block 8 (lamaon) 54	2 Acres
Julius Kipkemboi Kibet	Plateau/plateau (ug) Farm No. 84	17.4acres



Salina Jepkorir Birgen	Kaptagat/lotonyok Block 2 (koilel)	7 Acres
Emmanuel Kemei Christopher Kibet	Kaptagat/lotonyok Block 2 (koilel)	10 Acres 10 Acres
House A · Ford Tractor 6600-KLX 876 · Stationery water tank at Naiberi · Trailers – one large flat, one small (blue) and the smallest one (all at Naiberi) · 20 litre Knapsack sprayer · Peugeot car pick up 404-KLZ 151 Disc Plough Nardi type (short frame) · Mould board plough · Light tiller (Red) · Small maize tiller (blue) at Naiberi · Cobalt Harrows – One new model and one old model · Mower · Maize Planter – international model · Light Harrow · Mobile water engine – Borrowed by Daudi of strawbag · Tractor drawn chain at Naiberi · BMC Lorry Leyland type.	House B · Ford tractor 6600 – KSD 292 · Mobile Water tank · Trailers – One large body-build, and one small (red) · 20 it knapsack sprayer · Peugeot car 404 pickup-KLY 710 · Disc plough – Nardi (long frame) · Mould board plough · Chisel rake triller (yellow) · Small tiller at Kamukunji Home · Cobalt Harrow one old model · Maize shelter · Tractor mounted grass-cutter · Maize planter – butch type · Light harrow · Lightning and water drawing engine borrowed by uncle Kimitei samoei · Mobile water engine at Lamaon shamba (Kimurgor’s home) · Tractor drawn chain at Kapker home	House C · Ford Tractor 5000-KQC 180 · Mobile water tank at Kamukunji Home · Trailers – obe baiter type, and one small (red) · 20 Litre Knapsack sprayer · Bedford Lorry · Disc Plough – Rumson type · wheat seeder (new model) · Chisel rake tiller (yellow) · Light tiller (red) · Small tiller at Kamukunji home · Tractor drawn CAN spreader · Maize planter – butch type · Light Harrow · Fixed water drawn engine (Natasha) at Kamukunji farm · Mobile water engine at Kamukunji farm · Large raised plastic water tank at Kamukunji farm · Small cylindrical tank at Naiberi · Tiller for potatoes – to be care tanker but can be utilized by the other two families · Tractors drawn chain borrowed by Lawrence Kebenei
Money in the Bank All money at the Equity bank Account No. 0300190813211 to be shared equally among the three household		

57. A careful look at the impugned ruling and subsequent certificate of confirmation of grant would show the necessity of this court to have a fresh look at the questions raised by the administrators on the implementation of grant. The course followed by the High Court demands of it to invoke the review jurisdiction for the interest of justice in this cause of action. As a consequence of it, the following orders shall abide:
- a. The certificate of confirmation of grant dated 11<sup>th</sup> December, 2023 be amended and reviewed as per the detailed schedule above.



- b. The administrators shall, within 60 days, execute necessary documents for transfer to purchasers and beneficiaries.
- c. As for the movable assets, given their nature and structure and limitation of time, depreciation might have set in to warrant an order do issue to the department of mechanical engineering at the County of Uasin Gishu or an engineer with expertise to be sourced by the administrators for the sole purpose of gaining access to the location of the machinery and equipment to establish the economic value, usage and suitability as an asset for distribution to the beneficiaries.
- d. That this intestate estate has no applicability of gift *intervivos* or gift *mortis causa*.
- e. That in distributing the estate under the review jurisdiction this court has acted in accordance with section 38 and 40 of the *Law of Succession Act*.
- f. That the distribution of the estate by the administrators shall take into account the respective family homes already established by the respective beneficiaries as a reference point in allocating the shares of each beneficiary.
- g. That the court has taken cognizance that this estate has remained undistributed for more than ten years and in complete disregard of the statutory timelines within the letter of the *Law of Succession Act*.
- h. In this respect, in the event the administrators abdicate their duties, the DR shall cause the County surveyor to develop a survey plan together a mutation reflecting the model of distribution in the Certificate of Grant to be generated on the entire immovable estate which shall be registered with the Land Registrar for purposes of transmitting the estate to the beneficiaries.
- i. All costs of implementing these orders shall be borne by the estate.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 15<sup>TH</sup> DAY OF NOVEMBER 2024**

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**R. NYAKUNDI**

**JUDGE**

In the Presence of:

M/s Songok & Co. Advocates

M/s Morgan Omusundi & Co. Advocates

M/s Mathai Maina & Co. Advocates

