REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE NO E051 OF 2023

IN THE MATTER OF THE ESTATE OF THE LATE GIDEON BOEN KIMARTA (DECEASED)

NAUM CHEPKUTO BOEN……..1ST PETITIONER

JONAH KIPTOO BETT……..2ND PETITIONER

ISAAC KIPNG'ETICH BETT……3RD PETITIONER

VERSUS

ANNAH JEPKOSGEI SAMOEI……..1ST BENEFICIARY/PROTESTOR

TRUPHOSA CHELIMO MUTAI……2ND BENEFICIARY/PROTESTOR

Coram: Justice R. Nyakundi

M/s Terer & Co Advocates

M/s J.C Chumba & Co Advocates

M/s Bitok & Sambu Advocates

JUDGMENT

1. The brief background of this Succession cause is that the deceased herein Gideon Boen Kimarta died on the 30th day of September 2005 at Moi Teaching and Referral Hospital as recorded in the certificate of death on record. Naum Cheputo Boen, Jonah Kiptoo Bett and Isaac Kipng'etich Bett being the deceased's widow and sons respectively petitioned for the grant of Letters of Administration intestate.
2. A grant of letters of Administration intestate was issued to the aforementioned survivors on 8th April 2024. They indicated that the deceased died intestate and left the following surviving him: -
    a. Naum Chepkuto Boen Widow
    b. Peter Kipkemboi Bett Son

c. Jonah Kiptoo Bett Son
d. Ruth Jepkoech Kosgei Daughter
e. Benjamin Kiplagat Bett Son
f. Isaac Bett Kipngetich Son
g. Anna Jepkosgei Samoei Daughter
h. Truphosa Jelimo Boen Daughter
i. Joseph Kimutai Bett Son
j. Isiah Kipkorir Bett Son (Deceased)
k. Gladys Chepchirchir Boen Daughter

3. They also provided an inventory of all the assets and liabilities of the deceased at the date of his death vide an affidavit in support of Petition for Letters of Administration intestate to include the following: -
   a. Moiben/Moiben Block 6 (Kabiyet) 10 Measuring 76.65 Ha
   b. Land Reference Number 766/1
   c. Toyota Pick Up KXM 562
   d. Tractor Massex Ferguson KXX 968
   e. Shares in Kabiyet Holdings.
   f. Shares in Sergoi Holdings
   g. Shares in G-bo gaa Company Limited
   h. Shares in Kibware Tea Estate.

Litigation History

4. The Petitioners/Administrators herein filed summons for Confirmation of Grant dated 24th January 2025 seeking that the Grant of Letters of Administration made to the said **Naum Chepkuto Boen, Jonah Kiptoo Bett** and **Isaac Bett Kipngetich** in this matter on 8th day of April 2024 be confirmed and the estate be divided in terms of the annexed proposed mode of distribution captured in their supporting affidavit.
5. The summons was opposed vide Affidavits dated 4th February 2025 sworn by **Annah Jepkosgei Samoei** and **Truphosa Chelimo Mutai** who deponed that that the proposed mode of distribution was discriminative, inequitable an offends the law; that their consent on the proposed mode

of distribution was never sought and they never signed the prerequisite consent to Confirmation of Grant, that in any event the purported Consent to Confirmation of Grant was only signed by 6 out of the 11 beneficiaries and is therefore not binding and that the Petitioners/Administrators had willfully excluded some properties of the Deceased from the proposed distribution mode despite being listed in Form P & A 5 as part of the Estate specifically: *shares in Kabiyet Holdings, shares in Sergoi Holdings, shares in G-bo gaa Company Limited, shares in Kibware Tea Estate, 2 centre plots at Kaigat Trading Centre at Mosop Sub county, Nandi County, Toyota pick –up KXM 562, tractor Massey Ferguson KXX 968, Nardi 3 Disc Plough and a Vans & Plate Trailor.*

6. One of the Administrators herein **Naum Chepkuto Boen** filed a Reply to Affidavits of protest dated 5th February 2025 and deponed that: On the 24th day of January 2025, they were requested to attend a meeting at their lawyer's office for the purposes of agreeing on the mode of distribution; that all her children attended the meeting save for Ruth Jepkoech Kosgei who was unwell and Annah Jepkosgei Samoei who deliberately refused to attend the meeting; that they all followed the wishes of the deceased in the distribution of the property where they agreed that all the daughters be given 5 acres each; that everyone else consented to the mode of distribution save for protestor Annah Jepkosgei Samoei; that during the meeting they all agreed to have the shares Kabiyet Farm Limited and Chipokaa to be registered in the names of the Administrators and Truphosa Jelimo Boen in trust for the rest of the beneficiaries; shares of Kibware Tea Estate were transferred into her name immediately after the demise of her late husband; that the pick-up registration number KXM 562 does not form part of the deceased property, it is registered in the name of Jonah Kiptoo Boen, who paid medical bill for the protestor's husband; that tractor Massey Ferguson KXX 968 is registered in someone else name and in any case all the movable properties belong to her; that Tractor Massey Ferguson 3 disc plough is in the homestead of Annah Jepkosgei Samoei, it has been there for the last

10 years, it does not have any registration number and is part of the movable property which belongs to her and that vans and plate trailer also are movable property which belongs to her.

7. One of the beneficiaries herein **Truphosa Chelimo Mutai** filed a further affidavit of protest dated 3rd March 2025 and deponed as follows: that in the spirit of fair negotiations, give and take and expeditious determination she ceded the following properties of the Estate to be distributed to their mother absolutely being 2 centre plots at Kaigat Trading Centre at Mosop Sub County, Nandi County, Toyota pick-up KXM 562, Tractor Massey Ferguson KXX 968, Nardi 3 Disc Plough and a vans and Plate Trailer; that the proposed mode of distribution is discriminative, inequitable and offends the provisions of law in that the petitioners herein fraudulently deprived some of the beneficiaries of the deceased, who are women of their fair and just share of their inheritance from the estate; that there is no legal way that Kibware Tea Estate could be transferred into the 1st Petitioner's name after the demise of the deceased till the completion of the proceedings herein thus th aforementioned transfer depicts fraud, illegality and/or intermeddling on the part of the 1st Petitioner and that the Estate was solely owned by the deceased with no overriding interest registered against the title thus does not form part of matrimonial property.
8. The two (2) protestors herein **Annah Jepkosgei Samoei** and **Truphosa Chelimo Mutai** filed their proposed mode of distribution vide an affidavit dated 25th March 2025 and deponed as follows: that their protest at all the material times to these proceedings and their counter-proposed mode of distribution of the estate herein has been and continuous to be equal distribution of all the parties constituting this estate amongst the 11 dependants/beneficiaries taking into consideration the shares of the bonafide purchasers and the donees as by law required; that the mode of distribution subsequently proposed by the Administrators and reasons thereof are still not only unreasonable but also unlawful, discriminatory, repugnant to justice, morality and completely unacceptable in modern

Kenyan society; that it is our firm position that all of the Dependants herein are entitled to equal distribution of both Land Title No. LR No. 766/1 and Land Title No. Moiben/Moiben Block 6 as well as Estate shares in Kabiyet Holdings, Sergoi Holdings, G-bogaa Company Limited and Kibware Tea Estate; that its unfathomable and repugnant to justice and morality for the Administrators to front this rather archaic and primitive argument that the married daughters of the Deceased should forego their father's inheritance in favour of their brothers because they are likely to enjoy inheritance of their husband's side of the family forgetting that the same brothers are married and would equally benefit from properties that their wives would inherit from their parents as well; that the argument by the Administrators that all the married daughters ought to be secluded from inheriting one of the deceased's estate property and discriminatively distributed another estate property on the account that they married and should not have a share at a common estate of the deceased is folly and that Naum Chepkuto Boen who is Ninety-two (92) years being the deceased's spouse is only entitled to life interest over any portion of the said Estate. The protestors equally submitted their proposed mode of distribution as attached in the face of the record.

9. The Administrators filed an affidavit on the proposed mode of distribution dated 1st April 2025 sworn by **Jonah Kiptoo Bett**. He deponed that on the 25th day of March 2025 they held a meeting attended by all the beneficiaries save for the protestors and agreed as follows: that the gift of 15 acres received by the Protestor Annah Jepkosgei Samoei from the deceased during his lifetime and where she resides should be considered in the distribution of the estate of the deceased; that the widow, Naum Chepkuto Boen has a life interest over all the properties of her late husband according to section 35 of the Law of Succession Act and according to the Kalenjin customs; that the said widow takes priority over all her children and dependants and shall retain her matrimonial home; that the wishes of the deceased should be respected during distribution of his net estate; that the deceased settled his 5 sons on 30 acres each

being part of the property L.R 766/1 (Uasin Gishu) measuring 253 Acres; that he established his homestead and had developments on the property known as Moiben/Moiben Block 6 (Kabiyet)/10; that all the deceased daughters are married except the last born who stays with our mother. He preferred their mode of distribution as preferred on the face of the record.

10. **Naum Chepkuto Boen** filed an affidavit dated 1st April 2025 in answer to the mode of distribution proposed by the protestors and deponed as follows: that the shares of Kibware Tea Estates does not form part of the Estate of the deceased, the same are registered in the name of Naum Chepkuto Boen; that the motor vehicle KXM 562 does not form part of the estate of the deceased and many other properties listed by the Protestors; that the protestors' proposed mode of distribution is reckless, unreasonable, disrespectful and inconsiderate; that the said mode of distribution places the widow of the deceased in the same category as the children and dismantles what the deceased had done or accomplished prior to his death; that the deceased had settled his 5 sons on 30 acre land each, where they have built their homestead and carried out developments; that the protestors' proposal does not consider the wishes of the deceased, the settlements on the ground by the sons of the deceased or rights or priority of a widow upon the death of the husband; that all the deceased's daughters are married and live outside the Estate of the deceased save for the last born who is agreeable to their mode of distribution; that the mode of distribution presented by the rest of the beneficiaries apart from the protestors is reasonable, considerate and equitable, each beneficiary has been substantially provided for and the wishes of the deceased have been respected; that the deceased had two prime properties Moiben/Moiben Block 6 (Kabiyet)/10 measuring 189 Acres and LR 766/1 (Uasin Gishu) measuring 253 Acres.

11. The 3rd Petitioner herein Isaac Bett filed an application dated 28th April 2025 seeking the orders that this Honourable Court be pleased to arrest the delivery of the ruling on the mode of distribution herein pending hearing of the application interpartes and that this Honourable Court be

pleased to grant the Applicants an opportunity to file their affidavits on the proposed mode of distribution and to be heard on the same. The grounds in support of the application were that the Applicants discovered an anomaly on the part of their counsel previously on record who alleged that they had agreed on the mode of distribution in the submissions dated 4th April 2025. Consequently, this court delivered its ruling dated 1st September 2025 in which it was held as follows:

> *"5. The concept of fairness is not static and responds to the individual circumstances of the case so as to ensure the ends of justice are met. The link between evidence and rights is very clear. The goal of factual accuracy also promotes human rights as one of our values in Article 10 of the Constitution. This being said I exercise discretion to freeze temporarily the determination of the issues on distribution of the estate as proposed by the Respondents and give an opportunity to the Applicants to file a rejoinder to the mode of distribution to facilitate this court to move with speed to deliver its long-awaited final judgement on the matter.*
>
> *6. For those reasons, the application is merited and an enlargement of time of 10 days be and is hereby allowed for the Applicants to read in and read out the proposed model of distribution and file one in concurrence or in objection but abide with the provisions of the law. The final Status Conference on 17.9.2025 for highlighting of any differentia minimum or maximum to the proposed mode of distribution currently on record."*

12. I take cognizant note that when this matter came up for a mention on 17th September 20225 in the presence of both counsels, the mode of distribution dated 1st April 2025 was marked as withdrawn. The parties thereafter filed their proposed mode of distribution of the intestate estate by way of their various affidavits which I shall summarize as below.

Affidavits of the mode of distribution

13. ISAAC BETT KIPNGETICH preferred a Mode of Distribution vide an affidavit dated 11th September 2025 and deponed as follows;

a) That I am one of the administrators of the estate of the deceased.

b) That the averments herein have been made with the advice of my advocates on record which advice I verily to be true.

c) That the proposed mode of distribution herein is made on behalf of the following beneficiaries who have duly signed consent in support of the mode of distribution.

a. Isaac Bett Kipng'etich

b. Peter Bett

c. Flora Jepchirchir

d. Benjamin Kiplagat Bett

e. Naum Chepkuto Boen

d) That the deceased was survived by the following dependants: -

a. Naum Chepkuto Boen Widow

b. Peter Kipkemboi Bett Son

c. Jonah Kiptoo Bett Son

d. Ruth Jepkoech Kosgei Daughter

e. Benjamin Kiplagat Bett Son

f. Isaac Bett Kipngetich Son

g. Anna Jepkosgei Samoei Daughter

h. Truphosa Jelimo Boen Daughter

i. Joseph Kimutai Bett Son

j. Isiah Kipkorir Bett Son (Deceased)

k. Gladys Chepchirchir Boen Daughter

e) That the assets of the deceased are as particularized here under:

a. LR No. 766/1 Uasin Gishu measuring approximately 253 acres

b. Moiben/Moiben Block 6(Kabiyet)/10 measuring approximately 189 acres

f) That the deceased also had shares in the following companies:

a. Kibware PLC

b. Sirgoi Holdings Limited

c. *Kabiyet Farm Limited*
d. *Chipokaa Limited*

f. *That the deceased herein had made gift intervivos to all the beneficiaries in parcel number*
   a. *LR No. 766/1 as particularized hereunder:*

LR No. 766/1

a. *Naum Chepkuto Boen* *47 Acres*
b. *Peter Kipkemboi Bett* *30 Acres*
c. *Jonah Kiptoo Bett* *30 Acres*
d. *Ruth Jepkoech Kosgei* *5 Acres*
e. *Benjamin Kiplagat Bett* *30 Acres*
f. *Isaac Bett Kipng'etich* *30 Acres*
g. *Anna Jepkosgei Samoei* *5 Acres*
h. *Truphosa Jelimo Boen* *5 Acres*
i. *Joseph Kimutai Bett* *30 Acres*
j. *Flora Jepchirchir (in trust for the estate of Isiah Kipkorir Bett) – 30 Acres*
k. *Gladys Chepchirchir Boen* *5 Acres*
l. *AIC Chemuriet Local Church* *2 Acres*
m. *Family cattle dip* *1 Acre*
n. *Family water catchment area* *3 Acres*

g. *That the widow, Naum Chepkuto Boen has agreed that the daughters shall be given additional 5 acres out of her share to be as follows:*
a. *Naum Chepkuto Boen* *27 Acres*
b. *Ruth Jepkoech Kosgei* *10 Acres*
c. *Anna Jepkosgei Samoei* *10 Acres*
d. *Truphosa Jelimo Boen* *10 Acres*
e. *Gladys Jelimo Boen* *10 Acres*

h. *That Moiben/Moiben Block 6 (Kabiyet)/10 measuring approximately 189 Acres. That the deceased had sold 49 Acres of the above*

parcel of land. The deceased had expressed his wishes regarding the distribution of this estate which is as follows:

a. *Naum Chepkuto Boen* *20 Acres*
b. *Peter Kipkemboi Bett* *20 Acres*
c. *Jonah Kiptoo Bett* *20 Acres*
d. *Benjamin Kiplagat Bett* *20 Acres*
e. *Isaac Bett Kipngetich* *20 Acres*
f. *Joseph Kimutai Bett* *20 Acres*
g. *Flora Jepchirchir (in trust for the estate of Isiah Kipkorir Bett) – 20 Acres*

i. *That the beneficiaries herein have agreed that the shares which the deceased owned shares in the following companies be distributed as follows:*

Name of Company	***Beneficiaries***
Kibware PLC	*Naum Chepkuto Boen, Ruth Jepkoech Kosgei, Anna Jepkosgei Samoei, Truphosa Jelimo Boen & Gladys Chepchirchir Boen*
Sirgoi Holdings Limited	*Naum Chepkuto Boen, Ruth Jepkoech Kosgei, Anna Jepkosgei Samoei, Truphosa Jelimo Boen & Gladys Chepchirchir Boen*
Kabiyet Farm Limited	*Peter Kipkemboi Bett, Jonah Kiptoo Bett, Benjamin Kiplagat Bett, Isaac Bett Kipngetich, Joseph Kimutai Bett & Florah Jepchirchir*
Chipokaa Limited	*Peter Kipkemboi Bett, Jonah Kiptoo Bett, Benjamin Kiplagat Bett, Isaac Bett Kipngetich, Joseph Kimutai Bett & Florah Jepchirchir*

j. *That the deceased had already made gifts to the beneficiaries and we humbly pray that the court considers the wishes of the deceased in the final distribution.*
k. *That at the time the deceased made the gifts all the daughters were happily married and he thus gave them a share according to their needs.*
l. *That the deceased had also bought 15 acres for Anna Jepkosgei Samoei and her protest is therefore unmerited since she will*

receive a benefit more than any beneficiary in the estate of the deceased.

m. *That the proposed mode of distribution herein is in line with the wishes of the deceased and each beneficiary receives a substantial which is fair, equitable and in the interest of justice.*

n. *That the beneficiaries have signed consent to confirmation of grant.*

o. *That I will diligently distribute the estate and account to court.*

14. The mode of distribution above is opposed vide an annexed affidavit sworn by ANNAH JEPKOSGEI SAMOEI and TRUPHOSA CHELIMO MUTAI who deponed as follows: -

1. *That we are beneficiaries to the estate of the deceased.*
2. *That the contents of the Affidavit on the Mode of Distribution sworn 11/9/2025 have been read and explained to me by my advocate on record and having understood the same, we wish to respond thereto in opposition as follows;*
3. *That the said Affidavit on the Mode of Distribution sworn 11/9/2025 is bad in law, incompetent, mischievous, frivolous, misleading, full of falsehood, an afterthought, an abuse of the court's process and ought to be struck out in the first instance on the following grounds;*
    a. *That the proposed mode of distribution is discriminative, inequitable and offends the law.*
    b. *That the proposed mode of distribution completely excludes daughters from Moiben/Moiben Block 6 (Kabiyet)/10 while giving portions to male beneficiaries.*
    c. *That no point was our consent and/or signature sought for the Consent on the proposed Mode of distribution despite us being beneficiaries.*
    d. *That the two (2) Administrators herein, Naum Chepkuto Boen and Jonah Kiptoo Bett did not sign the purported consent for Confirmation of the proposed mode of distribution by the Applicants.*

e. *That the proposed Mode of distribution is unreasonable, unacceptable and untenable that is the reason we oppose the same.*
f. *That the Applicants mislead this Honourable Court that all the beneficiaries have actual possession of portions of Land Title No. LR No. 766/1 by producing a sketch and/or drawing purported to be a Survey plan of the occupation on the ground. However, Jonah Kiptoo Bett, Annah Jepkosgei Samoei, Truphosa Chelimo Mutai and Ruth Jepkoech Kosgei did not reside and or have any possession in anyway whatsoever of the said land Title No. L.R No. 766/1.*
g. *That the proposed mode of Distribution is shrewd, non-inclusive and sorely aimed at depriving some beneficiaries particularly the deceased's daughters of their fair and just share of inheritance from the Estate.*
h. *That the proposed mode of distribution does not detail creditors and donees in whose favour land was donated.*
i. *That the proposed mode of distribution is unreasonable, un acceptable and untenable and that is the reason we oppose the same.*

4. *That it is our firm position that all of the dependents is entitled to equal distribution to both Land Title No. Moiben/Moiben Block 6 and Land Title No. 766/1.*
5. *That it is our firm position that all of the dependents is entitled to equal distribution of the deceased's estate among all the legitimate beneficiaries as per protestor's Affidavit on Mode of Distribution sworn 25/3/2025 and protestors' written submission dated 4/4/2025 on record.*
6. *That it is our position that there is no differentia minimum or maximum to our proposed mode of distribution.*
7. *That our Advocates on record inform us information we verily believe to be true that in the spirit of constitutionality and in*

promoting gender equality, all the dependents, regardless of their gender have equal rights to inherit from Estate of the Deceased.

15. Naum Chepkuto Boen also filed her proposed Mode of Distribution vide an affidavit dated 29th September 2025 sworn by her. She deponed as follows;

1. *That I am one of the Administrator of the estate of Gideon Boen Kimarta Alias Gedeon Boen Kimarta (Deceased) by virtue of being his spouse and having granted Letters of Administration by this Honourable Court.*
2. *That the deceased died intestate without leaving a valid will and/or had not distributed any part of his Estate to any of the Beneficiaries during his lifetime.*
3. *That the deceased was survived by the following beneficiaries:*
    a. *Naum Chepkuto Boen Widow*
    b. *Peter Kipkemboi Bett Son*
    c. *Jonah Kiptoo Bett Son*
    d. *Ruth Jepkoech Kosgei Daughter*
    e. *Benjamin Kiplagat Bett Son*
    f. *Isaac Bett Kipngetich Son*
    g. *Anna Jepkosgei Samoei Daughter*
    h. *Truphosa Jelimo Boen Daughter*
    i. *Joseph Kimutai Bett Son*
    j. *Isiah Kipkorir Bett Son (Deceased)*
    k. *Gladys Chepchirchir Boen Daughter*
4. *That in the interest of family unity, peace and reconciliation, I have personally visited all my children and engaged in extensive consultations with all the beneficiaries regarding the distribution of the estate of the deceased.*
5. *That I hereby withdraw any previous positions and/or proposals that may have suggested unequal distribution of the estate and I now fully support equal distribution among all beneficiaries.*

6. *That I am informed by my Advocates on record information which I verily believe to be true that my previous affidavit of Mode of Distribution on record has been withdrawn by my previous Advocates on record.*
7. *That further I am informed by my Advocates on record information which I verily believe to be true as the surviving spouse, I shall hold life interest over the said estate. From the aforementioned, I hereby accept the following properties of the Estate to be distributed to me which I shall hold a life interest over the said properties: -*
   a) *23 Acres from Land Title No. L.R No. 766/1 in (Uasin Gishu) Measuring approximate 253 Acres.*
   b) *12.5 Acres from Land Title No. Moiben/Moiben Block 6(Kabiyet)/10 measuring approximate 189.3 Acres.*
   c) *2 centre plots at Kaigat Trading Centre at Mosop Sub County, Nandi County.*
   d) *Toyota pick-up KXM 562*
   e) *Tractor Massey Ferguson KXX 968*
   f) *Nardi 3 Disc plough*
   g) *A vans and plate Trailor*
8. *That it is my position that all of the dependents are entitled to equal distribution to both land title No. Moiben/Moiben Block 6 and Land Title No. L.R No. 766/1.*
9. *That it is in the spirit of fair and just distributions of the Estate of the Deceased, I propose the following mode of distribution of the estate and request this Honourable Court to adopt the same;*

ASSET (S)	*BENEFICIARIES*	*SHARE OF THE BENEFICIARY*	*INTEREST*
Land Title No. L.R No. 766/1 (Uasin Gishu) Measuring Approximate 253 Acres	*Naum Chepkuto Boen*	*23 Acres*	*Life Interest*
	Jonah Kiptoo Boen	*22.6 Acres*	*Absolute*
	Isaac Bett Kipngetich	*22.6 Acres*	*Absolute*
	Joseph Kimutai Bett	*22.6 Acres*	*Absolute*

	Truphosa Jelimo Boen	*22.6 Acres*	*Absolute*
	Benjamin Kiplagat Bett	*22.6 Acres*	*Absolute*
	Gladys Chepchirchir Boen	*22.6 Acres*	*Absolute*
	Annah Jepkosgei Samoei	*22.6 Acres*	*Absolute*
	Peter Kipkemboi Bett	*22.6 Acres*	*Absolute*
	Ruth Jepkoech Kosgei	*22.6 Acres*	*Absolute*
	Florah Jepchirchir *Registered Trustees of AIC Chemuyet (Donee)*	*22.6 Acres* *2 Acres*	*Absolute* *Absolute*
	Common Utility Land containing a Cattle Dip in Land Title No. L.R No. 766/1 (Uasin Gishu) to be Registered in the names of the Administrators in Trust of all Beneficiaries namely Naum Chepkuto Boen, Jonah Kiptoo Boen, Isaac Bett Kipngetich, Joseph Kimutai Bett, Truphosa Jelimo Boen, Benjamin Kiplagat Bett, Gladys Chepchirchir Boen, Anna Jepkosgei Samoei, Peter Kipkemboi Bett, Ruth Jepkoech Kosgei & Florah Jepchirchir *Common Utility Land containing a Dam in Land Title No. L.R No. 766/1 (Uasin Gishu) to be registered in the name of the Administrators in Trust of all the Beneficiaries namely Naum Chepkuto Boen, Jonah*	*1 Acre* *1 Acre*	

	Kiptoo Boen, Isaac Bett Kipngetich, Joseph Kimutai Bett, Truphosa Jelimo Boen, Benjamin Kiplagat Bett, Gladys Chepchirchir Boen, Anna Jepkosgei Samoei, Peter Kipkemboi Bett, Ruth Jepkoech Kosgei & Florah Jepchirchir		
Land Title No. Moiben/Moiben Block 6 (Kabiyet)/10 measuring approximately 189.3 Acres	*Naum Chepkuto Boen*	*12.5 Acres*	*Life Interest*
	Jonah Kiptoo Boen	*12.48 Acres*	*Absolute*
	Isaac Bett Kipngetich	*12.48 Acres*	*Absolute*
	Joseph Kimutai Bett	*12.48 Acres*	*Absolute*
	Truphosa Jelimo Boen	*12.48 Acres*	*Absolute*
	Benjamin Kiplagat Bett	*12.48 Acres*	*Absolute*
	Gladys Chepchirchir Boen	*12.48 Acres*	*Absolute*
	Annah Jepkosgei Samoei	*12.48 Acres*	*Absolute*
	Peter Kipkemboi Bett	*12.48 Acres*	*Absolute*
	Ruth Jepkoech Kosgei	*12.48 Acres*	*Absolute*
	Florah Jepchirchir	*12.48 Acres*	*Absolute*
	William Robert Kapkiyai (Purchaser)	*37 Acres*	*Absolute*
	Benjamin Kipya (Purchaser)	*15 Acres*	*Absolute*
Shares in Kabiyet Holdings, Sergoi Holdings, G-bogaa Company Limited, Kibware Tea Estate	*The said shares to be liquidated by the Administrators and the proceeds to be divided equally amongst all the Beneficiaries herein namely Naum Chepkuto Boen, Jonah Kiptoo Boen, Isaac Bett Kipngetich, Joseph Kimutai Bett, Truphosa Jelimo Boen, Benjamin Kiplagat Bett, Gladys Chepchirchir Boen, Anna*	*In Equal shares*	

	Jepkosgei Samoei, Peter Kipkemboi Bett, Ruth Jepkoech Kosgei & Florah Jepchirchir		
2 Centre Plots at Kaigat Trading Centre at Mosop Sub County, Nandi County, Toyota Pick-up KXM 562, Tractor Massey Ferguson KXX 968, Nardi 3 Disc Plough & A vans and Plate Trailor	*Naum Chepkuto Boen*		*Life Interest*

10. That my Advocates on record inform me, information which I verily believe to be true that it is in the spirit of constitutionality and in promoting Gender Equality, all the dependents regardless of their gender, have equal rights to inherit from the Estate of the Deceased.

Analysis and Determination

16. This succession cause at hand presents a long dispute over the distribution of the intestate estate of the deceased. To me, this is a highly contested matter because looking at the record the parties have not agreed on the mode of distribution taking into context the multiple pleadings they have filed before this Honourable court. It is not in dispute that the deceased died intestate and left the following surviving him: -

a. Naum Chepkuto Boen Widow
b. Peter Kipkemboi Bett Son
c. Jonah Kiptoo Bett Son
d. Ruth Jepkoech Kosgei Daughter
e. Benjamin Kiplagat Bett Son

f. Isaac Bett Kipngetich Son
g. Anna Jepkosgei Samoei Daughter
h. Truphosa Jelimo Boen Daughter
i. Joseph Kimutai Bett Son
j. Isiah Kipkorir Bett Son (Deceased)
k. Gladys Chepchirchir Boen Daughter

17. There was a dispute over the assets that were left by the deceased because in the different modes of distribution preferred by the beneficiaries some of the assets were left out and others were included. A look at the Affidavit in support of the Petition for the Grant of Letters Intestate provided the following assets to include the estate of the deceased: -

a. Moiben/Moiben Block 6 (Kabiyet) 10 Measuring 76.65 Ha
b. Land Reference Number 766/1
c. Toyota Pick Up KXM 562
d. Tractor Massex Ferguson KXX 968
e. Shares in Kabiyet Holdings.
f. Shares in Sergoi Holdings
g. Shares in G-bo gaa Company Limited
h. Shares in Kibware Tea Estate.

18. I have read and considered the pleadings on record and also the affidavits of the proposed modes of distribution. There are two (2) central issues for determination namely: -

a. Whether the deceased herein had made gift intervivos to all the beneficiaries in parcel number LR No. 766/1?
b. What is the proposed mode of distribution preferred by the beneficiaries which complies with the law?

Whether the deceased herein had made gift intervivos to all the beneficiaries in parcel number LR No. 766/1?

19. A person may not wish to leave all his property by will. There is a myth in the African set up and perspective that when one writes a will they are

inviting death. There are various ways in which a person may pass his property without leaving it by will. The transfer of property whilst the donor is still alive takes a form of gifts referred to ***gift inter vivos*** (between living persons). Gifts intervivos as contemplated in the Law of Succession are such that the owner of the property or asset donates it to another without expectation of death. In any event the person who makes such a gift must have the capacity and competency to gift the property and the gift must be perfected. In the case of intervivos, the gift must go into immediate and absolute effect. It is also well established that where the gift has been made, delivery to the beneficiary is necessary to consummate the gifts. Further, it is fundamental to understand the intention of the parties and their acts done sufficient to establish the passing of the gift to the done. The legal position for this is provided for under section 42 of the Law of Succession Act which provides as follows: -

42. Previous benefits to be brought into account

Where-

a. *an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or*

b. *property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.*

20. The implication section 42 of the Law of Succession Act is that there are some conditions which must be met in order for a gift inter vivos to be valid. These conditions include: -

a) The individual making the transfer actually intends to make a gift; it must be demonstrated that the donor's objective was to make a gift when he or she transferred the property.

b) The second condition for a gift inter vivos to be complete is that the donee accepts the gift made to him or her; the donee must agree to the transfer of property that the donor made in his or her favor.

c) The other condition for a gift inter vivos to be complete is delivery of the property that is the subject-matter of the transfer by the donor to the donee.

d) Also for a gift inter vivos to be complete, it is also a requirement that the donor has to divest him or herself of the property; he or she has to place it in the possession of the donee.

21. Adherence to the rule based-model on transfer of immovable property involves an inquiry on the Law of gifts inter vivos or causa mortis featuring in **Odunga's Digest on Civil Case Law and Procedure Vol (III) Page 2417 at paragraph 5484 (d) e – 1** thus:

"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 aid of 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, on the otherhand, the done has under his control everything necessary to constitute his title completely without any further assistance from the donor, the done need no assistance from 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 done has within his control all those things necessary to enable him, complete his title. 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 though the donee has"

22. It follows therefore that a gift in form of a parcel of land ought to be effected by way of a written memo or a transfer or declaration of trust in writing showing that the land was gifted to the donee. If a gift rests purely in promise, whether written or oral, or in unfulfilled intention, it is incomplete and imperfect, and the court will not compel the intending donor, or those claiming under him, to complete and perfect it, except in circumstances where the donor's subsequent conduct gives the donee a right to enforce the promise.

23. In many instances the donor transfers possession to the donees without transferring ownership of property. The procedures of transfer and registration are not completed during the lifetime of the deceased. However, the beneficiaries have exercised possession and control over the property. This has presented a conundrum in the legal world for a long time. There is constraint which exist on the exercise of discretionary power by court as is the norm which fashions equity: ***"See Rose, Re {1952} Pelington & Another v Waine & Ors {2002} ALL ER. In Lubberts Estate Re {2014} ABCA 216 the Court emphasized that*** *"An inter vivos gift exists if the donor, while alive, intends to transfer unconditionally legal title to property and either transfers possession of the property to the donee or some other document evidencing an intention to make a gift and the done accepts the gift."* In **High Court Succession Cause No. 15 of 2015 In the Estate of the Late Gichunge M'itwerandu alias Githungu M'Nthiiri** the court tried to give a guidance with regards to this concept wherein it held as follows;

"A person can deal with his property as he wills during his life time. Whoever feels aggrieved on how his/her parent had dealt with his property should at the earliest opportunity question such a person during his/her lifetime. He/ She cannot wait until such person dies to raise issues of discrimination or unfairness. Such issues can only

validly be raised in cases of a will since wills are kept secret until the testator passes on. However, request that are given as gifts inter vivos openly so given and in my view whoever is dissatisfied is at liberty to question the same before the demise of the giftor."

24. The onus is always on the applicants to prove on a balance of probabilities that the gift of the subject parcel of land was intended by the deceased to be transferred to them for their gain and not anyone else. Section 42 of the Law of Succession Act provides that during the distribution of the estate, previous benefits or gifts *inter vivos* be taken into consideration when determining the share of each child. An understanding of this provision is that whatever property belonged to the deceased and which had not yet been transferred to the individual children during the deceased's lifetime had to be subject to the provisions of this Act and the court would then take cognizance of the gifts given during the deceased's lifetime. If indeed the deceased had already given the other beneficiaries their share, then that would be taken into account at the time of distribution. This is what is commonly referred as bringing property to the hotchpot.

25. It is for the purpose of achieving equity or fairness that the law requires that during intestate distribution all the assets be brought to the table. It is called bringing property to the hotchpotch or hotchpot. There must be a full disclosure of the deceased's estate of his free property, encumbered property and property distributed inter vivos. The fact of inter vivos gifting does not make the beneficiaries of such gifts outsiders to the distribution of the estate. They must be listed in the petition as survivors of the deceased and they must also be listed as survivors in the confirmation application they must execute the consents in Form 37 and must play their role in the confirmation hearing in terms of section 71(2) of the Law of Succession Act and Rules 40 and 41 of the Probate and Administration Rules. In the case of **Samuel Maina Mwangi & 2 Others Vs Muthoni Kagiri [2013] eKLR** the Court of Appeal held

in a case where the deceased had given the appellants (his sons) gifts inter vivos byway of first registration: -

"We are of the considered view that the said registrations in favour of the 1st and 2nd appellants were tantamount to gifts given by the deceased during his lifetime……. Therefore, the trial court was correct in holding that the parcels of land that were given to the appellant would be taken into account in distribution of the deceased's estate."

26. The purpose of bringing all the assets into the hotchpotch is not to snatch property from those who might have benefited from *inter vivos* gifts, but rather to ensure that there is justice and fairness in distribution, by having account taken of all what each of the children or survivors had received from the deceased during his lifetime, so as to determine whether such beneficiaries of lifetime gifts should benefit from the net intestate estate or not, and if they should, how much of the net intestate estate is to be given to them.

27. From the case at bar, I take note that Isaac Bett Kipngetich vide his affidavit on the preferred mode of distribution deponed that: -

That the deceased herein had made gift intervivos to all the beneficiaries in parcel number LR No. 766/1 as particularized hereunder:

LR No. 766/1

a. Naum Chepkuto Boen	*47 Acres*
b. Peter Kipkemboi Bett	*30 Acres*
c. Jonah Kiptoo Bett	*30 Acres*
d. Ruth Jepkoech Kosgei	*5 Acres*
e. Benjamin Kiplagat Bett	*30 Acres*
f. Isaac Bett Kipng'etich	*30 Acres*
g. Anna Jepkosgei Samoei	*5 Acres*
h. Truphosa Jelimo Boen	*5 Acres*
i. Joseph Kimutai Bett	*30 Acres*

j. *Flora Jepchirchir (in trust for the estate of Isiah Kipkorir Bett) – 30 Acres*
k. *Gladys Chepchirchir Boen 5 Acres*
l. *AIC Chemuriet Local Church 2 Acres*
m. *Family cattle dip 1 Acre*
n. *Family water catchment area 3 Acres*

p. *That the widow, Naum Chepkuto Boen has agreed that the daughters shall be given additional 5 acres out of her share to be as follows:*
a. *Naum Chepkuto Boen 27 Acres*
b. *Ruth Jepkoech Kosgei 10 Acres*
c. *Anna Jepkosgei Samoei 10 Acres*
d. *Truphosa Jelimo Boen 10 Acres*
e. *Gladys Jelimo Boen 10 Acres*
f. *That Moiben/Moiben Block 6 (Kabiyet)/10 measuring approximately 189 Acres. That the deceased had sold 49 Acres of the above parcel of land. The deceased had expressed his wishes regarding the distribution of this estate which is as follows:*
a. *Naum Chepkuto Boen 20 Acres*
b. *Peter Kipkemboi Bett 20 Acres*
c. *Jonah Kiptoo Bett 20 Acres*
d. *Benjamin Kiplagat Bett 20 Acres*
e. *Isaac Bett Kipngetich 20 Acres*
f. *Joseph Kimutai Bett 20 Acres*
g. *Flora Jepchirchir (in trust for the estate of Isiah Kipkorir Bett) – 20 Acres*

28. However, this was disputed by some beneficiaries namely Annah Jepkosgei Samoei and Truphosa Chelimo Mutai vide their affidavit of protest dated 24th September 2025 in which it was deponed: -

That the Applicants mislead this Honourable Court that all the beneficiaries have actual possession of portions of Land Title No. LR

No. 766/1 by producing a sketch and/or drawing purported to be a Survey plan of the occupation on the ground. However, Jonah Kiptoo Bett, Annah Jepkosgei Samoei, Truphosa Chelimo Mutai and Ruth Jepkoech Kosgei did not reside and or have any possession in anyway whatsoever of the said land Title No. L.R No. 766/1.

29. A party who asserts gift inter vivos must prove it and for land this normally requires documentary proof such as transfer instruments, registered dispositions, receipts, title searches, mutation forms or strong contemporaneous evidence showing donative intent and delivery/acceptance. On the present record, Isaac Bett Kipngetich's averments that the deceased herein had made gift inter vivos to all the beneficiaries in parcel number LR No. 766/1 as particularized thereunder is not supported by adequate documentary proof. To be precise, no transfer instruments, title extracts or mutation records have been produced to show that the contested parcels left the deceased's estate during his lifetime. In those circumstances the Court must treat the parcels as still forming part of the estate pending proper proof.

30. It is notable that the affidavit of mode of distribution filed by Isaac Bett Kipngetich annexed a sketch map or survey plan purporting to show the actual ground occupation of L.R. No. 766/1 among the beneficiaries. However, this evidence was met with strong objection from some beneficiaries like Annah Jepkosgei Samoei and Truphosa Chelimo Mutai who deponed that Jonah Kiptoo Bett, Annah Jepkosgei Samoei, Truphosa Chelimo Mutai, and Ruth Jepkoech Kosgei neither reside on nor have any possession or occupation of the said parcel of land. They contended that the map relied upon by Isaac does not reflect the true position on the ground.

31. In light of these disputes, the purported sketch map cannot be relied upon as conclusive proof of gifts inter vivos. For a gift inter vivos to be valid, the donor must have intended to transfer ownership during their lifetime and must have completed the act of transfer, either by delivery, registration, or possession. Mere occupation by some family members,

without evidence of the deceased's intention or completed transfer does not meet this threshold. The absence of possession by some beneficiaries and the contested nature of the alleged ground allocations demonstrate that the deceased did not perfect or complete any gift in his lifetime. Consequently, the alleged map or survey cannot, on its own qualify as evidence of gifts inter vivos within the meaning of section 42 of the Law of Succession law and the estate remains subject to equitable redistribution among all lawful beneficiaries within the confines of section 35 of the Law of Succession Act.

What is the proposed mode of distribution preferred by the beneficiaries which complies with the law?

32. It is not in dispute that the deceased dies intestate and left one surviving spouse and children. The applicable law in this instance is section 35 of the Law of Succession Act which provides as follows: -

> ***35. Where intestate has left one surviving spouse and child or children***
>
> *(1)Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to-*
> *(a)the personal and household effects of the deceased absolutely; and*
> *(b)a life interest in the whole residue of the net intestate estate:*
> *Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.*
> *(2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.*

(3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.

(4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so what order, shall have regard to-

(a)the nature and amount of the deceased's property;

(b)any past, present or future capital or income from any source of the applicant and of the surviving spouse;

(c)the existing and future means and needs of the applicant and the surviving spouse;

(d)whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;

(e)the conduct of the applicant in relation to the deceased and to the surviving spouse;

(f)the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and

(g)the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.

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

33. From the reading of the above section, the deceased having been survived by a widow and children the net intestate estate devolves upon the widow subject of course to the provison to section 35(1)(b) that the widow's interest determines upon her re-marriage to any person. But while she enjoys life interest, the deceased's widow retains the power of appointment in exercise of which she may give any part of the estate or even distribute the entire estate to the surviving child or children. **In re Estate of Justus Nguyo Waititu alias Jastus Nguyo Waititu (Deceased) [2019] eKLR,** the Court held as follows:

> *"If the widow has the power to distribute the estate in her lifetime she may as well waive her right to the estate and instead share it out in the confirmation proceedings. My understanding of this provision of the law is that nothing stops her from taking this course as long as she is in agreement with her children. At the end of the day the distribution of the estate during the confirmation proceedings invariably achieves the same purpose that the power of appointment is meant to achieve.*
>
> *Where there is a disagreement, as has turned out to be the case here, then the only available alternative open to this court is to revert to the strict application of section 35(1)(b) of the Act and transfer the entire net intestate estate to the deceased's widow subject, of course, to a life interest. Upon the devolution, it will be up to the deceased's widow to exercise the power with which she is clothed and distribute all or any part of the net intestate estate, by way of gift, amongst her children or their heirs.*
>
> *The door will always remain open for the deceased's children or their heirs as the case may be to exercise their right under subsection (3) and apply for appointment of their share if the deceased either unreasonably exercises her power or if she withholds it, again unreasonably.*

34. In the instant case, I take note that the surviving spouse herein has preferred her mode of distribution. Specifically, she deponed as follows

a. *That in the interest of family unity, peace and reconciliation, I have personally visited all my children and engaged in extensive consultations with all the beneficiaries regarding the distribution of the estate of the deceased.*
b. *That I hereby withdraw any previous positions and/or proposals that may have suggested unequal distribution of the estate and I now fully support equal distribution among all beneficiaries.*
c. *That further I am informed by my Advocates on record information which I verily believe to be true as the surviving spouse, I shall hold life interest over the said estate. From the aforementioned, I hereby accept the following properties of the Estate to be distributed to me which I shall hold a life interest over the said properties: -*
    a) *23 Acres from Land Title No. L.R No. 766/1 in (Uasin Gishu) Measuring approximate 253 Acres.*
    b) *12.5 Acres from Land Title No. Moiben/Moiben Block 6(Kabiyet)/10 measuring approximate 189.3 Acres.*
    c) *2 centre plots at Kaigat Trading Centre at Mosop Sub County, Nandi County.*
    d) *Toyota pick-up KXM 562*
    e) *Tractor Massey Ferguson KXX 968*
    f) *Nardi 3 Disc plough*
    g) *A vans and plate Trailor*
d. *That it is my position that all of the dependents are entitled to equal distribution to both land title No. Moiben/Moiben Block 6 and Land Title No. L.R No. 766/1.*

35. From the mode of distribution proposed by Naum Chepkuto Boen, it is evident that the principle of equality among beneficiaries was the guiding consideration in apportioning the estate of the deceased. Naum, as the surviving spouse and one of the administrators expressly withdrew all previous proposals suggesting unequal allocation and affirmed that all the dependants both male and female are entitled to equal shares of the deceased's estate. Her proposed schedule distributes the two main

parcels of land, L.R. No. 766/1 (Uasin Gishu) and Moiben/Moiben Block 6 (Kabiyet)/10, almost equally among all the ten surviving children of the deceased, regardless of gender, with each receiving approximately 22.6 acres and 12.48 acres respectively. In addition, Naum retained a life interest over a limited portion of each property, consistent with Section 35 of the Law of Succession Act, which grants a surviving spouse a life interest in the estate where the deceased is survived by children. The constitutional court of South Africa in **Fraser Vs Children's Court, Pretoria North and Others 1997 (2) SA 261** laid down the importance of the right to equality as reminisced herein in the following extract;

" There can be no doubt that the guarantee of equality lies at the very heart of the constitution. It permeates and defines the very ethos upon which the Constitution is premised. In the very first paragraph of the preamble it is declared that there is a need to create a new order in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms"

36. It is my considered view that the model of distribution by Naum Chepkuto Boen, the surviving spouse aligns with the constitutional and statutory principles of non-discrimination and equal treatment of heirs. Article 27 of the Constitution of Kenya guarantees equality and freedom from discrimination on any ground, including sex or marital status, thereby affirming that daughters and sons are equally entitled to inherit from their parents' estate. The same spirit is echoed in judicial precedents such as **Rono Vs Rono & Another [2005] eKLR,** where the Court of Appeal emphasized that fairness in succession must be interpreted in light of the Constitution's equality clause.

37. Before I pen off, I also take cognizance that Isaac Bett Kipng'etich filed his preferred mode of distribution. His proposal relies on consents said to have been given yet some beneficiaries like Annah Jepkosgei Samoei & Truphosa Chelimo Mutai deny their consent. The Court cannot confirm a distribution that materially reduces some beneficiaries' shares where

those beneficiaries deny consent. The Court must be mindful of constitutional and statutory principles of non-discrimination and equality. Any proposed mode that appears to produce unequal deprivation of women's or other beneficiaries' rights will be closely scrutinized and will not be confirmed where consent is incomplete or disputed. Moreover, the proposed mode of distribution by Isaac Bett Kipng'etich completely excludes daughters from Moiben/Moiben Block 6 (Kabiyet)/10 while giving portions to male beneficiaries.

38. The mode of distribution preferred by David Malakwen Tuikong is discriminatory in nature in that it has left all the women out of the distribution matrix Moiben/Moiben Block 6 (Kabiyet)/10 while there is no evidence on record that they had rescinded their right to inheritance. With the above, I would like to refer to Article 27 of the Constitution of Kenya 2010 which provides as follows:

> **Equality and freedom from discrimination.**
> *27. (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.*
> *(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.*
> *(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.*
> *(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.*
> *(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).*

39. Article 2(5 & 6) of the Constitution of Kenya 2010 provides as follows: (*5) The general rules of international law shall form part of the law of Kenya; (6) Any treaty or convention ratified by Kenya shall form part of*

the law of Kenya under this Constitution. **The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)** provides clear guidance on this matter. Article 21 on the Right to Inheritance states unequivocally:

> *“1. A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.*
>
> *2. Women and men shall have the right to inherit, in equitable shares, their parents' properties.”*

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

41. The Constitutional framework establishes a clear position regarding discriminatory practices in Kenya. The Constitution, as the supreme law of the land, explicitly prohibits any form of discrimination. This principle has deep historical roots, dating back to the 1963 independence Constitution, and was reinforced in Article 27 of the 2010 Constitution, which specifically addresses discrimination based on gender and marital status.

42. In our jurisdiction, in **Mary Rono Vs Jane Rono & another [2005] eKLR**, the Court of Appeal observed as follows:

"As a member of the international community, Kenya subscribes to international customary laws and has ratified various international covenants and treaties. In particular, it subscribes to the international Bill of Rights, which is the Universal Declaration of Human Rights (1948) and two international human rights covenants: The Covenant on economic, social and cultural rights and the Covenant on civil and political Rights (both adopted by the UN General Assembly in 1966). In 1984 it also ratified, without reservations, the Convention on the Elimination of All Forms of Discrimination Against Women, in short, "CEDAW". Article 1 thereof defines discrimination against women as: -

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

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

43. Given this constitutional foundation and provisions of the international instruments which Kenya is a party, the mode of distribution advanced by Isaac Bett Kipng'etich denies inheritance rights to women thus, it is deemed discriminatory as it directly contravenes these fundamental constitutional protections as discussed above. I also take note that section 38 of the Law of Succession Act provides as follows; *"Where an intestate has left a surviving child or children but no spouse, the net intestate*

estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children." In the case of **Stephen Gitonga M'Murithi Vs Faith Ngira Murithi [2015] eKLR**, the Court of Appeal stated as follows;

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

44. When it comes to land rights for women, more needs to be done by escalating measures to ensure their social legitimization, implementation and reinforcement. There is need of a paradigm shift of the male gender in accepting inheritance claim resolutions in favour of women. Thus, when I distinguish the two (2) modes of distribution preferred herein by the beneficiaries, it is my considered view that Naum Chepkuto Boen, the surviving spouse's proposal on the mode of distribution reflects a progressive and lawful approach that recognizes both customary fairness and constitutional equality ensuring that all beneficiaries i.e. sons and daughters alike benefit from the estate in equal measure.

45. In view of the foregoing, the following orders shall abide: -

a) *That Naum Chepkuto Boen, the surviving spouse, shall hold a life interest in the portions specifically allocated to her under Section 35 of the Law of Succession Act.*

b) *That the Administrators of the estate shall ensure that titles are issued in accordance with the confirmed mode of distribution within ninety (90) days from the date hereof.*

c) *That the common utility lands including the cattle dip and water catchment areas shall remain jointly registered in the names of the administrators in trust for all beneficiaries.*

d) *That the shares in Kabiyet Holdings, Sergoi Holdings, G-Bogaa Company Limited, and Kibware Tea Estate shall be liquidated by the administrators, and the proceeds divided equally among all the beneficiaries.*

e) *That the Administrators are hereby directed to file a final probate account within sixty (60) days of completion of the distribution, detailing how the estate has been apportioned in accordance with this ruling.*

f) *That the matter shall be mentioned for a Status Conference on 16th January 2026 to confirm compliance with the orders above.*

g) *This being a family matter, there shall be no order as to the costs.*

ASSET (S)	BENEFICIARIES	SHARE OF THE BENEFICIARY	INTEREST
Land Title No. L.R No. 766/1 (Uasin Gishu) Measuring Approximate 253 Acres	Naum Chepkuto Boen	23 Acres	Life Interest
	Jonah Kiptoo Boen	22.6 Acres	Absolute
	Isaac Bett Kipngetich	22.6 Acres	Absolute
	Joseph Kimutai Bett	22.6 Acres	Absolute
	Truphosa Jelimo Boen	22.6 Acres	Absolute
	Benjamin Kiplagat Bett	22.6 Acres	Absolute
	Gladys Chepchirchir Boen	22.6 Acres	Absolute
	Annah Jepkosgei Samoei	22.6 Acres	Absolute
	Peter Kipkemboi Bett	22.6 Acres	Absolute
	Ruth Jepkoech Kosgei	22.6 Acres	Absolute
	Florah Jepchirchir Registered Trustees of AIC Chemuyet (Donee)	22.6 Acres 2 Acres	Absolute Absolute
	Common Utility Land containing a Cattle Dip in Land Title No. L.R No. 766/1 (Uasin Gishu) to be Registered in the names of the Administrators in	1 Acre	

	Trust of all Beneficiaries namely Naum Chepkuto Boen, Jonah Kiptoo Boen, Isaac Bett Kipngetich, Joseph Kimutai Bett, Truphosa Jelimo Boen, Benjamin Kiplagat Bett, Gladys Chepchirchir Boen, Anna Jepkosgei Samoei, Peter Kipkemboi Bett, Ruth Jepkoech Kosgei & Florah Jepchirchir		
	Common Utility Land containing a Dam in Land Title No. L.R No. 766/1 (Uasin Gishu) to be registered in the name of the Administrators in Trust of all the Beneficiaries namely Naum Chepkuto Boen, Jonah Kiptoo Boen, Isaac Bett Kipngetich, Joseph Kimutai Bett, Truphosa Jelimo Boen, Benjamin Kiplagat Bett, Gladys Chepchirchir Boen, Anna Jepkosgei Samoei, Peter Kipkemboi Bett, Ruth Jepkoech Kosgei & Florah Jepchirchir	1 Acre	
Land Title No. Moiben/Moiben Block 6 (Kabiyet)/10 measuring approximately 189.3 Acres	Naum Chepkuto Boen	12.5 Acres	Life Interest
	Jonah Kiptoo Boen	12.48 Acres	Absolute
	Isaac Bett Kipngetich	12.48 Acres	Absolute
	Joseph Kimutai Bett	12.48 Acres	Absolute
	Truphosa Jelimo Boen	12.48 Acres	Absolute
	Benjamin Kiplagat Bett	12.48 Acres	Absolute
	Gladys Chepchirchir Boen	12.48 Acres	Absolute
	Annah Jepkosgei Samoei	12.48 Acres	Absolute
	Peter Kipkemboi Bett	12.48 Acres	Absolute

	Ruth Jepkoech Kosgei	12.48 Acres	Absolute
	Florah Jepchirchir	12.48 Acres	Absolute
	William Robert Kapkiyai (Purchaser)	37 Acres	Absolute
	Benjamin Kipya (Purchaser)	15 Acres	Absolute
Shares in Kabiyet Holdings, Sergoi Holdings, G-bogaa Company Limited, Kibware Tea Estate	The said shares to be liquidated by the Administrators and the proceeds to be divided equally amongst all the Beneficiaries herein namely Naum Chepkuto Boen, Jonah Kiptoo Boen, Isaac Bett Kipngetich, Joseph Kimutai Bett, Truphosa Jelimo Boen, Benjamin Kiplagat Bett, Gladys Chepchirchir Boen, Anna Jepkosgei Samoei, Peter Kipkemboi Bett, Ruth Jepkoech Kosgei & Florah Jepchirchir	In Equal shares	
2 Centre Plots at Kaigat Trading Centre at Mosop Sub County, Nandi County, Toyota Pick-up KXM 562, Tractor Massey Ferguson KXX 968, Nardi 3 Disc Plough & A vans and Plate Trailor	Naum Chepkuto Boen		Life Interest

h) *With the above matrix in mind, the Deputy Registrar of the High Court shall move to occasion a certificate of confirmation of grant to be generated to be the basic structure to the administrators to fulfill their obligations according to the provisions of the Law. It is expected that the administrators shall act diligently and faithfully to*

devolve the Estate as if they were seated at the armchair of the deceased.

i) *Orders accordingly.*

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 13TH DAY OF OCTOBER 2025

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R. NYAKUNDI
JUDGE