

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION CAUSE NO 126 OF 2005

IN THE MATTER OF THE ESTATE OF THE LATE KIPKOSKEI CHELULEI
(DECEASED)

Coram: Before Justice R. Nyakundi
M/s Onkangi Onkangi & Associates Advocates
M/s B Murgor & Co Advocates

RULING

1. What is pending before me for determination are Summons for Confirmation of Grant dated 22nd May 2025 in which the Applicants are seeking the following orders:

a) That the grant of probate for letters of administration intestate made to the said RICHARD KIBITOK KUTTO, BENJAMIN AGUI KOSGEI and ELIJAH KIPKEMBOI CHUMBA in this matter on 9th May 2025 be confirmed.

b) That the costs of this application be in the cause.

2. The Summons are grounded upon the annexed supporting affidavit dated 22nd May 2025 sworn by RICHARD KIBITOK KUTTO, BENJAMIN AGUI KOSGEI and ELIJAH KIPKEMBOI CHUMBA in which they aver as follows;

a. A grant of letters of administration of the said estate was made to us in this matter on the 9th May 2025.

b. The deceased was survived by the following persons: -

<i>1. RUTH CHEBII KOSGEI</i>	<i>WIDOW</i>	<i>ADULT</i>
<i>2. LUCY KOGOI CHELULEI</i>	<i>WIDOW</i>	<i>ADULT</i>
<i>3. CHEMAIYO TAPKILE KOSKE</i>	<i>WIDOW</i>	<i>ADULT</i>
<i>4. BENJAMIN AGUI KOSKEI</i>	<i>SON</i>	<i>ADULT</i>
<i>5. JOSEPH TIROP KOSGEI</i>	<i>SON</i>	<i>ADULT</i>

6. ELIJAH KIPKEMBOI CHUMBA	SON	ADULT
7. DAVID KIPLIMO KOSKEI	SON	ADULT
8. STEPHEN KIMUTAI KOSGEI	SON	ADULT
9. JOHN KORIR CHELULEI	SON	ADULT
10. JOANA KIPNGETICH KUTO	SON	ADULT
11. RICHARD KIBITOK KUTTO	SON	ADULT
12. SHADRACK KIPROP KOSGEI	SON	ADULT
13. NAOMI CHEPKEMEI KOSKEI	DAUGHTER	ADULT
14. CAREN JELIMO KOSKEI	DAUGHTER	ADULT
15. GLADYS CHEROTICH KOSKEI	DAUGHTER	ADULT
16. SILVYA CHERUTO	DAUGHTER	ADULT
17. RUTH JEPKOECH KOSKEI	DAUGHTER	ADULT

c) The deceased was survived by the following other dependents.

d) The identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows:

<i>Beneficiaries</i>	<i>Description of property</i>	<i>Share</i>
<i>Richard Kibitok Kutto</i>	<i>Olare/Burnt Forest Block 13 (Samitoi)/3</i>	<i>13.0 Acres</i>
<i>Benjamin Agui Koskei</i>	<i>Olare/Burnt Forest Block 13 (Samitoi)/3</i>	<i>6.5 Acres</i>
<i>Elijah Kipkemboi Chumba</i>	<i>Olare/Burnt Forest Block 13 (Samitoi)/3</i>	<i>6.0 Acres</i>
<i>Shadrack Kiprop Kosgei</i>	<i>Olare/Burnt Forest Block 13 (Samitoi)/3</i>	<i>6.5 Acres</i>
<i>Joseph Tirop Kosgei</i>	<i>Olare/Burnt Forest Block 13</i>	<i>6.5 Acres</i>

	(Samitoi)/3	
Joana Kipngetich Kuto	Olare/Burnt Forest Block 13 (Samitoi)/3	9.5 Acres
Stephen Kimutai Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	7.5 Acres
David Kiplimo Koskei	Olare/Burnt Forest Block 13 (Samitoi)/3	6.5 Acres
John Korir Chelulei	Olare/Burnt Forest Block 13 (Samitoi)/3	9.5 Acres
Paul Kimeli (purchaser)	Olare/Burnt Forest Block 13 (Samitoi)/3	1.0 Acre

e) No estate duty is payable (remains unpaid) in respect of the estate of the deceased and refer to an estate duty compliance certificate.

3. The Summons are opposed vide a Replying Affidavit dated 27th May 2025 sworn by RICHARD KOSGEI KUTTO who avers as follows:

- a. That I am one of the surviving sons of the late KIPKOSGEI CHELULEI.
- b. That the deceased was survived by 3 widows and 27 children namely:

-

1ST HOUSE

- | | |
|---------------------------|----------|
| a. RUTH CHEBII KOSGEI | WIDOW |
| b. EASTHER KOSGEI | DAUGHTER |
| c. BENJAMIN AGUI KOSGEI | SON |
| d. STEPHEN KIMUTAI KOSGEI | SON |
| e. DAVID KIPLIMO | SON |

- | | |
|------------------------|----------|
| f. SALINA KOSGEI | DAUGHTER |
| g. JOHN KORIR CHELULEI | SON |
| h. JANE KOSGEI | DAUGHTER |
| i. TECLA KOSGEI | DAUGHTER |

2ND HOUSE

- | | |
|---------------------------|------------------|
| a. LUCY CHELULEI | WIDOW (DECEASED) |
| b. HELLENA KOSGEI | DAUGHTER |
| c. EMILY KOSGEI | DAUGHTER |
| d. JEPCHIRCHIR KOSGEI | DAUGHTER |
| e. RICHARD KOSGEI KUTTO | SON |
| f. JEKOGEI KOSGEI | DAUGHTER |
| g. SILYVIA JERUTO | DAUGHTER |
| h. FRIDAH JEROTICH KOSGEI | DAUGHTER |
| i. MERCY JELIMO KOSGEI | DAUGHTER |
| j. ANNAHA KOSGEI | DAUGHTER |

3RD HOUSE

- | | |
|----------------------------|----------|
| a. DORCAS CHELULEI | WIDOW |
| b. RAEL KOSGEI | DAUGHTER |
| c. JOHANA KIPNGETICH | SON |
| d. JOSEPH TIROP KOSGEI | SON |
| e. ELIJAH KIPKEMBOI CHUMBA | SON |
| f. SHADRACK KIPROP KOSGEI | SON |
| g. JEMOSBEI KOSGEI | SON |
| h. JEPKORIR KOSGEI | DAUGHTER |
| i. JEPTUM KOSGEI | DAUGHTER |
| j. RUTH JEPKOECH KOSGEI | DAUGHTER |
| k. NAOMI CHEPKEMEI KOSGEI | DAUGHTER |

- c. That to the best of my knowledge my late father was registered owner of all that parcel of land known as OLARE/BURNT FOREST BLOCK 13 (SAMITOI)/3 which contains by measurements 72.5 Acres.
- d. That I did not participate in the institution of this probate and administration proceedings and I came to be aware of them on 22nd May, 2025 when I was served to attend court for confirmation of grant.
- e. That I am not aware that I am one of the administrators of the estate of the late KIPKOSGEI CHELULEI.
- f. That the list of beneficiaries provided by the applicants has excluded the following beneficiaries.

a. RUTH CHEBII KOSGEI	WIDOW
b. EASTHER KOSGEI	DAUGHTER
c. SALINA KOSGEI	DAUGHTER
d. JANE KOSGEI	DAUGHTER
e. TECLA KOSGEI	DAUGHTER
f. HELLENA KOSGEI	DAUGHTER
g. EMILY KOSGEI	DAUGHTER
h. JEPCHIRCHIR KOSGEI	DAUGHTER
i. JEKOGEI KOSGEI	DAUGHTER
j. SILYVIA JERUTO	DAUGHTER
k. FRIDAH JEROTICH KOSGEI	DAUGHTER
l. MERCY JELIMO KOSGEI	DAUGHTER
m. ANNAHA KOSGEI	DAUGHTER
n. DORCAS CHELULEI	WIDOW
o. RAEL KOSGEI	DAUGHTER
p. JEMOSBEI KOSGEI	SON
q. JEPKORIR KOSGEI	DAUGHTER
r. JEPTUM KOSGEI	DAUGHTER
s. RUTH JEPKOECH KOSGEI	DAUGHTER
t. NAOMI CHEPKEMEI KOSGEI	DAUGHTER

- g. *That I propose that the estate of my late father be shared equally among the three houses and not among all the beneficiaries.*
- h. *That I am advised by my advocate on record which advise I verily believe to be true that section 40(1) of the Law of Succession Act where an intestate has married more than one under any system of law permitting polygamy, his estate shall be in the first instance be shared among the children of the houses as a unit.*
- i. *That under section 40(2) the distribution of the personal and household effects and the residue of the net intestate within each house shall then be in accordance with the rules provided under section 35 to 38 of the Law of Succession Act Cap 160.*
- j. *That I propose that the net estate of the deceased be distributed among the three houses as follows: -*
 - a. *RUTH CHEBII KOSGEI* *23.8 Acres*
 - b. *RICHARD KOSGEI KUTTO* *23.8 Acres*
 - c. *CHEMAIYO TAPKILE KOSKEI* *23.8 Acres*
 - d. *PAUL KIMELI (PURCHASER)* *1.0 Acre*
- k. *That the above in paragraph 11 (a, b and c) shall then hold the property as above as trustees for their respective houses.*
- l. *That we have heard several meetings before the area chief but we have not reached a settlement on this matter.*
- m. *That I would like the Honourable Court to distribute the property among the houses.*

4. The Summons are further supported by the affidavit dated 4th June 2025 sworn by ELIJAH KIPKEMBOI CHUMBA who avers as follows:

- a. *That I am one of the Administrator of the estate of the late Kipkosgei Chelulei, who died on 15/1/2002, domiciled at Olare Location, Uasin Gishu.*
- b. *That the deceased owned land parcel Olare/Burnt Forest Block 13 (Samitoi)/3, measuring 72.5 acres.*

- c. That the deceased was survived by three wives and 27 children.
- d. That in 1999, the deceased before his demise he called all his children and wives to a family meeting where it was agreed that each of his 9 sons to look for money to pay for survey work to be conducted on the property each one of us raised Kshs. 6,600 for the said work.
- e. That in 2000, we converged at the Land Control Board at Eldoret to establish the current status of the said land. It was later established that there was an existing A.F.C loan which had been cleared.
- f. That on 7/3/2000, at a meeting before the Land Control Board, including the protestor Richard Kutto, no one objected to the intended distribution.
- g. That on 9/3/2000, our father called another meeting where he distributed the land as follows;
- a) That Each son was given 6.5 acres
 - b) That he retained 13 acres to himself, our mothers and the minor at the time as shown herein below;
- | | | |
|----------------------------|--------|--------------|
| 1. KIPKOSGEI CHELULEI | FATHER | |
| 2. RUTH CHEBII KOSGEI | WIFE | |
| 3. LUCY KOGOI CHELULEI | WIFE | |
| 4. CHEMAIYO TAPKILE KOSGEI | WIFE | ALL 13 ACRES |
| 5. SILVYA CHERUTO | MINOR | |
| 6. RUTH JEPKOECH KOSKEI | MINOR | |
| 7. GLADYS CHERUTICH KOSKEI | MINOR | |
| 8. NAOMI CHEPKEMEI KOSKEI | MINOR | |
| 9. CAREN JELIMO KOSKEI | MINOR | |
- c) That the deceased also declared that if any adult daughter returned home, she could be accommodated from his retained share of 13 Acres.
- d) That part of the retained portion included a road and water point.

e) *In 2000, 1 acre was sold to Paul Kimeli, who took possession and remains in his occupation to date.*

f) *That on 12/3/2000, a land surveyor demarcated the land as agreed, and each beneficiary began developing their allocated portion.*

g) *That after the father died in 2002, a family meeting was held to redistribute the 13 retained acres among the widows and some sons as follows:*

1. RUTH CHEBII	2.75 ACRES
2. LUCY KOGOI (DECEASED)	4 ACRES
3. CHEMAIYO TAPKILE	2.75 ACRES
4. RICHARD KUTTO	2 ACRES
5. STEPHEN KOSKEI	1 ACRE
6. WATER POINT	0.5 ACRE

h) *That when Lucy Kogoi died in 2005, her 4 acres were given to Richard Kutto.*

i) *That the final distribution would therefore appear as follows;*

1. RICHARD KIBITOK KUTTO	12.5 ACRES
2. BENJAMIN AGUI CHUMBA	6.5 ACRES
3. ELIJAH KIPKEMBOI CHUMBA	6.5 ACRES
4. SHADRACK KIPROP KOSGEI	6.5 ACRES
5. JOSEPH TIROP KOSGEI	6.5 ACRES
6. JOANA KIPNGETICH KUTO	6.5 ACRES
7. STEPHEN KIMUTAI KOSKEI	7.5 ACRES
8. DAVID KIPLIMO KOSKEI	6.5 ACRES
9. JOHN KORIR CHELULEI	6.5 ACRES
10. PAUL KIMELI (PURCHASER)	1 ACRE
11. RUTH CHEBII (WIDOW)	2.75 ACRES
12. CHAMAIYO TAPKILE (WIDOW)	2.75 ACRES
13. WATER POINT (COMMON AREA)	0.5 ACRES

- j) *That in response to paragraph 5 of the Replying Affidavit by Richard Kibitok Kutto, it is not true that the deponent is not aware of him being one of the administrator of the said estate as he participated fully from the initial stages and even paid for the filing of this succession cause and again all the family agreements were being conducted at his house.*
- k) *That in response to paragraph 12 of the replying affidavit, we as family members of the late Kipkosgei Chelulei (deceased) pray that the distribution and property should be distributed to the respective beneficiaries who are already in occupation of the portions since 2000 to date and have carried our various developments thereon.*
- l) *That the protestor's objections are afterthoughts intended to disrupt the peaceful occupation of the land, which has remained undisturbed since 2000.*

5. The Summons are also opposed by the Affidavit in protest dated 16th June 2025 sworn by EMILY CHEPOTIP KIBET, ANNA CHERONO ANDIEMA, MERCY JELIMO KOSGEI, SILYVIA JERUTO, JEPCHIRCHIR KOSGEI, HELLEN JEPRANUI KIOS and RICHARD KOSGEI KUTTO who aver as follows;

1. That we are the surviving children of the second house of the late KIPKOSGEI CHELULEI who died on 15/01/2002.
2. That the deceased was survived by 3 widows and 27 children namely;

1ST HOUSE

- | | |
|----------------------------------|-----------------|
| <i>a. RUTH CHEBII KOSGEI</i> | <i>WIDOW</i> |
| <i>b. EASTHER KOSGEI</i> | <i>DAUGHTER</i> |
| <i>c. BENJAMIN AGUI KOSGEI</i> | <i>SON</i> |
| <i>d. STEPHEN KIMUTAI KOSGEI</i> | <i>SON</i> |
| <i>e. DAVID KIPLIMO</i> | <i>SON</i> |

- | | |
|------------------------|----------|
| f. SALINA KOSGEI | DAUGHTER |
| g. JOHN KORIR CHELULEI | SON |
| h. JANE KOSGEI | DAUGHTER |
| i. TECLA KOSGEI | DAUGHTER |

2ND HOUSE

- | | |
|---------------------------|------------------|
| a. LUCY CHELULEI | WIDOW (DECEASED) |
| b. HELLENA KOSGEI | DAUGHTER |
| c. EMILY KOSGEI | DAUGHTER |
| d. JEPCHIRCHIR KOSGEI | DAUGHTER |
| e. RICHARD KOSGEI KUTTO | SON |
| f. JEKOGEI KOSGEI | DAUGHTER |
| g. SILYVIA JERUTO | DAUGHTER |
| h. FRIDAH JEROTICH KOSGEI | DAUGHTER |
| i. MERCY JELIMO KOSGEI | DAUGHTER |
| j. ANNAHA KOSGEI | DAUGHTER |

3RD HOUSE

- | | |
|----------------------------|----------|
| a. DORCAS CHELULEI | WIDOW |
| b. RAEL KOSGEI | DAUGHTER |
| c. JOHANA KIPNGETICH | SON |
| d. JOSEPH TIROP KOSGEI | SON |
| e. ELIJAH KIPKEMBOI CHUMBA | SON |
| f. SHADRACK KIPROP KOSGEI | SON |
| g. JEMOSBEI KOSGEI | SON |
| h. JEPKORIR KOSGEI | DAUGHTER |
| i. JEPTUM KOSGEI | DAUGHTER |
| j. RUTH JEPKOECH KOSGEI | DAUGHTER |
| k. NAOMI CHEPKEMEI KOSGEI | DAUGHTER |

3. *That our late father was the registered owner of land reference number OLARE/BURNT FOREST BLOCK 13 (SAMITOI)/3 which contains by measurement 72.5 Acres.*
4. *That our father prior to his death intended to subdivide his property amongst three (3) houses but STEPHEN KIMUTAI KOSGEI objected to the sub division claiming that the 1st house was entitled to a bigger share and this objection forced our father to abandon this exercise.*
5. *That mode of distribution proposed by the administrators is not only discriminatory as it favors the children and members of the 1st and 3rd houses but also favour children of the male gender.*
6. *That we propose that the mode of distribution of the estate of our father who died polygamous while intestate should be that the estate subdivided among the houses according to the number of children in each house and also adding any wife surviving the deceased as an additional unit to the number.*
7. *That we have a purchaser namely PAUL KIMELI who is entitled to 1.0 Acre out of the estate.*
8. *That the total number of the acreage to be subdivided amongst the children and the widows is 71.5 Acres.*
9. *That the first house will have 22.14 Acres, while the 2nd house will get 22.14 acres and the 3rd house will have 27.06 acres.*
10. *That all the children of the three (3) houses are grown-ups and all the girls except ANNA KOSGEI, JEPCHIRCHIR KOSGEI and FRIDAH JEROTICH KOSGEI are married.*
11. *That ANNA KOSGEI, JEPCHIRCHIR KOSGEI have been denied access to the land by STEPHEN KIMUTAI KOSGEI who has arrogated himself the right to subdivide the estate and has sub divided the estate into three (3) unequal shares.*

12. According to STEPHEN KIMUTAI KOSGEI the 1st house should get 29 ½ acres, the 2nd House 13.00 acres and the 3rd House, 28 ½ acres.

13. That the deceased had not gifted any property during his lifetime.

14. That we pray that the proposed mode of distribution dated 22nd May 2025 be rejected in lieu thereof the estate be distributed as we have proposed in this affidavit of protests.

6. The Summons were canvassed by way of written submissions.

2nd House Submissions

7. The 2nd House filed their submissions dated 26th June 2025 where the learned counsel Mr. Murgor submitted that the issue before the court is the mode of distribution of the deceased KIPKOSGEI CHELULEI who died on 15/1/2022 intestate and was survived by 3 widows and 27 children.

8. The Learned Counsel also submitted that the deceased, Kipkosgei Chelulei, had during his lifetime convened a series of family meetings, including one in 1999, where he informed his children of his wish to distribute his land parcel Olare/Burnt Forest Block 13 (Samitoi)/3, measuring 72.5 acres. The sons contributed Kshs. 6,600 each to finance the survey work.

9. The learned Counsel emphasized that no objections were raised when the distribution was discussed and agreed upon, nor when the matter was presented before the Land Control Board on 7th March 2000, where the protestor Richard Kutto was present and did not oppose the arrangements.

10. He further stated that the deceased divided the land by allocating 6.5 acres to each son and retaining 13 acres for himself, his wives, and minor children. The counsel pointed out that after the death of the deceased in 2002, another family meeting was held, and the 13 acres were further

distributed among the surviving wives and some sons, including the protestor, without any dissent. Counsel relied on the principle that customary distribution agreed by all beneficiaries during the lifetime of the deceased and reaffirmed after death should be respected, citing the case of **Mwathi v Mwathi [1995] eKLR**, where the court held: *“Where family consensus and long, undisturbed occupation have existed, the court should uphold the arrangement to promote certainty and prevent disquiet.”*

- 11.** It was further submitted that the protestor has been in occupation and enjoyment of his portion, and even benefitted further when the 4 acres previously belonging to one of the widows were allocated to him after her death. The learned counsel argued that the protestor’s claim to additional acreage is an afterthought intended to disrupt settled arrangements, relying on **In Re Estate of M’Ngarithi M’Miriti (Deceased) [2017] eKLR**, which held: *“A beneficiary who has accepted distribution and developed their portion over a long period without protest cannot later claim a fresh distribution without demonstrating fraud or undue influence.”*
- 12.** The Learned Counsel also highlighted that other beneficiaries have since developed their parcels and have been in peaceful occupation for over 20 years, which should weigh heavily against any attempt to alter the status quo. The learned counsel concluded by urging the court to dismiss the protestor’s objections as lacking merit and being calculated to cause confusion and conflict among beneficiaries; adopt the distribution proposal detailed in paragraph 15 of the supporting affidavit and uphold the beneficiaries’ peaceful enjoyment and occupation of their respective portions.

Analysis and Determination

13. I begin by reminding myself of the fundamental duty of this court. In the case of ***In re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR***, the court made it clear that: "*The primary duty of the Probate Court is to distribute the estate of the deceased to the rightful beneficiaries.*" This duty is not merely administrative but requires the court to ensure that justice is done to all who have a legitimate claim to the estate.

14. The statutory framework within which I must operate is set out in **Section 71(2)** of the *Law of Succession Act*. This provision mandates that before confirming any grant of letters of administration in cases of intestacy, the court must be satisfied as to the identities and shares of all persons beneficially entitled to the estate. The section provides that:

"(2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-

- a. if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or*
- b. if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or*
- c. Order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or*
- d. Postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:*

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially

entitled; and when confirmed the grant shall specify all such persons and their respective shares.”

- 15.** This proviso is particularly important in the present case. It places a clear obligation on me to determine not only who the beneficiaries are, but also what share each should receive.
- 16.** In this matter, it is not disputed that the deceased died intestate having married under a polygamous system. He was survived by three widows and 27 children distributed across the three houses. Where such circumstances exist, Parliament has provided clear guidance on how the estate should be distributed. **Section 40(1)** of the Law of Succession Act states:

“40(1) where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

- 17.** This provision establishes the house-to-house distribution model as the starting point for determining how a polygamous intestate estate should be shared among beneficiaries.
- 18.** The applicants have urged this court to confirm a distribution arrangement that was allegedly agreed upon by the deceased and some family members between 1999 and 2000. According to them, the deceased allocated 6.5 acres to each son while retaining 13 acres for himself, his widows and minor children. They argue that this arrangement has been in place for over 20 years and that beneficiaries have developed their portions. They rely on the principle of family consensus and long occupation.
- 19.** However, I must consider whether such an arrangement, even if it existed, can override the statutory provisions on intestate succession. The

protestors from the second house have raised concerns about the proposed distribution. They point out that it discriminates against daughters by either excluding them entirely or relegating them to be accommodated from a small retained portion. They also argue that the distribution favors the first and third houses over the second house, creating inequality among the houses.

20. The question of whether daughters should inherit equally with sons in intestate succession has been settled by our courts. In ***RE The estate of Lenonka ole Ntutu - deceased [2008] eKLR***, Rawal, J, (as she then was), held that daughters of a deceased were entitled to inherit a share from their father's estate just like the sons. This position was reinforced in ***Re Estate of Solomon Ngatia Kariuki - deceased [2008] eKLR***, where Makhandia J. (as he then was) stated:

“The law of Succession Act does not discriminate between the female and male children married or unmarried daughters of the deceased person when it comes to the distribution of his estate. All children of the deceased are entitled to stake a claim to the deceased’s estate. In seeking to disinherit the protestor under the guise that the protestor was married, her father, brothers and sisters were purportedly invoking a facet of customary law. Like most other customary laws in this country they are always biased against women and they tend to bar married daughters from inheriting their father’s estate. The justification for this rather archaic and primitive customary law demand appears to be that such married daughters should forego their father’s inheritance because they are likely to enjoy inheritance of their husband’s side of the family.”

21. The Court of Appeal has similarly made the position clear. In ***Eliseus Mbura M'Thara vs. Harriet Ciambaka and Another [2012] eKLR***, the court stated:

“The Law of Succession Act does not discriminate between gender in matters of succession or inheritance. Under the Law of Succession Act and indeed under the Constitution a child is a child and every person has equal rights under the law irrespective of gender. The Law of Succession Act does not discriminate between married or unmarried daughters but gives them equal rights to inheritance as the other children (sons) of a deceased person.”

- 22.** Having considered these authorities, I find that any distribution arrangement that excludes daughters or treats them as second-class beneficiaries cannot be sanctioned by this court, regardless of how long it may have been in place. The Law of Succession Act is clear and unambiguous on this point. All children, whether male or female, married or unmarried, have equal rights to inherit from their parent's estate.
- 23.** I also note the guidance provided by the Court of Appeal in ***Mary Ronoh v. Jane Ronoh & Another, [2005] eKLR***. In that case, Waki JA accepted that the court has discretion in ensuring fair distribution but emphasized that such discretion must be exercised on sound legal and factual basis. Omollo JA explained the operation of Section 40 as follows:

“My understanding of that section is that while the net intestate estate is to be distributed according to houses each house being treated as a unit, yet the judge doing the distribution still has a discretion to take into account or consider the number of children in each house. If Parliament had intended that they must be equality between houses they would have been no need to provide in the section that the number of children in each house be taken into account. Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work injustice particularly in the case of a young child who is still to be maintained, educated and generally seen through life. If such a child whether a girl or a boy, were to get an equal inheritance with another who is already working and for whom

no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied that the Act does not provide for that kind of equality.”

- 24.** This guidance makes it clear that while section 40 establishes the house-to-house distribution model, the court retains discretion to ensure fairness. However, that discretion must be exercised within the framework of the statute and in a manner that respects the equal rights of all children to inherit.
- 25.** I have carefully considered the evidence before me. The deceased left behind 3 widows and 27 children distributed as follows:
- First House:** Ruth Chebii Kosgei (widow) and 8 children (Benjamin Agui Kosgei, Stephen Kimutai Kosgei, David Kiplimo, John Korir Chelulei, Easther Kosgei, Salina Kosgei, Jane Kosgei, and Tecla Kosgei)
- Second House:** Lucy Kogoi Chelulei (widow, now deceased) and 9 children (Richard Kosgei Kutto, Hellena Kosgei, Emily Kosgei, Jepchirchir Kosgei, Jekogei Kosgei, Silyvia Jeruto, Fridah Jerotich Kosgei, Mercy Jelimo Kosgei, and Annaha Kosgei)
- Third House:** Dorcas Chelulei (widow) and 10 children (Johana Kipngetch, Joseph Tirop Kosgei, Elijah Kipkemboi Chumba, Shadrack Kiprop Kosgei, Jemosbei Kosgei, Rael Kosgei, Jepkorir Kosgei, Jeptum Kosgei, Ruth Jepkoech Kosgei, and Naomi Chepkemei Kosgei)
- 26.** Applying Section 40(1) of the Law of Succession Act, I must first divide the estate among the three houses. In computing each house's share, I add the surviving widow save for the deceased one in the second house as additional units to the number of children. Therefore, from the first house it becomes a total of 9 (nine) units, the second house shall equally have 9 (units) and the third house shall have 11 (eleven) units. It makes it a total of 29 units with each unit receiving a share of 2.46 Acres.
- 27.** The distribution among the houses will therefore be as follows:

1st House: 9 units × 2.4655 acres = 22.18 acres

2nd House: 9 units × 2.4655 acres = 22.18 acres

3rd House: 11 units × 2.4655 acres = 27.12 acres

- 28.** I note the submissions made regarding the long occupation and development of portions by some beneficiaries. While I appreciate that this situation has existed for many years, I cannot allow an unlawful arrangement to stand simply because it has been in place for a long time. The Law of Succession Act is binding on this court and I am duty-bound to apply it. The fact that some beneficiaries may have been excluded from the original arrangement, particularly daughters, cannot be justified by the passage of time or claims of family consensus.
- 29.** Having been in this space for decades now it is true to state that most of the abuse of human rights can be traceable to the long-protracted litigation under the Law of Succession Act. Sometimes one wonders whether the legal timelines outlined by the legislature in the Act makes any sense at all to both the administrators and the beneficiaries. The measure of time for one to petition for grant of letters of administration to the final decree styled or commonly known as certificate of confirmation of grant is essentially 1 year with a six month period under Section 83 of the Act for the Administrators to file a probate account for an order of liquidation and discharge of the administrators to be effected. However, a closure look of a sample size of case files across the country in probate registry tells a different story all together. One of the outstanding contentious issues falls within the scope of gender discrimination prohibited under Article 27 (4) of the constitution which is also reinforced by International Law under Article 2 (5) & (6) of the constitution. The interpretation of it gives one a sense of our legal system as having a polished customary law of succession. As I delve into this legal discourse on inheritance matters may be some kind of law reform ought

to be re-visited so that customary law be retained as one of the options in the scheme of succession for any of the ethnic group who would prefer to be guided by it in matters of personal law so long as it is not repugnant to justice and morality. Hence any provisions of customary law and values should be compatible with the constitution in matters of inheritance to promote equality and to prevent unfair discrimination.

30. Accordingly, the estate is hereby distributed in the table as enumerated as hereunder:

NO.	PROPERTY	BENEFICIARY	SHARE
1.	Richard Kibitok Kutto	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
2.	Ruth Chebii Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
3.	David Kiplimo Koskei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
4.	John Korir Chelulei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
5.	Esther Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
6.	Salina Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
7.	Jane Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
8.	Tecla Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465

9.	Benjamin Agui Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
10.	Elijah Kipkemboi Chumba	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
11.	Shadrack Kiproop Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
12.	Joseph Tirop Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
13.	Joana Kipngetich Kuto	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
14.	Stephen Kimutai Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
15.	Hellen Jeptanui Kios	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
16.	Emily Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
17.	Jepchirchir Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
18.	Jepkogei Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
19.	Sylvia Jeruto	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
20.	Fridah Jerotich Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465

21.	Mercy Jelimo Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
22.	Annaha Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
23.	Dorcas Chelulei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
24.	Jemosbei Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
25.	Rael Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
26.	Jepkorir Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
27.	Jeptum Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
28.	Naomi Chepkemei Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465
29.	Ruth Jepkoech Kosgei	Olare/Burnt Forest Block 13 (Samitoi)/3	2.465

31. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 3RD DAY OF
NOVEMBER, 2025**

.....
R. NYAKUNDI
JUDGE