



REPUBLIC OF KENYA



**In re Estate of Cheptoo Cheboswony (Deceased) (Succession Appeal
E001 of 2020) [2026] KEHC 62 (KLR) (14 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 62 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION APPEAL E001 OF 2020**

RN NYAKUNDI, J

JANUARY 14, 2026

IN THE MATTER OF THE ESTATE OF CHEPTOO CHEBOSWONY (DECEASED)

BETWEEN

EUNICE KIGEN CHEBOSWONY 1ST APPELLANT

WILSON KIPTOO CHEBOSWONY 2ND APPELLANT

GLADYS CHEBOSWONY 3RD APPELLANT

JEMUTAI CHEBOSWONY 4TH APPELLANT

AND

STANLEY KIBWALEI CHEBUNDO RESPONDENT

*(Being an Appeal from Ruling/Order of the Hon.R. Odenyo (SPM) in
Eldoret CMC Succession Cause No. 403 of 2017 delivered on 30/11/2020)*

JUDGMENT

Background

1. The brief facts of this Appeal are that the deceased died on the 8th day of December 1989. The Respondent herein who was the Petitioner at the trial Court petitioned for Grant of Letters of Administration Intestate and vide the Affidavit in support for the petition dated 6th October 2017, the Petitioner stated that the deceased died intestate and left the following surviving him: -
 - a. Stanley Kibwalei Chebundo Son Adult
 - b. Eunice Cheboswony Son Adult
 - c. Wilson Kiptoo Cheboswony Daughter Adult
 - d. Gladys Cheboswony Daughter Adult



- e. Jemutai Cheboswony Daughter Adult
 - f. Erick Cheptoo Cheboswony Son Deceased
 - g. Samuel Cheruiyot Son Deceased
2. Moreover, the Petitioner stated that the deceased left only asset namely LR No. MOSOP/NYARU/251 measuring approximately 9.8 Acres. Subsequently, a Grant of Letters of Administration intestate was issued to Stanley Kibwalei Chebundo, the Respondent herein on 1st March 2018. The Petitioner herein filed Summons for Confirmation of Grant dated 3rd October 2018 at the trial court and attached a consent on the mode of distribution of the intestate estate of the deceased that had been agreed by the beneficiaries as follows: -
- MOSOP/NYARU/251
- a. Stanley Kibwalei Chebundo to get 2.1 Acres
 - b. Wilson Kiptoo Cheboswony to get 2.7 Acres
 - c. Getrude Jepchirchir Rono to get 2.1 Acres
 - d. Hillary Cheruiyot to get 2.1 Acres
3. The Appellants herein filed summons for revocation of Grant dated 1st October 2018 based on the grounds that the Grant was obtained fraudulently since the death certificate of the deceased used in obtaining the grant of letters of administration was obtained through fraud as the Identification card of Cheptoo Cheboswony (deceased) was still in custody of the 1st Objector since she had not yet surrendered it to be issued with a death certificate, that the proceedings to obtain the grant were defective in substance, that the consent of all beneficiaries was not obtained and that the grant was obtained by concealment of material facts in that the deceased wished that land parcel No. MOSOP/NYARU/251 was to be held in trust to be utilized by family members from generation to generation and the same should never be subdivided, leased or sold. The Petitioner who is the Respondent herein subsequently filed a Replying Affidavit sworn on 29th October 2010 citing among other grounds, that the deceased had distributed land parcel known as MOSOP/NYARU/251 to all his sons during his lifetime.
4. The matter proceeded to interpartes hearing and vide the Ruling of the trial court dated 30th November 2020, the trial court dismissed the objector's case and upheld the petitioner's mode of distribution, which mode was allocated the subject land to the sons of the estate and excluded all the daughters of the estate. The Court subsequently issued a Certificate of Confirmation of Grant dated 17th December 2020 which excluded all the daughters of the deceased and the same Grant was coached in the following language: -



SCHEDULE
NAME
DESCRIPTION OF PROPERTY SHARE OF HEIRS
Stanley Kibwalei Chebundo MOSOP/NYARU/251 2.1 Acres
Wilson Kiptoo Cheboswony MOSOP/NYARU/251 2.7 Acres
Getrude Jepchirchir Rono MOSOP/NYARU/251 2.1 Acres
Hillary Cheruiyot MOSOP/NYARU/251 2.1 Acres

5. The Appellants being aggrieved by the said Ruling of the trial court appealed to this Honourable Court against the said ruling vide a Memorandum of Appeal dated 10th December 2020 based on the following grounds: -
 - a. The Learned Trial Magistrate erred in law and fact by failing and/or omitting to identify some of the respective beneficiaries.
 - b. The Learned Trial Magistrate erred in law and fact by failing and/or omitting to include some of the beneficiaries and their respective shares.
 - c. The Learned Trial Magistrate erred in law and fact by failing to consider the Objector's pleadings and submissions.
 - d. The Learned Trial Magistrate erred in law and fact by effecting distribution to some of the beneficiaries and leaving out other beneficiaries.
 - e. That the process used in confirmation of the grant and the distribution of the estate is fatally flawed.
6. The Appellants sought the following orders from the Memorandum of Appeal;
 - a. That this appeal be allowed with costs.
 - b. That the ruling of the Honourable R. Odenyo (SPM) on the issue of confirmation of the grant, distribution of the estate and costs, delivered on 30/11/2020 be discharged and set aside with costs to the Appellants.
 - c. That the Honourable Court be pleased to revoke and/or annul the grant of representation confirmed on 30/11/2020 and redistribute the estate of the deceased.
7. The Appeal was canvassed by way of written submissions.

Appellant's Case Summary

8. The Learned Counsel for the Appellants, Mrs. Cheronon submitted that the objectors' testimony before the trial court clearly brought out the oral wishes of their late father which evidence was consistent and corroborated. Counsel argued that the objectors, being daughters of the deceased are entitled to



inherit their father's land on an equal footing with their brothers and that their evidence established this entitlement.

9. Counsel submitted that although the trial court found the deceased's oral wishes to be untenable such a finding did not and could not lawfully extinguish the daughters' right to inherit from their father's estate. Counsel emphasized that the objectors had a duty to disclose the deceased's wishes to the court and that compliance with this duty should not be construed against them. Counsel further drew the Court's attention to pages 103 and 104 of the Record of Appeal which show that the petitioner/respondent acknowledged having received one acre of land in Kerio Valley during the deceased's lifetime, similar to his brothers who also received one acre each. Additionally, at page 145 of the Record of Appeal, the respondent himself had submitted before the trial court that the deceased's estate be distributed equally among all seven beneficiaries. Counsel therefore submitted that it was both unfair and contradictory for the trial court to exclude the daughters who are among the objectors from the final distribution of the estate without any justification.
10. Counsel contended that the exclusion of the daughters was not only inequitable but also contrary to clear statutory and constitutional principles governing succession. In support of this position, reliance was placed on *In re Estate of Isaiah Wahome s/o Ngatia (Deceased)* (Succession Cause No. 19 of 2009) [2025] KEHC 4038 (KLR) where the Court held that Section 38 of the *Law of Succession Act* is gender-neutral and mandates equal distribution of an estate among all children of the deceased, regardless of gender or marital status. The Court further held that Section 38 must be read together with Article 27 of *the Constitution* of Kenya, 2010 which guarantees equality and freedom from discrimination and affirmed that even before the 2010 Constitution, courts consistently rejected discriminatory customary practices against daughters.
11. Further reliance was placed on *In re Estate of Kipyegon Arap Chepkwony (Deceased)* (Succession Cause No. E018 of 2020) [2025] KEHC 1239 (KLR) where the Court upheld an objection on the basis that the *Law of Succession Act* does not countenance discrimination founded on gender or marital status. Counsel also cited *In re Estate of Munene Kamau (Deceased)* (Civil Appeal No. E022 of 2021) [2023] KEHC 24799 (KLR) in which the Court allowed an appeal and held that a son does not have priority over a daughter merely by virtue of being male affirming that sons and daughters are equal before the law and equally protected under *the Constitution*.
12. On the issue of gift inter vivos, counsel relied on *In re Estate of Elizabeth Wairimu Ngotho alias Elizabeth Wairimu Kabiru (Deceased)* (Succession Appeal No. E001 of 2022) [2024] KEHC 16095 (KLR) where the Court interpreted Section 42 of the *Law of Succession Act* to mean that any property given to a beneficiary during the deceased's lifetime must be taken into account when determining the final share accruing to that beneficiary. Counsel submitted that failure to do so would result in unfairness and discrimination, as some beneficiaries would receive a double benefit at the expense of others. He emphasized that the purpose of Section 42 is to promote equity and fairness in the distribution of an intestate estate.
13. In conclusion, Counsel urged the Court to find the appeal merited, to allow it as prayed and to redistribute the deceased's estate equally among all the children including the daughters, while taking into account the one acre in Kerio Valley gifted to each of the sons during the deceased's lifetime.

Respondent's Case Summary

14. The Learned Counsel for the Respondent, Mr. Limo submitted that the sole issue for determination in the appeal is what constitutes the estate of the deceased and how it ought to be distributed. Counsel argued that the evidence on record clearly establishes that land parcel Mosop/Nyaru/251, measuring



- 3.6 hectares, is the only property forming the free estate of the deceased. He relied on a Certificate of Official Search dated 26th May 2016, produced by the Respondent and contained at page 49 of the Record of Appeal, which confirms that the said parcel is registered in the name of the deceased.
15. Mr. Limo submitted that the Appellants' assertion that some beneficiaries had been provided for by the deceased during his lifetime was baseless and unsupported by evidence. He emphasized that the Respondent was categorical in his testimony that he resides on land registered in his own name, which has no nexus whatsoever with the deceased's estate. Counsel further submitted that the Appellants failed to demonstrate that the deceased owned any other property capable of forming part of the estate.
 16. On the legal definition of an estate, Mr. Limo relied on *Adan Chuda Sode v Madina Oshe Jira & Another* [2021] eKLR, where Justice Jesse N. Njagi interpreted Section 3 of the *Law of Succession Act* and reiterated that an "estate" comprises the free property of a deceased person, being property that the deceased was legally competent to dispose of during his lifetime and in respect of which his interest had not been terminated by death. He further relied on *In re Estate of Job Ndunda Muthike (Deceased)* [2018] eKLR where Odunga J held that property which a deceased person was not legally competent to freely dispose of cannot form part of the estate or be subject to confirmation of grant. Counsel submitted that proof of free property, particularly land, must be by documentary evidence such as a title deed, allotment letter, lease, or sale agreement, none of which were produced by the Appellants in respect of any other property.
 17. On the issue of distribution, Mr. Limo candidly conceded that although the Appellants were adamant that the only estate property, Mosop/Nyaru/251, should not be disturbed and failed to make a concrete proposal, the trial magistrate erred by failing to make adequate provision for some beneficiaries. To that limited extent, counsel submitted that the judgment of the trial court ought to be set aside and reviewed.
 18. Counsel proposed that Mosop/Nyaru/251 be distributed equally among the seven beneficiaries each receiving 1.3 acres namely: Stanley Kibwalei Chebundo, Eunice Cheboswony, Wilson Kiptoo Cheboswony, Gladys Cheboswony, Jemutai Cheboswony, Getrude Jepchirchir Rono (taking the share of her late father Erick Cheptoo Cheboswony) and Samuel Cheruiyot (taking the share of his late father Samuel Cheruiyot). He noted that the death certificates of the two deceased beneficiaries are on record at pages 47 and 48 of the Record of Appeal thereby justifying transmission of their respective shares to their heirs.
 19. In conclusion, Mr. Limo urged the Court to affirm that Mosop/Nyaru/251 is the sole property comprising the deceased's estate, to reject unsupported claims of inter vivos provision and to partially allow the appeal only to the extent of correcting the distribution so as to achieve equality and fairness among all beneficiaries.

Analysis and Determination

20. Being a first appeal, the court relies on the principles as set out in *Selle and Another Vs Associated Motor Boat Company Ltd & Others* [1968] 1EA that;

“.... this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take into account of particular circumstances or probabilities materially to estimate the evidence.”



21. It is thus established that an appellate court will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence; or the court has clearly failed on some material point to take into account of particular circumstances. This was the finding in *Mwangi Vs Wambugu* [1984] KLR 453 where the court observed that an appellate court will not normally interfere with a finding of fact by the trial court unless such finding is based on no evidence or on a misapprehension of the evidence; or where the court has clearly failed on some material point to take into account of particular circumstances or probabilities material to an estimate of the evidence.
22. This court's role is also to establish whether the lower court's finding was based on the evidence. The Court of Appeal in *Kiruga Vs Kiruga & Another* [1988] KLR 348, observed thus: -

“An appeal court cannot properly substitute its own actual finding for that of a trial court unless there is no evidence to support the finding or unless the judge can be said to be plainly wrong. An appellate court has jurisdiction to review the evidence in order to determine whether the conclusion reached upon that evidence should stand.”
23. Therefore, this Court is under a duty to delve at some length into factual details and revisit the facts as presented in the trial court, analyze the same, evaluate it and arrive at its own independent conclusions, but always remembering and giving allowance for it, that the trial court had the advantage of hearing the parties. The appeal challenges the identification of beneficiaries and the mode of distribution of the estate, particularly the exclusion of daughters of the deceased. From the pleadings, record, submissions and authorities cited, the following issues arise for determination: -
 - a. What constitutes the free property of the estate of the deceased?
 - b. Whether the trial court erred in excluding daughters of the deceased from the distribution of the estate.

What constitutes the free property of the estate of the deceased?

24. The Respondent herein produced a Certificate of Official Search dated 26th May 2016, appearing at page 49 of the Record of Appeal, confirming that LR No. MOSOP/NYARU/251, measuring approximately 3.6 hectares (approximately 9.8 acres), is registered in the name of the deceased. Section 3 of the *Law of Succession Act* defines "free property", in relation to a deceased person, means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death. It is therefore clear that the only property that forms part of the estate of the deceased is that property which the deceased was legally competent to dispose of during his lifetime, and in which by that time his interests had not been terminated.
25. In determining whether an asset forms part of the estate, the courts are to be guided as in *Mpatinga Ole Kamuye Vs Meliyo Tipango & 2 Others* (2017) eKLR, where it was stated that: -

“This Court's view before distribution of the estate of the deceased under Section 71 of the *Law of Succession Act* Cap 160; the Court must satisfy itself that the beneficiaries of the estate are the legitimate beneficiaries of the estate; that there are assets that comprise of the deceased's estate and are available for distribution after settling all liabilities and having the net estate for distribution.”



26. In Re Estate of Job Ndunda Muthike (Deceased) [2018] eKLR it was observed that: -

“In succession matters where the court is called upon to determine whether a property in question belongs to the estate of the deceased, the Court must be satisfied that that is the position so as to avoid a possibility of wrongfully incorporating a third party’s property into the estate as that may lead to serious consequences.”

27. The Appellants alleged that land in Kerio Valley formed part of the estate or should be considered for distribution. However, no documentary evidence was produced to demonstrate ownership of that land by the deceased. In the case of Adan Chuda Sode v Madina Oshe Jira & another [2021] eKLR, the Court held that;

“

“34. Section 3 of the *law of Succession Act* defines an “estate” to mean the free property of a deceased person, while “free property” in relation to a deceased person is defined to mean the property of which that person was legally competent freely to dispose during his lifetime and in respect of which his interest has not been terminated by his death. In In re Estate of Job Ndunda Muthike (Deceased) (2018) eKLR the court (Odunga J) while expounding on the said section stated that:

It is therefore clear that any property which the deceased was not legally competent freely to dispose during his lifetime and in respect of which his interest had been terminated by his death cannot form part of his estate and cannot be the subject of an application for confirmation of grant.

35. In my considered view, I would think that “free property” of a deceased person such as land can be proved by documents such as a title deed, allotment letter, lease agreement, sale agreement etc.”

28. The rule of evidence is clear that “He who alleges must prove”. The maxim has been grounded in law under Section 107 of the *Evidence Act*. The same was enunciated by late Justice Majanja in Evans Otieno Nyakwana Vs Cleophas Bwana Ongaro [2015] eKLR when he said that: “...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of section 107 (1) of the *Evidence Act* (Chapter 80 of the Law of Kenya) which provides:

“107.

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

29. Section 108 of the *Evidence Act* states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. For avoidance of doubt, the provision states as follows: “The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.” In addition, section 109 of the same Act states: “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”



30. The Court in the Matter the Estate of Sophia Watere Gachigua – Deceased [2016] eKLR that: -

“In my view the reason for this standard is that in some cases, the question of the probability or improbability of an action occurring is an important consideration to be taken into account in deciding whether that particular event had actually taken place or not. It is a fundamental principle of law that a litigant bears the burden (or onus) of proof in respect of the propositions he asserts to prove his claim. The standard of proof, in essence can loosely be defined as the quantum of evidence that must be presented before a court before a fact can be said to exist or not exist...I am also aware that proof in cases of this nature cannot be mathematically precise and certain and so the test should be one of satisfaction of a prudent mind in such matters. The onus must be on the person alleging and there must be clear and convincing evidence and absence of suspicious circumstances surrounding the case. For example, availing documents to confirm how the shares were acquired or the share certificates, or evidence of dividend payment, or the transfer instruments purporting to transfer shares to the petitioner could have shed light on the issue.”

31. The other question in this case is whether the mentioned land in Kerio valley which is unregistered land constitutes free property of a deceased herein in this succession proceedings. The answer to this question can be determined by examining the duty of a probate court. The duty of a probate court is to identify the estate of a deceased person, identify the lawful beneficiaries to the estate and distribute the same to the beneficiaries. In *Re Estate of Alice Mumbua Mutua (Deceased)* [2017] eKLR Musyoka J. elucidated this role as follows: -

“... The *Law of Succession Act*, and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.

32. The duty of a probate court ends at distribution of the estate and the process is then taken over by other bodies who have the mandate to transmit the property to the beneficiaries. The process of distribution is therefore the beginning of other processes geared towards transmission of the property from the deceased to the beneficiaries. In *re Estate of Reuben Mugesani (Deceased)* (2020) eKLR Musyoka J. explained the process that follows after the court has distributed the property amongst the beneficiaries as follows: -

7. After a grant is confirmed, and a certificate of confirmation of grant issued, the process that follows is known as transmission, of the property from the name of the deceased to that of the beneficiaries named in the certificate of confirmation of grant. That would involve, where the property has to be shared amongst many persons, the subdivision of the property, before the resultant subtitles are registered in the names of the beneficiaries. Transmission is not provided for under the *Law of Succession Act*, nor under the Probate and Administration Rules. It has nothing to do with the probate court, and it is carried out at the lands registry. It is, therefore, a process under land legislation. The principal legislation is the *Land Registration Act*, No. 3 of 2012, and the *Land Act*, No. 6 of 2012. The *Land Registration Act* and the *Land Act* carry complementary provisions on transmission of property upon the death of an owner after the grant has been confirmed.



33. In essence, the succession process requires that any property to be distributed by the court be clearly identifiable and precisely defined. Where the property in question is land, it must be properly identified by a land reference number. If the land is unregistered, as in the present circumstances, a succession court would be acting in vain because transmission cannot be effected at the Lands Registry. Courts do not engage in futile exercises. Accordingly, unregistered land cannot properly be regarded as the “free property” of a deceased person and its distribution therefore falls outside the jurisdiction and mandate of a probate court. Consequently, the burden of proof under Sections 107, 108 and 109 of the Evidence Act was not discharged. This Court therefore finds that land in Kerio Valley does not meet the legal threshold of forming part of the estate of the deceased.

Whether the trial court erred in excluding daughters of the deceased from the distribution of the estate?

34. The record shows that the confirmed grant issued on 17th December 2020 distributed the entire estate exclusively to male beneficiaries, excluding all daughters of the deceased. The relevant provision of the Law of Succession Act applicable to this succession Appeal is section 38 of the Law of Succession Act which provides as follows: -

38. Where intestate has left a surviving child or children but no spouse

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.

35. The said section mandates equal inheritance for all the children of the deceased irrespective of gender. In re Estate of Francis Andachila Luta (Deceased) (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment) Musyoka J stated as follows: -

“Let me revisit section 38 of the Law of Succession Act. It provides for equal distribution of the estate amongst the children. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent. Gender and marital status are factors under customary law, but not under the Law of Succession Act. The estate herein is not subject to customary law, for the reasons that I have discussed in paragraphs 13, 14 and 15 a foregoing. The estate is subject to the Law of Succession Act, which is blind on biases founded on gender and marital status.”

36. In re Estate of Francis Andachila Luta (Deceased) (Succession Cause 875 of 2012) [2022] KEHC 16900, the Honourable Court stated as follows;

“Let me revisit section 38 of the Law of Succession Act. It provides for equal distribution of the estate amongst the children. The language of section 38 is gender neutral. It does not classify children into male and female, nor sons and daughters, nor men and women. There is no discrimination nor differentiation nor classification nor categorization along gender lines. That would mean that sons and daughters of a dead person are entitled on equal basis to a share in the estate of their dead parent. Section 38 does not make marriage a factor in the distribution of the estate of a dead parent. Gender and marital status are factors under customary law, but not under the Law of Succession Act. The estate herein is not subject to



customary law, for the reasons that I have discussed in paragraphs 13, 14 and 15 a foregoing. The estate is subject to the *Law of Succession Act*, which is blind on biases founded on gender and marital status.”

37. I have taken note of the distribution matrix which was preferred in the Certificate of Confirmation of Grant dated 17th December 2020. The mode of distribution by the trial magistrate is discriminatory in nature in that it has left some of the women who are survivors of the deceased out of the distribution matrix 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).

38. 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.”

39. 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.

40. 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.
41. 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.”

42. Given this constitutional foundation and provisions of the international instruments which Kenya is a party, the distribution matrix preferred by the trial Magistrate in the Certificate of Confirmation of Grant denies inheritance rights to women thus, it is deemed discriminatory as it directly contravenes these fundamental constitutional protections as discussed above. 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.

43. In view of the above legal principles, this Court therefore finds that the trial court erred in law and in fact by confirming a mode of distribution that excluded daughters without any lawful justification. Such exclusion is unconstitutional, discriminatory and contrary to the *Law of Succession Act*.
44. In view of the foregoing and from the foregoing analysis, this Court finds that the trial court correctly identified Land Reference No MOSOP/NYARU/251 as the sole estate property. However, it fundamentally erred by excluding daughters from inheritance. The confirmation proceedings and the resulting certificate were therefore fatally flawed to the extent of distribution. The appeal is therefore merited to the extent of redistribution, but not on the inclusion of unproven properties. Consequently, the following orders shall abide: -



- a. That the Certificate of Confirmation of Grant issued on 17th December 2020 by the trial court is hereby varied and set aside.
- b. That an order so issue that the Land allegedly situated in Kerio Valley does not form part of the estate of the deceased, the Appellants having failed to meet the evidentiary threshold under Sections 107, 108 and 109 of the *Evidence Act*.
- c. That the Administrator is hereby directed to ensure transmission of the estate to the lawful beneficiaries within forty-five (45) days from the date of this judgment
- d. That a fresh Certificate of Confirmation of Grant shall issue, redistributing LR No. MOSOP/NYARU/251 equally among the seven (7) beneficiaries as follows: -

LR NO MOSOP/NYARU/251

NAME	SHARE OF THE HEIR
Stanley Kibwalei Chebundo	1.3 Acres
Eunice Cheboswony	1.3 Acres
Wilson Kiptoo Cheboswony	1.3 Acres
Gladys Cheboswony	1.3 Acres
Jemutai Cheboswony	1.3 Acres
Estate of Erick Cheptoo Cheboswony	1.3 Acres
Estate of Samuel Cheruiyot	3. Acres

- e. There shall be Status Conference on 3rd March 2026 to confirm compliance with the aforesaid orders.
- f. Each party shall bear their own costs, this being a family succession dispute.
- g. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 14TH JANUARY 2026

.....

R. NYAKUNDI

JUDGE

