



REPUBLIC OF KENYA



**In re Estate of Late Joshua Kiplagat Ngetich (Deceased) (Succession Cause 207 of 2005) [2026] KEHC 1100 (KLR) (5 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 1100 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 207 OF 2005  
RN NYAKUNDI, J  
FEBRUARY 5, 2026  
IN THE MATTER OF THE ESTATE OF THE LATE  
JOSHUA KIPLAGAT NGETICH (DECEASED)**

**BETWEEN**

**SARAH JERUBET NGETICH ..... PLAINTIFF**

**AND**

**PAMELA LAGAT ..... 1<sup>ST</sup> OBJECTOR**

**BRIGIT JEROP ..... 2<sup>ND</sup> OBJECTOR**

**NANCY CHEBET ..... 3<sup>RD</sup> OBJECTOR**

**ELVIS KIPLETING KOSGEY ..... 4<sup>TH</sup> OBJECTOR**

**CHRISTOPHER SIMON KIKORIR SITIENEI ..... 5<sup>TH</sup> OBJECTOR**

**JUDGMENT**

1. The Succession Cause herein involves the estate of the late Joshua Kiplagat Ngetich (deceased) who died on 30<sup>th</sup> September 2002. The deceased died intestate and left the following surviving him: -
  - a. Sarah Jerubet Ngetich Widow (Deceased)
  - b. Priscilla Jebitok Samoei Daughter
  - c. Truphosa Jepchumba Biwott Daughter
  - d. Shadrack Kipkoech Lagat Son (Deceased)
  - e. Peres Jepchirchir Ngetich Daughter



2. The deceased had the following properties/assets which form part of his net estate as per the Affidavit in support of the Petition for Letters of Administration intestate dated 14<sup>th</sup> November 2006;
  - a. Nandi/kaptel/1791 measuring 24.71 Ha
  - b. Nandi/kaptel/1792 measuring 2.0 Ha
  - c. Nandi/kaptel/876 measuring 0.42 Ha
  - d. Chepsiro/Kibuswa Block 2 (Kiptenden)/190 measuring 6.07 Ha
  - e. Chepsiro/Kibuswa Block 2 (Kiptenden) 415 measuring 0.04 Ha
  - f. Chepsiro/Kibuswa Block 2 (Kiptenden)/143 measuring 3.24 Ha
  - g. A pick up motor vehicle
  - h. One (1) Tractor KUA 167
  - i. Posho Mill
  - j. 8 Acres of tea bushes
  - k. 12 heard of cattle
  - l. Building and Development on the above plot.
3. I also take cognizant note that there is a Consent to the making of grant of letters of administration intestate dated 12<sup>th</sup> June 2025 which states that the beneficiaries do hereby consent to letters of administration to the estate of the said deceased being granted to the said Peres Jepchirchir Ngetich and Pamela Lagat.
4. From a clear reading of the record, I wish to note that what is in contestation in this succession cause is about the mode of distribution of the intestate estate of the deceased.

### **Applications before Court**

5. The Applicants herein led by Pamela Lagat filed a Notice of Motion Application dated 22<sup>nd</sup> April 2025 seeking the following orders: -
  - a. That Pamela Lagat be appointed as the Petitioner/Administrator herein.
  - b. That distribution be done according to the schedule accompanying this application.
  - c. That costs be provided for and paid by the estate.
6. The Application is made on the following grounds on the face of it among others;
  - a. That the estate herein has been pending for over twenty (20) years without being concluded.
  - b. That the Petitioner had only one (1) son Mr. Shadrack Kipkoech Lagat who has since passed on.
  - c. That the wife of Mr. Shadrack Kipkoech Lagat is Pamela Lagat, the applicant herein.
  - d. That Mr. Shadrack Kipkoech Lagat's three (3) sisters have all been married off.
  - e. That it is necessary therefore that Pamela Lagat be appointed as the administrator of the estate.



7. The Application is supported by the annexed affidavit dated 22<sup>nd</sup> April 2025 sworn by Pamela Lagat who deponed as follows;
  1. That the deceased Mr. Joshua Kiplagat Ngetich died on the 30<sup>th</sup> day of September 2002.
  2. That I am the wife to the only son of the deceased Mr. Shadrack Kipkoech Lagat.
  3. That the Petitioner herein my mother in law had been initially misled on the administration but she changed and supported me before her death and that is how the court file disappeared until her death.
  4. That however, we have resolved the family differences that existed.
  5. That the following are the deceased's dependents: -
    - a. Pamela Lagat.....Widow to Shadrack Kipkoech Lagat
    - b. Priscillah Jebitok Samoei.....Daughter
    - c. Truphosa Jepchumba Biwott.....Daughter
    - d. Peres Jepchirchir Ngetich.....Daughter
    - e. Elvis Kiplating.....Son
  6. That the deceased had the following properties
    - a. Nandi/kaptel/1179 – 24.71 Ha
    - b. Nandi/kaptel/1792 – 2.0 Ha
    - c. Nandi/kaptel/876 – 0.42 Ha
    - d. Chepsiro/Kibuswa Block 2 (KIPLEWA)/415 – 0.04 Ha
    - e. Chepsiro/Kibuswa Block 2 (KIPLEWA)/143 – 3.24 Ha
    - f. One (1) car registration number KAK 404D
  7. That the following are the beneficiaries in the estate.
    - a. Dr. Kipkorir Christopher Simon Sitienei – 5.1 Acres
    - b. Mr. Willy Sorinei – 2 Acres
    - c. Kapkuto Development Project – 0.4 points
    - d. Mr. Ezekiel Kipruto Yatich Mutai – 1 Acre
  8. That the estate to remain in the name of Pamela Lagat on her behalf and on behalf of the beneficiaries.

### **Response to the application**

8. The proposed mode of distribution as per the application above is opposed vide an affidavit of proposed mode of distribution dated 12<sup>th</sup> June 2025 sworn by Priscilla Jebitok Samoei and Peres Jepchirchir Ngetich who deponed as follows: -
  1. That the deceased herein one Joshua Kiplagat Ngetich died on 30.9.2002 as evidence vide certificate of death entry no. 39020344.



2. That our mother was called Sarah Jerubet Ngetich who also died on 30.7.2020
3. That prior to the death of the deceased herein, he had the following family members;
  - a. Sarah Jerubet Ngetich who was our mother but died on 30.7.2020 as evidence vide paragraph 2 above.
  - b. Priscilla Jebitok Samoei
  - c. Truphosa Jepchumba Biwott
  - d. Shadrack Kipkoech Lagat who died on 25.05.2005 but was survived by:
    - a. Pamela Lagat (Widow)
    - b. Elvis Kipleting Koech
    - c. Nancy Chebet
    - d. Bridgid Jerop
    - e. Menasseh Kirwa
  - e. Peres Jepchirchir Ngetich
4. That prior to his death, the deceased had the following properties/assets which form part of his net estate;
  - m. Nandi/kaptel/1791 measuring 24.71 Ha which is 61.10 Acres
  - n. Nandi/kaptel/1792 measuring 2.0 Ha which is 4.94 Acres
  - o. Nandi/kaptel/876 measuring 0.42 Ha which is 1.04 Acres
  - p. Chepsiro/Kibuswa Block 2 (Kiptenden)/190 measuring 6.07 Ha which is 15.0 Acres
  - q. Chepsiro/Kibuswa Block 2 (Kiptenden) 415 measuring 0.04 Ha which is 0.10 Acres
  - r. Chepsiro/Kibuswa Block 2 (Kiptenden)/143 measuring 3.24 Ha which is 8.0 Acres.
  - s. A pick up motor vehicle
  - t. One (1) Tractor KUA 167
  - u. Posho Mill
  - v. 8 Acres of tea bushes
  - w. 12 heard of cattle
  - x. Building and Development on the above plot.
5. That we propose to share the above stated estate in equal shares among the four (4) of us as follows;
  - a. Nandi/kaptel/1791 measuring 24.71 Ha which is 61.10 Acres
    - i. Priscilla Jebitok Samoei.....15.275 Acres
    - ii. Truphosa Jepchumba Biwott.....15.275 Acres



- iii. Estate of Shadrack Kipkoech Lagat.....15.275 Acres
- iv. Peres Jepchirchir Ngetich.....15.275 Acres
- b. Nandi/kaptel/1792 measuring 2.0 Ha which is 4.94 Acres
  - i. Priscilla Jebitok Samoei.....1.235 Acres
  - ii. Truphosa Jepchumba Biwott.....1.235 Acres
  - iii. Estate of Shadrack Kipkoech Lagat.....1.235 Acres
  - iv. Peres Jepchirchir Ngetich.....1.235 Acres
- c. Nandi/kaptel/876 measuring 0.42 Ha which is 1.04 Acres
  - i. Priscilla Jebitok Samoei.....0.26 Acres
  - ii. Truphosa Jepchumba Biwott.....0.26 Acres
  - iii. Estate of Shadrack Kipkoech Lagat.....0.26 Acres
  - iv. Peres Jepchirchir Ngetich.....0.26 Acres
- d. Chepsiro/Kibuswa Block 2 (Kiptenden)/190 measuring 6.07 Ha which is 15.0 Acres
  - i. Priscilla Jebitok Samoei.....3.75 Acres
  - ii. Truphosa Jepchumba Biwott.....3.75 Acres
  - iii. Estate of Shadrack Kipkoech Lagat.....3.75 Acres
  - iv. Peres Jepchirchir Ngetich.....3.75 Acres
- e. Chepsiro/Kibuswa Block 2 (Kiptenden)/415 measuring 0.04 Ha which is 0.10 Acres to all beneficiaries being
  - a. Priscilla Jebitok Samoei
  - b. Truphosa Jepchumba Biwott
  - c. Estate of Shadrack Kipkoech Lagat
  - d. Peres Jepchirchir Ngetich
- f. Chepsiro/Kibuswa Block 2 (Kiptenden)/143 measuring 3.24 Ha which is 8.0 Acres
  - i. Priscilla Jebitok Samoei.....2.0 Acres
  - ii. Truphosa Jepchumba Biwott.....2.0 Acres
  - iii. Estate of Shadrack Kipkoech Lagat.....2.0 Acres
  - iv. Peres Jepchirchir Ngetich.....2.0 Acres
- g. A pick up motor vehicle to be sold and proceeds shared equally among:
  - i. Priscilla Jebitok Samoei
  - ii. Truphosa Jepchumba Biwott
  - iii. Estate of Shadrack Kipkoech Lagat



- iv. Peres Jepchirchir Ngetich
- h. One (1) Tractor KUA 167 to be sold and proceeds shared equally among;
  - i. Priscilla Jebitok Samoei
  - ii. Truphosa Jepchumba Biwott
  - iii. Estate of Shadrack Kipkoech Lagat
  - iv. Peres Jepchirchir Ngetich
- i. Posh mill to be sold and proceeds shared equally among;
  - i. Priscilla Jebitok Samoei
  - ii. Truphosa Jepchumba Biwott
  - iii. Estate of Shadrack Kipkoech Lagat
  - iv. Peres Jepchirchir Ngetich
- j. 12 herd
  - a. Priscilla Jebitok Samoei.....3 heard of Cattle
  - b. Truphosa Jepchumba Biwott.....3 heard of Cattle
  - c. Estate of Shadrack Kipkoech Lagat.....3 heard of Cattle
  - d. Peres Jepchirchir Ngetich.....3 heard of Cattle
- k. 8 Acres of tea bushes in Land Parcel
  - i. Priscilla Jebitok Samoei.....2.0 Acres
  - ii. Truphosa Jepchumba Biwott.....2.0 Acres
  - iii. Estate of Shadrack Kipkoech Lagat.....2.0 Acres
  - iv. Peres Jepchirchir Ngetich.....2.0 Acres
- 6. That we opposed the proposal as per the Pamela Lagat presented vide the Notice of Motion dated 22.4.2025.

**Further Affidavit of Pamela Lagat**

- 9. The 1<sup>st</sup> Applicant herein filed a Further Affidavit dated 6<sup>th</sup> August 2025 in response to the mode of distribution preferred above where she deponed above;
  - a. That my co-petitioners Peres Jepchirchir Ngetich filed on the 11<sup>th</sup> June 2025 a counter mode of distribution in court dated 12<sup>th</sup> June 2025.
  - b. That I have read the same and have discussed widely and deeply now instructions to further allege and correct as hereunder:
  - c. That the deceased father– in-law had the following beneficiaries surviving him
    - a. Priscilla Jebitok Samoei



- b. Truphosa Jepchumba Biwott
  - c. Pamela Lagat
  - d. Peres Jepchichir Ngetich.
- d. That the deceased had the following properties in his lifetime.
- a. Nandi/kaptel/1791
  - b. Nandi/kaptel/1792
  - c. Nandi/kaptel/876
  - d. Chepsiro/Kibuswa Block 2 (Kiptenden) 415
  - e. Chepsiro/Kibuswa Block 2 (Kiptenden) 143
  - f. Motor vehicle KAK 404D
  - g. Chepsiro/Kibuswa Block 2 (Kiptenden) 190
- e. That the deceased with his wife Sarah Jerubet Ngetich sold land as hereunder.

**From Title No. Nandi/kaptel/1791**

- a. Dr. Christopher Simon Kipkorir Sitienei- 5.1 Acres paid in full and possession taken.
  - b. Mary Mugun- 0.9 Acres paid in full possession taken
  - c. David Kiplagat- 1.5 Acres paid full and possession taken
- Total- 7.5 Acres

**From Nandi/kaptel/1792**

- a. Bishop Birech Primary School – 4.9 Acres paid in full and possession taken.

**Chepsiro/Kibuswa Block 2 (Kiptenden) 143 – 3.24Ha**

- a. Chelalang Kiptenden Self Help Group 8 Acres
- f. That the following properties are available for distribution:
- a. Nandi/kaptel/1791 24.71 Ha 61 Acres
  - b. Nandi/kaptel/876 0.42 Ha 1.15 Acres
  - c. Nandi/kaptel/1792 2.0 Ha 5.48 Acres
  - d. Chepsiro/Kibuswa Block 2/kiptenden/415- 0.04 Ha- 1/8
  - e. Chepsiro/Kibuswa Block 2/Kiptendei/190- 6.07 Ha–15 acres
  - f. Chepsiro/Kibuswa Block 2/Kiptendei/143- 8 Acres
- Nandi/kaptel/1791.....61 Acres
- Purchasers for value
- a. Christopher Simon Kipkorir Sitienei.....5.1 Acres



- b. Mary Mugun.....0.9 Acres
  - c. David Kiplagat.....1.5 Acres
  - d. Willy Sovinei.....2.0 Acres
  - e. Kapkuto Community Development Project.....0.4 Acres
  - f. Ezekiel Yatich Mutai.....1.0 Acres
  - g. Pauline Langat.....0.7 Acres
  - h. Naftali Rono.....6.75 Acres
  - i. Benjamin Too.....1.0 Acre
  - j. Isaac Too.....0.2 Acres
- Total.....19.55 Acres
- Balance.....41.45 Acres
- Nandi/kaptel/1792.....4.94 Acres
- Gifted by Joshua K. Ngetich to Bishop Birech Primary School
- Nandi/kaptel/876.....0.42 HA
- Available shareable
- Chepsiro/Kibuswa Block 2/Kiptenden/415 – 0.04 Ha
- Joshua Ngetich Sold to Peter Lagat late (1/8)
- Chepsiro/Kibuswa Block 2/Kiptenden/190 – 6.07 Ha
- Gifted by Joshua Kiplagat Ngetich to Kipkoech Lagat (not shareable).
- Chepsiro/Kibuswa Block 2/Kiptenden/143 – 0.04 Ha
- Sold by Joshua Kiplagat Ngetich to Chelalang Kiptenden Self Help Group (whole)
- g. Available properties for distribution
    - a. Nandi/kaptel/1791.....41.45 Acres
    - b. Nandi/kaptel/876.....0.42 Ha – 1.05 Acres
- TOTAL.....42.5 Acres
- h. That having 42.5 Acres available in the family, I seek that we be allowed to go to Mediation on the same.

### **Analysis and Determination**

10. I have read and considered the pleadings herein. The following issues arise for determination by this Honourable Court;
  - a. Who should be appointed as administrator(s) of the estate?
  - b. What is the lawful mode of distribution of the estate under the *Law of Succession Act*?



- c. How should the court treat the claims of third parties alleging purchaser's interest in certain parcels of the estate?

### **Who should be appointed as administrator(s) of the estate?**

11. Section 66 of the *Law of Succession Act* grants this Honourable Court final discretion in appointing administrators with priority given to surviving spouses and children. Specifically, section 66 of the *Law of Succession Act* provides as follows;

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

- (a) surviving spouse or spouses, with or without association of other beneficiaries.
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.”

12. The Court in the case of *In re Estate of Erastus Njuguna Kamau (Deceased)* (Succession Cause 11 of 2019) [2025] KEHC 2441 (KLR) held as follows with regards to section 66 of the *Law of Succession Act*;

“ 37. Section 66 therefore guides on who qualifies and has priority to appointment as Administrator in intestacy. The list of preference is dependent on Part V of the *Law of Succession Act*. Based on the above, it is noted that a daughter-in-law does not feature either in Section 66 of the Act or Part V thereof. However, though under Section 66 of the Act preference is given to the surviving spouse of the deceased, followed by the children and other relatives in that order, the list is a guide and it can be departed from if the Court finds it justified to do so.”

13. In the present case, the record clearly shows that there is a consent duly recorded on the appointment of the Administrators. That consent is not a mere procedural formality; it is a deliberate agreement by the beneficiaries in this intestate succession cause on who should administer the estate. Once such consent is adopted by the court and a grant issues, the appointment becomes final and binding unless set aside through a proper application under the *Law of Succession Act*. Having consented to the appointment, the administrators assumed statutory responsibilities imposed by the *Law of Succession Act*. Under Sections 79, 82 and 83 of the *Law of Succession Act*, the Administrators are obligated to faithfully administer the estate, complete the administration within a reasonable time and implement the confirmed mode of distribution. They are therefore required to comply with procedural law by executing and signing all relevant succession and land transmission documents necessary to give effect to the confirmed grant.
14. In these circumstances, it would be untenable for any Administrator, after benefiting from a consensual appointment, to act in a manner that frustrates or delays the administration of the estate.



A refusal or failure to sign the requisite forms or to cooperate in the implementation of the confirmed grant would amount to a breach of statutory duty and an abuse of the trust reposed in them by both the court and the beneficiaries. Accordingly, where consent on appointment exists, the administrators cannot lawfully challenge or undermine the very process they agreed to. Their duty is to act jointly, transparently and in accordance with the confirmed grant and the court retains the power under Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules to issue appropriate directions or orders to ensure compliance and protect the integrity of the succession process.

15. In view of the above, the surviving children and the estate of the late Joshua Kiplagat Ngetich are entitled to representation with regards to the administration of the intestate estate. I note the consent filed on 12<sup>th</sup> June 2025 wherein the family agreed to the appointment of P Eres Jepchirchir Ngetich and Pamela Lagat as Administrators. There being no sufficient reason to depart from that arrangement, I affirm their joint appointment as co-administrators.

**What is the lawful mode of distribution of the estate under the *Law of Succession Act*?**

16. From the record, the deceased died on 30<sup>th</sup> September 2002. As at the time of his demise, the deceased left behind the following surviving him.
- a. Sarah Jerubet Ngetich Widow
  - b. Priscilla Jebitok Samoei Daughter
  - c. Truphosa Jepchumba Biwott Daughter
  - d. Shadrack Kipkoech Lagat Daughter
  - e. Peres Jepchirchir Ngetich Daughter
17. Since then from the record before me, the following survivors have passed away; Shadrack Kipkoech Lagat, son to the deceased died on 25<sup>th</sup> May 2005 and the widow herein Sarah Jerubet Ngetich died on 30<sup>th</sup> July 2020. The Applicable law with regard to this 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.

Section 41 of the same Act provides as follows;

41. Property devolving upon child to be held in trust

Where reference is made in this Act to the "net intestate estate", or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take



through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.

18. 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.”

19. I have taken note of the two modes of distribution of the intestate estate of the deceased preferred by the parties to this succession cause and in my view, the same are conflicted. The first mode of distribution preferred by Pamela Lagat is discriminatory in nature in that it has left all the women who are survivors of the deceased on the account that they have all been married namely: Priscilla Jebitok Samoei; Truphosa Jepchumba Biwott and Peres Jepchirchir Ngetich out of the distribution matrix while there is no evidence on record that they had rescinded their right to inheritance.

20. 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).

21. 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.”

22. 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.
23. 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.
24. 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.”

25. Given this constitutional foundation and provisions of the international instruments which Kenya is a party, the mode of distribution advanced by Pamela Lagat 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.”

26. 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.

27. 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. Every day in my work as a judge handling family matters, I encounter cases requiring interpretation of *the Constitution*, the *Matrimonial Property Act*, and the *Law of Succession Act*. These laws expressly safeguard women’s equal rights to acquire, co-own, access, manage, and inherit both movable and immovable property. However, deep-seated social, cultural, and customary norms continue to hinder the full realization and enjoyment of these rights.

28. Applying those provisions, the estate must devolve equally among: Priscilla Jebitok Samoei; Truphosa Jepchumba Biwott; Estate of Shadrack Kipkoech Lagat (to be held by his widow Pamela Lagat and children) and Peres Jepchirchir Ngetich. I therefore adopt the proposal by Priscilla Jebitok Samoei and Peres Jepchirchir Ngetich as it accords with the law: the land parcels, movable assets and livestock shall be divided into four equal shares, each beneficiary (or estate thereof) receiving a quarter.

#### **How should the court treat the claims of third parties alleging purchaser’s interest in certain parcels of the estate?**

29. The record shows that Pamela Lagat listed several individuals and entities such as Dr. Kipkorir Christopher Simon Sitienei, Mr. Willy Sorinei, Kapkuto Development Project, and Mr. Ezekiel Kipruto Yatich Mutai as purchasers of portions of land from the estate and some sale agreements were on record. One of the sale agreements on record before this court is dated 6<sup>th</sup> day of July 2004 between Sarah Jerubet Ngetich- widow (deceased) and Charles Kaino for selling of land of the deceased. Certainly, by this time, the grant had not been confirmed nor had the parties even petitioned for the grant of letters of administration intestate. The land was still in the name of the deceased herein Joshua Kiplagat Ngetich. It is therefore clear that this sale agreement to sell some parcel of land of Joshua



Kiplagat Ngetich (deceased) by the widow - Sarah Jerubet Ngetich who is deceased now was done before confirmation of grant. Section 82(b)(2), of the [Law of Succession Act](#) provides that;

“personal representatives have powers to sell the assets of the deceased, but it goes on to state that “no immovable property shall be sold before confirmation of grant”.

30. This court in the case of *In Re Estate of Isaac Kaburu Marete*(deceased) (2017) eKLR, held as follows;

“acquisition of land before confirmation of grant is unlawful and does not enjoy property rights under [the constitution](#)..... I will restate once again what I stated in the case of the Matter of the Estate of M’Ajogi M’Ikiugu Ajogi(deceased) on sale of estate property before confirmation of grant as follows: - Courts have said time and again, and I will not be tired of stating it again, that under section 82(b)(2) of the Succession Act, sale of immovable property of the estate before confirmation of grant is prohibited. Again, under section 55 of the Succession Act, the law had placed a restriction on distribution of any capital assets of the estate before confirmation of grant. Therefore, no person shall have any power or legal authority or capacity to sell immovable property of the deceased before confirmation of grant. As such, any such attempted sale of immovable property of the estate before confirmation of grant shall be null and void for all purposes and intents....”

31. It is trite that without a confirmed grant, the legal representative of Joshua Kiplagat Ngetich (deceased), could not enter into any sale agreement for sale of immovable property of the estate. Section 55 of the [Law of Succession Act](#) provides that no grant of representation, whether or not limited in its term, shall confer power to distribute any capital assets, or make any division of property, unless and until the grant has been confirmed as provided by Section 71 of the [Law of Succession Act](#). In the case of *In re Estate of Paul M’Maria* (Deceased) [2017] eKLR, the Court held that;

“(10) The restriction provided by law that no immovable property shall be sold or distributed before confirmation of grant is not merely directory or an embellishment. It is a statutory command with fatal consequences on any transaction done in contravention of the said law. Accordingly, acquisition of immovable property of the estate in contravention of the [Law of Succession Act](#) is tainted with killer poison; and is unlawful acquisition; thus, property so acquired does not enjoy the protection of property rights under article 40(6) of [the Constitution](#). See the claw-back provision of [the Constitution](#) that: -

40(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”

32. Further, the law forbids any person, may it be a beneficiary or not from dealing with the estate of a deceased person before being allowed by the court through succession proceedings. Section 45 of the [Law of Succession Act](#) provides that dealing with such an estate of the deceased without authority one commits an offence known as intermeddling. In particular, this section provides as follows;

45. No intermeddling with property of deceased person

(1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.



- (2) Any person who contravenes the provisions of this section shall-
- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
  - (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

33. In the case of *Samuel Ariga Bosire Vs Abagusii Otenyo Self Help Group (2021) eKLR*, the court held;

“... an administrator is not allowed to dispose of any part of the deceased's property even if he is a beneficiary..... if he does so, he will be guilty of intermeddling with the deceased estate under section 45 of the *Law of Succession Act* and is guilty of an offence under sub section (2) punishable by a fine not exceeding kshs. 10,000/= or to a term of imprisonment not exceeding 1 year or both penalties”

34. It is clear from the applicable law that the widow herein Sarah Jerubet Ngetich could not have entered into a sale agreement for sale of the deceased estate being part of parcel of land before confirmation of grant. That could have been intermeddling which is forbidden by Section 45 of the Succession Act. The court will rely on the findings of the court in the case of *Morris Mwiti Mburugu Vs Dennis Kimanthi M'mburugu (2016) eKLR*; where the court held: -

“from the foregoing, it is clear and I so hold, that where any person interferes with the free property of the deceased or deals with the estate of a deceased person contrary to the provisions of sections 45 and 82 of the Act, is intermeddling, is unlawful and cannot be protected by the court. The transaction is subject to be nullified and set aside at the instance of the innocent beneficiaries, who may have been affected by the act, but were not involved in the same.”

35. It is my considered view that a sale agreement does not confer rights in a succession case before the grant of representation is confirmed because the confirmed grant is the legal authority that empowers a personal representative to distribute the deceased's estate. Without a confirmed grant, the personal representative lacks the full legal authority to deal with the estate's capital assets, making any sale agreement before that point invalid for transferring property rights. Since the widow (deceased) herein Sarah Jerubet Ngetich allegedly entered into transaction for sale of the deceased estate being a portion of the parcel of land before grant was confirmed or without authority of the court, then he had no legal authority to sell land.

#### **Purchasers' interests' vis a vis the Estate of the Deceased.**

36. I take note that from the contents of the Further Affidavit of Pamela Lagat dated 6<sup>th</sup> August 2025, the central issue that emerges is the extent to which the properties listed as forming the estate of the deceased are encumbered by purchasers' and third-party interests and how such interests ought to be treated within succession proceedings under Kenyan law. In respect to allegations of the nature cited by the 1<sup>st</sup> Objector/Applicant being Pamela Lagat, I refer to the decision of Musyoka J in the case of *In the matter of the Estate of Stone Kakhuli Muinde (Deceased) [2016] eKLR*. As herein, the case involved



an Application by third parties for joinder into a Succession Cause. In dismissing the Application, the Judge stated as follows:

- “24. The probate process is meant to be largely administrative, where the documents lodged in the cause are scrutinized administratively by court officers before certain instruments are processed and executed by relevant judicial officers before being issued to the parties. It is intended that there be minimal court appearance. The whole process is tailored to be non-contentious, and the only contemplated court appearance is at the stage of the confirmation of the grant of representation. In that scenario then there would be no need to join any person or entity to the succession cause.
25. The cause can and does, as a matter of course, turn contentious. To facilitate distribution of the estate, the court should identify the persons who are entitled to inherit from the estate of the deceased and the assets to be shared out amongst the person entitled. Disputes often arise on those issues. It may become necessary for the court to determine whether a particular person is entitled to a share in the estate of the deceased or not. An issue may also arise whether some asset formed part of the estate of the deceased or not.
26. The Act and the Rules have elaborate provisions on resolving such questions, and to settle them there would be no need to bring in persons who have no direct interest in the matter, especially those who are not family members. Whether a person is entitled to the part of the estate is an issue to be resolved without joining other persons to the matter.
27. With regard to the assets, one of the questions that may present itself would be the ownership of the assets presented as belonging to the deceased. An outsider may claim that the property does not form part of the estate and therefore it need not be placed on the probate table. The resolution of such questions do not necessitate joinder into the cause of the alleged owner to establish ownership. It is not the function of the probate court to determine ownership of the assets alleged to be estate property. That jurisdiction lies elsewhere.
28. Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules. This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the Environment and Land Court. If a decree is obtained in such suit in favour of the claimant, then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.
29. It is the failure to observe the foregoing, and allowing non-survivors or beneficiaries of the estate to prove their claims against the estate within the probate court that has often made succession causes complex, unwieldy and endless. It is by the same token that it had become necessary for the court to allow joinder of persons to the Succession cause who ideally ought not to be party to the cause in the first place.”



37. There is also the case of *In Re Estate of Mbai Wainaina (Deceased)* [2015] eKLR, in which again, W. Musyoka J, held as follows: -

“ Even if there was material establishing that there was such a trust, I doubt that the resolution of this issue would be a matter of the probate court. The mandate of the probate court under the *law of succession Act* is limited. It does not extend to determining issues of ownership of property and determination of trusts. It is not a matter of the probate court being incompetent to deal with such issues but the provisions of the law of succession and the relevant subsidiary legislation do not provide a convenient mechanism for determination of some issues. A party who wishes to have such matters resolved ought to file a substantive suit to be determined by the Environment and Land court. Consequently, and for the reasons above stated, I wish to find and hold that this court has no mandate to resolve the proprietary interest on land based on the alleged trust”.

38. Similarly, in the case of *In re estate of Solomon Mwangi Waweru (deceased)* (2018) eKLR, A.K. Ndungu J remarked as follows: -

“Therefore, claims by interested third parties against the estate of the deceased ought to be litigated in separate proceedings. It is imperative that any adverse claims against the estate of a deceased person are determined through settlement or where inapplicable through suits against the administrator (s) of the estate and not through an objection like the one before court”

.....

“It is my opinion that the fact that the applicant has laid claim to the estate does not give rise to an automatic right to have the distribution of the property stayed by the succession cause. The applicant ought to disclose a legitimate claim which needs to be determined by the Environment and Land court. The succession court would then proceed with the administration of the estate in respect of other properties not affected by the conservatory order if obtained awaiting the outcome of the suit”.

39. Under section 3 of the *Law of Succession Act*, the “free property” of a deceased person refers to property which the deceased was legally competent to freely dispose of during his lifetime and which has not been effectively disposed of at the time of death. Property that was validly sold by the deceased during his lifetime and where consideration was paid and possession taken, does not strictly fall within the free property of the estate, save to the extent of any unsold balance. From the Further Affidavit, it is evident that the deceased, together with his wife, sold substantial portions of Nandi/kaptel/1791, Nandi/kaptel/1792 and Chepsiro/Kibuswa Block 2/Kiptenden/143 to various purchasers for value, many of whom paid in full and took possession. These transactions give rise to equitable interests in favour of the purchasers. Kenyan courts have consistently recognized that such purchasers are creditors of the estate for purposes of succession proceedings.

40. However, it is critical to underscore that the probate court’s primary mandate under sections 47, 71 and 82 of the *Law of Succession Act*, is to ascertain the assets that constitute the estate of the deceased, identify the lawful beneficiaries and distribute the estate in accordance with the law. It is true that the mandate of a Probate and Administration Court is to determine the assets of the deceased, identify the rightful beneficiaries of the estate, ascertain their respective shares and finally, distribute the estate



accordingly. This has been restated in a plethora of decisions including for instance, the case of re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR, in which the Court held that: -

“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.”

41. The probate court does not determine ownership disputes or enforce land sale agreements. That jurisdiction lies with the Environment and Land Court under Article 162(2)(b) of *the Constitution* of Kenya 2010. I take note that Purchasers and third parties who bought land from the deceased are not beneficiaries of the estate. Their interests are recognized in law as liabilities or obligations of the estate, falling under section 82(b)(ii) of the *Law of Succession Act*, which empowers administrators to complete contracts entered into by the deceased during his lifetime. That said, such purchasers cannot directly claim ownership or demand transmission of land through the succession cause before confirmation of grant. The legal position is settled that before confirmation of grant, administrators hold the estate in trust and cannot distribute or transmit assets and that after confirmation of grant, the administrators acquire authority to settle liabilities of the estate, including honouring valid sale agreements entered into by the deceased.
42. This position flows from section 71 of the *Law of Succession Act* as read together with Rule 40 of the Probate and Administration Rules which requires the court at confirmation of the Grant to be satisfied as to the assets and liabilities of the estate. Accordingly, purchasers and third parties can only assert their claims through the administrators and after the issuance of a Certificate of Confirmation of Grant, either by being recognized as creditors whose interests are noted during confirmation or enforcing their rights against the administrators in separate civil or land proceedings, where necessary.
43. The administrators once confirmed bear a statutory duty under sections 82 and 83 of the *Law of Succession Act* to settle the estate’s liabilities, including completing valid land sale transactions. Until then, the probate court’s focus remains on identifying the estate, safeguarding the free property and ensuring a lawful and orderly distribution of the properties of the estate of the deceased.
44. In light of the foregoing, I make the following final orders:
  - a. That Peres Jepchirchir Ngetich and Pamela Lagat be and are hereby appointed as joint administrators of the Estate of Joshua Kiplagat Ngetich (deceased) pursuant to the provisions of section 66 of the *Law of Succession Act*.
  - b. That any claims by third parties alleging purchaser’s interest in the estate properties shall not be determined in this succession cause. Such parties are at liberty to pursue their rights against the respective beneficiaries and/Administrators upon confirmation of the grant.
  - c. That the Administrators of the intestate estate of the deceased are hereby placed on notice and are directed to expeditiously and diligently complete the administration of the estate including the transmission and distribution of all the estate assets to the respective beneficiaries strictly in accordance with the *Law of Succession Act*.
  - d. That the Administrators shall, within sixty (60) days from the date hereof, take all necessary statutory and administrative steps to effect transmission of the estate properties to the



respective beneficiaries as confirmed by this Court, including execution of all relevant transfer instruments and compliance with the requirements of the law.

- e. That a Certificate of Confirmation of Grant in respect of the intestate estate of the deceased shall forthwith be generated and shall reflect the following distribution matrix below;

Schedule

1. Nandi/kaptel/1791 measuring 24.71 Ha which is 61.10 Acres
  - a. Priscilla Jebitok Samoei.....15.275 Acres
  - b. Truphosa Jepchumba Biwott.....15.275 Acres
  - c. Estate of Shadrack Kipkoech Lagat.....15.275 Acres
  - d. Peres Jepchirchir Ngetich.....15.275 Acres
2. Nandi/kaptel/1792 measuring 2.0 Ha which is 4.94 Acres
  - a. Priscilla Jebitok Samoei.....1.235 Acres
  - b. Truphosa Jepchumba Biwott.....1.235 Acres
  - c. Estate of Shadrack Kipkoech Lagat.....1.235 Acres
  - d. Peres Jepchirchir Ngetich.....1.235 Acres
3. Nandi/kaptel/876 measuring 0.42 Ha which is 1.04 Acres
  - a. Priscilla Jebitok Samoei.....0.26 Acres
  - b. Truphosa Jepchumba Biwott.....0.26 Acres
  - c. Estate of Shadrack Kipkoech Lagat.....0.26 Acres
  - d. Peres Jepchirchir Ngetich.....0.26 Acres
4. Chepsiro/Kibuswa Block 2 (Kiptenden)/190 measuring 6.07 Ha which is 15.0 Acres
  - a. Priscilla Jebitok Samoei.....3.75 Acres
  - b. Truphosa Jepchumba Biwott.....3.75 Acres
  - c. Estate of Shadrack Kipkoech Lagat.....3.75 Acres



- d. Peres Jepchirchir Ngetich.....3.75 Acres
- 5. Chepsiro/Kibuswa Block 2 (Kiptenden)/415 measuring 0.04 Ha which is 0.10 Acres to all beneficiaries
  - a. Priscilla Jebitok Samoei
  - b. Truphosa Jepchumba Biwott
  - c. Estate of Shadrack Kipkoech Lagat
  - d. Peres Jepchirchir Ngetich
- 6. Chepsiro/Kibuswa Block 2 (Kiptenden)/143 measuring 3.24 Ha which is 8.0 Acres
  - a. Priscilla Jebitok Samoei.....2.0 Acres
  - b. Truphosa Jepchumba Biwott.....2.0 Acres
  - c. Estate of Shadrack Kipkoech Lagat.....2.0 Acres
  - d. Peres Jepchirchir Ngetich.....2.0 Acres
- 7. 12 herd
  - a. Priscilla Jebitok Samoei.....3 heard of Cattle
  - b. Truphosa Jepchumba Biwott.....3 heard of Cattle
  - c. Estate of Shadrack Kipkoech Lagat.....3 heard of Cattle
  - d. Peres Jepchirchir Ngetich.....3 heard of Cattle
- 8. 8 Acres of tea bushes in Land Parcel
  - a. Priscilla Jebitok Samoei.....2.0 Acres
  - b. Truphosa Jepchumba Biwott.....2.0 Acres
  - c. Estate of Shadrack Kipkoech Lagat.....2.0 Acres
  - d. Peres Jepchirchir Ngetich.....2.0 Acres
    - a. That with respect to the movable assets forming part of the intestate estate of the



deceased, namely a pick-up motor vehicle, one (1) tractor Registration No. KUA 167 and a posho mill, the Administrators are hereby directed to jointly engage a qualified and independent valuer duly registered and licensed under the relevant professional bodies. That the said valuer shall undertake a comprehensive valuation, taking into account the current market value, appreciation or depreciation, mechanical condition, usability and residual value of each of the said assets.

- b. That upon receipt of the valuation report, the Administrators shall consult among themselves and with the beneficiaries and make a reasoned and informed decision on the appropriate mode of dealing with the assets.
- c. That there shall be a Status Conference on May 13<sup>th</sup> 2026 to confirm compliance with the aforesaid orders.
- d. There shall be no orders as to the costs this being a family matter.

45. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 5<sup>TH</sup> DAY OF FEBRUARY 2026**

.....

**R. NYAKUNDI**

**JUDGE**

