

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**SUCCESSION CAUSE NO 8 OF 2018**  
**IN THE MATTER OF THE ESTATE OF THE LATE NATHANIEL KIBITOK**  
**SIELEY (DECEASED)**

**PETER KIPROP BITOK SIELEY.....3<sup>RD</sup>**  
**ADMINISTRATOR/APPLICANT**

**VERSUS**

**ANDREW KIPKORIR BITOK SIELEY.....1<sup>ST</sup>**  
**ADMINISTRATOR**

**JONATHAN KIBIWOT BITOK SIELEY.....2<sup>ND</sup>**  
**ADMINISTRATOR**

**Coram: Before Justice R. Nyakundi**

**M/s Kipkorir, Kipkorir CK & Co Advocates**

**M/s Z.K. Yego Law Offices**

**RULING**

1. The 3<sup>rd</sup> Administrator/Applicant filed an Application under the Certificate of Urgency dated 19<sup>th</sup> November 2025 stating that the 1<sup>st</sup> and 2<sup>nd</sup> Administrators had filed Summons for Confirmation dated 24<sup>th</sup> October 2025 and the Applicant averred that the Summons were filed accompanied by a consent which the Protestor/3<sup>rd</sup> Administrator was not aware of. He stated that the Summons which seek to disinherit some of the beneficiaries would be allowed given the consent filed if the affidavit of protest would not be heard on a priority basis. The 3<sup>rd</sup> Administrator/Applicant also filed an **Affidavit of Protest Against Confirmation of Grant** in which he deponed as follows: -

*1. That I am a co-administrator and the biological son to the late Nathaniel Kibitok Sieley herein hence competent and authorized to swear to this affidavit.*

2. *That I swear to this affidavit on my own behalf as a beneficiary of the estate.*
3. *That my co-administrators are my siblings and beneficiaries of the estate of our late father.*
4. *That my late father died having acquired properties which were to be inherited by his children and or beneficiaries.*
5. *That I was shocked that my co-administrators commenced the instant succession without my knowledge until recently when I heard from my village that the succession process over the estate of our late father is in its final stages.*
6. *That I have equally gone through the summons for confirmation of grant dated 24<sup>th</sup> October,2025 and wish to state that I have never consented to the distribution of the estate in the manner in which it is proposed. I am an adult of sound mind and I have a right to own the property without anyone holding thee property in trust for me.*
7. *That since the death of our parents, my co-administrators took over the estate enriching themselves while sidelining me to wallow in poverty despite the fact that I am entitled to use and gain out of the property. My co-administrators have further stopped me from picking tea for my own benefit and further gives me peanuts out of an estate that generates so much money.*
8. *That despite being one of the sons, my co-administrators have made sure that I do not get any information with regards to the estate of our late father and while they insist that they settle my children's school fees, I have been forced sometimes to do manual work to settle some part of the school fees.*
9. *That I know for a fact that I the grant is confirmed as proposed by my co-administrators, I will be kicked out of the estate.*
10. *That the cause was filed secretly and the same was not disclosed to protestor nor my consent sought.*

11. *That the petitioner intends to lock out myself and other beneficiaries from succeeding their rightful share out of the above estate.*
12. *That I am opposed to the mode of distribution proposed by the petitioner and I pray that this honorable court confirm the grant as follows;*
  - a) ALL THE PROPERTIES OF THE DECEASED BE SHARED EQUALLY AMONGST ALL THE BENEFICIARIES**
13. *That this application is brought to this honorable court in good faith and in the interest of justice, expedient and convenient in all circumstances of the case to not confirm the grant as per the supporting affidavit of my co-administrators*

### **Replying Affidavit**

2. The Application is opposed vide a Replying Affidavit dated 3<sup>rd</sup> December 2025 sworn by Andrew Kipkorir Bitok Sieley, the 1<sup>st</sup> Administrator/Respondent who deponed as follows: -
  - a. *That am the co-administrator and the biological son of the late Nathaniel Kibitok Sieley herein hence competent to make and swear this affidavit.*
  - b. *That I have read and understood the imports and purpose of the 3<sup>rd</sup> Administrator/Protestor's objection by way of application dated 19<sup>th</sup> November 2025, the same have been explained to me by my Advocate on record and wish to respond as follows: -*
  - c. *In response thereto I wish to say that the 3<sup>rd</sup> Administrator's Protest by way of application is made in bad faith and lacks in merit.*
  - d. *That vide grant of letters of administration intestate dated 28<sup>th</sup> September 2018 we were appointed the administrators of the estate including our late mother Elizabeth Chelimo Sieley and the 3<sup>rd</sup> Administrator.*
  - e. *That it is true that the Protestor herein is our brother and a co-administrator.*

- f. *That we the administrators of the estate of the late Nathaniel Kibitok Sieley including the 3<sup>rd</sup> Administrator himself vide a letter dated made a proposal to our advocate on the mode of distribution*
- g. *That all the beneficiaries including the 3<sup>rd</sup> Administrator entered into a consent on the proposed mode of distribution and even appended their signatures.*
- h. *That the 3<sup>rd</sup> Administrator's allegations that he never consented to the proposed mode of distribution is absurd as evidenced from the signature appended on the consent forms and also the letter dated 22<sup>nd</sup> October 2025 which shows the proposal made by we the administrators including him which has been adopted as the proposed mode of distribution as agreed to by all beneficiaries.*
- i. *That when this matter came up for confirmation of grant on 27<sup>th</sup> October 2025, the Applicant herein failed to turn up in court without any reason and the same was adjourned. On the directions of the court, the court assistant spoke to him to advise him that his presence was required in court before the grant could be issued. He confirmed to the court assistant that he signed the consent for the distribution of the estate but did not give any reason for his non-attendance in court. For his absence on 27<sup>th</sup> October 2025, the matter was adjourned to 29<sup>th</sup> October 2025 for confirmation of grant and we all advised him to appear in court on the said date (29<sup>th</sup> October 2025). Again on the said date he failed to appear in court without any justification. As such the grant was confirmed on 29<sup>th</sup> October 2025 and the Applicant was made aware of it. If the Applicant had any objection to issuance of the grant despite signing the consent for distribution of the estate dated 24<sup>th</sup> October 2025 then he ought to have made efforts to appear in court on 27<sup>th</sup> or 29<sup>th</sup> October 2025 to register his objection before the judge. This belated*

*objection is an afterthought actuated by bad faith to delay a matter which the parties had conclusively agreed on.*

- j. That the 3<sup>rd</sup> Administrator has also alleged that he was not aware of this instant succession proceeding until recently when he heard from his village that the succession process was in its final stages. This claim on the face of it has been made in bad faith. The 3<sup>rd</sup> Administrators has been aware of the succession proceedings (succession cause no.8 of 2018 filed in the Eldoret High court) all along since the year 2018 when the succession proceedings commenced till date and has also even attended court on various dates and been actively involved in the whole court process.*
- k. That furthermore, one would wonder how could somebody wait for almost 7 years when the grant made on 28<sup>th</sup> September,2018 was about to be confirmed for him to allege thereafter that all along he has been kept in the dark without even taking any cause of action to address his concerns prior. In his application dated 19<sup>th</sup> November,2025, he has not disputed his appointment as the 3<sup>rd</sup> Administrator yet this constitutes part of the succession proceedings, is he then claiming that in the first instance he should not be legally recognized as an 'administrator' since this succession cause should not have happened in the first instance?*
- l. That I have been advised by my advocate on record, which information I believe to be true that pursuant to the consent made on the mode of distribution, I together with the 2<sup>nd</sup> Administrator will be the trustees of the estate of the late Nathaniel Kibitok Sieley meaning that we will be in a fiduciary position qua the property. As the trustees of the properties we must account to the beneficiaries herein including the 3<sup>rd</sup> Administrator the management of the assets. It is in this regard that we dismiss the 3<sup>rd</sup> Administrator's claims that*

*we intend to lock him out and other beneficiaries from succeeding their rightful share of the estate of the deceased.*

- m. That the 3<sup>rd</sup> Administrators seems to insinuate that by the estate being held in trust means it has been bequeathed to us only at the expense of others. The 3<sup>rd</sup> Administrator had demonstrated his confidence in us holding the estate in trust for them by proposing the mode of distribution and even consenting on the same by appending his signature, he ought not deny the same yet he enunciates that he is of sound mind. He never indicated anywhere/produced evidence that at the time of signing the consent he was of unsound mind and that the signing was forged. Hence has failed to prove his allegations.*
- n. That the other beneficiaries of the estate of the deceased stand to suffer prejudice if the protest by way of application dated 19<sup>th</sup> November, 2025 is allowed.*
- o. That the grant of probate (or letters of administration intestate) made to the said Andrew Kipkorir Bitok Sieley, Jonathan Kibiwot Bitok Sieley and Peter Kiprop Sieley in this matter on 28<sup>th</sup> September 2018 and the estate be divided in terms of the annexed proposed mode of distribution.*
- p. That I make and swear this affidavit in strong opposition to the Protest made by way of application dated 19<sup>th</sup> November 2025 be dismissed with costs.*

3. A perusal of the record indicates that the beneficiaries had filed a Consent to Confirmation of Grant dated 24<sup>th</sup> October 2025 which is disputed by the 3<sup>rd</sup> Administrator/Protestor. The Consent sought to distribute the Estate in the following manner: -

<b>ASSET</b>	<b>BENEFICIARY</b>
NAIROBI LR NO. 7868/21 I.R 7567	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the

	beneficiaries of the estate)
NANDI HILLS L.R NO. 9245/3 I.R 13461/12	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
NANDI HILLS L.R NO. 9245/17	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
NANDI HILLS L.R NO. 9245/27	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
NANDI HILLS/KOSOYWO/BLOCK1/736	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
NANDI HILLS/KOSOYWO/BLOCK1/748	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
KILIBWONI/CHESUWE/624	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Cash deposits in KCB Nandi Hills Branch (as per the judgement in HCCC No. 23 of 2019)	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
NSSF Benefits	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY

	(To be held in trust for the beneficiaries of the estate)
Shares in ABSA (Formerly Barclays Bank)	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Shares in ABSA (Formerly Barclays Bank)	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Shares in Safaricom Limited	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Shares in Standard Chartered Bank	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Shares in NIC Bank Limited	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Shares in National Bank Limited	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Shares in Sireet Out growers and Empowerment Limited	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Motor vehicle Registration No. KAB 453 Peugeot 504 Pick Up	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK

	SIELEY (To be held in trust for the beneficiaries of the estate)
Motor vehicle Registration No. KZU Peugeot 504 Station Wagon	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Motor Vehicle Registration No. KLH 292 Ford 4000 Tractor	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)
Motor Vehicle Registration No. KLS 460 Ford County 754 Tractor	ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate)

4. Further to the Consent above, the Administrators herein stated that with respect to the distribution of the estate of the late Nathaniel Kibitok Sieley (deceased), we submit the following proposals: -
- a. *All fixed assets such as land and houses to be held in a suitable trust/holding company managed by the administrators.*
  - b. *Cash holdings to be transferred to a joint account managed by the administrators.*
  - c. *Shares and securities be transferred to a CDSC account managed by the administrators.*
  - d. *Vehicles to be registered in the name of the holding company.*
  - e. *Following the unfortunate demise of Mrs. Elizabeth Sieley, per attached death certificate please remove her name from the list of administrators and beneficiaries.*
5. The Application was canvassed by way of written submissions.

### **Protector's/Applicant's Submissions Summary**

6. The learned Counsel for the Protestor/Applicant Mr. Kipkorir submitted that the consent dated 24/10/2025 is not binding upon the Protestor as it was neither freely nor knowingly executed and is therefore liable to be set aside on grounds that justify setting aside a contract, including misrepresentation and lack of informed consent, as held in ***Flora Wasike Vs Destimo Wamboko (1982-88) 1 KAR 625*** and ***Samuel Mbugua Ikumbu Vs Barclays Bank of Kenya (2015) eKLR***.
7. Counsel further submitted that the succession proceedings were conducted in violation of Sections 51(2)(g) and 76 of the Law of Succession Act and Rule 7(7) of the Probate and Administration Rules for failure to disclose and involve all beneficiaries, thereby offending the principles of natural justice. Reliance was placed on ***In Re Estate of Gakunga Njoroge (2018) eKLR*** and ***Matheka & Another Vs Matheka (2005) eKLR***, where the courts held that non-disclosure and concealment of material facts render succession proceedings defective and liable to revocation irrespective of lapse of time.
8. It was additionally submitted that under Section 38 of the Law of Succession Act, where an intestate is survived by children only, the net estate must be distributed equally among them. Counsel cited ***Stephen Gitonga M'Murithi v Faith Ngira Murithi (2015) eKLR*** and ***In Re Estate of Wilson Kimutai Korir (2020) eKLR*** in support of the principle that equality is the governing rule in intestate succession and that disinheritance without lawful justification is impermissible.
9. Counsel therefore concluded that the Protestor was unlawfully excluded from the succession process, the impugned consent was not voluntarily executed, and the proposed distribution is inequitable and contrary to statute. The Court was accordingly urged to uphold the Protest, set aside the consent, and order equal distribution of the estate in strict compliance with the Law of Succession Act and established jurisprudence.

## **1<sup>st</sup> and 2<sup>nd</sup> Administrators Submissions Summary**

10. The 1<sup>st</sup> and 2<sup>nd</sup> Administrators filed their written submissions dated 9<sup>th</sup> December 2025 through their Learned Counsel Mr. Yego. The learned Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Administrators, Mr. Yego, submitted that the 3<sup>rd</sup> Administrator/Protestor voluntarily consented to the proposed mode of distribution dated 24<sup>th</sup> October 2025, having actively participated in the succession proceedings since 2018 and appended his signature to the consent. Counsel argued that a consent order is binding upon the parties unless set aside on recognized grounds such as fraud, duress, coercion, misrepresentation or mistake, none of which were pleaded or proved by the Protestor. Reliance was placed on ***Justus Thiora Kiugu & 4 others Vs Joyce Nkatha Kiugu & another [2015] KECA 886 (KLR)*** and ***In re Estate of Kiplangat Chumo (Deceased) [2023] KEHC 22701 (KLR)***, where the courts affirmed the binding nature of duly executed consents.
11. Counsel further submitted that the confirmation of grant made on 29<sup>th</sup> October 2025 was in strict compliance with Section 71 of the Law of Succession Act. He cited ***In re Estate of Jackson Mutua Mbula (Deceased) [2023] KEHC 25496 (KLR)***, ***In re Estate of Benjamin Ng'ono Mbatl alias Ng'ono Mbatl (Deceased) [2021] KEHC 4477 (KLR)*** and ***In re Estate of Tumbo Lavu (Deceased) [2020] KEHC 9030 (KLR)*** for the principles governing confirmation of grant, namely proper appointment of administrators and proper ascertainment of beneficiaries and their respective shares. Counsel emphasized that the administrators were properly appointed and that all beneficiaries—three sons and two daughters were duly identified.
12. On the issue of holding the estate in trust, Counsel relied on ***In re Estate of Susan Mwelu Mutia (Deceased) [2025] KEHC 2202 (KLR)*** to submit that a family trust is a lawful and appropriate mechanism for preservation of family assets and does not extinguish the proprietary interests of beneficiaries. He argued that the Protestor had produced no evidence of abuse of trust by the 1<sup>st</sup> and 2<sup>nd</sup> Administrators.

13. Counsel also contended that the Protestor's absence during confirmation proceedings did not invalidate the confirmation of grant, particularly where a signed consent existed, as held in ***In re Estate of the late Muhindi Chacha (Deceased) [2022] KEHC 11986 (KLR)***. He maintained that the present application was an afterthought brought in bad faith to delay distribution.
14. In conclusion, Counsel therefore urged the Court to find that the Protestor failed to prove his case on a balance of probabilities, uphold the confirmation of grant issued on 29<sup>th</sup> October 2025 pursuant to the Law of Succession Act, order distribution in accordance with the consent dated 24<sup>th</sup> October 2025, issue the Certificate of Confirmation of Grant and dismiss the Protestor's application with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Administrators.

### **Analysis and Determination**

15. Having considered the Application, the Affidavit of Protest, the Replying Affidavit, the annexures thereto and the rival written submissions by Counsel, the Court distils the following two (2) issues for determination: -
- a. *Whether the consent dated 24<sup>th</sup> October 2025 meets the legal threshold and is binding?*
  - b. *What is the lawful mode of distribution of the estate?*

### **Whether the Consent dated 24<sup>th</sup> meets the threshold of the Law?**

16. It is not in dispute that the estate herein is intestate and is therefore governed by the provisions of the Law of Succession Act. The impugned consent dated 24<sup>th</sup> October 2025 purports to vest all the assets of the estate in the 1<sup>st</sup> and 2<sup>nd</sup> Administrators ***“to be held in trust for the beneficiaries of the estate.”*** The 3<sup>rd</sup> Administrator denies voluntarily executing the consent and contends that he neither understood nor agreed to the proposed mode of distribution. Generally, a court will not

interfere with a consent judgment except in circumstance such as would provide a good ground for varying or rescinding a contract between parties. It is a principle in law that a consent is binding only if freely entered into by all parties. **In Flora N. Wasike Vs Destimo Wamboko [1988] eKLR** Hancox JA held the view that: -

*It is now settled law that a consent judgment or order has a contractual effect and can only be set aside on grounds which would justify setting a contract aside, or if certain conditions remain to be fulfilled, which are not carried out.*

17. In **Kenya Commercial Bank Ltd Vs Specialised Engineering Company Ltd [1982] KLR 485**, Harris J held as follows: -

1. *A consent order entered into by Counsel is binding on all parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.*
2. *A duly instructed advocate has an implied general authority to compromise and settle the action and the client cannot avail himself of any limitation by him of the implied authority to his advocate unless such limitation was brought to the notice of the other side.*

18. In **Kenya Commercial Bank Ltd Vs Benjoh Amalgamated Ltd & Another [1998] eKLR** this court cited a passage in the **Supreme Court Practice 1976 (Vol 2) paragraph 2013 page 620** stating: -

*“Authority of solicitor- a solicitor has a general authority to compromise on behalf of his client, if he acts bona fide and not contrary to express negative direction, and it would seem that a solicitor acting as agent for the principal solicitor has the same power*  
**(Re Newen) [1903] 1 Ch pp817, 818; Little vs Spreadbury**

**[1910] 2KB 658.** No limitation of the implied authority avails the client as against the other side unless such limitation has been brought to their notice. **Welsh vs Roe (1918-9) All ER Rep 620.**”

19. Lastly in **Brooke Bond Liebig Vs Mallya (1975) EA 266** where Mustafa Ag. VP stated: -

*“The compromise agreement made an order of the court and was thus a consent judgment. It is well settled that a consent judgment can be set aside only in certain circumstance, e.g. on grounds of fraud, collusion, that there was no consensus between the parties, public policy or for such reasons as would enable a court to set aside or rescind a contract. In this case, the parties and their advocates consented to the compromise in very clear terms; they were certainly aware of all the material facts and there could not have been any mistake or misunderstanding. None of the factors which could give rise to the setting aside of a consent agreement existed.”*

20. Essentially, the above-cited authorities are clear that a consent order will only be set aside if it can be demonstrated that it was procured through fraud, non-disclosure of material facts or mistake or for a reason, which would enable a court to set it aside. From the Consent dated 24<sup>th</sup> October 2025 distributing the estate in the manner set out therein, the Court must therefore interrogate not merely the existence of a signature, but whether the consent reflects an informed, lawful and procedurally compliant agreement consistent with the Law Succession Act.

21. From the Consent on the distribution, it was stated that all the properties of the intestate estate of the deceased would be shared as follows: **ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK SIELEY (To be held in trust for the beneficiaries of the estate).** From the wording of this consent dated 24<sup>th</sup> October 2025 which tends to distribute the intestate estate of the deceased, it is not about distribution of the Intestate Estate but creation of a trust which is a fiduciary

relationship created where the individual gives a third party (Trustee) the right to hold his or her property for the use, protection and benefit of a beneficiary. The main objective of a Trust is to ensure that the assets are legally protected, managed and distributed according to the wishes of the Trustee. In the current legal regime, there is recognition testamentary Trust, Pension and Provident Trust, and Trusts created for any purpose like religious, Educational, Scientific, Athletic or charitable purposes. In terms of legal policy, Trust law is covered under two primary statutes being The Trustees (Perpetual Succession) Act (Cap 164 and Perpetuities and Accumulation Act (cap 161) of the Laws of Kenya. In the current legal regime Trust Law does not adequately recognize non-charitable purpose Trust.

22. The administration of an Intestate Estate under the Law of Succession Act entitles collection and preservation of the Estate, payment of the deceased's funeral, testamentary and administration expenses and all the deceased's debts and other liabilities and with finality distribute the net estate among the beneficiaries. It is therefore necessary to appreciate the law that the administration of an Estate is the responsibility of the Personal Representative(s) duly appointed under Section 66 of the Law of Succession Act and his or her or their names must be gazetted in the official Kenya Gazette as a mandatory procedural requirement. This is the very reason where the legislature enacted provisions relating to administration of Estates of a deceased person under part 7 of the Law of Succession Act covering Section 44 to 95. In adherence to the Law of Succession Act, section 82 expressly states inter-alia: -

**82. Powers of personal representatives**

*Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers -*

- a. *to enforce by suit or otherwise all causes of action which by virtue of any law survived the deceased or rise out of his death for his Estate.*
- b. *to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:*

*Provided that-*

- (i) *the purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and*
  - (ii) *no immovable property shall be sold before confirmation of the grant;*
- c. *to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;*
- d. *to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix the value of the respective assets and liabilities of the estate, and to make any transfer which may be requisite for giving effect to the appropriation.*

23. Section 84 of the Law of Succession Act sets out the following **duties of Personal Representatives:** -

- a. *to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;*

- b. *to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;*
- c. *to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);*
- d. *to ascertain and pay, out of the estate of the deceased, all his debts;*
- e. *within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;*
- f. *subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be.*
- g. *within six months from the date of confirmation of the grant, of such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.*
- h. *to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;*
- i. *to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the*

*estate, to produce to the court a full and accurate account of the completed administration.*

24. The Courts have spoken on these issues as reflected in the application of Section 83(B) of the Act which provides: “Section 83 (b) provides that it is the duty of personal representatives to collect in the assets of the deceased’s estate after a grant has been made to them. **Waki J in the matter of the Estate of Yusuf Mohamed (deceased) Mombasa HCP & A No 434 of 1995**, pointed out that under Section 83 the personal representative has a duty to get in all the free property of the deceased and is at liberty to reasonably exercise the powers conferred by law in pursuit of such property.
25. In any distribution of an Estate, the Personal Representatives must collect an inventory of the net estate as defined in Section 2 of the Act and have the same distributed to the beneficiaries by the Court. The Probate Court provides governance oversight on the administration of the Estate hence the very reason why the legislature deemed it fit under Rule 25 (5) of the Probate and Administration Rules to provide powers to the court that at any time and from time to time to require the Personal Representative(s) to render to the court a true account of the Intestate Estate of the deceased and the administration of it as per the law established.
26. There is nowhere in these provisions the law contemplates creation an entity by the name of a Trust or extent the powers of the Administrator or Administrator(s) to hold the Intestate Estate of the deceased in Trust on their own behalf or the legitimate beneficiaries. It is therefore necessary to state that the Personal Representatives cannot enjoy the benefits of the Estate for themselves hence the ambiguity of the Consent on the Confirmation Grant dated 24<sup>th</sup> October 2025 which sought to distribute the intestate estate of the deceased by stating that all the properties of the intestate estate of the deceased would be shared as follows: **ANDREW KIPKORIR BITOK SIELEY and JONATHAN KIBIWOT BITOK**

***SIELEY (To be held in trust for the beneficiaries of the estate).***

The primary duty of a Probate Court in exercising Jurisdiction is to identify the beneficiaries under Section 29 of the Act and the free net estate and proceed to distribute it within the scope of Section 35, 36, 37, & 38 of the same law on Succession Matters. In **Re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR**, 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.”*

27. Further to the Consent on the Confirmation of Grant dated 24<sup>th</sup> October 2025, the Administrators herein stated that with respect to the distribution of the estate of the late Nathaniel Kibitok Sieley (deceased), we submit the following proposals: -

- a. All fixed assets such as land and houses to be held in a suitable trust/holding company managed by the administrators.*
- b. Cash holdings to be transferred to a joint account managed by the administrators.*
- c. Shares and securities be transferred to a CDSC account managed by the administrators.*
- d. Vehicles to be registered in the name of the holding company.*
- e. Following the unfortunate demise of Mrs. Elizabeth Sieley, per attached death certificate please remove her name from the list of administrators and beneficiaries.*

28. From the above, a critical concerns arise being the **Nature and Effect of the Proposed Trust**. The proposed mode of distribution does not allocate specific shares to each beneficiary. Instead, it vests the entire estate in two administrators to hold in trust indefinitely. This approach raises legal concerns under succession law. Section 71(2) of the Law of Succession Act requires the Court, before confirming a grant in cases of intestacy, to be satisfied as to the identities of all beneficiaries and their respective shares. Confirmation must specify those shares. The Court in **Re Estate of Benjamin Ng'ono Mbatia alias Ng'ono Mbatia (Deceased) [2021] KEHC 4477 (KLR)** whereby the court pointed out two primary factors: -

*"In confirmation applications, there are two principal factors for the court to consider: appointment of administrators and distribution of the estate. For avoidance of doubt, this is what section 71 of the Law of Succession Act, Cap 160, Laws of Kenya, says: "Confirmation of Grants. Confirmation of grants(1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.(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 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; 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 such grant shall specify all such persons and their respective shares.*"

29. The consent in question does not specify the shares of each beneficiary. Rather, it creates a centralized holding structure through a trust or holding company without defining beneficial entitlement in concrete terms. Such an arrangement effectively postpones distribution and concentrates legal control in two administrators. While the law recognizes trusts in appropriate circumstances, including family trusts, such a mechanism must not defeat or obscure the statutory rights of beneficiaries. Succession proceedings are not corporate restructuring processes; they are judicial processes for transmission of a deceased's estate to entitled beneficiaries. In the present case, the proposed trust arrangement: -

*a) Does not define individual shares.*

*b) Does not specify duration or conditions of trust.*

*c) Does not provide clear safeguards for equitable enjoyment.*

*d) Concentrates control in two administrators to the exclusion of the third.*

30. It is crystal clear from the record that the deceased was survived by one spouse and five Children. Therefore, the cluster of the principles be applied run through the legal blood wire of Section 38 & 41 of the Law of Succession Act applied and interpreted purposively. The children of the deceased are all above the age of 18 and therefore not subject to the provisions of Section 41 of the Act. In this case, from the Consent dated 24<sup>th</sup> October 2025, the parties had intimated that they had agreed to have

the property be held in Trust without distribution to the beneficiaries which in my view runs foul to the letter and spirit of Section 41 as construed with Section 38 of the Act. Accordingly, the Consent to Confirmation of Grant dated 24<sup>th</sup> October 2025 is hereby set aside.

### **What is the lawful mode of distribution of the estate?**

31. A perusal of the record particularly the Consent to the making of a Grant of Administration intestate dated 12<sup>th</sup> March 2018 indicates that the deceased was survived by the following: -

- |                                  |          |
|----------------------------------|----------|
| a. Elizabeth Chelimo Sieley      | Widow    |
| b. Andrew Kipkorir Bitok Sieley  | Son      |
| c. Jonathan Kibiwot Bitok Sieley | Son      |
| d. Peter Kiprof Bitok Sieley     | Son      |
| e. Joyce Chebichii Sieley        | Daughter |
| f. Joan chelagat Sieley          | Daughter |

32. The said Elizabeth Chelimo Sieley, Andrew Kipkorir Bitok Sieley, Jonathan Kibiwot Bitok Sieley and Peter Kiprof Bitok Sieley petitioned for Grant of Letters of Administration Intestate and a Grant of Letters of Administration Intestate was issued to them on 28<sup>th</sup> September 2018, the said members of the family being the Administrators of the estate. I take note that one of the Administrators herein, Elizabeth Chelimo Sieley who was the widow to the deceased has since passed away. 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.*

33. 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.*

34. 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.”*

35. From the aforesaid legal principles, section 38 of the Law of Succession Act is gender neutral. It provides for equal distribution of the estate to all the children of the Deceased irrespective of gender or marital status. Therefore, daughters of a Deceased person whether married or not are entitled to a share of the estate of their dead parent. Section 38 of the Law of Succession Act must be read together with Article 27 of the Constitution of Kenya 2010 which provides for **“Equality and Freedom from Discrimination.”** Article 27 provides that all men and women have the right to equal treatment in all spheres of life.

36. In **Eliseus Mbura M’ Thara Vs Harriet Gambaka & Another [2012] eKLR** the Court stated that: -

*“The law of succession Act does not discriminate between gender in matters 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.”*

37. From the discussed legal provisions above, this Court therefore finds that the lawful mode of distribution is equal division of the net estate among

the five surviving children in accordance with Section 38 of the Law of Succession Act.

38. On the issue of the Administrators, I take note that as per the Grant of Letters of Administration issued on 28<sup>th</sup> September 2018, there were four (4) Administrators namely: Elizabeth Chelimo Sieley, Andrew Kipkorir Bitok Sieley, Jonathan Kibiwot Bitok Sieley and Peter Kipro Bitok Sieley. The said Elizabeth Chelimo Sieley who was the widow to the deceased has since passed away. The Law of Succession Act does not provide for substitution of a deceased administrator (s). Indeed, Section 81 of the Act, provides that: -

*“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them...”*

39. In the same line of thought, **Musyoka J.** held as follows in **Re Estate of George Ragui Karanja (Deceased) [2016] eKLR**: -

*“The Law of Succession Act does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act, which provides for vesting of the powers and duties of personal representatives in the survivor or survivors of a dead personal representative...”*

40. That means that in the event of the death of one or more of joint administrators, where there are several administrators, the surviving administrator or administrators would then have the mandate to continue with their duties to completion without the need to replace the deceased ones. The implication of this is that the remaining Administrators of the intestate estate of the deceased herein Andrew Kipkorir Bitok Sieley, Jonathan Kibiwot Bitok Sieley and Peter Kipro Bitok Sieley are mandated to continue with the Administration of the estate of the deceased.

41. In view of the foregoing and taking into context the interests of justice, the following orders shall abide: -

- a) *That the Consent to the Confirmation of Grant dated 24<sup>th</sup> October 2025 be and is hereby set aside.*
- b) *That the confirmation of Grant order issued on 29<sup>th</sup> October 2025 based on the said consent be and is hereby vacated.*
- c) *That the Grant of Letters of Administration Intestate issued to Elizabeth Chelimo Sieley, Andrew Kipkorir Bitok Sieley, Jonathan Kibiwot Bitok Sieley and Peter Kiprof Bitok Sieley on 28<sup>th</sup> September 2018 be and is hereby reviewed by removing the name of Elizabeth Chelimo Sieley. A fresh Grant of Letters of Administration Intestate shall be issued to Andrew Kipkorir Bitok Sieley, Jonathan Kibiwot Bitok Sieley and Peter Kiprof Bitok Sieley as Administrators of the intestate estate of the deceased.*
- d) *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.*
- e) *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.*
- f) *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;*

<b>ASSET</b>	<b>BENEFICIARY</b>	<b>SHARE OF HEIRS</b>
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NAIROBI LR NO. 7868/21 I.R 7567	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
NANDI HILLS L.R NO. 9245/3 I.R 13461/12	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
NANDI HILLS L.R NO. 9245/17	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
NANDI HILLS L.R NO. 9245/27	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
NANDI HILLS/KOSOYWO/BLOCK1/7 36	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
NANDI HILLS/KOSOYWO/BLOCK 1/748	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY

KILIBWONI/CHESUWE/624	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
Cash deposits in KCB Nandi Hills Branch (as per the judgement in HCCC No. 23 of 2019)	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
NSSF Benefits	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
Shares in ABSA (Formerly Barclays Bank)	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
Shares in ABSA (Formerly Barclays Bank)	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
Shares in Safaricom Limited	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiprop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY

Shares in Standard Chartered Bank	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiproop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
Shares in NIC Bank Limited	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiproop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
Shares in National Bank Limited	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiproop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY
Shares in Sireet Out growers and Empowerment Limited	Andrew Kipkorir Bitok Sieley Jonathan Kibiwot Bitok Sieley Peter Kiproop Bitok Sieley Joyce Chebichii Sieley Joan chelagat Sieley	TO BE SHARED EQUALLY

*g) That with respect to the movable assets forming part of the intestate estate of the deceased namely: Motor Vehicle Registration No. KAB 453 Peugeot 504 Pick Up, Motor Vehicle Registration No. KZU Peugeot 504 Station Wagon, Motor Vehicle Registration No. KLH 292 Ford 4000 Tractor and Motor Vehicle Registration No. KLS 460 Ford County 754 Tractor, 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.*

*h) 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 said assets.*

*i) That there shall be a Status Conference on **May 23<sup>rd</sup> 2026** to confirm compliance with the aforesaid orders.*

*j) There shall be no orders as to the costs this being a family matter.*

42. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 23<sup>RD</sup> DAY  
OF FEBRUARY 2026**

.....  
**R. NYAKUNDI  
JUDGE**