

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**SUCCESSION CAUSE NO. 91 OF 2013**

**IN THE MATTER OF THE ESTATE OF PETER KIPKEMBOI RUTO ALIAS**  
**KIPKEMOI s/o ARAP RUTO**

**JANE JEPKERING KEMBOI** (*substituted with*  
*her daughter EMILY JELIMO CHUMO*)  
.....PETITIONER

**VERSUS**

**JOHN KIPTOO KEMBOI**.....OBJECTOR

**JUDGMENT**

1. The background of the matter is that the deceased, **Peter Kipkemboi Ruto Alias Kipkemoi s/o Arap Ruto**, died on 16/10/2009 at the age of 81 years old. By the Petition dated 11/04/2013 filed through **Messrs Billy Amendi & Co. Advocates**, the Petitioner, **Jane Jepkering Kemboi**, describing herself as the only wife of the deceased, applied for a Grant of Letters of Administration to manage the estate of the deceased. The Petitioner listed herself and her stated 4 children as the only dependents of the estate. She also listed one parcel of land described as **Nandi/ Kamobo/403** measuring 11.2 hectares, and one bank account, as the only assets comprising the estate.
2. However, after the Petition was gazetted but before it was issued, the Objector, by her Objection dated 21/08/2013, filed through **Messrs Kalya & Co. Advocates**, filed a challenge to the Petition. The grounds alleged were that although the Objector is a son of the deceased, he had been excluded from the list of beneficiaries, and he had also not consented to filing of the Petition.
3. The Petitioner, **Jane Jepkering Kemboi**, having changed her Advocates to **Messrs Arnold Otundo & Co. Advocates**, filed the Affidavit sworn on 28/06/2015 in Reply to the Objection. In the Affidavit, she now conceded that indeed, the deceased had 3 wives, namely **Flora Ruto** (1<sup>st</sup> wife), herself (Petitioner) as the 2<sup>nd</sup> wife, and **Emily Ruto** (3<sup>rd</sup> wife). She then deponed that her mother-in-law, **Ann Chimase**, the mother of the deceased, sometime in 1992, gave a separate parcel of land known as **Nandi/Lelmokwo/1421** to the 1<sup>st</sup> wife (**Flora Ruto**) who is the Objector's mother, as a gift, and after the Objector's mother died, **Ann Chimase** instructed the Objector to transfer the land to his (Objector's) name. She

deponed that similarly, **Ann Chimase** gave out the 2<sup>nd</sup> parcel of land, namely, **Nandi/Kamobo/403**, the subject hereof, to the deceased, also as a gift, which parcel of land, herself (Petitioner) and the 3<sup>rd</sup> wife (**Emily Ruto**) still live on. She stated that the Objector has all his life been living on the 1<sup>st</sup> parcel of land, **Nandi/Lelmokwo/1421**, which, as aforesaid, was given to his mother (1<sup>st</sup> wife), and he has never at any time lived or built on the parcel of land, **Nandi/Kamobo/403**, nor claimed any part of it knowing very well that his mother had already been gifted the parcel of land, **Nandi/Lelmokwo/1421**. She deponed further that the Objector has been colluding with the area Chief to intrude into the land and she also denied any knowledge of the person referred to in the Chief's letter dated 6/05/2011 as "**Peter Kipkemboi Ruto**" as being the deceased herein since that is not the name of the deceased, her late husband. She pointed out that while the deceased registered the 2<sup>nd</sup> parcel of land, **Nandi/Kamobo/403**, into his name, the Objector, on his part, has never, on his part, too, made any efforts to transfer the parcel of land, **Nandi/Lelmokwo/1421**, into his name, or even initiate the process of filing Succession proceedings over the estate of **Ann Chimase**, but that the Objector has, instead, sold upto 9 acres of **Nandi/Lelmokwo/1421**, and, as such, has left only 2 acres, which information was confirmed to her by the Objector's own wife. She deponed further that the deceased had, before his death, divided the parcel of land, **Nandi/Kamobo/403**, into a ratio of 18 acres to the 2<sup>nd</sup> house (Petitioner's) and 10 acres to the 3<sup>rd</sup> house (**Emily Ruto's**) only, and that the 1<sup>st</sup> house (the Objector's mother's) was therefore omitted because it had already been given the parcel of land, **Nandi/Lelmokwo/1421**.

4. The contents of the Petitioner's Affidavit set out above were supported by one **Rosemary Jepkurgat**, who also swore an Affidavit on 19/01/2015, and who described herself as a daughter-in-law of the 3<sup>rd</sup> wife (**Emily Ruto**). She deponed that although she is the only one from the 3<sup>rd</sup> house who had been listed as a beneficiary of the 10 acres of **Nandi/Kamobo/403** proposed to be allocated to the 3<sup>rd</sup> house, that does not mean that she had excluded her mother-in-law, **Emily Ruto**, from sharing the estate.
5. The matter was then directed to be canvassed by way of *viva voce* trial upon which the parties filed Witness Statements and documents. However, for various reasons, including transfer of Judges, death of the Petitioner, successive change of Advocates, and also some level of apparent lethargy by the parties, the trial did not take off until 19/10/2023 when it eventually commenced before me. Although the parties filed a number of Witness

Statements, I will only recite those made by the witnesses who actually testified at the trial as only those were adopted in evidence.

**Objector's Witnesses' Statements**

6. The Objector, **John Kiptoo Kemboi**, apparently erroneously named in his Statement dated 19/10/2025, as "**John Kiprono Kemboi**", then represented by **Messrs Kalya & Co. Advocates**, reiterated that his father, the deceased herein, had 3 wives, that her mother, **Flora Ruto**, who died in 2001, was the 1<sup>st</sup> wife, and that although they were 5 children in the 1<sup>st</sup> house, 3 have died and as such, only 2 are alive. He stated that after his mother died, his request, made in a family meeting, to be given the share that was due to her mother was refused, and that the Petitioner even refused to speak to the village elder or the area Chief about the issue when they tried to intervene, upon which the District Officer advised the Objector to seek legal representation. He stated after he filed the Objection herein, a family meeting was held at the District Officer's office on 14/10/2013, in which he explained that the parcel of land, **Nandi/Lelmokwo/1421**, which belonged to their grandmother, had been given to him (Objector) by his grandmother as a gift, and as such, it should not be included as part of the estate of the deceased. He stated that after deliberations, in the same meeting, the village elders who were in the meeting resolved that the parcel of land, **Nandi/Kamobo/403**, be divided amongst the 3 houses, each getting 9 acres, but after protests from the Petitioner and her children (2<sup>nd</sup> house), again in the same meeting, and after further deliberations, he (Objector) agreed to cede 5 acres out of the 9 acres proposed by the elders to be allocated to him, and thus, only take 4 acres. He stated that this was agreed upon, and a resolution to that effect recorded and signed, but subsequently, the Petitioner changed tune and disowned the resolution. He thus prayed that this Court, if the Petitioner continues to disown the resolution, should rule that the 3 houses share the parcel of land **Nandi/Kamobo/403** equally, at 9 acres each, as he had initially demanded.
  
7. **Kimeli Keino Kapruto** and **Hosea Kiprop Lagat**, in their identical, but separate Statements, stated that they live in the same village with the Objector and also knew the deceased, who had 3 wives, and they also knew the Objector's mother, who was the 1<sup>st</sup> wife of the deceased. They both then supported the matters alleged by the Objector in his Statement above, and stated that they accompanied the Objector to the meeting held on 14/10/2023 at the office of the District Officer, and confirmed the deliberations undertaken at the meeting as narrated by the Objector above, including the elder's decision that the parcel of land, **Nandi/Kamobo/403**, be divided equally amongst the 3 houses, the Objector's subsequent offer accepted by the Petitioner, to cede a portion of his equal 9 acres share

allocated to him by the elders, to therefore take a lesser portion of only 4 acres, and also the resolution, at the same meeting, adopting the acceptance of the Objector's offer to receive only 4 acres thereof.

#### **Petitioner's Witnesses' Statements**

8. **Emmy Jelimo Chumo**, the late initial Petitioner's (her mother) successor in the case, who is now being represented by **Messrs Songok & Co. Advocates**, having dropped **Messrs Arnold Otundo & Associates Advocates**, and earlier, having also dropped her mother's initial Advocates, **Messrs Billy Amendi & Co.**, authored a Statement that was basically, a replica of the contents of the Affidavit sworn by her late mother, **Jane Jepkering Kemboi**, on 28/06/2015, already exhaustively recounted above. I do not therefore deem it necessary to again recount the same.
  
9. **James Kiprutto** stated that the deceased was his neighbour in the village at Kamobo, Nandi County, where they were both born, and that he (**James Kiprutto**) was a village elder for 12 years from the year 2008 to 2021 when the deceased died. He confirmed that the deceased had 3 wives, whom he all also knew, and that the 1<sup>st</sup> wife, **Flora Ruto**, who was the Objector's mother, was given the parcel of land, **Nandi/Lelmokwo/1421**, where she lived with her children, including the Objector, until her death in 1982. He stated that the deceased, as such, gave the 2<sup>nd</sup> parcel of land, **Nandi/Kamobo/403**, to the 2<sup>nd</sup> wife (the initial Peitioner, **Jane Jepkering**) and the 3<sup>rd</sup> wife (**Emily Chepkoech**), that sometime in 2008, the deceased told him that he wanted to divide the said **Nandi/Kamobo/403**, measuring 28 acres, between the 2<sup>nd</sup> wife and the 3<sup>rd</sup> wife, and then brought a Surveyor who divided the land at the ratio of 18 acres to the 2<sup>nd</sup> house, and 10 acres to the 3<sup>rd</sup> house. He testified that the deceased also told him that he had given the parcel of land, **Nandi/Lelmokwo/1421** to the Objector. He then stated further that there was no dispute within the families regarding the manner in which the deceased had divided the two parcels of land, which, as aforesaid, were both initially owned by the mother of the deceased, **Ann Chemase**. In conclusion, he stated that he knew the deceased as "**Kipkemboi Arap Ruto**", and not "**Peter Kipkemboi Arap Ruto**".

#### **Hearing of the Objection**

10. As aforesaid, the matter then proceeded for *viva voce* trial. Before then however, the initial Petitioner, **Jane Jepkering Kemboi**, having died during the intervening period, the parties agreed, by consent, to substitute her with her daughter, **Emily Jelimo Chumo**. The parties
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also subsequently, by another consent, agreed to appoint the said **Emily Jelimo Chumo** and the Objector, **John Kiptoo Kemboi**, as the joint co-Administrators. These consents were adopted by the Court and implemented.

**Objectors' Witness Testimonies**

11. **PW1** was the Objector, **John Kiptoo Kemboi**, now represented by **Messrs Tum & Associates Advocates**, having dropped **Messrs Kalya & Co. Advocates**. Led by **Ms. Tum**, he adopted his Witness Statement, and testified that as regards the parcel of land, **Nandi/Kamobo/403**, measuring 28 acres, the deceased gave out 1 acre thereof and divided the remaining 27 acres equally among the 3 houses. He then basically reiterated the matters contained in his Statement, including making reference to the deliberations he alleged to have been made at the family meeting held at the office of the District Officer on 14/05/2013, the elder's decision that the parcel of land be divided equally amongst the 3 houses at 9 acres each, and his subsequent offer to cede his equal 9 acres entitlement, and only take 4 acres, which offer, he reiterated, was accepted by the Petitioner and was then adopted as a resolution of the meeting. He also reiterated that the parcel of land, **Nandi/Lelmokwo/1421**, which belonged to his grandmother, was given to him by the grandmother as a gift, and as such, it should not be included as forming part of the estate of the deceased. Under cross-examination by **Mr. Songok**, he stated that among the 3 wives, only **Emily Chepkoech Ruto** (3<sup>rd</sup> wife), is still alive, and that in the 1<sup>st</sup> house, there were 5 children, 2<sup>nd</sup> house has about 10 children, and the 3<sup>rd</sup> house had 4 children but one died. According to him therefore, there were about 19 children in total in the 3 houses. Regarding the minutes of the meeting of 14/10/2014, he denied that the same was not genuine, but he however conceded that not all family members attended the meeting. He denied that the deceased, their father, had distributed the estate before his death, and pointed out that while the parcel of land, **Nandi/Lelmokwo/1421**, was 10 acres, the 2<sup>nd</sup> parcel of land, **Nandi/Kamobo/403**, is 28 acres. He then reiterated that the parcel of land, **Nandi/Lelmokwo/1421**, belonged to their late grandmother, **Ann Chemase**, who gave him 8 acres therefrom, in which he lived and built his house, and that he is the only one who was given land by their grandmother. He stated that he was the only one who was given land by their grandmother, and denied that he never lived there. He however agreed that he currently lives in Ziwa, Uasin Gishu, which he purchased. He agreed that he has since sold the whole parcel of the parcel of land, **Nandi/Lelmokwo/1421**, but denied that he wants the parcel of land, **Nandi/Kamobo/403**, so that he could also sell it. She also agreed that their grandmother also owned a third parcel of land known as **Nandi/Chemuswa/180**, measuring 10 acres, which, he stated, the grandmother also gave to him. He denied that this 3<sup>rd</sup> parcel of

land is registered in the name of one **Pamela Chepkorir**, and stated that his share in **Nandi/Lelmokwo/1421**, is what was transferred to the **Nandi/Chemuswa/180** land, and as such, it is not true that he was given 2 parcels of land by their grandmother.

12. He stated further that the 1<sup>st</sup> house, which he belongs to, lived in the parcel of land, **Nandi/Lelmokwo/1421**, including his mother and brother, even when their father (the deceased) was alive, and that he was of school-going age at that time. He also agreed that all that time, the 2<sup>nd</sup> and 3<sup>rd</sup> wife were living in the **Nandi/Kamobo/403**, where they both still live although the 2<sup>nd</sup> wife (initial Petitioner herein) is now deceased. Regarding the third parcel of land, **Nandi/Chemuswa/180**, he stated that it had been exchanged with another person, for **Nandi/Lelmokwo/1421**, and since it was 8 acres, 2 acres remained in **Nandi/Lelmokwo/1421**, and since his house was in that 2 acre portion, he moved there, and that **Nandi/Lelmokwo/1421** remained in the name of their grandmother, who was still alive during that time. He stated that he later sold **Nandi/Chemuswa/180**, and relocated to Uasin Gishu. He insisted that for **Nandi/Kamobo/403**, the grandmother, too, gave him a separate share thereof as a gift, and that the share he is pursuing in this matter is that of his father. He agreed that Succession proceedings for the grandmother's estate has not yet been initiated, and insisted that **Nandi/Kamobo/403** has always been in the name of their father (the deceased herein), not the grandmother, and therefore denied that the deceased got it from the grandmother. He stated that **Nandi/Lelmokwo/1421** was sub-divided into 8 acres and 2 acres, that the 8 acres was registered in his name, while the 2 acres remained in the name of the grandmother. She also stated that although he had 4 siblings in their 1<sup>st</sup> house, only he was given land by their grandmother, whose decision he could not explain. He thus denied that **Nandi/Lelmokwo/1421** given out by the grandmother, was so given out for the whole 1<sup>st</sup> house family, and not just for him alone. He agreed that the deceased (his father) sold some portions of **Nandi/Kamobo/403**, but stated that he was not certain about the number or identity of purchasers although he is aware that one of the purchasers was a church, which purchased 1 acre, and that he also heard that one of his sisters had also purchased some portion from one of his brothers. He also denied that he sent one of his sisters with some Agreements for Sale of Land to be signed by the Petitioner when the Petitioner was sick in hospital. He also denied that only 4 acres remain in **Nandi/Kamobo/403**, or that such remainder was all allocated to one of the step-sisters, **Grace Cheptanui Kemboi**, who is mentally deranged. In re-examination, he insisted that **Nandi/Kamobo/403** is still 28 acres as the deceased only gave 1 acre to **Pamela Chepkorir**, a sister from the 2<sup>nd</sup> house, but who later sold it to a church

**13. PW2** was **Hellen Ngetich**. I however did not come across any Statement made by her, save for the Affidavit referred to hereinabove. Be that it may, she testified that the Objector is her brother as both are from the 1<sup>st</sup> house, children of the late **Flora Chemaiyo Ruto**. She supported the Objector's case, and basically restated the Objector's testimony, and stated that as the 1<sup>st</sup> house, they are only asking for 4 acres of **Nandi/Kamobo/403**. Under cross-examination by **Mr. Songok**, she stated that she was brought up in the **Nandi/Kamobo/403** parcel of land before they (1<sup>st</sup> house) moved to the **Nandi/Lelmokwo/1421** land, at which time she was not even 13 years old in age. She agreed that since her National Identity Card indicates her year of birth as 1960, it means that the time they moved was about 1970, at which time their father (the deceased) was still alive. She, too, stated that their grandmother was the owner of the **Nandi/Lelmokwo/1421** land, while their father was the owner of the **Nandi/Kamobo/403** which was inherited property. He stated that their father used to visit them in the **Nandi/Lelmokwo/1421** land, she agreed that the 2<sup>nd</sup> and 3<sup>rd</sup> wife remained in the **Nandi/Kamobo/403** land, and she also agreed that their 1<sup>st</sup> house never returned to the **Nandi/Kamobo/403** land. She however denied that the **Nandi/Kamobo/403** land was given to their father by their grandmother. She pointed out that although the Objector appears to be pursuing a share of the **Nandi/Kamobo/403** land in his individual capacity, what he is seeking is for the whole 1<sup>st</sup> house. Regarding the meeting convened at the District Officer's office, she stated that she attended it, and that although the County Commissioner's stamp indicates the year as "10/02/2014", it was on 14/10/2013, although she agreed that she could not recall with certainty as it was along time back. She, too, testified that her father sold 1 acre of the **Nandi/Kamobo/403** land to a church, but denied knowledge of other alleged sales of further portions, or that the portion remaining after the sales is only 4 acres, which has allegedly been reserved for their unmarried, mentally challenged sister from the 2<sup>nd</sup> house, **Grace Cheptanui**. In re-examination, she stated that as regards the **Nandi/Lelmokwo/1421** land, their grandmother gave 8 acres to the Objector and 13 acres to their sister **Miriam Chepngetich**.

**14. PW3** was the said **Hosea Kiprop Lagat**. He, too, adopted his Witness Statement and basically reiterated the matters contained therein, including that he is a neighbour of the family of the deceased at **Lelmokwo** where he was also a village elder. He also reiterated that he attended the meeting held on 14/10/2023 at the office of the District Officer, the 3 houses' agreement that the **Nandi/Kamobo/403** land be divided equally amongst the 3 houses, the Objector's offer, accepted by the Petitioner, to cede 5 acres portion of his 9 acres equal share allocated to him by the elders, to take a lesser portion of only 4 acres, and also the resolution, at the meeting, adopting the acceptance of the Petitioner's offer to only

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receive 4 acres instead. In cross-examination, when brought to his attention by **Mr. Songok** that his name does not appear in the minutes of the said meeting, he stated that he was not aware that his name does not so appear.

15. **PW4** was the said **Kimeli Keino Kipruto**. He, too, adopted his Witness Statement and **Mr. Songok** did not cross-examine him.

#### Petitioners' Witnesses' Testimonies

16. **DW1** was the said **Emmy Jelimo Chumo**, who as aforesaid, was admitted into this matter in substitution of the initial Petitioner, her mother (2<sup>nd</sup> wife). Led by **Mr. Songok**, she adopted her Witness Statement, and basically reiterated its contents, including that both the **Nandi/Lelmokwo/1421** land and the **Nandi/Kamobo/403** land were inherited from their grandmother, and that their father settled the 1<sup>st</sup> house in the **Nandi/Lelmokwo/1421** land, and the 2<sup>nd</sup> and 3<sup>rd</sup> house in the **Nandi/Kamobo/403** land, and that all the families have lived in that manner since then. She also reiterated the allegation that the Objector (1<sup>st</sup> wife's son) sold **Nandi/Lelmokwo/1421** and relocated elsewhere, and that their father predeceased their grandmother, and she then gave a breakdown of the manner in which the grandmother and father, when they were still alive, distributed the **Nandi/Kamobo/403** land among the 2<sup>nd</sup> and 3<sup>rd</sup> wives and their specified children. She denied any knowledge of any meeting in which it was agreed that the Objector be given 4 acres share of the **Nandi/Kamobo/403** land, and also stated that she was herself not given any share but she has no problem with that omission, as she is not interested in getting any share. Under cross-examination by **Ms. Tum**, she insisted that the 1<sup>st</sup> house, from which the Objector comes from, should not get any share in the **Nandi/Kamobo/403** land, although she conceded that there was nothing on the record to demonstrate that the **Nandi/Kamobo/403** land initially belonged to their grandmother.

17. **DW2** was the said **James Kipruto**. He, too, adopted his Witness Statement and basically, also reiterated the contents thereof, including that he is a neighbour of the family at Kamobo. He then testified that the 1<sup>st</sup> wife (Objector's mother) was buried in **Lelmokwo**, and that the **Nandi/Lelmokwo/1421** land was inherited by the Objector from his father (the deceased herein) who had also inherited it from his mother (the Objector's grandmother). He therefore denied that the land was a gift to the Objector from the grandmother. He explained that the deceased was an only child of the Objector's grandmother, and as such, he is the one who inherited the **Nandi/Lelmokwo/1421** land, that the Objector had a brother but who died, and

this is therefore how the Objector, remaining as the only son, solely inherited the the **Nandi/Lelmokwo/1421** land as the only heir as his other siblings were all girls. He therefore insisted that the Objector should not again inherit the **Nandi/Kamobo/403** land. In cross-examination, he, too, stated that he was a village elder in the area for a long time, and regarding the meeting held at the office of the District Officer, he contended that no resolution was agreed upon because the families did not agree.

### Written Submissions

18. Upon close of the trial, the parties filed Written Submissions. The Objector filed the Submissions dated 21/07/2025, while the Petitioner's is dated 22/07/2025.

### Objector's Submissions

19. Counsel for the Objector submitted that despite the Objector being a son of the deceased, and thus a lawful heir, the Petitioner omitted him from the list of beneficiaries, and the Odid not also consent to filing of the Petition. He also pointed out that the Petitioner only listed her own 4 children, despite the number of wives being 3, and the number of children in the 3 houses being 19 in aggregate. He therefore submitted that the Petitioner had completely omitted the 1<sup>st</sup> and 3<sup>rd</sup> houses and had thus concealed the fact that there were other dependents. He cited the definition of a "**wife**" or "**wives**" as set out in **Section 29** of the **Law of Succession Act**, and also the definition of "**child**" of a deceased person, as set out in **Section 3(1)** thereof. He urged further that the 1<sup>st</sup> house is represented in this case by the Objector and **PW2 (Hellen Jepkurgat Ngetich)**, that the Objector is contented with the 4 acres agreed upon at the meeting held at the office of the District Officer, and he has, as such, forfeited 5 acres to the 2<sup>nd</sup> and 3<sup>rd</sup> houses, which houses shall, as a result, together, inherit an aggregate of the remaining 23 acres. He insisted that the **Nandi/Lelmokwo/1421** land was given to the Objector by the grandmother as a gift, and he therefore, refuted the Petitioner's claim that the Objector should not get any share in the **Nandi/Kamobo/1421** on the ground that the Objector had already received his full share by way of having been given the **Nandi/Lelmokwo/1421** land.

### Petitioners' Submissions

20. Counsel for the Petitioner submitted that it is not disputed that the parcel of land known as **Nandi/Lelmokwo/1421** was registered in the name of **Ann Chemase**, the mother of the deceased, and later inherited and settled upon by **Flora Chemaiyo Ruto**, the 1<sup>st</sup> wife of the **Eldoret High Court Succession Cause No. 91 of 2013**

deceased. He submitted that the Objector, a son of the 1<sup>st</sup> wife, has been in possession of the **Nandi/Lelmokwo/1421** land, and has sold about 9 acres thereof, leaving only about 2 acres. According to Counsel therefore, the Objector's claim that the land was gifted to him is unsubstantiated and lacks any formal documentation, and that the law on inter *vivos gifts* requires clarity and unequivocal intention, which is lacking here. She urged further that the **Nandi/Lelmokwo/1421** land was meant for the benefit of the 1<sup>st</sup> house and the Objector having already alienated most of it, cannot now purport to seek a share of the **Nandi/Kamobo/403** land as well. Regarding the **Nandi/Kamobo/403** land measuring 28 acres, Counsel submitted that it was registered in the name of the deceased in 1979, and is where the 2<sup>nd</sup> and 3<sup>rd</sup> houses settled, who have agreed on the manner they will share it between themselves. She then particularized such agreed share formula and described it as equitable and reflecting the wishes of the deceased, and as taking into account special needs, such as disability (4 acres having been allocated to an unmarried and disabled daughter). He termed the Objector's conduct as selfishness and bad faith, as, he submitted, the Objector having dissipated nearly the entire share allocated to the 1<sup>st</sup> house, now seeks to encroach upon the portions rightly belonging to the 2<sup>nd</sup> and 3<sup>rd</sup> houses.

### **Determination**

21. The issues arising for determination in this matter can be summarised as follows:

- i) Whether the Objector, or the 1<sup>st</sup> house by extension, is entitled to inherit a share in the estate asset known as the parcel of land Nandi/Kamobo/1421, or whether the Objector, or the 1<sup>st</sup> house by extension, has already fully benefited by its occupation or ownership of the parcel of land known as Nandi/Lelmokwo/1421.**
- ii) How then should the estate be distributed?**

22. On the issue of "*dependency*", Section 26 of the Law of Succession Act provides that:

**"Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that**

**such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.”**

23. On this definition of a “**dependent**”, under the provisions of **Section 29(a)** of the **Law of Succession Act**, the persons who are given the first priority in inheriting the property of a deceased person, are the following:

**“the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;”**

24. In this case, there is no dispute that the parcel of land known as **Nandi/Kamobo/403** measuring about 11.2 hectares (approximately 28 acres), is registered in the name of the deceased, and is thus, no doubt, a property forming or comprising the estate of the deceased. There is also no dispute that the separate parcel of land known as **Nandi/Lelmokwo/1421**, measuring approximately 11 acres, initially or is even perhaps, still, registered in the name of **Ann Chemase**, who was both the Petitioner’s and the Objector’s grandmother, being the mother to the deceased. There is however indication that substantial portions of that parcel of land have since been “sold off” despite the estate of **Ann Chemase** not having being subjected to any form of proceedings under the **Law of Succession Act** as yet. I also agree that it was wrong for the Petitioner to have failed to disclose, when filing the Petition, that there were other members of the family of the deceased. This omission, alone, could have led to revocation of the Grant had she obtained one. The rule of the thumb is to first disclose the true facts, and then justify to the Court why such other survivors are not entitled to inherit, not to conceal that these other survivors exist.

25. Be that as it may, the Petitioner’s basis for opposing the Objector’s demand to be allocated a share in the **Nandi/Kamobo/403** land is that the Objector, or the 1<sup>st</sup> house by extension, in which the Objector belongs, has already fully benefited because the 1<sup>st</sup> house was allocated the separate **Nandi/Lelmokwo/1421** land. According to the Petitioner, both parcels of land initially belonged to the mother to the deceased, **Anne Chemase**, (the Objector’s and the Petitioner’s grandmother) and were thus inherited by the deceased or his family from the grandmother. However, according to the Objector, **Nandi/Kamobo/403** never belonged to **Ann Chemase**, and could not therefore have been inherited from her. As for **Nandi/Lelmokwo/1421**, the Objector agrees that it initially belonged to **Anne Chemase** (their grandmother) but argues that **Ann Chemase** gave it to him, as a gift.

26. After carefully listening to, and observing the witnesses, although there is no documentary evidence that the parcel of land **Nandi/Lelmokwo/1421**, was at any time registered in the name of the deceased, I have no doubt in my mind that the property devolved to the 1<sup>st</sup> house, which the Objector belongs, by virtue of the deceased being the only son of **Ann Chemase**, the grandmother to both the Objector and the Petitioner. Although the property might not have therefore first passed through the deceased by registration into his name before it eventually vested into the 1<sup>st</sup> house, that, alone, cannot displace the unmistakable truth of the matter. The fact that the deceased let the 1<sup>st</sup> house, alone, occupy **Nandi/Lelmokwo/1421**, the lesser in size, and left the 2<sup>nd</sup> and the 3<sup>rd</sup> house to jointly occupy the larger **Nandi/Kamobo/403** land is a clear indication that this is how he wished the 3 houses to live. There is no doubt that the arrangement that the deceased made was that the 1<sup>st</sup> house, alone, assume possession of the **Nandi/Lelmokwo/1421** land, and the 2<sup>nd</sup> and the 3<sup>rd</sup> house jointly own the **Nandi/Kamobo/403** land. I find no indication whatsoever, that the deceased intended that the 1<sup>st</sup> house get a share of the **Nandi/Kamobo/403** land, or the 2<sup>nd</sup> and 3<sup>rd</sup> house get a share of the **Nandi/Lelmokwo/1421** land. I am therefore not all convinced by the Objector's claim that **Nandi/Lelmokwo/1421** was a gift to him from the grandmother, and that it should not therefore be considered as having any effect in determination of the manner in which the estate of the deceased ought to be distributed. To accept that argument would be to allow the Objector to benefit from unjust enrichment, and to impose an injustice upon the 2<sup>nd</sup> and 3<sup>rd</sup> houses. It would be to ignore the dictates of equity, and would amount to applying the law too mechanically and literally without considering the entire context of the true factual situation of the family. Although I do not therefore excuse or condone the Petitioner's ill-advised act of not disclosing, when she filed the Petition, that there were other survivors of the deceased, in the end, weighing all factors, I find her argument that the 1<sup>st</sup> house is not entitled to inherit a share of the **Nandi/Kamobo/403** land to be merited, and I uphold it.

27. I am alive to the fact that the Objector produced minutes of a meeting he alleges to have been convened at the office of the area District Officer on 14/10/2013, in which it was allegedly decided by village or clan elders that the 3 houses share the **Nandi/Kamobo/403** land measuring approximately 27 acres, equally at 9 acres each, but the 3 houses, in the same meeting, after further deliberations, subsequently agreed that the 1<sup>st</sup> house, through the Objector, be allocated a lesser option of 4 acres, and the 2<sup>nd</sup> and 3<sup>rd</sup> houses share the remaining 23 acres.

28. I agree that such out of Court settlements are indeed recognized and adopted under the now embraced **Altrernative Justice System (AJS)**, which refers to informal, traditional, or non-judicial mechanisms utilized by parties to resolve their disputes outside the formal judicial or Court process. This is based on the provisions of **Article 159(2)(c)** of the **Constitution of Kenya**, which, indeed, encourages adoption of traditional dispute resolution mechanisms as long as such mechanisms do not breach the Bill of Rights, or the laws of the contry. For instance, **C. Kariuki J**, in **High Court Narok, Succession Cause No. 3 of 2022**, while handling, as herein, a case concerning division of the property of a deceased, upheld a settlement negotiated and agreed upon, as herein, before elders. The Judge also correctly stated that such settlements are lawful as long as the parties voluntarily submitted to the process, the dispute was within AJS's jurisdiction, and, the award did not suffer procedural impropriety.
29. Similarly, **L.Kasan J**, in **Mwangaza v County Assembly of Meru; Njuri Ncheke Supreme Council of Ameru Elders (Proposed Amicus Curiae) (Constitutional Petition E013 of 2024) [2024] KEHC 14842 (KLR) (29 July 2024) (Ruling)**, in a case concerning the impeachmeant of the Governor of Meru County accepted a request by local Council of elders known as the *Njuri Ncheke*, to postpone his Ruling on the matter, and instead, grant the elders an opportunity to mediate over the dispute. The Judge stated as follows:

**“The truth of the matter is that we are living in the society where decisions by AJS are subjected to the court which will then decide if they are constitutional or not. The court is the ultimate authority to subject AJS decisions to constitutionalism but before that exercise, there must be an AJS decision. In fact, for the years that AJS has been embraced, jurisprudence has been created. As I write this ruling, plea bargain is gaining prominence everyday which was not a thing in the past. Who knew twenty years ago that someone can plead guilty for murder and the matter is settled with a lighter sentence?”**

30. I would therefore anytime adopt a AJS settlement as long as it meets the required threshold. In this case however, I am constrained to disregard the settlement presented, even assuming that it is genuine. I have, instead, opted to distribute the estate on the basis of the evidence on record, and also equity, not as per the alleged settlement. I say so because, although the 2<sup>nd</sup> and 3<sup>rd</sup> wives appear to have signed the resolution, which could then be said to possibly bind the 2<sup>nd</sup> and 3<sup>rd</sup> houses, I also observe that, while the family of the deceased comprises of about 19 children in aggregate, only about 6 children are indicated to have attended the meeting. With such a small sample of the family involved, it cannot be be said that the settlement demonstrated unequivocal unanimity within the entire family. I also consider that

**Emily Chumo** denied any knowledge of the meeting, and **DW2**, the elder who claimed to have attended the meeting, alleged that no resolution was reached as the parties did not agree. Under these circumstances, I find it unsafe to adopt the settlement, even assuming that it is genuine.

### **Final Orders**

31. In the end, I rule and order as follows:

- i) The Objector, or the 1<sup>st</sup> house by extension, is **not** entitled to inherit a share in the parcel of land known as **Nandi/Kamobo/403**, the Objector, or the 1<sup>st</sup> house by extension, having already fully benefited by way of its inheritance from **Ann Chemase**, the deceased's mother, of the separate parcel of land known as **Nandi/Lelmokwo/1421**.
- ii) The 11.2 hectares (approximately 28 acres) of the only property now forming or comprising the estate of the deceased herein, namely, **Nandi/Kamobo/403**, is hereby distributed in the manner proposed by the late Petitioner, through the said **Emily Jeptumo Chumo**, substituted in her place, in the manner particularized hereinbelow, no other member of the 2<sup>nd</sup> and 3<sup>rd</sup> houses having come forward to participate in these proceedings or to oppose the proposal:

<b>Beneficiary</b>	<b>Description</b>	<b>Share</b>
<b>Richard Kibet Chumo</b>	<b>Son to the 2<sup>nd</sup> wife, Jane Jepkering Kemboi</b>	<b>10 acres</b>
<b>Grace Cheptanui Kemboi</b>	<b>Unmarried, mentally challenged daughter of the 2<sup>nd</sup> wife, Jane Jepkering Kemboi, to be held in trust by one Victor Kiprono</b>	<b>4 acres</b>
<b>Reserved as the 2<sup>nd</sup> wife, Jane Jepkering Kemboi's matrimonial home</b>		<b>4 acres</b>
<b>Rosemary Jepkurgat</b>	<b>Widow to Edwin Kipkoech, the 3<sup>rd</sup> wife, Emily Ruto's late son</b>	<b>10 cres</b>

- iii) Save that occupation or possession of the area or acreage currently occupied or possessed by the 3<sup>rd</sup> wife said to be still alive, **Emily Ruto**, in the parcel of land

known as **Nandi/Kamobo/403**, shall not, under any circumstances, be interfered with or disturbed, and she shall therefore be allowed to continue residing or cultivating thereon, as the case may be, for the rest of her remaining life.

- iv) Any party aggrieved by the decision hereinabove has **forty-five (45) days** leave to file an appeal, and which period shall also act as automatic stay against implementation or execution of this Judgment.
  
- v) Upon expiry of the period abovestated, the parties shall be at liberty to extract the Grant of Letters of Administration Intestate, and also the Certificate of Confirmation of Grant.
  
- vi) As this is a family matter, I order that each party bear his/her own costs.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 18<sup>TH</sup> DAY OF MARCH 2026**

.....  
**WANANDA JOHN R. ANURO**  
**JUDGE**

**Delivered in the presence of:**

**Ms. Sielei for the Objector**

**N/A for the Petitioner**

**Court Assistant: Brian Kimathi**