

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

SUCCESSION CAUSE NO. E107 OF 2025

IN THE MATTER OF THE ESTATE OF KIPKEMEI SAMOEI (DECEASED)

THROUGH

HELLEN CHEBOLEM SAMOEI.....
PETITIONER

Coram: Before Justice R. Nyakundi

RULING

1. Before this Court is Summons for confirmation of grant expressed to be brought under Section 71(3) & (4) of the Law of Succession Act, Cap 160 and Rule 40 of the Probate and Administration Rules and dated on 5th day of February 2026 seeking the following orders:
 - a. *The grant of letters of administration intestate to the estate of Kipkemei Samoei (deceased) made to the Applicant herein, Hellen Chebolem Samoei on 8th August 2025 be confirmed.*
 - b. *The estate of the late Kipkemei Samoei be distributed as per the schedule provided under paragraph 8 of the supporting affidavit.*
 - c. *The costs of this application be in the cause.*
2. This application is based on the following grounds:
 - a. *The estate is not contested and all beneficiaries have agreed on the mode of distribution, making it unnecessary to wait for six months to lapse before applying for confirmation of grant.*
 - b. *The applicant is the duly appointed administrator of the deceased's estate.*
 - c. *The identification of all persons beneficially entitled to share in the estate and their respective entitlements has been ascertained and determined, and all beneficiaries have consented to the proposed distribution*

- d. It is in the interest of justice that the orders sought be granted.*
3. In support of the application is the supporting affidavit of one Hellen Chebolem Samoei who deponed as follows:
- a. That I am the applicant/petitioner and the administrator of the estate of Kipkemei Samoei (deceased) who died on 26th May 2025 intestate and I am competent and authorized to swear this affidavit.*
 - b. That a grant of letters of administration intestate to the estate of the said Kipkemei Samoei (deceased) was made to me on 8th August 2025.*
 - c. That the said grant is now ripe for confirmation to enable the final distribution of the estate among the beneficiaries.*
 - d. That the estate is not contested and all beneficiaries are in agreement with the proposed mode of distribution, making it unnecessary to wait for six months before applying for confirmation of grant.*
 - e. That there is no objection from any beneficiary to the confirmation of the grant before the lapse of six months.*
 - f. That the deceased was survived by the following dependents:*
 - i. Hellen Chebolem Samoei - wife*
 - ii. David Samoei - son*
 - iii. Christopher Kipkemboi Chumo - son*
 - iv. Julius Kimaiyo Samoei - son*
 - v. Sarah Jepleting Samoei - son*
 - g. That the estate of the deceased comprises:*
ILLULA SETTLEMENT SCHEME 313-10
 - h. That the identification of shares of all persons beneficially or otherwise entitled to the estate of the deceased has been ascertained and determined as follows:*

Name	Property	Beneficial Share
Hellen Chebolem Samoei Sarah Jepleting Samoei Julius Kimaiyo Samoei David Samoei Christopher Kipkemboi Chumo	ILLULA SETTLEMENT SCHEME/313 measuring approximately 4.1 Ha	parcel to be sold and proceeds shared equally between the beneficiaries listed herein after paying creditors.
Ambrose Kimitei	Creditor	Kshs. 3,844,333
Milton Koech	Creditor	Kshs. 900,000

- i. That all beneficiaries have willingly consented to the mode of distribution indicated herein.*
- j. That, the deceased died intestate with no written will.*
- k. That I make this affidavit in support of the application now before court.*

Decision

4. The law on confirmation of grant is provided for under Section 71 of the Act as read with Sections 35, 36 & 39 of the Act. Section 35 (1)(b) of the Act provides that:

(1) Subject to the provisions of Section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouses shall be titled to—

(a) The personal and household effects of the deceased absolutely; and

(b) A life interest in the whole residue of the net intestate estate: Provided that if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.” A plain reading of this provision is that a widower can remarry without losing the enjoyment of a life interest whereas a widow’s right to

enjoy a life interest would immediately stand extinguished upon her remarriage.

Similarly, Section 36 (1) of the Act provides that:

- 1) *Where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to—*
 - (a) *The personal and household effects of the deceased absolutely;*
 - and*
 - (b) *The first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the greater; and*
 - (c) *A life interest in the whole of the remainder:*
- Provided that if the surviving spouse is a widow, such life interest shall be determined upon her re-marriage to any person.”*

Section 39 (1)(a) and (b) of the Act provides that:

- (1) *Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority*
 - (a) *father; or if dead*
 - (b) *mother; or if dead”*
5. In accordance with Section of 38 the Law of Succession which provides as follows;

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of Sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children. The said Section mandates equal inheritance for all the children of the deceased irrespective of gender. In re Estate of Francis Andachila Luta (deceased) (Succession Cause 875 of 2012) [2022] KEHC 16900 (KLR) (23 December 2022) (Judgment) Musyoka J stated as follows; “Let me revisit section 38 of the Law of

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

6. In light of the foregoing, it is safe to conclude that the identification of shares of all persons who are entitled to the estate has been ascertained. It would be noticed that there is a clause in the beneficiary interest of the parcel of land to be sold and profit to be shared equally. Succession or inheritance may be defined as the devolution of title to property under the law of descent and distribution (Black’s Law Dictionary 5th Edition). Therefore, succession would exclude those who take by deed, grant or any form of purchase contract. Generally, the Probate Court is not in the business of decreeing that the estate property be sold, that would mean entering into the realm of commercial law. For succession purposes the estate of the deceased shall devolve in equal shares to the heirs of the deceased. This other procedural aspect of sale is a matter within the purview of the Administrators. The Court must exercise caution in granting disposal of the sale of the intestate estate as that issue can be properly handled by the Administrators and thereafter file probate account to liquidate the estate.
7. For avoidance of doubt under Section the Court invoking Section 47 of the Act adopts the model as proposed by the beneficiaries in the above

matrix. With this a Certificate of Confirmation of Grant shall be issued to the Administrators by the Deputy Registrar of the High Court.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 10TH DAY OF
APRIL 2026.**

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R. NYAKUNDI

JUDGE