



REPUBLIC OF KENYA



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**In re Estate of Alexander Tarus Kipsang (Deceased) (Succession Cause 105 of 2019) [2025] KEHC 11441 (KLR) (1 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11441 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 105 OF 2019  
JRA WANANDA, J  
AUGUST 1, 2025**

**IN THE MATTER OF THE ESTATE OF ALEXANDER TARUS KIPSANG**

**BETWEEN**

**LABAN KIBET KOGO ..... PETITIONER**

**AND**

**ALICE JEBUNGEI ..... 1<sup>ST</sup> OBJECTOR**

**JOYCE TARUS ..... 2<sup>ND</sup> OBJECTOR**

**STELLAH CHEROTICH ..... 3<sup>RD</sup> OBJECTOR**

**NANCY JEPKOSGEI ..... 4<sup>TH</sup> OBJECTOR**

**VIVIAN JEPTOO ..... 5<sup>TH</sup> OBJECTOR**

**EMMANUEL KIPROP TARUS ..... 6<sup>TH</sup> OBJECTOR**

**JUDGMENT**

1. The deceased, Alexander Tarus Kipsang, died on 3/09/2018 at the age of 75 years. On 22/08/2019, the Petitioner, Laban Kibet Kogo, as his son, through Messrs Musyoka Murambi & Co. Advocates, applied for a Grant of Letters of Administration Intestate in respect to the estate. In the Petition, he listed 10 survivors of the deceased [including himself and the Objectors] and 4 parcels of land, amongst others, as comprising the estate. Before the matter could be processed, the Objectors emerged and challenged the Petition. I have not however come across any formal Objection in the file.
2. The matter was then directed to be canvassed by way of viva voce evidence. Pursuant thereto, both the Objectors' side and the Petitioner filed various Affidavits and also documents. I will however only recite the Affidavits sworn by the witnesses who actually testified as only those were adopted by the deponents as their evidence-in-chief. The trial then proceeded before me on 19/10/2023, and on 28/11/2024, and in which the Objectors called 1 witness, while the Petitioner called 3.



## Objectors' Affidavit

3. Alice Jebungei, the 1<sup>st</sup> Objector, in her said Affidavit sworn on 10/03/2019 and filed through Messrs Nyachiro Nyagaka & Co. Advocates, deponed that she is the 1<sup>st</sup> born child of the deceased, and they are 10 siblings in total. She stated that upon the death of the deceased, a meeting was convened by their elders but which aborted as only 7 siblings attended, and thus at no point did the family agree to the Petitioner taking out Letters of Administration over their father's estate. She reiterated that the Objectors were never informed nor did they participate in the filing of the Petition herein, and they only learnt of the same when they sought the Chief's letter to enable them file for Succession.
4. She urged further their consent was not obtained in filing of the Petitioner and also, that the Petitioner did not list all the assets of the deceased, namely, parcel of land known as Elgon Estate Turbo measuring 50 x 100, and Kiplombe [Barracks] land measuring 11 acres. She also faulted the Affidavit of Justification and the Guarantee filed with the Petition on the ground that beneficiaries of the estate cannot also be sureties to the same estate, as was the case herein. She contended further that at no time did their father distribute the properties before his death, and that he only allowed her [1<sup>st</sup> Objector] to utilize the parcel of land in Kiplombe as she was unemployed. According to her, since their father did not write a Will, the estate should be shared equally, and tradition or culture should not override *the Constitution* of Kenya, and that all children of the deceased whether male or female, are supposed to be catered for. She added that the parcels land at Kiplombe do not have title deeds, and are also subject of Court cases but once concluded, they should all be distributed equally.

## Petitioner's Affidavits

5. The Petitioner, Laban Kibet Kogo, in his Affidavit sworn on 19/05/2022 and filed through his said Advocates, Musyoka Murambi & Co. Associates, deponed that upon their father's demise, the elders of their sub-clan, together with the family, held a meeting in which he was nominated to petition for Grant of Letters of Administration over the deceased's estate on behalf of the family. He deponed further that before the deceased's demise, he called for a meeting with the clan elders with the aim of communicating his wishes on the mode of distribution of his estate amongst his children after his demise. He deponed further that before the deceased's demise, he allocated properties to them [his children] as follows:
  - a. Parcel of land in Kiplombe Kisor [Barracks] measuring 11.4 acres, was allocated to all the female children and the same is however currently occupied by Alice Jebungei Maiyo, who separated from her husband, and was directed by the deceased to live and farm thereon for her livelihood, in trust for her other sisters. He exhibited a copy of a letter dated 21/03/2022 from the Chief.
  - b. Parcel of land known as Uasin Gishu/Ndalat Settlement Scheme/56, measuring 7.5 Hectares [approximately 18.5 acres] was allocated to the 4 male children, namely, Laban Kibet Kogo, Albert Kiprono Bor, Benjamin K Limo and Emmanuel Kiprop Tarus, who were shown specific portions to build their homestead and to farm for their respective families' upkeep as is the tradition among the Kalenjin.
  - c. Parcel of land known as Uasin Gishu/Ndalat/ Settlement Scheme/126, measuring 1.60 Hectares [approximately 4 acres] was allocated to the 4 male children, Emmanuel Tarus, being the deceased's last-born son, and who traditionally must inherit the deceased's homestead, which he has indeed occupied since the deceased's demise.
  - d. Parcel of land known as Uasin Gishu/Ndalat Settlement Scheme/56, measuring 7.5 Hectares [approximately 18.5 acres] forms part of the ancestral land of the Kapchemwor sub-clan that



was purchased by their father from proceeds of sale of his ancestral land, and the same was to be held, according to their culture, in trust for their father's male children, from generation to generation.

- e. That in the Kapchemwor sub-clan and Kalenjin tribe, ancestral land does not devolve to female children upon the demise of their father but to the male children to ensure continuity and stability in the clan. According to him therefore, the said parcels of land are to remain as an estate of the Kapchemwor sub-clan, and that it was for this reason that their father and mother acquired various other parcels of land for use by their sisters, and which they farm on to date.
6. He then reiterated that upon their father's demise, a meeting was convened by clan elders, and which he [Petitioner] and other family members in attended, in which distribution of the assets was discussed and agreed upon. According to him, the last two meetings held on 24/06/2020 and 19/12/2020 brought to a close, discussions on distribution of the properties, the agreement having been reduced into writing, and confirmed by all members present and signed. He stated that however, upon attending Court Annexed Mediation sessions ordered by this Court, they, in good faith, as children of one family, reconciled their positions and agreed to re-distribute the estate. According to him, they allocated their sisters the parcel of land Uasin Gishu/Ndalat Settlement Scheme/126 measuring 1.60 hectares [approximately 4 acres], and also the parcel of land in Kiplombe measuring 50 x 100, in addition to the property in Kiplombe Kisor [Barracks] measuring 11.4 acres as per the schedule annexed to his Affidavit, as follows:



Uasin Gishu/Ndalat Settlement Scheme/126 measuring 1.60 Ha [approx. 4 acres]	Alice Jebungei	Equally
	Joyce Jepleting Rotich	
	Priscah Jepchichir	
	Stellah Cherotich	
	Nancy Jepkirui	
	Vivia Jepkorir	
Uasin Gishu/Ndalat Settlement Scheme/56 measuring 7.5 Ha [approx. 18.5 acres]	Laban Kibet Kogo	Equally
	Albert Kiprono Bor	
	Benjamin K. Limo	
	Emmanuel Kiprop Tarus	
Kiplombe/Kiplombe Farm/Block 4/120 [7.1 acres]	Laban Kibet Kogo	Equally
	Albert Kiprono Bor	
	Benjamin K. Limo	
	Emmanuel Kiprop Tarus	
Plot in Kiplombe [50 x 100]	Nancy Jepkurui	Equally
	Vivian Jepkorir	
	Priscah Jepchichir	
Plot in Elgon Estate Turbo [50 x 100]	Priscah Jepchirchir	Equally
	Benjamin Limo	
Barracks/Kiplombe land measuring 11 acres	Alice Jebungei	Equally
	Joyce Jepleting Rotich	
	Priscah Jepchichir	
	Stellah Cherotich	
	Nancy Jepkirui	
	Vivian Jepkorir	



Maize harvest 2018 [4 acres 100 bags @ 3,000 = Kshs 300,000]	Alice Jebungei	Equally @ Kshs 30,000
	Joyce Jepleting Rotich	
	Priscah Jepchichir	
	Stellah Cherotich	
	Nancy Jepkirui	
	Vivian Jepkorir	
	Laban Kibet Kogo	
	Albert Kiprono Bor	
	Benjamin K. Limo	
	Emmanuel Kiprop Tarus	

7. He thus deponed that the female children of the deceased have not been disinherited but have been apportioned shares in the assets in accordance with the rules of equity and traditions of their clan. He also denied knowledge of any pending Court cases affecting any of the father's properties as alluded to by the 1<sup>st</sup> Objector, nor any liabilities to the estate.
8. Kipkosgei Rop Chesiboi, in his Affidavit also sworn on 19/05/2022, stated that he was a friend of the deceased and an uncle to the parties herein. He stated that he helped the deceased to acquire the property Uasin Gishu/Ndalat Settlement Scheme/56 in the year 2006 from the proceeds of sale of the deceased's ancestral land in Ziwo, Nandi County. He then reiterated the matters deponed by the 1<sup>st</sup> Objector regarding the convening and resolutions of family meetings called by elders. He however stated that despite invitations on various occasions to the Objectors, they failed and/or refused to attend. He then urged that the estate should be distributed in accordance with the minutes of the meeting of 24/06/2020, and he, too, deponed that the female children of the deceased have not been disinherited but have been apportioned shares in accordance with the rules of equity and traditions of their clan.
9. David Keino, in his Affidavit also sworn on 19/05/2022, stated that the deceased was his brother-in-law as the deceased was married to his sister. He, too, reiterated the matters deponed by the 1<sup>st</sup> Objector and the said Kipkosgei Rop Chesiboi, regarding the convening and resolutions of family meetings called by elders.

### **1<sup>st</sup> Objector's Testimony**

10. PW1 was the 1<sup>st</sup> Objector, Alice Jebungei. Led by her Counsel, Mr. Nyachiro, he reiterated the matters contained in her said Affidavit. She testified that the Petition omitted the property known as Elgon Estate Turbo which belonged to their mother, and Kiplombe [Barracks] then stated that although they went for Court Annexed Mediation, they did not reach an agreement. She then testified that neither herself nor the rest of the Objectors signed consents to the Petition, and that only 4 of their siblings signed. She however stated that rather than revoke the Grant, she proposes that one additional Administrator be appointed. She then proposed Vivian Chepkorir. She reiterated that the properties



be shared equally amongst the 10 of them as none of them made any contributions in acquisition of the properties by their father. She reiterated that one of the two Kiplombe properties, and the Barracks land do not have title deeds as yet. She continued with her denial of any knowledge of the alleged family meetings with elders and stated that in any case, the elders do not possess any mandate to determine distribution. She pointed out that the minutes indicate that only Albert, Laban and Benjamin were present in the meeting, and denied that they were invited. She then stated that one Isaac Choge is not their sibling and thus he cannot occupy their lands. As regards one David Keino, she stated that he is their uncle from the mother's side. She then denied any knowledge of the said Kipkosgei Rop.

11. Under cross-examination by Ms. Nekoye, she agreed that she lives in one of the parcels of the Kiplombe properties and that it is their father who settled her thereon. She reiterated that the Turbo land is in their mother's name but conceded that she did not have any document to prove the allegation. She also reiterated that the Barracks land is the subject of a Court case. In re-examination, she claimed that the mode of distribution proposed by the Petitioner is not equitable as the sons have been allocated a total of 25.6 acres and the daughters have only been given 15. Regarding the item described as "maize harvest", she observed that she has been allocated a share but denied any knowledge of the item.
12. At this point, Mr. Nyachiro brought it to the Court's attention that he had forgotten to lead PW1 to produce the Objector's documents as exhibits. In the circumstances, PW1 was allowed, by consent, to produce the same.

#### **Petitioner's Witness' Testimonies**

13. DW1 was the Petitioner, Laban Kibet Kogo. Led by his Counsel, Ms. Nekoye, he adopted his Affidavit and reiterated the matters he deponed therein. He reiterated that he was nominated to be the Administrator herein in a meeting convened after their father's death and which was attended by family members, and that the convening of the meeting to be held during the memorial was communicated to all at the burial. He stated that he used to reside at the 11 acres Kiplombe farm but their father relocated him to Ndalat and told him to leave the Kiplombe farm to the sisters whom he wanted to settle there. According to him therefore, this was his father's wishes and prayed that the properties be shared in accordance therewith. He then produced his documents as exhibits. Under cross-examination by Mr. Nyachiro, he conceded that the minutes of the meeting of 24/06/2020, show that only 3 of the siblings, Albert, Benjamin and himself, attended. He also conceded that the consent to the Petition was signed by only 4 of the siblings, Albert, Benjamin, Prisca and himself. When put to ask about the statement in his Affidavit that only male offspring can, under the culture of their clan, inherit, he answered that he had now changed his mind about that view. He then stated that their father's hospital bill was catered for from the proceeds of sale of 2 acres out of the 13 acres Kiplombe land by their father, and that the remaining portion of the land is what the 1<sup>st</sup> Objector is occupying. Regarding occupation by the 1<sup>st</sup> Objector, he referred to the letter dated 21/03/2022 from the Chief. He then remarked that he has no problem even if he is given the Kiplombe land, and that he also has no problem even if his sisters are given part of the ancestral land. In conclusion, he stated that even the smaller parcels of land which may not be conveniently shared, can be sold and the proceeds shared. In re-examination, he reiterated that in their culture, the grandfather's land is inherited by male children.
14. DW2 was Kipkosgei Rop Chesiboi. He, too, adopted his Affidavit and reiterated the matters therein. He testified that his sister was married to the deceased's brother, and reiterated the fact of the convening of the meeting with the elders. He testified that they gave the Ndalat farm to only the sons of the deceased as it was the ancestral home, and the Kiplombe farm to the daughters. He stated that one of the sons used to reside in the Kiplombe farm but the deceased relocated him to Ndalat, the ancestral land. Under cross-examination by Mr. Nyachiro, he stated that he is 90 years old, and conceded that



he was not sure about the number of children that the deceased had, and he also could not recall the names of the children of the deceased. He however denied that this was proof that he did not know the family well..

15. Regarding the meeting with the elders, he stated that as per their tradition, it was convened after the 40 days of mourning. He also conceded that only 4 siblings attended the meeting and that he had nothing to show that those who did not attend were invited. He reiterated that in their culture, the ancestral home remains with the male children but he agreed that this can change where the father had no other land elsewhere in which case the daughters can be given shares in the ancestral land. He also conceded that he had no evidence that the deceased communicated his wishes on distribution of the estate. He also agreed that he has heard that the Barracks land is being claimed by the Kenya Defence Forces [KDF], and he agreed that should the KDF succeed in taking it over, then the daughters shall remain landless if the mode of distribution he has proposed is adopted. He also confirmed his knowledge that *the Constitution* prohibits discrimination on account of gender. In re-examination, he stated that the fact that they had allocated the daughters the Kiplombe farm is evidence that they respect *the Constitution*, and thus denied that their culture offends *the Constitution* in any way.
16. DW3 was David Keino. He, too, adopted his Affidavit and reiterated the matters therein. He testified that the deceased was his brother-in-law as the deceased was married to his sister. He, too, reiterated the fact of the convening of the meeting with the elders and their allocation of the Ndalat farm to only the sons of the deceased in accordance with their culture, as it was the ancestral home, and the Kiplombe farm to the daughters. He also reiterated that the Petitioner used to reside in the Kiplombe farm and the deceased relocated him to Ndalat, the ancestral land. In cross-examination, the witness stated that these were the wishes of the deceased, and that the deceased himself told him so when he was sick in hospital. In re-examination, he stated that the deceased told him about the said wishes on several occasions, the first time being in 1996. He then stated that the Ndalat farm used to belong to the father of the deceased who purchased it, but the original home of the family was in Nandi

### Written Submissions

17. Upon close of the trial, the parties filed written Submissions. The Objector's Counsel filed the Submissions dated 11/02/2025, while the Petitioner's is dated 24/03/2025.

### Objector's Submissions

18. Counsel for the Objector, after recounting the background to the case, submitted that if a person dies without a Will, their property is to be distributed in accordance with the *Law of Succession Act*, Section 3[2] whereof defines a "child" without any discrimination on account of gender, and that therefore all children are considered equal before the law. He cited the case of Stephen Gitonga M'Murithi v Faith Ngira Murithi [2015] eKLR. After recounting the testimonies of the witnesses, he submitted that as proved by the evidence on record, the Ndalat farm is registered in the name of the deceased, and thus forms part of his estate. He further stated that the Kiplombe farm having a pending case before the Environment & Land Court [ELC], cannot be distributed at this stage, but only after the suit is determined. He thus wondered how the daughters can be granted that which is still disputed and the outcome unknown. He submitted further that the application of the customary laws takes pride of place in Section 3[2] of the *Judicature Act* Cap. 8, but is circumscribed thus "so far as it is applicable and is not repugnant to justice and morality or inconsistent with any written law.". He also cited Section 82 of *the Constitution*, and also Article 18 of the African Charter of Human Rights, otherwise known as the Banjul Charter [1981] which, he submitted, Kenya ratified in 1992. According to Counsel therefore, the Nandi customary law, insofar as it discriminates against female children of a deceased person, should not be upheld as it is contrary to Article 27[3] of *the Constitution*. He cited



various further authorities, and also Article 53 of *the Constitution*, and made further submissions on the issue.

### **Petitioner's Submissions**

19. Counsel for the Petitioner, after reciting the testimonies of the witnesses and evidence, submitted that from the evidence, it is confirmed that the deceased had settled the siblings in the manner set out in the mode of distribution presented by the Petitioner, and they have been living, farming and constructing structures in the allocated portions for about 10 years. She submitted that after the demise of the deceased, Emmanuel Kiprop Tarus [last born] settled in the homestead as is the norm traditionally among the Kapchemwor sub-clan. She cited the case of *Re Estate of the late Siwanyang Ngilotochi [Deceased]* eKLR. She urged that the manner in which the estate of the deceased has been occupied and utilized since 2014 reflects his intentions.
20. She submitted that Alice Jebungei Maiyo relocated to the Kiplombe Kisor [Barracks] farm, Emmanuel Tarus [last born] occupied the family homestead, and Laban Kibet Kogo, Albert Kiprono Bor, and Benjamin K. Limo have continuously occupied, and lived with their families on Uasin Gishu/Ndalat Settlement Scheme/56 and Uasin Gishu/Ndalat Settlement Scheme/126. She urged that having consistently adhered to this distribution and acted in accordance thereto, the Objectors are estopped from seeking to alter the same. She refuted the allegation that the daughters were discriminated against as they, too, were allocated shares and were all also included in the Petition. He cited Article 11 of *the Constitution* on recognition of culture as the foundation of the nation, and also Article 2. She urged that according to DW2, an elder well-versed in the customs of the Kapchemwor sub-clan, inheritance of ancestral land has traditionally been prioritized for male children, and is aimed at ensuring the continuity and inter-generational transfer of ancestral land within the lineage, rather than as a means of disinheriting or discriminating against female children.
21. He also pointed out that according to DW2, the deceased acquired the property, Kiplombe Kisor [Barracks] to ensure that his daughters were also catered for. Counsel further submitted that the Objectors' protest appears to be driven by malice as they did not contest the devolution of the homestead to the last-born, Emmanuel Kiroop Tarus, a well-established custom in their sub-clan, and that their objection is solely focussed on properties they perceive to be of greater value since during her testimony, Alice Jebungei Maiyo, admitted that she wishes to inherit part of Uasin Gishu/Ndalat Settlement Scheme/56 as she found Kiplombe Kisor [Barracks] too swampy for her liking. On the need to avoid a mode of distribution that would be disruptive to the lives of beneficiaries, she cited the case of *Re Estate of Kaga Kimaru Gathua [Deceased]* [Succession Cause No. 42 of 2015] [2024]. On the allegation that not all the properties of the deceased have been disclosed, Counsel contended that the additional property listed by the Objectors, namely, Elgon Estate Turbo measuring 50 x 100, has no relation to the estate of the deceased as it is under the name of their mother.

### **Determination**

22. The Objectors had raised the issue that the Petitioner commenced this Succession Cause without involving them [his siblings] and neither did he obtain their consents. This allegation seems valid since it is apparent from the consent filed with the Petition that although the Petitioner listed all his 9 other siblings, only 3 of them are indicated to have signed the consent. To his credit, he did not conceal this fact since he filed the consent with the spaces for the 6 other signatures left blank. As the absence of the 6 signatures is apparent in the consent, I would not say that he fraudulently applied for the Petition.
23. Be that as it may, the 1<sup>st</sup> Objector, in her testimony, stated that the Objectors are not seeking revocation of the Grant but only pray that there be a co-Administrator appointed from the Objectors' side. She



then proposed their sister, Vivian Jepkorir. These sentiments and proposal have not been contested by any of the parties, and further, I find them fair and just considering that all the protagonists in this matter are siblings thus ranking equally in the hierarchy of eligibility for appointment as Administrator[s] of the estate. I will therefore accept and adopt the same.

24. In view of the foregoing, the one broad issue that remains is “what mode of distribution of the estate of the deceased should the Court apply in this matter”
25. Regarding the properties forming the estate of the deceased, and thus available for distribution, in the Petition, the Petitioner had listed 4 parcels of land. He had also listed some movables but which however, none of the parties has revisited and seem to have been abandoned. Regarding parcels of land, the Objectors, when they came into the matter, claimed that the Petitioner had left out 2 parcels of land, which they described as Elgon Estate Turbo measuring 50 x 100, and Kiplombe [Barracks] measuring 11 acres. However, from the trial and the Affidavits adopted in evidence, I can safely conclude that the unanimous verdict by all parties is that the properties available are those described in the following terms:

[i]	Uasin Gishu/Ndalat Settlement Scheme/126	1.60 Ha
[ii]	Uasin Gishu/Ndalat 56	7.50 Ha
[iii]	Kiplombe/Kiplombe Farm/Block 4/120	2.80 Ha [portion]
[iv]	Barracks/Kiplombe	4.60 Ha
[v]	Plot in Kiplombe [50 x 100]	0.046 Ha [presumably]

26. In this case, the deceased died intestate, and was predeceased by his wife [the mother to all the parties herein]. Distribution of his estate is therefore governed by 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.”

27. Although the word used in Section 38 of the [Law of Succession Act](#) is “equal”, it is generally agreed that it does not mean that “equal” distribution is what must always, in all circumstances, as a mandatory requirement, be applied. If that were the case, it would lead to situations of absurdity in many cases. Omollo JJ, in the case of *Mary Rono v Jane Rono & Another* [2005] eKLR, Omollo JJ, although dealing with the application of Section 40 of which relates to distribution in polygamous families, recognized the spirit that the [Law of Succession Act](#) does not provide that “equality” in distribution means necessarily that each child must receive the same or equal portion. This is how he put it:

“ .....



Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work an injustice particularly in case of a young child who is still to be maintained, educated and generally seen through life. If such a child, whether a girl or a boy, were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an injustice and for my part, I am satisfied the Act does not provide for that kind of equality.”

28. I fully associate myself with the above view.
29. Regarding distribution of the estate of an intestate deceased, as was stated by Hon. Justice J.K. Karanja in the case of *In re Estate of Michael George Tendwa Said [Deceased]* [2020] eKLR, the applicable principle is as follows:

“any proposed mode of distribution ought to be compatible with and in accordance with the provision thereby leaving no room for distribution based on the whim of the holder of the grant or his/her sentimental feelings.”
30. In this case, the beneficiaries are all children of a monogamous family, same father, same mother. They are 10 siblings in total, 4 sons and 6 daughters. The Objectors are 5 of the daughters, plus one son.
31. The daughters claim that the Petitioner has discriminated against them on account of their gender. Regarding the place of gender in the principle of “equality” in distribution, the Court of Appeal in the case of *Stephen Gitonga M’murithi v Faith Ngira Murithi* [2015] eKLR, observed as follows:

“Section 38 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 .....
32. The above is indeed therefore the position in law. However, although the Objectors have attempted to introduce the gender discrimination argument in this case, my take is that they failed to demonstrate that they have been discriminated against, or disadvantaged in any way, on account of their gender. As aforesaid, the Petitioner, to his credit, named all the 10 siblings in the Petition, and the Objectors swiftly challenged the Petition at that early stage, before the Petitioner had even obtained the Grant of Letters of Administration. The Petitioner had therefore not even presented any mode of distribution to the Court for adoption. I therefore find it premature to allege discrimination on account of gender.
33. There was however evidence that before this matter came to Court, elders from the Kapchemwor sub-clan of the Nandi community, to which the family belongs did convene meetings and proceeded to propose a mode of distribution of the estate. The daughters have however disowned that mode of distribution suggested by the elders, and also stated that they never attended the alleged meetings with the elders nor were they invited. According to them, that mode of distribution favoured the sons and thus discriminated against them on account of their gender. It seems the bone of contention by the daughters was that the elders reserved the parcel of land described as the ancestral home to the sons only, allegedly in accordance with their customs and tradition of the community.
34. There are two Ndalat plots but the parties did not clearly specify which of the two was the ancestral land referred to. The indication however is that these two plots border each other and are being treated as one large plot. It was also stated that according to the tradition, the homestead was left to the last-born son. Having heard DW2, an old mzee of about 90 years in age, and who also described the deceased as his brother-in-law, I refuse to accept the argument that this tradition is “repugnant to justice and morality or inconsistent with any written law”, within the meaning contemplated under Section 3[2]



of the *Judicature Act*, or in contravention of *the Constitution*. This is because DW2 also testified that this tradition is not cast in stone and where the ancestral land is the only land available, then there is nothing wrong with allocating a share to the daughters. In this case, the deceased had several other parcels of land and the daughters were offered these other parcels of land, whose aggregate acreage seems even larger than what was offered to the sons. It is therefore not correct to claim that the daughters were discriminated against.

35. The Objectors did not really come out clearly why they were fighting so hard to get a share of the ancestral land. According to the Petitioner's witnesses, what the elders proposed was what the deceased had himself wished. Although no sufficient proof of this alleged wish was tendered, the allegation is bolstered by the fact, and this has not been contested, that before his death, the deceased himself relocated the Petitioner from the Kiplombe [Barracks] farm and resettled him in the ancestral land, one of the two Ndalat plots, and that in exchange, she settled the 1<sup>st</sup> Objector in the Kiplombe [Barracks] farm. There being no other convincing explanation, this relocation and resettlement strongly suggests the direction of the wishes of the deceased.
36. One interesting fact in this matter is that although the parties, at the trial, canvassed the issue of the choice of the mode of distribution to be applied, the Objectors, despite strongly criticizing the mode suggested by the Petitioner, did not themselves present their own proposal, not in their Affidavits, and not in their Counsel's final Submissions. Apart from simply urging that the distribution should be "equal", they did not all suggest to the Court how such "equality" should be achieved. The distribution to be made, being in respect to several parcels of land, and not some tangible commodity which could easily be cut into half and shared out, this omission by the Objectors was strange to me, considering that it is they who came rushing to Court to challenge the Petitioner.
37. The value of land depends on many factors, and size may not even be one of those factors in many circumstances. Factors such as the location, existence of infrastructure and social amenities, and population, many a time exert more influence. In matters of this nature therefore, the parties, particularly the one challenging a mode of distribution put forward by a Petitioner, should address the Court on all these factors and where possible, even present valuation reports to demonstrate the inequality or unequitable distribution, or absence of fairness alleged.
38. On his part, the Petitioner, in his Affidavit, which he adopted as his evidence-in-chief, stated that although the Court Annexed Mediation that the parties were referred to by the Court was not successful, he proposes the same mode of distribution that he presented at the Mediation. He attached a schedule of that proposal to the Affidavit, and which I have already reproduced hereinabove. He also stated, and this is apparent from a comparison made, that this proposal was a variation of the one suggested by the elders, and which the daughters had rejected. However, in the Petitioner's Counsel's final Submissions, he seems to have gone back or reverted to the mode of distribution proposed by the elders.
39. Applying the principles set out in the various authorities cited above to the facts and circumstances of this case, I find the best and most justiciable way to distribute the 5 parcels of land is to distribute them in terms of the proposal made in terms of the schedule attached to the Petitioner's Affidavit sworn on 19/05/2022, the one he says he presented at the Court Annexed Mediation session, as already produced above, but with a few variations, or modifications, and/or alterations.
40. I find the said proposal to be fair since one of the two Ndalat plots, though the smaller one, will go to the daughters thus satisfying their desire to maintain some presence in Ndalat. This mode also ensures that the larger Ndalat property, being part of the ancestral land, remains with the sons in accordance with the sub-clan's customs and traditions, and as proposed by the elders.



41. The mode of distribution also ensures that the daughters settle in the Kiplombe [Barracks] plot in accordance with the presumed wishes of the deceased as alluded above. Further, as it has been said that the Kiplombe [Barracks] plot is the subject of a Court case arising from attempts by the Kenya Defence Force [KDF] to take it over, this mode of distribution ensures that in the event that the said parcel of land is indeed taken away as attempted, the daughters, though I would expect that some compensation would be paid to them by the Government, would still remain with sufficient land elsewhere to relocate to.
42. I also find the said mode to be the least disruptive of the existing status quo considering that respective beneficiaries are said to have been either living, or farming or have made constructions in respective portions which they have been occupying for a long time. Finally, this mode of distribution ensures that all the siblings, whether sons or daughters inherit almost, more or less, equal acreage of land.

### **Final Orders**

43. In premises, I determine this matter in the following manner:
  - i. I appoint the Petitioner, Laban Kibet Kogo, and the 5<sup>th</sup> Objector, Vivian Jeptoo, to be the two joint Administrators of the estate of the deceased, Alexander Tarus Kipsang. A Grant of Letters of Administration shall now be issued in accordance herewith.
  - ii. Regarding distribution of the estate, the same is hereby made as follows:



1. Uasin Gishu/Ndalat Settlement Scheme/126 measuring 1.60 Ha [approx. 4 acres]	Alice Jebungei	Equally at 0.267 each
	Joyce Jepleting Rotich	
	Priscah Jepchichir	
	Stellah Cherotich	
	Nancy Jepkirui	
	Vivia Jepkorir	
2. Uasin Gishu/Ndalat Settlement Scheme/56 measuring 7.5 Ha [approx. 18.5 acres], presumably the ancestral land [with Emmanuel Tarus, as the last-born inheriting the homestead]	Laban Kibet Kogo	Equally at 4.625 each
	Albert Kiprono Bor	
	Benjamin K. Limo	
	Emmanuel Kiprop Tarus	
3. Kiplombe/Kiplombe Farm/Block 4/120 [2.80 Ha] [7.1 acres]	Laban Kibet Kogo	Equally at 0.7 Ha each
	Albert Kiprono Bor	
	Benjamin K. Limo	
	Emmanuel Kiprop Tarus	
4. Plot in Kiplombe [50 x 100]	Nancy Jepkurui	Equally
	Vivian Jepkorir	
	Priscah Jepchichir	
	Benjamin Limo	
5. Barracks/Kiplombe land, measuring 4.6 Ha [11.4 acres approx.]	Alice Jebungei	Equally at 0.77 Ha
	Joyce Jepleting Rotich	
	Priscah Jepchichir	
	Stellah Cherotich	
	Nancy Jepkirui	
	Vivian Jepkorir	



- iii. If it however, turns out that the homestead to be inherited by the last-born, falls within Uasin Gishu/Ndalat Settlement Scheme/126 measuring 1.60 Ha [approx. 4 acres], then the last-born, Emmanuel Kiprop Tarus, shall be at liberty, should he wish to do so, to take up or inherit the entire Uasin Gishu/Ndalat Settlement Scheme/126 measuring 1.60 Ha, in which case, he shall cede an equivalent 1.60 Ha out of his 4.625 Ha entitlement allocated to him hereinabove in Uasin Gishu/Ndalat Settlement Scheme/56, which 1.60 Ha so ceded shall then be shared out amongst the 6 daughters equally in exchange.
- iv. The parties are at liberty, but only by mutual consent, to agree on any adjustments on the mode of distribution made above, and present the same to the Court for adoption.
- v. This being a family matter, each party shall bear his own costs
- vi. Any party aggrieved by the decision hereinabove has forty-five [45] days leave to file an appeal, which period shall act as stay against implementation or execution of the Judgment.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 1<sup>ST</sup> DAY OF AUGUST 2025**

**WANANDA J. R. ANURO**

**JUDGE**

Delivered in the presence of:

Ms. Nekoye for the Petitioner

Mr. Nyachiro for the Objectors

Court Assistant: Brian Kimathi

