



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of the Late John Bartilol (Deceased) (Succession Cause
17 of 2001) [2025] KEHC 4372 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4372 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 17 OF 2001
RN NYAKUNDI, J
APRIL 4, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE JOHN BARTILOL (DECEASED)

BETWEEN

**HILLARY KIPRUTO BARTILOL 1ST APPLICANT
WINNIE CHEBET BARTILOL 2ND APPLICANT
JOYCE CHEMUTAI BARTILOL 3RD APPLICANT
ALICE CHERONO BARTILOL 4TH APPLICANT**

AND

**DINAH JEPKEMBOI BARTILOL 1ST ADMINISTRATOR
JAPHETH KIPROTICH BARTILOL 2ND ADMINISTRATOR**

RULING

1. This succession matter, now in its third decade before the courts, concerns the estate of the late John Kiptum Bartilol who passed away in 1998. The protracted nature of this case reflects the complexity of family relationships and competing interests that often characterize succession disputes. The court is tasked with bringing finality to an issue that has far-reaching implications for all beneficiaries of the estate.
2. At the heart of this application is the question of whether legal fees amounting to Kshs. 16,216,542 incurred in litigation concerning the estate's Ndalala Farm property should be borne by the estate as a whole or personally by the 1st Respondent, Dinah Jepkemboi Bartilol. This determination requires careful examination of the administrators' actions, their legal authorities, the resulting benefits to the estate, and the principles of equity that govern succession matters.



3. The deceased left behind substantial properties including Ndalala Farm Kitale L.R No. 5 (approximately 100 acres), Illula Settlement Scheme Plot No. 4 (approximately 50 acres), Kakamega/Sergoit/147 (approximately 29.75 acres), a plot at Soy L.R. No. 15074, and several vehicles. These assets have become the focal point of contentious proceedings between two families claiming inheritance rights, one represented by Dinah Jepkemboi Bartilol (1st Respondent) and her son Japheth Kiprotich Bartilol (2nd Respondent), who were initially granted letters of administration in 1998, and the other comprising Hillary Kipruto Bartilol (1st Applicant/Administrator) and his siblings Winnie, Joyce, and Alice (2nd-4th Applicants).
4. The factual background reveals a complex series of transactions and subsequent litigation. In 2005, the 1st Respondent entered into a sale agreement dated 27th December, purporting to sell 50 acres of Ndalala Farm to one Martin Sangula Ngomat for a consideration of Kshs. 4,000,000. The purchaser paid Kshs. 2,010,000 but failed to complete the remaining balance. This transaction, undertaken without prior court approval, forms the basis of the Applicants' contention that the 1st Respondent should bear the subsequent legal costs personally.
5. When the purchaser defaulted, rather than accepting the partial payment and allowing the property to remain alienated from the estate, the 1st Respondent engaged the legal services of Kraido & Co. Advocates to institute proceedings to rescind the sale agreement and recover the property. These actions materialized as Kitale ELC Cases No. 37 and 39 of 2015. The litigation was successful, resulting in the recovery of Ndalala Farm for the benefit of the estate, but also generating the substantial legal fees now in dispute.
6. The Applicants argue forcefully that since the 1st Respondent's initial action in selling estate property violated Section 82(b)(ii) of the Law of Succession Act, which expressly prohibits the sale of immovable estate property under administration without prior court approval, she should bear the consequential legal costs personally. They contend that had she adhered to the legal requirements governing administrators, the litigation and resulting expenses would never have been necessary.
7. The Applicants further point to Justice Hellen Omondi's ruling dated 21st January, 2019, wherein the Respondents were ordered to surrender an amount of up to Kshs. 18,288,000 into a mutual account from revenue generated by Ndalala Farm and Soy Petrol Station, an order they allege the Respondents never complied with. This, they argue, demonstrates a pattern of conduct inconsistent with the fiduciary duties of an administrator.
8. The Respondents counter that the legal proceedings were undertaken not to defend the 1st Respondent's personal interests, but to protect and recover estate property for the benefit of all beneficiaries.
9. The Respondents further contend in paragraph 11 of their Supplementary Submissions that the Respondents acted in the best interest of the Estate by issuing the instructions to the Law firm and it is out of their vigilance and pro-activeness that the Estate did not lose the property to land grabbers. Otherwise, the Applicants would not be having the property for distribution. This assertion suggests that regardless of how the circumstances arose, the ultimate outcome of the litigation benefited the estate as a whole.

Decision

10. The Law of Succession Act provides a comprehensive framework for understanding the powers and responsibilities of administrators. Section 82 empowers personal representatives to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death



for his estate. However, this authority must be exercised within the constraints of the law, including the explicit prohibition against selling immovable property before confirmation of grant under Section 82(b)(ii). The section provides as follows:

- “ 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, survive the deceased or arising out of his death for his personal representative;
 - (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) any 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;”

11. “A valid sale of estate property can only be by those to whom the assets vest by virtue of section 79, and who have the power to sell the property by virtue of section 82. Even then, immovable assets, like land, such as Kakamega/Kegoye/30, cannot be disposed of by administrators before their grant has been confirmed, and if land has to be sold before confirmation, then leave or permission of the court must be obtained. That is the purport of section 82(b)(ii) of the Law of Succession Act. Clearly, the sale transaction that was carried out by the administrators was contrary to sections 45 and 82(b) (ii) of the Law of Succession Act, and was invalid for all purposes. It cannot be asserted at all, and am surprised that persons to whom administration of the estate herein can purport to support a sale transaction that was carried out contrary to the very clear provisions of the law.

- a. For avoidance of doubt, sections 45, 79 and 82 of the Law of Succession Act provide as follows:
- b.

“45. No intermeddling with property of deceased person

- (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
- (2) Any person who contravenes the provisions of this section shall—
be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”



“79. Property of deceased to vest in personal representative

The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.”

“82. Powers of personal representatives

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

to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

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—

ii. no immovable property shall be sold before confirmation of the grant...”

12. From the above analysis the legal principle is clear and unambiguous. The 1st Respondent's action in attempting to sell the Ndalala Farm property without court approval was manifestly ultra vires and contrary to law. The subsequent litigation, though ultimately beneficial in recovering the property for the estate, was necessitated entirely by her initial unauthorized action.
13. In evaluating this matter, I am guided by the principle that administrators must be held to high standards of accountability in their fiduciary duties. The role of an administrator carries significant responsibilities, including strict adherence to the legal framework governing the administration of estates. When an administrator acts outside the scope of their authority, they cannot reasonably expect the estate to bear the costs of remedying the consequences of such unauthorized actions.
14. The import deducible from the litigation history of this succession cause and the principal of fiduciary duties of the administrator, Dinah Jepkemboi shows that in the course of the administration of the estate at one time she did not act in good faith, what this court considers to be the best interest of the estate. As alluded to by the applicant, there are stains of acts of dishonesty and misconduct on the affairs of the estate more specifically on the transactions with regard to Ndalala farm. She was under duty to act in accordance with the *law of succession act* and the instruments issued by this court commonly referred to as Grant of Letters of administration and exercise her powers only for the purposes allowed by the law. There is incontrovertible evidence that she used the estate property information and opportunities accorded to her as an administrator for her own benefit without consent or a resolution passed by rest of the family members.
15. While it is true that the litigation ultimately secured the return of a valuable estate asset, this outcome does not negate the fact that the entire situation was created by the 1st Respondent's improper attempt to sell estate property. To allow the estate to bear these costs would effectively require all beneficiaries to subsidize the expenses of correcting the 1st Respondent's unauthorized actions, which would be inequitable.
16. The doctrine of equity does not support relieving the 1st Respondent of personal liability in these circumstances. The maxim that "one who seeks equity must do equity" is particularly relevant. Having created the situation necessitating litigation through her unauthorized actions, the 1st Respondent cannot now claim that equity demands the estate bear the resulting costs.



17. Furthermore, holding administrators personally liable for costs incurred due to their unauthorized actions serves an important public policy function. It reinforces the obligation of administrators to act strictly within their legal authority and discourages actions that might jeopardize estate assets, even if subsequently remedied.
18. After careful consideration of all submissions, evidence, and applicable legal principles, I find that the legal fees incurred in recovering the Ndalala Farm property should be borne personally by the 1st Respondent, Dinah Jepkemboi Bartilol. While the litigation ultimately benefited the estate, it was necessitated solely by her unauthorized attempt to sell estate property without court approval, in clear violation of Section 82(b)(ii) of the [Law of Succession Act](#).
19. While this Court has determined the issue of liability for the legal fees, I must address an important procedural matter regarding the quantum. The duty of a probate court is not to determine the precise amount of costs due to advocates, as this is the sole preserve of the taxing master. In reviewing the record, I note that the alleged fees of Kshs. 16,216,542 appear disproportionate when considering that the subject matter the sale transaction of Ndalala Farm involved approximately Kshs. 4,000,000 as indicated in the evidence.
20. Though the 1st Respondent bears responsibility for the fees as established above, principles of justice require that such costs be properly quantified through the appropriate legal channels. No bill of costs has been presented to this Court for scrutiny, nor has a certificate of costs been produced which would provide certainty on the amount payable. In the absence of such documentation, it would be premature for this Court to definitively pronounce itself on the exact figure.
21. This contentious issue on who is to meet the legal fees in a litigation involving Ndalala farm, which there is no doubt it was part of the intestate estate of the deceased but upon demise, it appeared to have been devolved to a 3rd party pursuant to the transactions which were sanctioned by Dinah, being the administrator of the estate. The record stays crystal clear that eventually, the transaction to a third party became the source of litigation occasioning that immovable property to revert back to the estate as a free property. In the first instance as already alluded to above, the property was not ripe to be transmitted to a third party by the administrator in view of non-compliance with the provisions of the Succession Act on the making of the Certificate of confirmation of Grant. It is actually a criminal offence according to the Act to intermeddle with any of the assets of the deceased before a final decree of the court on distribution and sharing of the estate amongst the beneficiaries. principally therefore, the issues raised in this contestation on who is liable to meet the costs and legal fees for that litigation, revolve around the question as to whether Dinah Bartirol, the administrator of the estate was acting in a personal capacity or on behalf of the estate. In my considered view, from the litigation history of this asset, it entails the conduct of the co-administrator in so far as this same subject matter is concerned. This court has spoken to that issue and do not need to belabour the point. It was a decision made by Dinah Bartilol in excess of her jurisdiction. First and foremost, the question of assessment of this legal fees due to the advocate or lawfirm falls within an advocate-client schedule (VI) of the Advocates Remuneration Order. Given the controversy surrounding this Legal fees, in terms of instructions and other incidentals, it should be assessed and taxed by the taxing master and a Certificate of Costs issued, it is not in the province of this court to rule on the quantum due and owing to the law firm in question as those circumstances are within the scope of the Deputy Registrar's ministerial powers on assessment of legal fees and other costs as between Advocate Client which is indeed a constitutional imperative under Art. 2(g) of the [Constitution](#). It will appear by this application that the fee note from the respective law firm involved in legal representation to redeem the Ndalal farm demands an amount of Kshs. 16,216,542/=. Hence the dissatisfaction from the applicants as to liability and questionable amount. This has resulted in a back and forth between the parties without any consensus as demonstrated by the pleadings and affidavits



to this application. Ultimately, without infringing into the jurisdiction of the Deputy Registrar, this matter will be better resolved by the Respondent filing an Advocate Client Bill of Costs pursuant to schedule VI part B of the [Advocates Remuneration Order 2014](#)

22. Therefore, while upholding the determination on liability, I direct that the specific amount payable shall be assessed and determined by the Deputy Registrar in their capacity as taxing master. This will ensure that the 1st Respondent's liability, while established in principle, extends only to reasonable and proportionate legal costs actually incurred in remedying the consequences of her unauthorized actions. The taxation process will provide necessary checks and balances, ensuring that the quantum of fees aligns with established legal standards and practice.
23. Having put all these into context and text, the following orders do issue:
 - a. The legal fees incurred in Kitale ELC Cases No. 37 and 39 of 2015 are declared to be the personal liability of the 1st Respondent, Dinah Jepkemboi Bartilol, and shall not be charged to the estate of the late John Kiptum Bartilol.
 - b. The exact quantum of legal fees payable by the 1st Respondent shall be determined by the Deputy Registrar as taxing master through proper taxation proceedings.
 - c. The costs of this application be in the cause.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 4TH DAY OF APRIL 2025

.....

R. NYAKUNDI

JUDGE

