



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Patroba Makone Ombese (Deceased) (Succession Cause
302 of 2017) [2025] KEHC 6346 (KLR) (Family) (15 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6346 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 302 OF 2017

SN RIECHI, J

MAY 15, 2025

IN THE MATTER OF THE ESTATE OF PATROBA MAKONE OMBESE - (DECEASED)

JUDGMENT

1. The deceased Patroba Makone Ombese die on 12.8.2015 at Nairobi Hospital at the age of 85 years. The deceased was survived by the widow Bathseba Mokoeria Makone and 5 children:
 1. Charles Makone
 2. Young Makone
 3. Joyce Makone
 4. Norah Makone
 5. Maureen Makone.
2. The deceased had the following properties:
 - a. LR No, 2/125- An Apartment at Kilimani, (Belmont) Nairobi,
 - b. LR No 209/10611 Block 7, Flat No 5- An Apartment in Nairobi (Villa Franca)
 - c. LR. No 209/10611 Block 7 flat No 1 -An Apartment in Nairobi' (Villa Franca)
 - d. Plot No 1/1/434 -Suna East, Migori- Vacant plot and
 - e. Plot No 30 Borabu Nyamira (Developed)
 - f. Gesima Farm LR No 208- measuring 43.0 hectares

SHARES

 - a. 69,478 shares in Nyansingo Tea Factory- Nyamira County



- b. 10,050 shares in Gianchore Tea Factory- Kisii County
 - c. 1432 Shares in Nyankoba Tea Factory. Nyamira County;
 - d. 500,000 shares in Borabu Vision Sacco, and
 - e. 200,000 shares in Kenya Seed Company.
3. A grant of Probate of written Will was issued on 10.7.2017 to Bathsheba Mokeira Makone, Charles Osoro Makone and Young Heba Makone by Musyoka J.. In the course of these proceedings Bethsheba Mokeira Makone the widow died on 11th day of August 2021. On 24. 4. 2004 Charles Osoro Makone and the siblings applied that the widow who was now deceased be subsisted by Joyce Nyangara Mogere. The application was allowed and a fresh grant issued by this court on 24.4.24 appointing Charles Osoro Makone, Young Heba Makone and Joyce Nyagara Mogere as the executors/administrators.
4. On 19.7. 2024, By consent of Mr. Kurgat for young Makone and Ongoto for Charles Osoro Makone the court directed Charles Osoro Makone to file summons for confirmation. Charles duly filed summons for confirmation dated 20.6.2024 together with his proposed preferred mode of distribution of the estate. Young Heba Makone filed a protest to the mode of distribution together with his preferred mode of distribution. The summons for Confirmation was canvassed by way of viva voce evidence on 20.11.2024.
5. Charles Osoro Makone gave evidence. He testified that the deceased and Bethseba the widow (also deceased had 7 children).
 1. Charles Makone
 2. Young Makone
 3. Joyce Makone
 4. Norah Makone
 5. Maureen Makone.
 6. Evans Makone – Deceased
 7. Richard Nyakawa – Deceased
6. He adopted his proposed mode of distribution which is a s hereunder:



Name	Description Of Properties	Share Of Heirs
Joyce Nyangara Mogere, Norah Moraa Mageto Maureen Mongina Kebati	a. LR No 2/125- An Apartment at Kilimani. Nairobi, b. LR No 209/10611 Block 7. Flat No 5 An Apartment in Nairobi (Villa Franca): c. LR. No 209/10611 Block 7 flat No I -An Apartment in Nairobi (Villa Franca	To be registered in their names as beneficiaries in equal shares.
Charles Osoro Makone, Young Iteba Makone Joyce Nyangara Mogere, Norah Moraa Mageto Maureen Mongina Kebati	d. Property No 1/1/434- Suna East, Migori.	To be registered in their names as beneficiaries in equal shares.
Charles Osoro Makone Young Iteba Makone	e. Plot No 30 Borabu-Nyamira.	To be registered in their names as beneficiaries in equal shares.
Charles Osoro Makone Young Iteba Makone Joyce Nyangara Mogere	f. Gesima Farm LR No 208	To be run and managed by them on behalf of all other beneficiaries.
Charles Osoro Makone, Young Iteba Makone Joyce Nyangara Mogere, Norah Moraa Mageto Maureen Mongina Kebati	g. 69,478 shares held Nyasiongo Tea Factory Nyamira County . h. 10,050 shares in Gianchore tea Factory in Kisii County i. 1432 shares in Nyankoba Tea Factory and voting rights of 4869- Nyamira County j. 200,000 shares held in Kenya Seed Company Limited- Kitale k. 500,000 shares in Borabu Vision Sacco- Nyamira County Any other benefits not specifically noted and distributed shall be deemed to be equally divided and	To be registered in their names as beneficiaries in equal shares.



	distributed to all beneficiaries of the estate of the deceased.	
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7. He testified that this proposed Mode of Distribution is supported by himself, Joyce Makone, Norah Makone and Maureen Makone
8. He testified that of all the beneficiaries it is young Heba Makone who does not agree with this proposal. He testified that his proposal is equitable and has accorded to the deceased's wish that the Gesora farm should not be sub-divided.
9. On being cross examined by Young Makone, Charles stated that there is an Account at Vision Sacco in which he and Norah are signatories. He stated that he does not include the Kakrao Property as it had been given by deceased to Joyce who should get it. On being Cross examined by Joyce on behalf of the daughter Norah and Maureen, he stated he did not include plot No 208 and 209 which was not in the name of the deceased. He testified that they should each fast young Heba Makone testified that the deceased had 7 children but 2 are deceased. He testified that the deceased had the following properties:
 - g. LR No, 2/125- An Apartment at Kilimani, (Belmont) Nairobi,
 - h. LR No 209/10611 Block 7, Flat No 5- An Apartment in Nairobi (Villa Franca)
 - i. LR. No 209/10611 Block 7 flat No 1 -An Apartment in Nairobi' (Villa Franca)
 - j. Plot No 1/1/434 -Suna East, Migori- Vacant plot and
 - k. Plot No 30 Borabu Nyamira (Developed)
 - l. Gesima Farm LR No 208- measuring 43.0 hectares
Shares
 - g. 69,478 shares in Nyansingo Tea Factory- Nyamira County
 - h. 10,050 shares in Gianchore Tea Factory- Kisii County
 - i. 1432 Shares in Nyankoba Tea Factory. Nyamira County;
 - j. 500,000 shares in Borabu Vision Sacco, and
 - k. 200,000 shares in Kenya Seed Company.
10. He filed his preferred mode of distribution dated.
 - a. All the shares listed in number 6 (i) above be sold and the proceeds of the sale be shared equally by all the Five (5) beneficiaries
 - b. The farm known as Gesima Farm L.R, No 208- measuring 43.0 hectares- each beneficiary to be apportioned an equal portion of land with tea to manage e independently and also each beneficiary to get an equal portion of land for own economic use and separate titles be issued to each beneficiary.
 - c. The livestock and trees on the farm be sold as a matter of urgency as many of them are already wasting away having matured over Four (4) years ago and the proceeds of the sale shared equally.
 - d. Plot No, 1/1/434 -Suna East, Migori- Vacant plot be sold and the proceeds of the sale be shared equally by all the Five (5) beneficiaries.



- e. Plot No 30 Borabu — Nyamira (Developed) be shared between Charles Osoro Makone and Young Iteba Makone.
- f. That we propose that all farm equipment, tractor, power saw and generator that had been taken away from the farm by our sibling Young Iteba Makone be returned to the farm to be utilized by all beneficiaries together with other farm tools.
- g.
9. That the properties listed below be shared by the Three (3) sisters;
- i. LR No 2/125- An Apartment at Kilimani (Belmont), Nairobi-estimated value Kshs.14,000,000/-
 - ii. L.R, No 209/10611 Block 7, Flat No 5- An Apartment in Nairobi (Villa Franca);- estimated value Kshs.6,000,000/-
 - iii. LR. No 209/10611 Block 7 flat No 1 -An Apartment in Nairobi (Villa Franca)- estimated value Kshs.6,000,000/-
- Total sum value -26,000,000/-
8. That our proposal above is informed by the inter vivos gifts that our brothers were gifted as follows;
- Charles Makone
- a. Property in Kilimani (that was the family home) whose value is estimated at Kshs.250,000,000/-.
 - b. Property LR 17/209 Nakuru house whose estimate value is Kshs.55,000,000/-
 - c. The Plot 1282 Suna East Kakrao Migori County whose value is estimated at Kshs, 12,000,000/-
- Total sum value = Kshs.317,000/-
- Young Makone
- a. Property LR 209/7431 House in Kileleshwa whose value is estimated at Kshs.200,000,000/-
 - b. Property LR 17/208 House in Nakuru County whose value is estimated at Kshs.80,000,000/-
 - c. Property LR /1/1436 House in Suna East Wasweta, Migori County whose value is estimated at Ksh.25,000,000/-
- Total Sum Value – Ksh.305,000,000/-
11. He proposed that the Gesima farm be given to himself and Charles as the 3 sisters are married. The rest of the property be sold and proceed shared.
12. On being cross-examined excised by Ongoto Advocate he stated that his siblings Evans and Rachier who died were not married and did not name children. On Cross examination by Joyce he stated that the deceased had during his lifetime given each child property which is not included in the estate for distribution. He denies that the deceased gave Joyce the Kakrao Property. Joyce Nyangara Mogere testified that she and Norah and Maureen have filed their preferred mode of distribution.



- a. All the Shares listed below not to be sold but shared equally by all the Five (5) beneficiaries:
 - i. 69,478 shares in Nyansiongo Tea Factory- Nyamira County
 - ii. 10,050 shares in Gianchore Tea Factory- Kisii County
 - iii. 1432 Shares in Nyankoba Tea Factory- Nyamira County;
 - iv. 500,000 shares in Borabu Vision Sacco, and
 - v. 200,000 shares in Kenya Seed Company
 - b. The farm known as Gesima Farm LR No 208- measuring 43.0 hectares the apportionment of the land and tea to remain as allocated to each beneficiary for their own economic use and manage their portions independently and separate titles be issued to each beneficiary.
 - c. The livestock and trees on the farm be sold as a matter of urgency as many of them are already wasting away having matured over Four (4) years ago and the proceeds of the sale shared equally by all five (5) beneficiaries
 - d. Plot No 1/1/434 -Suna East, Migori- Vacant plot be sold and the proceeds of the sale be shared equally by all the Five (5) beneficiaries.
 - e. Plot No 30 Borabu — Nyamira (Developed) be shared between Charles Osoro Makone and Young Iteba Makone.
 - f. That we propose that all farm equipment, tractor, power saw and generator that had been taken away from the farm by our sibling Young Iteba Makone be returned to the farm to be utilized by all beneficiaries together with other farm tools.
 - (g) -;
 - i. LR No 2/125- An Apartment at Kilimani (Belmont), Nairobi estimated value Kshs.14,000,000/-
 - ii. LR No 209/10611 Block 7, Flat No 5- An Apartment in Nairobi (Villa Franca);- estimated value Kshs..6,000,000/-
 - iii. LR. No 209/10611 Block 7 flat No 1 An Apartment in Nairobi (Villa Franca) estimated value Ksh. 6,000,000/-
13. The proposal is supported by Norah and Maureen. On being cross examined by Ongoto for Charles Makone, she gave the following proposals.
1. I suggest the properties in Nairobi to be given to the sister.
 2. The trees be sold and proceeds divided.
 3. My point of departure with Charles is that the farm be managed by administrators for benefit of others. The farm should be shared equally among all the children. At the moment Charles is running the farm well.
 4. The Suna/West property be sold
 5. Nyansiongo Plot to be given to Charles and Young



6. Kakrao 1084 is still in deceased's name. it was given to me as a grant. The property is in deceased's name. I kept the title for 15 years. The farm should be sub=divided and each given. Young took away a tractor, power saw and generator.
14. Upon hearing the parties, this court finds that the deceased Patroba Ombese who died on 12.8.2025 was survived by his widow Bathseba and 5 surviving children. Bathsheba the widow died in 2021 during the pendency of the proceedings. The surviving beneficiaries of the estate now comprises the 5 children of the deceased they are:
 1. Charles Makone
 2. Young Makone
 3. Joyce Makone
 4. Norah Makone
 5. Maureen Makone
15. The other 2 children died before the deceased and were not married nor did they have children. The properties comprising of the estate of the deceased consist of the following:
 - m. LR No, 2/125- An Apartment at Kilimani, (Belmont) Nairobi,
 - n. LR No 209/10611 Block 7, Flat No 5- An Apartment in Nairobi (Villa Franca)
 - o. LR. No 209/10611 Block 7 flat No 1 -An Apartment in Nairobi' (Villa Franca)
 - p. Plot No 1/1/434 -Suna East, Migori- Vacant plot and
 - q. Plot No 30 Borabu Nyamira (Developed)
 - r. Gesima Farm LR No 208- measuring 43.0 hectares
Shares
 - g. 69,478 shares in Nyansingo Tea Factory- Nyamira County
 - h. 10,050 shares in Gianchore Tea Factory- Kisii County
 - i. 1432 Shares in Nyankoba Tea Factory. Nyamira County;
 - j. 500,000 shares in Borabu Vision Sacco, and
 - k. 200,000 shares in Kenya Seed Company.
16. In this cause therefore I find that the identification of the beneficiaries is agreed. The assets comprising the estate is agreed except for the Nakuru Property which is subject to identification and which was left out of these proceedings.
17. This cause was filed on2017 as a testate cause. Though there are records of an alleged Will, the same was contested leading to the filing of a document examiner's report which showed the signature in the Will to be different from the known signature of the deceased. It appears to me that the parties did not pursue this issue of the Will which was never proved. The parties therefore proceeded as intestate succession. Indeed as intestate Succession. Indeed the summons dated 20.8.2024 is in the following terms:



1. That this Honourable Court be pleased to confirm the grant of letters of administration intestate made and issued on 10th July, 2017.
2. That the costs of this application be costs in the cause.

On the ground that:

- a. This honourable court be pleased to confirm the grant of letters of Administration intestate made on 10th July, 2017 and issued to Bethseba Mokeira Makone (now deceased), Charles Osoro Makone And Oung Iteba Makone.
 - b. That one of the administrators in the grant Bethseba Mokeira Makone passed on 11th August, 2021 before the grant was confirmed and was substituted by Joyce Nyangara Mogere.
 - c. That the application for substitution was allowed on 19th July, 2024 and the grant was made to Charles Osoro Makone, Young Iteba Makone And Joyce Nyangara Mogere as the administrators of the estate.
 - d. There is no objection in the substitution and making of the Grant as foresaid which we hereby apply for confirmation.
18. The beneficiaries mode of distribution and gave evidence. This goes to confirm the issue of the Will has been abandoned and the cause was canvassed as an intestate Succession. The submission that there was a Will upon which distribution should be based is therefore misplaced. The grant issued on 10.7.2017 should be therefore property titled grant Letters of Administration Intestate.
 19. Upon hearing the beneficiaries of the Estate and having considered each of the beneficiaries proposal for distribution, I order that the estate of the deceased be Makore Ombese who died on 12.8.



Name	Description Of Properties	Share Of Heirs
Charles Makone Young Makone	a. Gesima Farm LR No 208 measuring 43.0 hectares b. Plot No 30 Borabu Nyamira (Developed)	To Share Equally
Joyce Makone Norah Makone Maureen Makone	c. LR No, 2/125- An Apartment at Kilimani, (Belmont) Nairobi c) LR No 209/10611 Block 7, Flat No 5- An Apartment in Nairobi (Villa Franca) c) LR. No 209/10611 Block 7 flat No 1 -An Apartment in Nairobi' (Villa Franca)	To Share Equally
Joyce Makone	d) Plot No 1/1/434 -Suna East, Migori Vacant plot and	Absolutely
Charles Makone Young Makone Joyce Makone Norah Makone Maureen Makone	a) 69,478 shares in Nyansingo Tea Factory- Nyamira County b) 10,050 shares in Gianchore Tea Factory- Kisii County c) 1432 Shares in Nyankoba Tea Factory. Nyamira County; d) 500,000 shares in Borabu Vision Sacco, and e) 200,000 shares in Kenya Seed Company	In Equal Shares

2015 be distributed among the beneficiaries as follows:

DATED at NAIROBI THIS 15TH DAY OF MAY, 2025

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S. N. RIECHI

JUDGE OF THE HIGH COURT OF KENYA, NAIROBI

