



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

PROBATE & ADMINISTRATION CAUSE NO. E004 OF
2023

IN THE MATTER OF THE ESTATE OF THE LATE SHADRACK KIBET
BARTENGE (DECEASED)

AND

IN THE MATTER OF AN APPLICATION TO REVOKE AND OR REMOVE
AN ADMINISTRATOR

VIBIAN JEPKURUI BARTENGE.....PETITIONER/ADMINISTRATOR

VERSUS

TIMOTHY KIPRUTO BARTENGE 1ST OBJECTOR/APPLICANT

TITUS KIPCHUMBA BARTENGE 2ND OBJECTOR/APPLICANT

JUDGMENT

1. The petitioner, **Vibian Jepkurui Bartenge**, a daughter of the deceased, Shadrack Kibet Bartenge, filed a petition dated 16th December 2022 seeking letters of administration intestate. She listed the following beneficiaries of the estate:

1. Nancy Teriki Bartenge (widow – deceased)
 2. Daisy Jepkogei Bartenge (daughter)
 3. Ronald Kipchirchir Bartenge (son – deceased)
 4. Vibian Jepkurui Bartenge (daughter)
 5. Timothy Kipruto Bartenge (son)
 6. Titus Kipchumba Bartenge (son)
 7. Jematia Bartenge (daughter)
 8. Silvia Jemutai Bartenge (daughter)
 9. Micken Jerobon Kibet (daughter)
 10. Irene Jepngetich Bartenge (daughter)
2. The petitioner listed the assets of the estate as:
1. Lembus/Metipso/20 measuring approximately 25 acres
 2. Baringo/Mumberes/1128
 3. Plot No. 9 Metipso Trading Centre
 4. Shares at Chemorgong Trading Centre
3. The petitioner was appointed administrator of the estate. The petitioner’s brothers, **Timothy Kipruto Bartenge** and **Titus Kipchumba Bartenge**, filed an objection dated 6th September 2023. They contended that they were excluded as administrators without their consent, that the petition was filed without family authority, and that the petitioner was unsuitable to administer the estate. They alleged that the petitioner acted in bad faith and would not administer the estate in the best interests of all beneficiaries.

4. Upon the filing of the objection, the court directed that the matter proceeds by way of viva voce evidence.

Objectors' Evidence

5. The 1st objector, **Timothy Kipruto Bartenge (OW1)**, adopted his witness statement dated 22nd February 2024. He testified that a family meeting had been held on 24th January 2023 and that minutes were filed in court. He reiterated the assets of the deceased but stated that Baringo Women Group shares had been omitted and that Baringo/Lembus/66 was subject to a pending case.
6. OW1 stated that he preferred to administer the estate jointly with the petitioner and the 2nd objector. He testified that he had worked with his father in farming for many years and that in 1981 they jointly took a loan which he helped service. He stated that the petitioner had lived away from the family home since 1976, married in 1991, and had not been involved in family affairs, which formed the basis of his objection to her sole administration.
7. He further testified that when his father fell ill in 1996, he paid off the loan alone by 1999 and assisted in raising his siblings after their mother fell ill. He stated that a truck he had purchased was sold by his mother to pay the petitioner's school fees. He confirmed that he resides in New Jersey,

USA, but maintained that he could still administer the estate as he has a family base in Kenya.

8. On cross-examination, OW1 stated that the deceased had eight children, two of whom were deceased. He testified that the deceased son, Ronald Bartenge, was married and had a child, but both the wife and child later died. He also testified that a deceased daughter had five children, one of whom had also died.
9. OW1 testified that he and the 2nd objector reside on Lembus/Metipso/20 measuring between 20-24 acres, which they had developed. He stated that Baringo/Mumberes/1128 measured approximately 10 acres, part of which he believed had been sold by the deceased. He proposed that the land and trading centre plots be allocated to the daughters.
10. He testified that the petitioner had been cultivating the Mumberes land and alleged that trees he planted were destroyed. He further stated that he paid to redeem the title deed from AFC after the deceased's death, though he had no documentary proof.
11. In re-examination, OW1 stated that his residence abroad would not hinder administration. He asserted that the

deceased had indicated boundaries between his sons during his lifetime and that some parcels were allocated informally. He testified that parcel No. 66 remained disputed and that some sisters had concealed information regarding estate property.

12. The 2nd objector's witness, **Kipkorir Cheronon (OW2)**, aged 103 years, adopted his witness statement. He testified that the deceased had three sons, two of whom were alive, and that one son had been given land in Mumberes. He stated that the deceased had not formally distributed his property before death but had verbally expressed intentions concerning his sons. On cross-examination, he denied signing or thumb-printing the witness statement presented.
13. OW2 further testified that under Kalenjin customary understanding, married daughters do not inherit their father's land. He stated that the deceased did not mention daughters when discussing property distribution. He confirmed that no documents were ever signed in his presence.
14. **Gilbert Kipchumba Bartenge (OW3)**, a nephew of the deceased, adopted his witness statement dated 26th February 2024. He testified that the deceased had nine children, three sons (one deceased) and six daughters. He

stated that the deceased's late son Ronald had two children who were chased away from the family home after their father's death. He asserted that the grandchildren were entitled to inherit their late father's share.

15. OW3 testified that the deceased owned Metipso land, Mumberes land, and plots at Metipso Trading Centre. He stated that the deceased's wife had informed him that the deceased intended Metipso land to be shared between the two objectors and Mumberes land to be allocated to Ronald. He further testified that daughters who were unmarried were to be accommodated, while married daughters were to inherit from their husbands.

PETITIONER'S EVIDENCE

17. The petitioner, **Vibian Jepkurui Bartenge**, adopted her witness statement dated 26th February 2024 together with its annexures. She testified that she petitioned for letters of administration after her brothers caused conflict at the family home. She stated that she sought to process the land to support her sister who resides at home and to secure equal distribution among all beneficiaries.
18. She testified that she issued citations to her brothers but received no response, prompting her to file the petition. She expressed concern that her brothers' residence abroad

would delay administration. She proposed equal distribution of both Metipso and Mumberes land. She acknowledged that her late brother Ronald had children and stated that they should inherit their father's share.

19. On cross-examination, the petitioner testified that five siblings consented to the petition and reiterated her concern that the 1st objector would not act fairly if appointed administrator.

20. **Jematia Bartenge (PW2)**, a daughter of the deceased, adopted her witness statement dated 26th February 2024. She confirmed the assets of the estate and testified that Ronald was married. She denied allegations that his children were chased away, attributing their departure to conflict caused by the 1st objector. She stated that she had no objection to the 1st objector being an administrator but expressed concern over delays due to his residence in the USA.

21. **Silvia Jemutai Bartenge (PW3)** testified that she resides at the family home in Metipso and is unmarried. She expressed her wish for equal distribution of the estate. She opposed the appointment of her brothers as administrators due to their absence from the country and alleged interference in her daily life. She testified that one of her

deceased sister's children resides with the petitioner and that her sister Micken Jerobon, who resides in Canada, is also entitled to a share of the estate.

ANALYSIS AND DETERMINATION

25. I have carefully considered the pleadings, the viva voce evidence tendered by all parties, the submissions on record. This being a succession cause, the Court is guided principally by the Law of Succession Act and the Constitution, with the overarching objective being the just, equitable, and orderly distribution of the estate of the deceased among all rightful beneficiaries. From the foregoing, I find the following as issues for determination:-

- a) Who are the lawful beneficiaries of the estate of the deceased;
- b) What assets constitute the free property of the deceased available for distribution;
- c) Whether the deceased made a valid inter vivos distribution or expressed wishes capable of guiding distribution;
- d) Whether the petitioner was properly appointed as administrator and whether the objections thereto are merited; and
- e) What mode of distribution best accords with the law and the interests of justice.

a) **Beneficiaries of the Estate**

27. There is no dispute that the deceased was survived by 9 children 3 sons one of who is deceased and 6 daughters one being deceased. There is also no dispute that the two deceased children Ronald and Daisy are survived by children.
28. under Part V of the Law of Succession Act, all children of a deceased person rank equally as beneficiaries, irrespective of gender or marital status. Customary norms that exclude married daughters from inheritance have no legal force where they conflict with statute and the Constitution.
29. Equally, the children of a deceased child of the intestate step into the shoes of their parent by representation and are entitled to that parent's share. The evidence confirms that the late Ronald and Daisy had surviving children, and no lawful basis was laid for their exclusion.

(b) **Assets of the Estate**

30. The assets disclosed by the parties substantially converge and include:

- i. L.R. Lembus/Metipso/20;
- ii. L.R. Baringo/Mumberes/1128;
- iii. Plot Nos. 8 and 9, Metipso Trading Centre; and
- iv. Shares held at Chemorgong Trading Centre.

31. Allegations were made that some properties or shares were omitted or that some parcels are subject to pending disputes. Where a property is subject to a pending case, it cannot be conclusively distributed until the dispute is resolved, but it nonetheless remains part of the estate for purposes of administration.

(c) Alleged Inter Vivos Distribution and Deceased's Wishes

32. A substantial part of the objectors' case rests on the contention that the deceased had, before his death, allocated land among his sons, leaving daughters out in accordance with customary norms.

33. The evidence tendered in support of this assertion was largely oral, conflicting, and unsupported by any documentary proof or formal acts of transfer. While an elderly witness testified as to what the deceased allegedly stated while ill, such testimony, without corroboration and in the face of competing narratives, falls short of establishing a binding inter vivos gift or a legally cognizable testamentary disposition.

34. Even assuming the deceased expressed preferences, such wishes cannot override the clear provisions of the Law of Succession Act, particularly where they would result in discrimination against daughters or exclusion of grandchildren entitled by representation.

(d) **Administration of the Estate**

35. From evidence adduced, the petitioner was appointed administrator following due process after citation. The objection that she should not administer the estate solely because she is married or resides away from the ancestral home has no legal foundation.

36. I however that the evidence reveals deep seated mistrust, acrimony, and conflict among the siblings, particularly between the petitioner and the objectors. This reality informed the Court's earlier ruling declining to arrest delivery of judgment while at the same time directing preservation and accountability measures.

(e) **Mode of Distribution**

38. The guiding principle in intestate succession is equality among beneficiaries, subject only to lawful exceptions expressly provided for by statute. Upon evaluation of evidence, I find that there is no proof of lawful inter vivos gifts; the estate must therefore be distributed in a manner

that reflects equality, inclusivity, and fairness and the law; objections premised on exclusion of daughters and reliance on alleged customary allocation are not sustainable. in the absence of.

39. The estate shall therefore be administered and distributed strictly in accordance with the Law of Succession Act, ensuring equal treatment of all beneficiaries and representation of the estates of deceased children.

40. **FINAL ORDERS:-**

- a) Assets of the deceased listed in paragraph 30 to be distributed equally to all children of the deceased.
- b) Shares of the deceased's children who are now deceased to go to their children.
- c) Any prior occupation or developments on estate land may be accommodated at the implementation stage without undermining substantive equality.

Dated and signed at **Nairobi** this 11th day of March 2026.



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R NGETICH
JUDGE

Dated, Countersigned and delivered at **Eldoret** this 12th day of March 2026.

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J.R. WANANDA
JUDGE

In the presence of:

Court Assistant - Brian Kimati
Kibet holding brief for Arusei for Petitioners.
No appearance for other parties.