



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS

SECOND YEAR EXAMINATION FOR THE AWARD OF THE

DEGREE OF BACHELOR OF LAW

SECOND SEMESTER, 2021/2022

(JUNE - SEPTEMBER, 2022)

LLBK 225: LAW OF SUCCESSION

STREAM: LLBK 2 S2

TIME: 2 HOURS

DAY: WEDNESDAY, 12:00 – 2:00 P.M.

DATE: 09/09/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.*
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.*
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.*

QUESTION ONE

In 1990 Kepha married Mercy in the Anglican church Malindi where Kepha is a very respected church elder. Between 1991 and 1996 they are blessed with four children: Mogwasi, Halima, Etemesi and Mutheu. By mutual agreement, Mercy opts to be a housewife and to manage a family's investments. Kepha is left to manage his thriving bakery business. Overtime, the couple are able to acquire a beautiful family home on Zares in cusuarina, build 50 apartments in malindi town where Mercy collected rents, buy 10 acres of land in kilifi and a beach house in watamu. Upon completion of their university studies two of the children, Mogwasi and Etemesi, join the bakery and over time become co-directors. Halima and Mutheu get married to well-off men after finishing their university studies and Kepha gifts each a four-bedroom villa in Kilifi town.

In January 2015 Kepha falls ill suddenly and is diagnosed with stage four cancer. He is constantly in great pain and in hospital and sadly passes away in 2017 after lengthy treatment in India.

An advocate Mr. Amason contacts Mercy and informs her that he is in a possession of a will written by Kepha and he summons her and her family to appear before him in his office on the material date at his offices. Present are Mercy and her four children, their long time family friends Dr. Lukas and Fr. Maitha, a lady and two young men whom Mr. Amason introduces as Magdalene and her sons Michael and Gabriel; Kepha's second family.

Mr. Amason explains that Kepha drew the will on 20th February 2013 and therefore Amason did not read it to him. He was accompanied by Magdalene, dr. Lukas was present and attested the will, Fr. Maitha came alone at a later date and attested though in the absence of Kepha, Kepha bequeathed the family home to Mercy, the beach house to Magdalene, 25 flats to Mercy and 25 flats to Magdalene. The shares in the bakery to Mogwasi, Etemesi, Michael and Gabriel in equal shares. 10 acres to Mogwasi and Etemesi in equal shares and money in bank account to Mercy and Magdalene in equal shares. Nothing is left to Halima and Mutheu.

Very upset about the will, Mercy and her children approach you to contest the will which on perusal you note some anomalies.

- a) Using statutory provisions and decided case law, discuss the formal requirements of drawing a will. (8 marks)
- b) With reference to statutory provisions and decided case law, analyze grounds on which the will may be invalidated. (14 marks)
- c) Assuming the will is valid, explain what recourse in law Halima and Mutheu have to ensure they get a share of the inheritance. (8 marks)

QUESTION TWO

Simon is a senior civil servant who according to his family has never married and does not have children. He dies intestate at the age of 70 years, his four siblings agree that one of them, Simon should take out letters of administration. In the course of identifying the deceased's assets, Simon discovers that Ms. Martha has been withdrawing Simon's pension on the strength of a letter from the local chief. The letter claims she is Simon's widow and that they have three children. Martha has used the letter to obtain birth certificates which read Simon as the father of the children. She has been using

the documents to claim school fees and upkeep for the children from Simon. Simon instructs you to take legal action against Martha.

- a) As Simon's advocate, identify in detail the steps you would take in your application, relying on the provisions of the Law of Succession Act and relevant case law. (10 marks)
- b) One of the properties Simon identifies is a prime property in Kituru and without his siblings' knowledge and consent, he enters into a sale agreement with Jonathan who pays him the full purchase price before the letters of administration are issued. Simon assures him that the letters are about to be issued. On discovery of this action, Simon's siblings decide to take legal action against him.

As their advocate, analyze what legal issues emerge and the reliefs available to them under law of succession act and on the basis of legal precedent.

(10 marks)

QUESTION THREE

- (a) Distinguish between contentious and non-contentious probate. (4 marks)
- (b) Define intestacy and describe three ways under which intestacy rules may apply in Kenya. (6 marks)
- (c) Why do you think most people in Kenya die intestate? Highlight six advantages of making a will. (10 marks)

QUESTION FOUR

Mohamed, a Muslim, began cohabiting with Cherry, a Catholic, in 1985 in Mombasa. They lived in Mohamed's house until Mohamed's death in 2015. In the intervening period they were blessed with four children, all born before 1990.

Mohamed's father, Hussein, passed away in the year 2000 and Mohamed and his mother Miriam obtained letters of administration jointly. However, by the time of Mohamed's death in 2015, distribution of Hussein's estate had not commenced. In 2016, Miriam applied to the Kadhi's court and obtained orders that Mohamed's share was 20% but that neither Cherry nor her children were entitled to inherit as they were not Muslims. Miriam's advocate argued that Mohamed never married Cherry under Islamic laws and therefore Cherry's children were born out of wedlock and are illegitimate. The advocate

further argued that article 24(4) of the constitution limits provisions on equality to allow application of Islamic law and Mohamed being a muslim was subject to Islamic law. The principal kadhi endorsed Miriam's arguments and decreed in her favour noting that there cannot be presumption of marriage despite the length of cohabitation since the concept of presumption of marriage is not recognized under Sharia law.

Aggrieved by the kadhi's court decision, Cherry and her children have hired you to appeal the decision in the High court.

- a) Evaluate whether Cherry and her children are subject to Islamic law and hence Kadhi's Court jurisdiction. (10 marks)
- b) With the aid of statutory provisions and case law, advance arguments against Miriam's position that Mohamed's children are illegitimate for purposes of succession under Islamic law. (10 marks)

QUESTION FIVE

Make notes on the following:

- (a) Resealing of foreign grants
- (b) Probate jurisdiction
- (c) Revocation of wills by destruction
- (d) Executor *de son tort*

(20 marks)