



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SPECIAL EXAMINATIONS
SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
SECOND SEMESTER, 2021/2022
(FEBRUARY - JUNE, 2022)

LLBK 225: LAW OF SUCCESSION

STREAM: Y2 S2

TIME: 2 HOURS

DAY: WEDSDAY, 3:00 – 5:00 P.M.

DATE: 27/07/2022

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

Mr. Kimathi died intestate on 7th December 2013 at the age of 96 years. He was survived by 5 children namely Geoffrey, Job, Mercy, Alice and Peter.

His estate comprised of:

- Land parcel L.R. 306/123 measuring 2.5 acres
- Cash deposit in Barclays Bank Account Number 111000123

On the above stated land parcel L.R. 306/123, the deceased had erected 160 rental houses in the following units:

- i. Wooden houses – 35 single rooms
- ii. Mabati houses – 30 single rooms
- iii. Permanent houses – 50 bedsitters
- iv. Commercial units = 45

160

After Kimathi's death, Geoffrey and Job started collecting rent from the 160 units and utilized the money obtained for their own personal gain. They did not inform other beneficiaries and excluded them from benefitting from the deceased properties. Seven years down the line the family had not yet began the succession process as Job and Geoffrey were quite evasive. Mercy had no job and many times had requested that the family applies for letters of administration but in vain.

In May 2020, after a heated family meeting, the family members agreed to apply for letters of administration. In June 2020, Geoffrey, Job and Mercy jointly petitioned for letters of administration and the grant was subsequently issued in June 2021. Six months down the line, the parties could not agree on distribution of the estate. George and John also refused to give an account of the rental proceeds acquired from the deceased's estate after his death. In-fact, they continued collecting rent without accounting for the same. They frustrated the succession process and evaded applying for confirmation of the grant.

Mercy, one of the co-administrators of the deceased's estate has sought your legal services on way forward.

In view of the above narrative:

[a] Analyse the issues arising out of the conduct of Job and Geoffrey following the death of their father and the available remedies thereon. (10 Marks)

[b] Mercy has instructed you to institute proceeding in court to safeguard the estate of the deceased. Discuss the prayers you would be seeking in the application. (10 marks)

[c] The High Court, after determining Mercy's application has further directed the parties to proceed with confirmation of the grant. Mercy is of the view that the estate should be shared equally while Job and Geoffrey are of the view that the two of them should get 60% and the remaining 40% to be shared among

the rest of the three beneficiaries. The court now directed each party to file a proposed schedule of distribution.

Draft a proposed schedule of distribution of the estate on behalf of Mercy in light of this narrative (10 marks)

QUESTION TWO

(a) Discuss the conditions which need to be satisfied for a valid *donatio mortis causa* as set out by Lord Russell in the case of *Cain v Moon* [1896] 2 QB 283. (10 marks)

(b) In *Elizabeth K. Ndolo v. George M. Ndolo* (Court of Appeal No. 128) the court inter alia held that:

“in section 5 of the Law of Succession Act, every adult has unfettered testamentary freedom to dispose his or her property by will in any manner he or she sees fit. But like all freedoms to which all of us are entitled, the freedom to dispose off property given by section 5 must be exercised with responsibility and a testator exercising that freedom must bear in mind that the enjoyment of that freedom, he or she is not entitled to hurt those for whom he was responsible during his/her lifetime.”

In light of the above quote, consider the following:

(i) A man dies testate leaving a written will. In the said will he does not provide for his son whom he sired out of wedlock. He recognized this son since birth, took care of him, educated him and had even introduced him to his family.

The son comes to you for legal advice on whether he has a claim. Discuss his entitlements or otherwise using relevant statutory provisions and case law. (6 marks)

(ii) A lady who claims to be a wife of a deceased person wants to lay a claim for provision in a pending succession case. However, she has no marriage certificate and she is not known by the family of the deceased. No traditional marriage ceremony has ever been performed. She did not have any children with the deceased. A friend of the deceased says she was only a girlfriend who accompanied the deceased to the local pubs and other ceremonial occasions.

Evaluate her case and advise her whether she can claim or not.

(4 marks)

QUESTION THREE

- (a) By way of an application dated 21st February 2020 the applicant seeks orders for an interim injunction restraining the respondents from acting in any way whatsoever through alienating, encroaching or otherwise intermeddling with the property belonging to the deceased's estate.

In view of the above background facts and also against the words of Hon. Justice W. Okwany in *Moraa Gisemba v David Nyakoi Ongori* [2015] e KLR that:

“courts have in many instances grappled with the question of whether orders of an injunction can be made in succession cases with the main question being whether the court is clothed with the power to grant such orders.”

Assume that you are acting for:

- (i) The applicant;
- (ii) The respondent

Advise each party in light of the Judge's sentiments. (10 marks)

- (b) Most people in Kenya die intestate. Highlight the reasons why this is the case and discuss various advantages of making a will. (10 marks)

QUESTION FOUR

In *Re Harrison* (1885) Ch. 390, the court observed that “where a will is executed in solemn form, it is to be assumed that the maker did not intend to solemn force and that he did not intend to die intestate when he had in fact gone through due process of making a will.”

In light of the above, consider the following:

Madam P makes a will with a provision that: “I direct my executor to pass my interest in the land known as L.R. 2/101/10/40 measuring 10.5 acres to my five children of marriage...”

After the demise of Madam P, the executor later discovers that L.R. 2/101/10/40 does not exist and in fact the one that exists and measures 10.5 acres is L.R.2/40/10.

- (a) Advise the executor. (10 marks)
- (b) Using relevant laws including case law, discuss two rules applied in construction of wills. (10 marks)

QUESTION FIVE

Make explanatory notes on the following:

- (a) Limited grant as to purpose (10 marks)
- (b) General principles of the African customary law of succession. (10 marks)