CM ADVOCATES LLP



FAMILY TRUSTS FOR KENYANS IN THE DIASPORA:

Secure Your Legacy and Investments Back Home

For the increasing number of Kenyans living and working abroad, maintaining strong ties with home often includes investing in land, real estate, businesses, or supporting loved ones. However, managing these investments from a distance and ensuring their protection and smooth transition to future generations can present significant challenges.

A Family Trust offers a reliable and flexible legal structure for Kenyans in the diaspora seeking to safeguard their wealth back home. It ensures long-term asset protection, privacy of holdings, and an efficient way to pass on wealth without the delays, costs, or disputes often associated with court-based succession processes.

LEGAL FRAMEWORK FOR FAMILY TRUSTS IN KENYA

Family Trusts in Kenya are supported by a robust and evolving legal framework:

- The Trustees (Perpetual Succession) Act, Cap 164, provides for the incorporation of family trusts, enabling them to own and manage property in their own name.
- The Perpetuities and Accumulations (Amendment) Act, No. 10 of 2022, removed the previous 80-year limitation on the lifespan of family trusts, allowing them to exist in perpetuity and support multiple generations.

These progressive legal reforms position Kenya as a favourable jurisdiction for Kenyans in the diaspora who wish to protect their assets and create a structured, long-term legacy for their families.

COMMON CHALLENGES FACED BY KENYANS IN THE DIASPORA

Despite their deep commitment to investing back home, many Kenyans living abroad encounter serious challenges that not only jeopardise their hard-earned wealth but also threaten the legacy they hope to build for future generations.

a) Land Scams, Fraud & Mismanagement: One of the most heartbreaking and widespread issues is falling victim to land fraud. It is not uncommon to hear of hardworking diaspora Kenyans who send money home, often to relatives or agents, with the hope of acquiring land, only to discover years later that the property never existed, was already owned, or was located on public or disputed land. In some cases, the "investment" turned out to be nothing more than buying air.

Even well-meaning family members or friends

can mismanage funds or make unauthorised decisions, leading to properties being sold off without consent, neglected, or entangled in disputes. Without trusted local oversight, verified documentation, and professional support, these investments become vulnerable to loss and betrayal.

b) Hidden Wealth & Lack of Succession Planning:

Many diaspora Kenyans build their wealth quietly, sometimes in secrecy, due to mistrust, past disappointments, or cultural caution. They invest in land, businesses, or financial assets without informing anyone back home. In the unfortunate event of illness, incapacity, or death, family members may be unaware of what was owned, where it is located, or how to access it. Without a clear succession plan, that silence can result in wealth being lost, contested, or never passed on.

c) Remote Management Limitations:

Running businesses, farms, or rental properties from abroad is difficult without a reliable legal structure and a trusted team on the ground. Tracking income, managing tenants, conducting repairs, and responding to emergencies becomes nearly impossible without formal systems in place. Emotional and financial stress often follows.

d) Unprotected Dependents & Family Disputes:

Without a proper estate plan, such as a will or family trust, dependents may be left without guidance or legal protection. Families are often forced to dig through bank records, messages, or vague conversations to figure out what was owned. This uncertainty can lead to court battles, delays, and family wrangles. What was meant to be a blessing often becomes a source of confusion, stress, and division.

HOW A FAMILY TRUST SOLVES THESE CHALLENGES

A Family Trust offers a structured, legally recognised solution to manage, protect, and pass on wealth, making it an ideal estate planning tool for Kenyans in the diaspora. Here is how:

a) Protection from Fraud and Mismanagement:

When property, businesses, or other investments are placed into a Family Trust, legal ownership is vested in the trust itself and managed by appointed trustees. This structure ensures:

- Assets are not held in an individual's name and are therefore shielded from misuse, illegal sale, or interference by unauthorised parties.
- Trustees have a legal duty to act in the best interests of the beneficiaries and per the terms of the trust deed.
- Even in the absence, incapacity, or death of the person who created the trust (the Settlor), the assets remain secure and under continuous management.

b) Seamless Succession Planning:

Unlike a will, which may be contested or delayed through court proceedings, a Family Trust:

- Provides a private and efficient mechanism for passing on assets without court involvement.
- Minimises the risk of inheritance disputes and succession-related delays.
- Can be tailored to support vulnerable dependents, such as minor children, persons with special needs, or elderly parents—ensuring their long-term care and financial security.

c) Structured Remote Management:

For Kenyans abroad, the trust provides a clear and dependable system for managing investments in Kenya, particularly where a Corporate or Professional Trustee is appointed:

- A Corporate Trustee is a regulated, professional entity with expertise in property, business, and financial management.
- They are legally accountable for the day-to-day running of the trust and must act transparently and impartially.
- This ensures that the trust is managed with competence, oversight, and continuity—independent of family conflicts or personal relationships.

d) Transparency and Reporting:
Trustees are legally obligated to maintain detailed records and provide regular reports. This includes:

- Books of accounts, income statements, and expenditure summaries.
- Clear reports showing rental income, expenses, and balances.
- Regular updates shared with the Settlor and, eventually, the beneficiaries.
- For Kenyans in the diaspora, this means full visibility over your investments—no chasing, guessing, or relying on verbal updates.

e) Peace of Mind and Control from Afar:
A Family Trust gives diaspora investors confidence that:

- Their wealth is being managed professionally and per their wishes.
- Loved ones are protected and catered for, even in their absence.
- The fear, uncertainty, and risk associated with remote property ownership are significantly reduced.

CONCLUSION

For Kenyans living and working abroad, a Family Trust is more than just an estate planning tool; it is a powerful expression of foresight, responsibility, and care. It allows you to organise your affairs with clarity, protect your wealth from common risks, and ensure that your legacy is preserved and passed on according to your wishes.

By establishing a Family Trust, you gain peace of mind knowing that your investments, property, and loved ones are protected, even in your absence. It is a thoughtful and proactive step toward securing your future and building generational wealth that lasts.

HOW CAN WE HELP?

At **CM Advocates LLP**, our Wealth and Private Clients Team brings deep experience and cross-border capability in estate planning, trust formation, trust administration, and succession structuring across the East African region.

We have successfully advised on, structured, and administered various types of family trusts, including complex, multi-jurisdictional structures, for diaspora and local clients alike. Our team is well-positioned to guide you through every stage of the process, from conceptualisation to implementation, ensuring that the trust is tailored to meet your family's unique needs and goals.

If you have any questions about setting up a Family Trust or would like to discuss your estate planning objectives, please do not hesitate to contact us at:

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