



HIGH COURT CLARIFIES: DNA TESTS CANNOT BE FORCED IN SUCCESSION DISPUTES TO PROVE PATERNITY

We draw attention to an important clarification by the High Court of Kenya on the increasing tendency to seek compulsory DNA testing in inheritance and succession disputes. The Court has affirmed that paternity in succession matters cannot automatically be determined through forced DNA testing, particularly where the deceased's DNA is unavailable and alternative legal pathways exist under the Law of Succession Act.

This decision carries significant implications for estate administration, beneficiary disputes, and long-term family wealth structuring, including the strategic use of family trusts to prevent uncertainty and conflict.

The Core Issue: Paternity Disputes in Inheritance Proceedings

In many succession proceedings, disputes arise where one party challenges whether certain children or dependants are rightful beneficiaries of the deceased's estate. Litigants increasingly seek orders compelling DNA testing to exclude rival claimants.

The High Court has now confirmed that:

- Courts will not compel DNA tests as a default mechanism in inheritance disputes.
- Such intrusive orders require a firm legal and factual foundation.
- Beneficiary status may still be determined through recognition, acceptance, dependency, and evidence.

Leading Authority: *In re Estate of Benard Njeru Kamau (Deceased)*

In re Estate of Benard Njeru Kamau (Deceased) (Succession Cause 13 of 2022) [2025] KEHC 7457 (KLR), the Court dismissed an application seeking sibling-to-sibling DNA testing to establish the paternity of children claimed as beneficiaries.

The Court emphasized that:

- The deceased's DNA profile was unavailable
- It would be unconscionable to treat one set of children as the unquestioned "baseline" for legitimacy
- Even where DNA testing fails, inheritance may still arise through dependency and other statutory avenues

Succession Law Goes Beyond Biology

The Court reaffirmed that Kenyan succession law adopts a broader approach to defining a “child.”

Under Section 3(2) of the Law of Succession Act, a child includes:

- Any child expressly recognized by the deceased, or
- Any child for whom the deceased voluntarily assumed permanent responsibility

This means inheritance rights may be grounded not only in blood relation but also in recognition, responsibility, and dependency.

DNA Testing Implicates Constitutional Rights

The Court underscored that ordering DNA testing is not merely procedural. It is a serious intrusion implicating constitutional rights including human dignity and privacy.

The Court held that:

“Ordering DNA testing is not a mere procedural matter but is substantive enough given that an individual’s constitutional rights may be limited through such testing.”

Practical Guidance: Determining Beneficiaries Holistically

The Court highlighted that succession disputes should ordinarily be resolved through:

1. Evidence of recognition by the deceased
2. Dependency claims under Section 29(b) of the Law of Succession Act
3. A full hearing of the protest, rather than compulsion through DNA testing

The Role of Family Trusts in Preventing Succession Disputes

This decision reinforces the importance of proactive private wealth structuring. Many inheritance conflicts arise because families rely solely on intestacy rules, leaving courts to resolve sensitive issues of legitimacy, dependency, and entitlement.

Proper planning through family trusts and wealth structuring vehicles can significantly reduce such disputes by:

- Clearly identifying beneficiaries.
- Protecting family wealth from contested claims.
- Ensuring orderly succession across generation.
- Avoiding intrusive litigation over paternity or dependency.
- Preserving family dignity, legacy, and continuity.

Family trusts are increasingly recognized as essential tools in safeguarding intergenerational wealth, especially where families have complex structures, cross-border assets, or blended households.

Integrated Advisory: Estates, Trusts and Private Wealth

CM Advocates LLP provides integrated advisory where estate planning, family governance, and private wealth structuring intersect, including:

- Structuring of investment companies and holding vehicles.
- Advisory for family-owned enterprises and succession-ready governance frameworks.
- Establishment and administration of family trusts.
- Wealth structuring and asset protection strategies.
- Estate and succession planning across jurisdictions.
- Long-term lifestyle and family legacy planning.

Beneficiaries may lawfully receive estate and succession planning advisory while resident in Kenya, including advice relating to family businesses, investment holdings, and trust structures, subject to compliance with applicable regulatory and tax frameworks.

For Inquiries and Advisory Support

Family Law, Probate and Estate Administration Unit
familyandprobate@cmadvocates.com

WELL Practice (Wealth, Estate, Legacy & Lifestyle)
wellpractice@cmadvocates.com

CONTRIBUTOR



Nelima Walubengo Tindi
Senior Associate
Email: ntindi@cmadvocates.com
CM Advocates LLP

Head Office - Nairobi, Kenya
I&M Bank House, 7th Floor, 2nd Ngong Avenue
T: +254 20 2210978 / +254 716 209673
P.O. Box 22588 – 00505, Nairobi Kenya
E: law@cmadvocates.com

Mombasa Office - Kenya
Links Plaza, 4th Floor, Links Road, Nyali
T: +254 041 447 0758 / +254 41 447 0548
P.O. Box 90056 – 80100, Mombasa Kenya
E: mombasaoffice@cmadvocates.com

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