



CM ADVOCATES LLP



UNDERSTANDING CONTENTIOUS PROBATE AND SUCCESSION DISPUTES

When a person dies, most families expect the estate to follow a straightforward path. If there is a valid Will, the deceased's wishes should generally be respected. If there is no Will, the estate is distributed under the intestacy provisions of the Law of Succession Act, Cap. 160. In practice, however, succession can become one of the most difficult disputes a family will face.

A number of disputes may arise. These include whether a Will is valid, whether the deceased had the capacity to make it, who is entitled to inherit where there is no Will, whether a dependant has been left without reasonable provision, whether an executor or administrator is properly managing the estate, whether a particular asset belongs to the estate or how the estate should ultimately be distributed. To advocates, these may be described as "contentious probate" or "contentious succession disputes".

Kenyan law does not create one statutory cause of action called "contentious probate". Depending

on the issue, the dispute may also engage the jurisdiction of the Environment and Land Court, the High Court's Commercial and Tax Division or another competent forum. For a family, identifying the precise dispute at the outset can be the difference between an efficient strategy and years of unnecessary litigation.

WHAT IS CONTENTIOUS PROBATE OR A CONTENTIOUS SUCCESSION DISPUTE IN KENYA?

In practical terms, a succession matter becomes contentious when a person with a legal or beneficial interest in an estate challenges the validity or effect of a Will, the persons entitled to inherit, a grant, the administration of the estate, the proposed distribution or another aspect of the succession process.

A dispute may arise whether the deceased left a Will or died intestate. It may arise before a grant is issued, during administration, at confirmation of the grant or even after a grant has been confirmed.

It may be brought by a beneficiary, dependant, executor, administrator, creditor or another person who can demonstrate a sufficient interest in the estate.

The first question should therefore not simply be, "Who should inherit?" The better questions are: Did the deceased leave a Will? If so, is the Will valid and properly executed? If there is no Will, who is entitled to inherit under the law? What property actually forms part of the estate? Who are the beneficiaries and dependants? Has a grant been issued or confirmed? Who is administering the estate? Is there a dispute about ownership of an asset? What remedy is legally available?

SO WHAT WOULD GIVE RISE TO A CONTENTIOUS PROBATE OR SUCCESSION DISPUTE?

While not exhaustive, the following are some of the common circumstances that may give rise to a contentious probate or succession matter in Kenya.

1. Challenging the validity of a Will

A Will may be challenged even where it appears properly signed. Sections 5, 7 and 11 of the Law of Succession Act are particularly important. Section 5 recognises testamentary freedom. A person who is of sound mind and not a minor may dispose of their free property by Will. Section 5(3) creates a presumption that a person making a Will was of sound mind unless the contrary is proved. Section 7 makes a Will or part of it void where its making was caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, or where it was induced by mistake. Section 11 sets out formal requirements for written Wills, including signature and attestation by at least two (2) competent witnesses.

A person challenging a Will may therefore raise lack of testamentary capacity, fraud or forgery, coercion or undue influence, improper execution or mistake. The mere fact that the Will produces an outcome that seems unfair is not, by itself, enough to invalidate it.

2. Testamentary capacity, fraud, forgery and improper execution

The Court does not determine testamentary capacity simply by asking whether the deceased was old, ill or physically frail. The central issue is whether, when making the Will, the deceased understood the nature of the act, the property being disposed of and the persons who might reasonably be expected to benefit.

Evidence may include medical records, the evidence of the advocate who prepared the Will, attesting witnesses, earlier Wills, correspondence, evidence of the deceased's conduct and, where appropriate, expert evidence.

Where a Will is alleged to be forged, the Court will examine the authenticity of the document and signature and the circumstances in which it was produced. Where coercion or undue influence is alleged, the focus is on whether the deceased's testamentary freedom was overborne. Where improper execution is alleged, Section 11 becomes central.

The evidential burden is therefore important. Suspicion may justify investigation, but a party seeking to invalidate a Will must prove the relevant allegation to the applicable civil standard. A recent illustration is *re Estate of Roger Bryan Robson (Deceased), Succession Cause No. 955 of 2013 [2025] KEHC 8562 (KLR)*. The High Court dismissed objection proceedings alleging, among other matters, forgery and coercion because the objections were not proved on a balance of probabilities. The decision demonstrates that a Will will not be displaced merely because family members dispute the circumstances in which it was made.

3. A claim for reasonable provision

Not every dispute about an estate is a challenge to the validity of a Will. A Will may be valid yet a dependant may still ask the Court to make reasonable provision from the estate.

Sections 26 to 29 of the Law of Succession Act allow the Court to intervene where a dependant has not received reasonable

provision. Section 26 permits the Court, on application, to make an order for reasonable provision out of the net estate. Section 29 identifies dependants, including spouses and children and, in appropriate circumstances, other relatives or persons whom the deceased was maintaining or had assumed responsibility to maintain immediately before death.

A person claiming reasonable provision is therefore not necessarily asking the Court to declare the Will invalid. The claim is for an additional provision to that person from the estate. Importantly, reasonable provision does not necessarily mean equal provision. In ***Dadhiwalla v Chaudri (Sued as Executor of the Estate of Gurdip Kaur Sagoo) & 2 others [2025] KECA 728 (KLR)***, the Court of Appeal held that reasonable provision does not mean equal provision. The Court nevertheless found that the appellant had not been adequately provided for and ordered that KES 130 million be provided to her from the deceased's estate. The decision demonstrates that testamentary freedom remains subject to the Court's statutory power to make reasonable provision for a dependant.

4. Disputes over who is entitled to inherit

Not every contentious succession dispute involves a Will. Where a deceased person dies intestate, disputes may arise over who qualifies as a spouse, child or dependant, the applicable shares of the estate, the existence of different houses or whether a particular person is entitled to participate in the succession proceedings.

Sections 35 to 38 of the Law of Succession Act provide the principal framework for intestate succession involving spouses and children. Section 40 deals specifically with estates where the deceased was married under a system that permits more than one house. In such cases, the estate is first divided among the houses in accordance with the statutory formula before the shares of individual children are determined.

These rules are particularly significant in Kenya because succession disputes may involve customary marriages, polygamous families, children from different relationships and disputes about whether a particular person qualifies as a spouse or dependant. Early identification of the family structure is therefore essential.

5. Challenges to the actions or inactions of an executor or administrator

An executor or administrator is responsible for administering the estate and is not free to treat estate property as personal property. Section 83 of the Law of Succession Act sets out important duties, including collecting and preserving estate assets, paying lawful debts and expenses, completing administration and rendering a full and accurate account when required.

Disputes may arise where an administrator delays administration, fails to disclose assets, refuses to provide accounts, sells or transfers estate property improperly, favours one beneficiary or otherwise fails to proceed diligently. Section 76 provides a remedy where a grant is defective or its holder fails to properly administer the estate. A grant may be revoked where, among other grounds, it was obtained through defective proceedings, fraud or concealment of material facts, through an untrue allegation of fact essential to the grant, or where the administrator fails to proceed diligently or produce the required inventories or accounts.

In ***re Estate of Lulei Rono (Deceased) [2025] KEHC 11886 (KLR)***, the High Court considered an application for preservation of an intestate estate and revocation of a grant. The Court emphasised that the grounds for revocation under Section 76 must be proved and that revocation is a discretionary remedy to be exercised judiciously. The Court also considered disputes concerning the identification of beneficiaries, the inventory of estate assets and allegations of wastage and intermeddling.

6. Disputes over estate assets and distribution

Beneficiaries may also disagree over what actually forms part of the deceased's estate or how particular assets should be distributed. A common mistake is to assume that every dispute involving property of a deceased person is automatically a succession dispute. It is not.

The succession Court determines matters within its statutory jurisdiction. A dispute over whether the deceased actually owned a parcel of land may require determination by the Environment and Land Court. Similarly, a dispute concerning ownership or control of company shares may require determination in another competent forum depending on the nature of the claim. This distinction is important because the succession Court may be able to administer an estate without necessarily having jurisdiction to finally determine an independent ownership dispute. In *re Estate of Roger Bryan Robson (Deceased)*, the High Court considered objections concerning alleged ownership and other issues surrounding estate property and ultimately dismissed the objections because the allegations had not been proved to the required standard.

Succession disputes can become protracted where parties repeatedly challenge the administration or distribution of an estate, particularly where there are appeals, multiple applications or proceedings in different forums. This can significantly increase the financial and emotional cost to the family.

Mediation can provide an effective alternative, particularly where the parties are family members whose relationships will continue after the dispute. Court-Annexed Mediation allows parties to negotiate a settlement while retaining greater control over the outcome. It can also allow families to address practical issues that a Court judgment may not fully resolve, including occupation of property, management of family businesses, payment arrangements or the sale of jointly held property.

Mediation will not, however, be appropriate in every case. Where urgent intervention is required

to preserve estate assets or serious allegations of fraud or concealment require determination, court proceedings may be necessary. Even in such circumstances, mediation may become useful once the estate has been preserved and the issues have been clarified.

WHAT SHOULD YOU DO IF YOU ARE FACING A CONTENTIOUS SUCCESSION DISPUTE?

The starting point is to identify what exactly is being challenged and the appropriate legal remedy and forum. Parties should establish whether the deceased left a Will, whether the Will is valid and properly executed where one exists, whether a grant has been issued or confirmed, who the beneficiaries and dependants are and what assets and liabilities form part of the estate. Evidence concerning the Will and the estate should be preserved while disputed property should not be transferred or disposed of without appropriate advice.

Where court intervention is necessary, early legal advice can help determine whether the matter requires an objection, revocation of grant, a claim for reasonable provision, an account or separate proceedings concerning ownership of an asset. Identifying the real dispute at an early stage can help prevent unnecessary litigation and protect the estate from further complications.

HOW WE AT CM ADVOCATES LLP CAN HELP

Contentious succession matters require more than determining who is entitled to inherit. They require careful assessment of the Will where one exists, the estate, the beneficiaries, the evidence and the appropriate legal forum and remedy.

Our team in the **Family Law & Private Client Practice Unit** and **Dispute Resolution & Appellate Practice Unit** can assist executors, administrators, beneficiaries and dependants in navigating disputed estates. This includes drafting, reviewing and challenging Wills, advising on testamentary capacity and execution, advising on intestate succession, challenging or defending grants, seeking revocation or annulment of grants, pursuing claims for

reasonable provision and addressing disputes concerning the administration and distribution of estates.

We can also assist where the dispute concerns estate assets or their ownership, including land, shares, businesses and other property. Where appropriate, we can pursue mediation and negotiated settlements. If litigation is necessary, we can advise on the appropriate forum and pursue the proceedings to determination.

If you are dealing with a disputed Will, an intestate estate, an estate that is not being properly administered or a disagreement over

your entitlement to an estate, legal advice can make a significant difference. Contact us to discuss the circumstances of the estate and the way forward.

This publication is intended for general information purposes only and does not constitute legal advice or a legal opinion. It is not intended to be a substitute for legal advice on any specific matter. The application of the law will depend on the particular facts and circumstances of each case. If you require advice your specific circumstances, please contact **Kelvin Mwaniki, Senior Associate** (kmwaniki@cmadvocates.com) or your usual contact at our firm.

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