

**COUNCIL OF LEGAL EDUCATION**



**EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES.**

**ATP 102: PROBATE & ADMINISTRATION**

**TUESDAY 22<sup>ND</sup> JUNE 2021**

**DURATION: 3 HOURS.**

**Instructions to Candidates:**

- (a) This paper contains Five (5) printed pages including the cover page, with a total of Six questions.
- (b) Candidates MUST answer FIVE (5) questions.
- (c) Question ONE is compulsory and carries 20 marks.
- (d) All other questions carry 10 marks each.
- (e) Answers MUST be supported by relevant case law and statutory provisions where required.

**PLEASE TURN OVER**

### QUESTION ONE

Reverend Belinda wrote and executed a Will on 1<sup>st</sup> March 1999. The Will partly read as follows: -

1. I revoke all previous wills and testaments.
2. I appoint my confidant Pastor Banda of P O Box 10, Mawingu as executor.
3. My plot/2020 is to be divided into four equal portions for my children as follows:

A	B	
C	X	D

X - Access road to be curved out of plot D

A - Maria (Daughter)

B - Anita (Daughter)

C - Johanna (Son)

D - Family plot to be held in the joint names of all my children

4. Any other property or possession of which I may die possessed shall be sold under the supervision of my said executor and the proceeds divided equally to all my descendants.

The Will was witnessed by her two friends. She made her children aware of the Will and gave a copy to each of them and a copy to her executor. Six (6) years after executing the Will, Pastor Belinda fell seriously ill. At the time of her illness, her two daughters were out of the country for further studies leaving her with her son Johanna and his wife. One morning, Pastor Belinda suffered a mild stroke and Mrs. Johanna who was the only person with her at the time insisted that she would call the doctor only if Pastor Belinda revoked her Will and bequeathed everything to Johanna and herself. Mrs. Johanna then brought in a tape recorder and asked Pastor Belinda to make an oral Will. Pastor Belinda whilst in pain and in the hope that Mrs. Johanna would call the doctor immediately, mumbled a few words to the effect that 'I have given everything I own to Johanna and in case of anything, Johanna and his wife shall inherit my estate and property.' Pastor Belinda died a few weeks later in the hands of Johanna & his wife. The two daughters, Anita and Maria travelled to attend the funeral and were not happy with Johanna as he had not informed them that their mother was seriously ill and insisted he had told them she was doing better. After the funeral, Johanna and his wife began selling the deceased's personal effects including jewellery, clothes and an old Daihatsu motor vehicle which they sold as scrap. They did not attempt to share with the daughters any of the proceeds of sale and when they approached Johanna, he indicated that everything belonged to him as he was the one who took care of the deceased in her final days and that she had changed her Will giving him and his wife everything. When they challenged him to produce a copy of her new Will, he brought the tape recorded message and asked them to listen. After listening to the recording, they were of the view that their mother must have been under a lot of pain and duress, as the sentences were incoherent.

However, faced with the new set of circumstances, they approached pastor Banda on the issue but he was equally confused and asked them to wait upon the Lord. The two daughters then sought legal services on the issue.

- a) Using case law and statutory provisions, discuss the validity or otherwise of the oral Will vis-a-vis the written Will executed on 1<sup>st</sup> March 1999. (6 marks)
- b) Name and discuss 3 methods of revoking a Will by a testator. (6 marks)
- c) In light of the above narrative;
  - i. Identify the type of grant to be applied for. (1 mark)
  - ii. Identify the forms and documents required in your application and outline the procedure up to confirmation of grant. (4 marks)

d) Draw a schedule of distribution of the deceased's estate in light of the above narrative. (3 marks)

#### QUESTION TWO

In 1995, Josiah started a school in Umoja and it was very successful. Upon his demise in 2005, his son Michael and daughter Veronica were appointed as administrators of his vast estate which included rental properties. Before the grant was confirmed, Michael died in 2010 leaving behind two wives, Faith and Linda and six children who are all minors and two plots in Ngong Town.

Faith and Linda have applied for grant of letters of administration and the case is still pending. The children's fees are pending. They have sold one of the parcels of land to Kennedy. They also want Veronica to give them more money from rent but she has declined.

Faith and Linda have filed an application against Veronica seeking orders that she gives a true and accurate account of all the monies generated by the school and the rental properties. Secondly, they pray that they be appointed administrators to oversee the school and the rental properties. Thirdly, they pray that Veronica be stopped from collecting rent and school income.

Faith and Linda have visited the firm where you are attached as a Pupil and your Pupil Master has asked you to research on the following issues:

- Identify the issues raised for determination and highlight the rights, if any, accruing to Faith and Linda, noting to apply the relevant law and legal precedents. (5 marks)
- Before Kennedy takes possession of the Ngong plot, Veronica approached the Firm along with Faith and Linda and offers to increase the amount for the children's fees and upkeep pending confirmation of grant of Josiah's estate. Immediately thereafter, Faith and Linda apply to court for orders restraining Kennedy from in any way intermeddling and or interfering with and entering into the Ngong property. Kennedy files a similar objection against them claiming a purchaser's rights and prays that Faith and Linda be themselves restrained from intermeddling. The judge requests you as his research assistant to prepare a well-articulated legal opinion in the matter.

Prepare the legal opinion on the matter. (5 marks)

#### QUESTION THREE

According to the traditions of the Wakanda tribe, it was a general rule passed on from generations that women were not entitled to own land. It was generally known that 'land had its owners and these were not women.' Thus, if a man was survived by daughters only and his wife, the deceased's brothers would take charge of the administration of the estate and if there were no brothers, the clan would select any member to be in charge. Married daughters were never considered beneficiaries of their father's estate and unmarried daughters were not entitled to own their father's land but would be shown a place to live and cultivate without any ownership or control rights. Divorced/returnee women were shunned and upon returning to their parents' home, would be shown a small strip of land to live and cultivate. The land title would always be in the name of the male figure in the family/clan. Administration of estates was applied for at the District Commissioners offices and the grant issued by the District Magistrate.

Unknown to the Wakanda people, the country came up with a new Act known as the Law of Succession Act, 1981. In spite of this new Act, the Wakanda people continued to apply their traditions as regards matters of inheritance/succession. Among the Wakanda people, there lived one Mr. Gitonga who owned a large tract of land and two town plots in the nearby shopping centre. Mr. Gitonga was blessed with 3 daughters only. He contemplated marrying another wife to bear him sons but before he could do so, he died abruptly on 1<sup>st</sup> August 1985. He was survived by his wife Josphine and 3 daughters. One daughter, Mercy was married nearby and the other two daughters Zipporah and Gladys were unmarried.

Subsequently, the clan sat to discuss administration of the estate of Gitonga (deceased). They allowed his wife to continue living in the matrimonial home together with the unmarried daughters. It was decided that since Mercy was married, she was not entitled to a portion of the land. As the deceased had no brothers, the clan then appointed a cousin of the deceased, Mr. Maingi to be the administrator of the estate. Mr. Maingi then proceeded with administration through the local administration offices and his application was sanctioned by the District Magistrate Wakanda. The estate was subsequently distributed as per the traditions of the Wakanda people.

In the meantime, Mercy was chased away by her husband and she sought refuge in her mother's house. The clan allowed her temporary occupation in her mother's house and they built for her a small mud house at the far end of her deceased father's land where returnee women are normally settled. They allowed her to cultivate a very small strip of land but not to own any land. Mercy was not comfortable but she had no option. Sometimes in November 1990, the *pro bono* lawyer's association visited the Wakanda independent church to give a talk on inheritance and property. Mercy, her sisters and mother attended the talk. They were surprised that women were actually allowed to inherit and a title could be in the name of a woman. They took the contacts of one lawyer and a week later, they were in his office seeking legal advice. Considering that they are caught in between custom and statute law;

- a) Using case law and relevant statutory provisions analyse the legal position as regards administration of the deceased's estate in the context of the narrative. In your answer, state whether the deceased's wife and daughters have a claim or not. (8 marks)
- b) Name two (2) instances where the Law of Succession Act allows for the application of African Customary Law. (2 marks)

#### QUESTION FOUR

Mrs. Makonde a widow died on 13<sup>th</sup> August 2017 in the city of Port Victoria. She died testate having executed a will five years before her death. Mrs. Makonde did not appoint an executor but she categorically stated how her property would be shared out. As per her will, the beneficiaries of her estate were her 5 children who were to inherit her estate in equal shares. Her Will was witnessed by her cousin and her nephew who were both adults. After her death, the children armed with the Will sought legal services as regards administration of the deceased's estate.

- a) In light of the narrative, explain the legal position in regard to administration of the deceased's estate. (4 marks)
- b) Draft the relevant petition to be filed in light of the narrative. (6 marks)

#### QUESTION FIVE

Precious, an astute farmer and business lady died intestate following a tragic road accident on 20<sup>th</sup> December 2018. She was survived by her mother Mrs. Blessing Makoni and one daughter, a minor. Her farming activities included rearing goats for milk and planting various food crops. At the time of her death, the tomatoes in her farm were ready for harvesting and the potatoes in the store were set to be transported and sold in the main city market. Precious also owned some wooden structures where she collected rent by the 5<sup>th</sup> of every month. After the funeral, the mother of the deceased felt that she needed to take steps to protect the estate of the deceased. She knew that if she did not take immediate action, the food crops would get spoilt and the tenants in the wooden structures could take advantage.

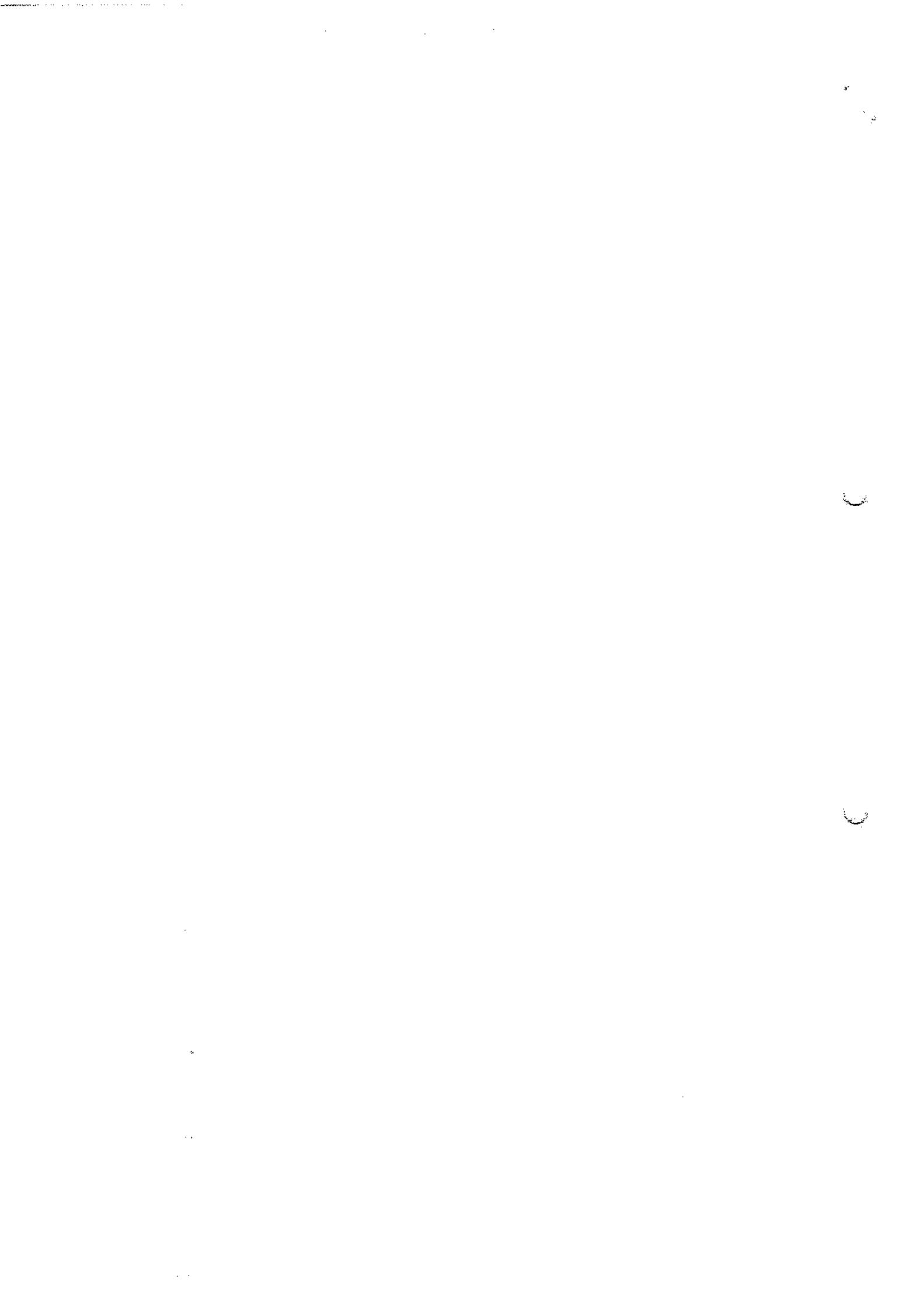
of the deceased's absence to abscond paying rent and end up committing acts detrimental to the estate of the deceased. Mrs. Blessing Makoni has sought your services as a lawyer on the immediate action she needs to take.

- a) Using case law and statutory provisions, discuss the type of grant required. (5 marks)
- b) Draft the relevant petition on behalf of Mrs. Blessing Makoni. (4 marks)
- c) Identify the grant that would be required to institute legal proceedings on behalf of the deceased arising out of the road accident. (1 mark)

#### QUESTION SIX

Mr. Singh died testate on 19<sup>th</sup> August 2017. He was survived by his wife Asmara and his four children; Priti (daughter), Bimal (son), Teji (son) and Malti (daughter). As per his Will, Mr. Singh appointed Bimal as the executor. He further indicated that his estate would be shared equally among his children and his wife would only have a life interest in his immovable property. Three months after his cremation, the family sought to initiate the process of succession as per the will. However, the appointed executor Bimal was not cooperative. He indicated he would not commence the process until the other beneficiaries considered giving him a larger portion of the deceased's estate. He based his argument on the fact that Priti was single with no children, Malti was married to a rich man, Teji was single with no children yet on his part, he had a wife and a daughter who depended on him for their upkeep. He felt that his wife and daughter should benefit from the estate of the deceased and should be included as dependants. He told his siblings he would frustrate the process until they agreed to his demands and accept to give his wife and daughter reasonable provision from the estate. However, his siblings were not willing to give in to his demands and they were of the view that the deceased's will should be followed to the letter. Consequently, Priti, Teji and Malti have decided to seek legal advice on the way forward.

- a) Considering Bimal's refusal to apply for grant of administration, explain the legal position and the procedure to be followed in pursuit thereof. (6 marks)
- b) Consider the argument by Bimal that his wife and daughter should be included as dependants/beneficiaries of the deceased's estate. (4 marks)

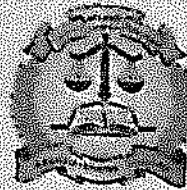


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**COUNCIL OF LEGAL EDUCATION**  
**EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES**

UNIT CODE: **A T P I O 1** SUBJECT/UNIT **PROBATE AND ADMINISTRATION**

REGISTRATION NUMBER: \_\_\_\_\_

DATE: **22/6/2021**.....

**INSTRUCTIONS TO CANDIDATES**

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	18	✓✓✓				
5	9	✓✓✓				
3	10					
4	8					
2	8					
<b>TOTAL MARKS</b>	<b>53</b>					

## REGISTRATION NUMBER:

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Questions 1(a) .....

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either margin

Section 9 of the Law of Succession Act provides that an oral will should be witnessed by at least 2 witnesses and for it to be valid the testator should die within 3 months of making of the oral will.

In this case, Pastor Boling made the will in presence of Mrs Johnson only who was recording her. There were no witnesses to attest the making of the oral will, and as such it is invalid to that extent.

Also the Oral will was made under duress and undue influence which both are vitiating factors under S7 of the LSA. She was unduly influenced to make the will and she was in a lot of pain at the time of making the Oral will, as such, the Oral will is also invalid due to the duress and undue influence.

In Mwathi vs Mwathi, the court declined the will which was made by the deceased invalid after establishing that there was undue influence from the deceased brother and that the will was made under suspicious circumstances.

On the other hand, S6 of the LSA provides for validity of written wills. For a written will to be valid, it must be executed by the testator, and the signature of the testator be attested to by 2 or more witnesses who must be

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Questions .....

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present at the time of execution by the testator.

Where a written will is being signed by another person other than the testator himself, S.R. requires that such execution be done in the presence of the testator and under his directions.

Consequently, the written will made by Pastor Belinda in 1999 meets all the requirements of a written will as stated above. It was properly executed and witness or rather attested to and as such it is valid.

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Questions 1 (b)

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either margin

Section 18 of the LSA provides that a testator can revoke his will by burning, tearing or otherwise destroying the will.

The first method of revoking the will is by way of destruction. This method of destroying the will requires two elements, which are virtual destruction and intention to revoke the will.

In Cheese vs Loveloy, the testator revoked his will by striking out clauses and the signature he threw the will in the dustbin which will was later collected by her househelp who placed it in a kitchen drawer. 5 years after the testator's death, the will was admitted to Probate, the court held that the striking out of the clauses did not revoke the will, as there was intention to revoke but actual destruction of the will did not take place.

Secondly, a will can be revoked expressly, that is express revocation of a will by a testator. This is done by including an express revocation clause in the will, that is the subsequent will that is made by the testator.

Thirdly, a will can be revoked impliedly, that is where a testator makes a new will, the former will is said to have been impliedly revoked by the later will.

Section 18 of the LSA provides that a testator can revoke his will by burning, tearing or otherwise destroying the will.

The first method of revoking the will is by way of destruction. This method of destroying the will requires two elements, which are actual destruction and intention to revoke the will.

In Chapoo vs Loveloy, the testator revoked his will by striking out clauses and the signature he threw the will in the dustbin which will was later collected by her househelp who placed it in a kitchen drawer. 8 years after the testator's death, the will was admitted to Probate. The court held that the striking out of the clauses did not revoke the will as there was intention to revoke but actual destruction of the will did not take place.

Secondly, a will can be revoked expressly, that is express revocation of a will by a testator. This is done by including an express revocation clause in the will, that is the subsequent will that is made by the testator.

Thirdly, a will can be revoked impliedly, that is where a testator makes a new will, the former will is said to have been impliedly revoked by the later will.

i) Grant of Probate:

ii) One requires - the Original will and 2 Copies of the will, the original death Certificate, the Petition and an affidavit supporting the Petition.

The procedure for applying for the Grant of Probate is as follows:-

One is to make an application to the Court by way of a Petition for the grant of Probate. This will be done by the named executor and should be accompanied by an affidavit which is sworn by the said executors.

The executor should attach the original death Certificate of the deceased, the original will and two copies of the will. Also, should attach the receipt evidencing payment of the requisite fees for advertising.

The documents should then be presented to the registrar who should confirm if they are in order.

The registrar forwards the documents to the Judge. The Judge after confirming everything is in order, gives directions requiring the grant to be advertised in the Kenya Gazette for a period of 30 days.

The advertisement is to invite objections from persons who may have interest in the estate of the deceased.

If no objections are raised within the 30 days a temporary grant is issued.

REGISTRATION NUMBER:

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Questions .....

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To the applicant - the applicant who is the  
executor is required to apply for confirmation  
of grant after 6 months.

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Under Section 62 of the law of Succession Act, a grant of Probate is not to be issued to any other person where there is an executor, unless the executor has been called upon to apply for the same. This essentially means that where an executor is appointed by a will, a third party cannot apply for grant of Probate until they get the executor failure by the executor to apply for the grant after they have been cited. allows a third party who qualifies to apply for grant to be made to them as per S66 of the act, to apply for the grant to be made to them.

Given that Bimal, has refused to apply for grant of Probate, the other beneficiaries of the deceased who in this case are his siblings and are entitled to apply for grant under S66 of the act, are required to apply for citations. The citations are to be drawn in accordance with the provisions or rule 21 of the probate and administration rules. They will then draw up citations, the citations are to be signed by the registrar and accompanied by an affidavit. The citations will be served on Bimal, in the manner that the registrar will prescribe. The citee who is Bimal, will be required to respond to the citations within 15 days of service.

REGISTRATION NUMBER:

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Questions .....

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If Bimal, who is the citizen fails to apply for the grant after the citations are served, then, the siblings will proceed and apply for the grant to be made to them. In their application they will have to include an affidavit showing that citations have been made. They will approach the court by way of a petition.

Section 29 of the Law of Succession Act provides for the dependents of a deceased. It provides thus:-

The first category of dependents identified under S 29(a) are - wife / wives, former wife / wives and the children of the deceased whether or not they were being maintained by him at the time of his death.

The second category is the parents of the deceased step parents, grandson, step-grandchildren, sisters, or brothers of the deceased or half brothers or sisters etc. as were being maintained by the deceased immediately before his death.

Consequently, it is clear that the first category of dependents under S 29(a) of the act, need not prove maintenance as they are entitled to benefit from the estate as of right and cannot be disinherited.

However, the second category which includes the grandchildren of the deceased need to prove that they were being maintained by the deceased immediately before his death. As such, Birlal's wife and daughter have to prove that they were being maintained by the deceased immediately before his death. For them to benefit from the estate.

REGISTRATION NUMBER:

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Questions .....

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The Court in the matter of the estate of John Msimbaji Katumangji, held that the grandchildren of a deceased are not entitled to benefit from the estate of their deceased grandparents unless they were being maintained by the deceased immediately before his death. For a grandchild to benefit from the estate of a deceased grandparent, they have prove maintenance immediately before death of the deceased, or benefit indirectly by obtaining / acquiring the share of their parents who are the children of the deceased where such children predecease their parents.

Also in the matter of the estate of M' Ngarithi / M' Miriti the Court reiterated the same position and held that a grandchild can only benefit from the estate of their deceased grandparent where they were being maintained by them immediately before their death, or where their parents who are the children of the deceased grandparents, predecease the testator.

Consequently, following the above the legal position is that Bimal's daughter is not entitled to benefit from the estate of her deceased grandparent as she does not qualify to be a dependant under S29(b) of the law of succession act.

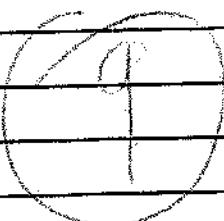
Similarly, Bimal's wife is not a dependant

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Questions .....

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of the deceased under s29(6) as she was not being maintained by him before his death. as such both of them are not entitled to benefit from the estate as they are not dependants of the deceased.



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Questions ... 3(a) .....

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Under the law Succession Act, Section 66 provides for persons who are entitled to apply for letters of administration for the estate of a deceased.

Under that section the spouse of the deceased is the first in priority to apply for the letters of administration followed by the beneficiaries of his estate, the public trustee and the creditors of the estate.

As such, where a person dies intestate, and they are survived by their spouse, the spouse is the one who is legally required to apply for the grant of letters of administration intestate. They can do so, together with one of their adult children provided the rest of the beneficiaries consent.

Additionally, where there is no spouse but there are children of the deceased, they are entitled to apply for grant of letters of administration regardless of the gender of the children. Where children or the beneficiaries fail to apply for the letters of administration due to disagreements among themselves, then the public trustee can apply for the letters of administration in their behalf. This is mainly done to avoid the estate from being wasted. A creditor of the deceased also can apply for grant of letters of administration where all the persons entitled to apply for the same refuse or fail to apply.

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Questions .....

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for the same.

Therefore, in light of the above narrative and following the provisions of s66 & the act, it is the wife / wives and children of the deceased who have the right to apply for letters of administration of the estate. This is to be done regardless of the gender of the children of the deceased.

Further, Section 45 of LSA prohibits intermeddling with the estate of a deceased. It provides that no person is to handle, take possession, dispose of or otherwise intermeddle with the estate of a deceased without legal authority. Intermeddling is a criminal offence and attracts a fine of Ksh. 10,000 or imprisonment for one year or both.

As such, the acts of the members of Wakanda Community, appointing a person that is a male person to administer the estate of a deceased or take control of the estate, without first obtaining letters of administration amounts to intermeddling and is unlawful.

On the other hand, Section 38 of the law of succession act, provides for equal distribution of the estate of a deceased to all his children. It does not make distinction between male and female children of a deceased.

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Questions .....

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In addition, Section 3(2) of LSA defined a child, and the definition is without distinction to a male or female child.

The court in the matter of the estate of Borous Wanjiru held that the definition of a child is without distinction from a child's gender.

In Rono vs Rono the court emphasized that the definition of a child under the act, is without reference to the sex of the child. In the matter of the estate of Ezekiel Mabaya, the court held that, the daughters of a deceased are entitled to benefit from the estate of their deceased parent. They fall under the first category of Section 29(a) and as such they need not prove maintenance. The daughters of a deceased therefore cannot be disinherited.

Consequently, it is clear from the above, that daughters of a deceased are entitled to equal share of the estate. They cannot be disinherited for any reason that is based on their gender or marital status.

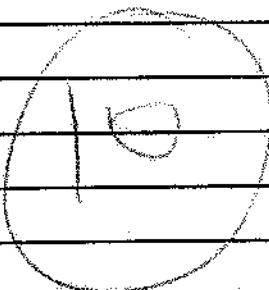
As such, the acts of the Wakanda community prohibiting daughters of a deceased from inheriting are against the law and should be avoided.

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Questions ..... 3(b) .....

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- i) Under s32 and 33 of the Law of Succession act, that is with respect to agricultural land found in the districts which are listed:
- ii) Under s2, that is with respect to the estates of persons who died before the coming of the act.



REGISTRATION NUMBER:

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Questions 4(a)

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Where a Person dies having made a will but without appointing executors, the beneficiaries are supposed to apply with the grant of letters of administration with will annexed as provided for under s 53 of the LSA.

Under s 56, only a maximum of 4 persons can be appointed to administer the estate of a deceased as such. In this case, the children who are the beneficiaries should agree on who among them is going to petition the court for the grant of letters of administration with the will annexed as their mother did not appoint an executor in the will.

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Questions ..... 4(b) .....

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Republic of Kenya,

In the High Court of Kenya at  
Nairobi,

Milimani Law Courts (Family Division)  
Succession Cause No. ... 2021

In the matter of the estate of Makos  
(deceased)

Petition for grant of letters of  
administration with will annexed.

We Brian and Betty residents of the  
city of Port Victoria within the Republic  
of Kenya and of P.O. Box 123-0001  
Nairobi, do hereby petition this honorable  
Court and estate as follows:-

1. That the name of the deceased to whom  
these proceedings relate is Mrs. Makonde
2. That the deceased died on 13<sup>th</sup> August  
2017 at her residence in the city of  
Port Victoria.
3. That the deceased was domiciled in  
Kenya at the time of her demise.
4. That the deceased died testate having  
left a will, but did not appoint any  
executors.
5. That we are related to the deceased by  
reason of being her son and daughter  
respectively.
6. That we will faithfully administer the  
estate of the deceased, and account for  
the manner of administration whenever

REGISTRATION NUMBER:

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Questions .....

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required to.

Dated, 6th of June 2021

Drawn and filed by:-

NKiruto and Co. advocates

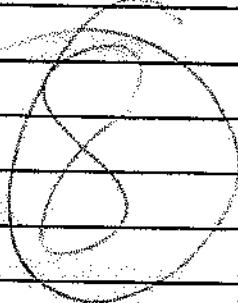
Eliwu Plaza

Utawala Road

Harambee building room 10

P.O Box 22-0001

Nairobi -



Firstly is whether the acts of Veronica collecting the rent from the property of the deceased amounts to intermeddling. Section 45 of the Law of Succession provides that no person is liable, dispossess or take possession or otherwise interfere with the free property of a deceased without lawful authority.

As such, the acts of Veronica collecting rent without a letter of administration or the grant of ad colligendam bona de functi amounts to intermeddling with the estate of the deceased.

The court in the matter of Wilson Nzuk Nsoko, held that the acts of a person who had proceeded to collect rent without first obtaining legal authority amounted to intermeddling. She was ordered to account to the rightful administrators of the estate.

Whether there is a remedy to faith and Linda:

Section 45 (2) of LSA provides for the remedy available in case one is found guilty of intermeddling an intermeddler is required to account to the rightful administrator for all the proceedings to the extent that they have intermeddled.

Also, an intermeddler can be fined an amount of Ksh. 10,000 or be imprisoned for 1 year or both.

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Questions 2 (b)

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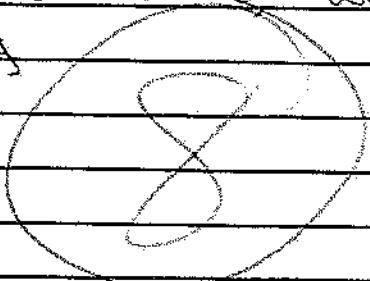
The act of Veronica selling the property of the deceased without letters of administration amounts to intermeddling with the free property of the deceased.

The court in 'M'ingariki M'miriti' declined a sale by a person who did not have letters of administration. Null and void - the court went ahead and ordered for the Purchaser to be evicted if he had already taken possession.

Consequently, it is unlawful for a person to enter into a sale transaction for the property of a deceased without letters of administration as such.

Kenedy has no claim on the property as it was sold to him by Veronica who has no rights to deal with the property of the deceased.

In 'Kieti Vs Kieti', the court held that doing anything which interferes with the free property of the deceased without letters of administration amounts to intermeddling. In this case, instituting a suit on behalf of the estate of a deceased without the grant conferring the authority to do so was held to be intermeddling.



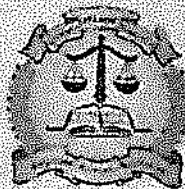


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Officer Checker	Initials
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1 <sup>st</sup> Verification	SS



**COUNCIL OF LEGAL EDUCATION**  
**EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES**

UNIT CODE: **A T P I / S 2** SUBJECT/UNIT **PROBATE & ADMINISTRATION**

REGISTRATION NUMBER: ..... DATE: **22 - JUNE - 2021** .....

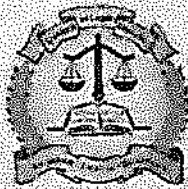
**INSTRUCTIONS TO CANDIDATES**

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
2. Do not write your name anywhere in this booklet.
3. Attempt each question on a fresh page of the booklet.
4. If an additional booklet is used, it MUST be fastened at the END of this booklet.
5. Insert in the column headed 'Question Number' the numbers of questions answered in the order in which you have attempted them.
6. Kindly ensure your handwriting is LEGIBLE.

Question Number	Examiner		Moderator		Quality Assurer	
	Mark	Initials	Mark	Initials	Mark	Initials
1	01					
2	02					
3	03					
4	01					
5	06					
<b>TOTAL MARKS</b>	<b>04</b>	<b>FO</b>				

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Officer Checker	Initials <b>MN</b>
Data Entry	Initials <b>SC</b>
1 <sup>st</sup> Verification	Initials <b>SC</b>



**COUNCIL OF LEGAL EDUCATION**  
**EXAMINATION FOR ADMISSION TO THE ROLL OF ADVOCATES**

UNIT CODE: **A T P I S 2** SUBJECT/UNIT .....**PRACTICE & ADMINISTRATION**.....

REGISTRATION NUMBER:

DATE: **22 - JUNE - 2021****INSTRUCTIONS TO CANDIDATES**

1. Enter the Unit code, Subject of the Examination, Admission Number and Date in the spaces provided. The admission number should be as it appears on the Examination Card.
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	Mark	Initials	Mark	Initials	Mark	Initials
1	01					
2	02					
3	00					
4	01					
5	00					
<b>TOTAL MARKS</b>	<b>04</b>	<b>FC</b>				

REGISTRATION NUMBER:

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Questions 161

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Discuss the validity or otherwise of the oral will vis-a-vis the written will executed on 1st March 1999.

In this sense there are a number of issues to discuss to begin with I will discuss on whether an oral will or written will require witnesses in order to be valid. That can be answered by stating that in any will for it to be valid there needs to be witnesses and the number of witnesses to be available need to be two for a written will and the same for the oral will but in a written will they are able to sign thus no requirement for evidence whereas in an oral will it will be hard to prove that there were witnesses.

Secondly in oral will one cannot make a valid will if in pain due to an medication as he or she is considered not in the right mind but in a written will once the testator has appended his or her signature then the will is valid irrespective whether he was sick.

Thirdly oral will can be easily challenged in Court on grounds of it not being altered or can be said not be the same person making the recorded thus a written will will be more valid as there is a signature.

Written will has an ~~be~~ administrator thus in case of issues on division, payment of debts and claiming of properties belonging to the deceased can be done while under oral will the same cannot be guaranteed as they lack the same.

(J)

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Questions ... 1 (b) ...

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Name and discuss three methods of revoking a will by a testator.

Through Court - A testator can revoke a will through making an application to the court to revoke the will. The Court High Court of Kenya has the powers to revoke a will if they consider it made fraudulently, not made under undue influence and other factors.

Through application to the Registrar - The testator can make an application to the registrar requesting for the same to be revoked, in return the registrar will give notice and through the procedure prescribed he may revoke the will.

Through Insolvency - The will can be revoked through insolvency if the testator becomes bankrupt and the same will cannot hold.

(b)

REGISTRATION NUMBER:

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Questions ... 1(c) .....

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i) Identify the type of grant applied for

The type of grant required in this case shall be a limited grant  $\times$

ii) Identify forms and documents required in application and procedure up to confirmation

The following documents shall be required in order to make the grants of probate

iii) Affidavit for

iii) Affidavit for justification of administration

iv) Death certificate

The procedure for the same shall be,

v) Application made to the register

vi) Register gives for files the same

vii) After filling the register gives notice to the parties involved on the dates ~~and~~ <sup>that they will be heard.</sup> that the application will be heard.

viii) After the parties attend court and present their case.

ix) After hearing the

x) Register then puts up a notice to the public by the and gazettes.

x) If there is no objection then the register confirms and the grant is given.  $\times$

(b)

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Questions ..... 1 (2) .....

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01

REGISTRATION NUMBER:

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Questions ..... 2 (9) .....

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In this view the issues that have been raised in this case are:

(i) Period of Execution after the deceased is buried.

(ii) Number of Persons that can apply for grant.

(iii) Issues pertaining Equal Share to the deceased Property

i) Who are the dependants and who gets the first rights to property.

ii) Who can be appointed as an administrator.

They have some rights in the same such as:

i) Right to apply for grant of power of administration.

ii) Right to equal share that was allocated to minor's first Rights to sue.

(67)

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Questions ..... 2 (b) .....

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## LEGAL OPINION

### LEGAL FACTS

#### LEGAL OPINION

DATE : 21/3/2005

PARTIES: Faith & Linda and Vtronics

v

KENNEDY

### LEGAL FACTS

- 1- Increase the amount for the children's fees and upkeep pending confirmation of grant of Joseph S. Estate
- 2- Restraining order for Kennedy from in any way meddling and or interfering with and entering into Ngong property
- 3- Kennedy's claims Purchaser's rights and Prays that faith and Linda themselves restrain from intermeddling.

### MERITS

#### LEGAL OPINION

- 1- On the first fact the amount cannot be increased before the confirmation of the grant as the administrator can only execute after the confirmation of the grant.
- 2- That a restraining order be granted to faith and Linda for to Kennedy from entering into Ngong property until the next confirmation of grant.
- 3- Kennedy's claims are right but the same can be addressed after the confirmation of grant.

Drawn by,

Rmott

02

They have a valid will in this case and that can be explained by the fact that the will was made in presence of two witnesses. This indicates that they can seek for grant for letters of administration.

In doing so they cannot all be able to administer as it is limited to four people who can only seek for grant. But they have equal share to the estate.

They can do so after the year after of burying the deceased. Since once they are able to get the grant to letters of administration then they can execute.

They need to do the application within six months after the death of the deceased through the office of the register but they have to first apply for the death certificate.

But since the deceased died in city of Port of Victoria they need to apply for the grant in the country of domicile.

They can also get the right to execute through heating as it is allowed in the Commonwealth countries. This will first require them to acquire the grant first, then the same needs to be gazetted, then they will have the death certificate.

Q. 6.

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either margin

Questions ... 4(b) .....

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REPUBLIC OF KENYA  
IN MILIMANI LAW COURTS AT NAIROBI

CIVIL NO.

XX and 5 others

PETITIONER

VERSUS

REPUBLIC OF KENYA  
IN MILIMANI LAW COURTS AT NAIROBI  
IN THE MATTER OF DECEASED ESTATE NO XX  
PETITION NO XX OF XX

XXX

YYY

ZZZ

AAA

BBB

PETITION

- 1 THAT; The above said person are of sound mind and domicile and work in Nairobi area.
- 2 THAT; They were the children of the deceased and lawful rightful inheritors of the estate.
- 3 THAT; They seek the court's orders by;
  - i) They may be appointed executors of the estate
  - ii) That they be allowed to execute if they are allowed

Drawn by

Wakili Mjania & Co ADV

P.O BOX 261, NAIROBI

UCHUMI HOUSE, 2nd floor

To begin with the law states that in making of a will the will should be followed as intended by the deceased. This is the legal stand and that being said they have a legal claim if Binwal fails to execute it as per the will.

They have an access to seek for him to execute the will within the period required so they can seek to have themselves be allowed to be administrators of the estate through the prescribed procedure.

They can do that because through application for grant of a letter of administration or by petitioning their brother. They can as well petition for him to be made to execute the will through specific performance.

In this case the only person allowed to make amends to the will can only be Mr. Singh and since he is deceased then the will can have to follow to the letter of t

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Questions C (b)

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This argument cannot stand as it is described under the Law of Succession act the only persons that can be considered as dependants (beneficiaries) can only be those that are mentioned in the will.

It further describes that they can only be entitled to the share that was allocated to Mr Bimal and since the will cannot be altered by the laws of making of a will describe the court to do only interpret what the will meant.

(3)

(2)

Considering the issue it all goes

This issue is an issue that needs lot of discussion and to begin with the Wakanda laws can be recognized as customary laws but they should as well understand to fit work with other legal laws.

Under this condition they can administrate the deceased estate through the laws provided by in the Act such as law of Centrality of interest in estate that means that as the guardians to the deceased they can continue to administrate the estate.

Since there was no written will on the estate they can move to file a petition under the court to have legal right to administer the estate and the court after hearing their case can determine their claim.

They can as well start the process of requesting for grant of probate through the registrars offices in the commissions offices under the Act that is there.

They have a legal claim since they are all adults that means they are of age to administer the estate and secondly they are of sound mind and that gives them a legal claim.

On the other hand they can claim since they did not participate in the murder of the deceased or they do not have any pending case to that effect.

They have a ground since the law of Succession Act on the issuance of grant to the letters of administration first considers the next of kin as to the other applicants.

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Questions ..... 3 (b) .....

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The first instance where law of succession can allow application of customary law can be when there is a dispute on the issue of burial place for the deceased.

Secondly will be on the allocation and distribution of ancestral land.

(b)

(b)