



KENYA SCHOOL OF LAW

PROBATE AND ADMINISTRATION

ATP 102

COURSE WORK ASSIGNMENT 2018/2019

ASSIGNMENT CARRIES 20% OF THE TOTAL MARK

INSTRUCTIONS

- a) Assignment must be typed – Font 12 and double line spacing
- b) Assignment must be done in Firms with everybody participating
- c) Minutes of the Firm Meetings to be taken at every meeting and attached to the presented assignment
- d) The minutes be signed accordingly by those members present using the official signature
- e) Assignment must not exceed 15 pages (excluding annexures)
- f) The assignment must be spiral bound
- g) Assignment be presented to the Administrative Assistant, Advocates Training Program on 08/06/2018 between 9.00 a.m. and 4.00 p.m.

Dr. Pengano ran a thriving clinic in Nairobi in which he treated cancer patients mainly; and after twenty years he amassed immense wealth.

In 2016, Dr. Pengano bought a large parcel of land in Parashamba Laikipia County on which he built a palatial home, where he went with his family for holidays every three months. However, upon the onset of the long rains which commenced in March, 2018, Dr. Pengano and his family have not been able to go to the farm because the road leading to the house was swept away by floods at the beginning of April, 2018. Before he could come to terms with the loss of his road, he received a call from his farmhand who informed him that floods had swept away his house, animals and crops. Dr. Pengano collapsed when he heard the news and was pronounced dead within two hours; survived by his widow- Regina and four adult children – Joshua, Jona, Maria and Mable.

Dr. Pengano died testate. Before instructing his Advocate to draw his will, he had been having nightmares that his body was being eaten by snakes in Nairobi river; as a consequence he believed that he was about to die.

In his will, Dr. Pengano directed his executor to ensure that his body is cremated at Langata crematorium in case thieves steal his coffin and throw his body into Nairobi River.

The will contained the following bequests:-

1. A bequest to his wife Regina, who was bequeathed the matrimonial home, in Rudasha Estate where they lived with their four children.
2. A bequest to Joshua was palatial home in Karisho Estate, Westlands
3. Maria was bequeathed a house in Southkando because Dr. Pengano informed his Advocate that he was bequeathing her a small house because she will get married and live in a palatial home with her spouse.
4. Mable was bequeathed a small farm in Redlima because she loved small animals especially rats.
5. Dr. Pengano's other beneficiary was his uncle Tuzo, on inquiry as to the reason he was bequeathing him some of his property, he stated that he was doing so

because Tuzo had been begging him increasingly to leave him some property to remember him by.

6. Kamani was another beneficiary because he was the Doctor's priest and had promised him that he would pray for him to go to heaven immediately upon his demise.
7. Finally, there was a bequest which the Doctor wrote himself, to his Advocate comprising two houses in Kileleshwa and Lavington. On inquiry as to the reason for doing so, he told you that you were more than a mere Advocate but a trusted friend.

After scrutinizing the above document, Dr. Pengano requested you to ensure that his wife Regina and son Joshua sign the will, and nobody else. Two days later he went to pick the will and kept it in his safe.

A few months later, Dr. Pengano called his wife Regina and their children Joshua, Jona, Maria and Mable and told them that he has an account with Barclays Bank PLC London in which he had deposited a substantial amount of money for their use in London.

The next day, he called his friend Rafiki and gave him a key to his car KKO 530B and told him that when he dies one day, he should drive the car off, since he had been his friend for many years.

Upon Dr. Pengano's demise, several people came to assist in funeral arrangements. Among the mourners were the following:

- a) A woman called Kazuri with her two daughters who were a spitting image of the deceased. When she was asked the reason for her visit, she said that she had been cohabiting with the deceased in Laini Kumi, Wood lane, Kenyatta estate as husband and wife, and were subsequently blessed with two daughters.
- b) Kazee also came and stated that she was married by the deceased under Yali Customary Law but later divorced because she was not blessed with children. However, after divorce, she was blessed with one issue. She further stated that she still lives in the deceased's former farm in Yali which was awarded to her by court after divorce.

- c) A young woman Kasupu also appeared with a baby boy who was born in July, 2017 at which time the deceased disappeared until she saw his picture in the obituary section of the newspaper.
- d) Whilst the funeral arrangements were in progress, one of the deceased's brothers, Kora drove off with the deceased's motor vehicle carrying his shoes, suits, expensive drinks and cutlery.
- e) After cremation of Dr. Pengano, his widow Regina went to remove his will in the safe, and to her shock and consternation, she found it torn into several pieces as well as, a piece of paper in which he had written..."I revoke all wills made by me; and bequeath my sister Mumisha all my crops and animals in shambayangu in Nakuru." The piece of paper was not signed.

After two weeks, Regina and her uncle Tuzo, Kamani – the priest, Kazuri, Kazee, Kasupu, Advocate and Rafiki have come to you as a renowned Advocate of the High Court of Kenya on Succession matters, for advice and action.

During the meeting, Regina gave the Advocate pieces of the torn will and the piece of paper. Furthermore, Kazuri informed you that she needs school fees urgently for her daughters before their School opens in two weeks' time. Equally, Regina informed the Advocate that maize in one of the deceased's farms are ready for harvesting.

With the assistance of statutory provisions under the Law of Succession Act Chapter 160 of the Laws of Kenya and the relevant cases, advise and take the necessary action on the following:

- a) Clarify issues pertaining to validity of wills
- b) Validity of all the bequests to the beneficiaries noted in 1 to 7 in the narrative
- c) Give the beneficiaries a sample of a will
- d) The status of Dr. Pengano's will and the piece of paper found with the torn will in the safe
- e) The position of deceased's car and suits as well as drinks taken without authority by Kora
- f) Procedure on how to access School fees and harvest maize
- g) Should a dispute arise, advise and take action to ensure urgent settlement of distribution of assets of the deceased.
- h) Advise and take action on acquisition of funds in Barclays Bank PLC London

- i) Advise the family, the requirements under the Law of Succession Act on the car – KKO 530B concerning inheritance
- j) Procedure to be undertaken pertaining to:-
 - Application for a Grant of Probate
 - Application for a Grant of letters of Administration
 - Short term applications for urgent action in order to deal with the property of a deceased e.g. fees, harvesting of crops
- k) Give the parties samples of the above (annextures) in case they wish to apply for the Grants themselves.