

KENYA SCHOOL OF LAW

PROBATE AND ADMINISTRATION ATP 102

COURSE WORK ASSIGNMENT

ASSIGNMENT CARRIES 20% OF THE TOTAL SCORE

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 should be signed by **only those members who are present** using the **official signatures** only.
 - (e) Assignment must not exceed 15 pages one and a half spacing (excluding annexures).
 - (f) The assignments shall be spiral bound.
 - (g) Assignments must be returned to Advocates Training Programme, Administrative Assistant's office, not later than **Friday, 2nd June 2017.**
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The issue

On Friday last week, Mr. Neru, your old client, arrived in your chambers without prior appointment, which was unusual. Upon his arrival, your Personal Assistant suggested that you see him urgently before the arrival of other clients because he appeared troubled and kept muttering incoherently in a strange voice.

When he entered your office, he looked very weak and walked towards your desk with the aid of a walking stick. No sooner had he sat down than he began to explain the reasons for his visit.

Firstly, he stated, to your shock and consternation, that for the past two months, Mr. Tena, his old enemy who died in 2012, has been molesting him on daily basis. He further

stated that evil spirits have been pursuing him, and hence he believes he is about to die and does not wish to die intestate. He instructed you to draw a will on his behalf. He then produced a list of all his assets, as well as, a list of those he wished to bequeath his property.

Among the main beneficiaries was a woman he called his lovely wife, Nema whom he had married after the divorce two years ago from his first customary law wife Fina. Nema, whom you knew to be a wife of somebody else, but had misrepresented herself to Mr. Neru that she was free to be married by him and he indeed married her.

His other beneficiaries he named among them his uncle Pamba. On inquiry as to why he was bequeathing him some of his property Mr. Neru stated that he wished to bequeath him some property because he had been begging him incessantly to leave him something to remember him by upon his demise.

He also gave a bequest to Garama whom he told you is his spiritual guide, who had threatened him that if he did not leave him some property, he would ensure that his soul never got any rest and ensure that he burns in hell for eternity.

Finally, there was a bequest titled 'bequest to my Advocate and trusted friend' and under the said statement, Mr Neru, had listed several houses situated in Umoja Phase V. Even though you pointed out to him that his bequest to you may raise eyebrows among his relatives, he insisted that since you had been more than a Lawyer and legal adviser to him, he wished to reward you for a job well done.

After scrutinizing the above documents, Mr Neru requested you to ensure that his wife Nema and his last born son Marifa, witness the will to make them happy and that no other person should see his will. He bequeathed property to all his beneficiaries except to his first born son Spaki, who he said had been disrespectful to him by marrying the wrong woman, and his daughter, Sera stating that there was no logical use bequeathing her any property because she was married and should inherit property from her husband. He further stated that bequeathing daughters property was against Kalongo Native Law and Customs. Upon the execution and attestation of the will Mr. Neru took it and kept in his safe after which he went about his duties as usual.

A few months later, Mr Neru called his wife Nema and his sons Marifa and his other son Boresha to a family meeting. At the meeting, he told them that he was suffering from a terminal illness, but they had nothing to worry about as he had made a will in their favour. He further told them that there is some money that he obtained from a recent business deal which he had deposited into an account with HSBC Bank in London for their use.

One evening Mr. Neru arrived home from a long walk in his farm and on reaching the forecourt, he heard his sons, Marifa and Boresha talking animatedly to each other. Boresha was telling Marifa that he was getting impatient, as the he goat was taking too long to die! He went on to say that he wanted to get his share of the estate immediately as he intended to go for a cruise to the Pati islands in the Pacific with his girlfriend Kaschana for a fun holiday and thereafter for shopping in Jollywood Boulevard and Dubai, Gold Market.

When Mr Neru heard his sons call him a "he goat", he walked away crestfallen, muttering that his wicked, good-for-nothing sons will die destitute. At this juncture he went to his safe removed the will and cancelled the bequests to his two sons, scoured through the witness signatures and took a knife and cut up the will into several small pieces and threw the will back into the safe.

The next day he called his friend, Jamii, telling him that he did not feel too well and gave him a key to his Car KBZ 222E, and told him that if he dies, the car is his. Mr. Neru died of heart attack a week later.

During the funeral arrangements a woman Tina and her two daughters came to attend the burial. The two young girls were a spitting image of the deceased. On inquiry as to why she had come, she stated that she had lived with the deceased as her husband in Hoody Estate Laini Kumi, for a long time and therefore regarded herself as the deceased's widow.

Fina also came and stated that although they were not blessed with children while she was living with Mr. Neru, she was now a proud mother of a son. She still lives in the deceased's former farm in Terni which was awarded to her by court after divorce.

Whilst making funeral arrangements, one of the deceased's brothers Joni drove off with one of the deceased's motor vehicles, took his clothes and TV claiming that he had a right to the property as this was his brother's property.

A young lady Flo also appeared with a baby and announced that she used to be the mistress of the deceased and gave birth to a baby boy in December 2014, at which time the deceased disappeared until she saw his picture in the obituary section of the newspapers.

After the burial of the deceased, the widow, Nema, the divorced one Fina, the young lady Flo, together with the woman who lived with the deceased Tina, have come to you as a renowned Advocate of the High Court of Kenya on Succession matters, for advice and action.

During the meeting, Nema gave you the torn up will, together with a piece of paper which she found next to the will on which Mr Neru had written " I bequeath all my crops and livestock in my Nakuru farm to my dear sister Bessy"; and signed the paper by himself. They further inform you that the maize on one of the shamba of Mr. Neru was ready for harvesting.

Furthermore, Tina informs you that she needs school fees urgently for her daughters before their school opens in two weeks' time.

1. Show them a sample will for their information.
2. With the assistance of statutory provisions under the Constitution, the Law of Succession Act, Chapter 160 of the Laws of Kenya, other relevant statutes and case law, advise the parties accordingly stating how the estate is dealt with and be finally devolved.
3. When the appropriate Grant is issued, advise the personal representative/s of their obligations and statutory records that they ought to maintain before distribution of the estate.