

SPECIAL ISSUE

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SENATE BILLS, 2020

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**THE LAW OF SUCCESSION (AMENDMENT) BILL,
2020**

A Bill for

AN ACT of Parliament to amend the Law of Succession Act; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Law of Succession (Amendment) Act, 2020.

Short title.

2. Section 3 of the Law of Succession Act, hereinafter referred to as the “principal Act”, is amended in subsection (1) by inserting the following new definitions in their proper alphabetical order-

Amendment of section 3 of Cap 160.

“intermeddling” means —

- (a) taking possession of, disposing off or using the property of the deceased without the authority under this Act or any other applicable law;
- (b) ejecting by force or by coercion a surviving spouse or child from the matrimonial home; or
- (c) any unlawful dealing with the deceased person’s estate.

“marriage” shall have the same meaning assigned to it under the Marriage Act;

“matrimonial home” shall have the same meaning assigned to it under the Matrimonial Property Act;

No. 4 of 2014.

“matrimonial property” shall have the same meaning assigned to it under the Matrimonial Property Act;

No. 49 of 2013.

“residue estate” means the remainder of the net intestate estate after the matrimonial home, matrimonial property and personal effects have been distributed or otherwise transferred;

“spouse” shall have the same meaning assigned to it under the Marriage Act;

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| <p>3. Section 29 of the principal Act is amended by —</p> <p>(a) deleting paragraph (a) and substituting therefor the following new paragraph —</p> <p style="padding-left: 40px;">(a) spouse or spouses and the children of the deceased whether or not maintained by the deceased prior to the deceased’s death;</p> <p style="padding-left: 40px;">(b) deleting paragraph (c).</p> | <p>Amendment of section 29 of Cap 160.</p> |
| <p>4. The principal Act is amended by deleting section 32 and substituting therefor the following new section—</p> <p>32. The provisions of this Part shall not apply to—</p> <p>(a) land contemplated under Article 63 of the Constitution; and</p> <p>(b) agricultural land, crops and livestock in counties specified under the Tenth Schedule.</p> | <p>Deletion of section 32 of Cap 160</p> |
| <p>5. Section 33 of the principal Act is amended inserting the word “existing” immediately after the words “section 32 shall be the”.</p> | <p>Amendment of section 33 of Cap 160.</p> |
| <p>6. Section 35 of the principal Act, is amended —</p> <p>(a) in subsection (1) by —</p> <p style="padding-left: 40px;">(i) inserting the words “subsect to subsection (1A) at the beginning of paragraph (b); and</p> <p style="padding-left: 40px;">(ii) deleting the proviso; and</p> <p>(b) by inserting the following new subsection immediately after subsection (1) —</p> <p style="padding-left: 40px;">(1A) The interest of the surviving spouse under subsection (1)(b) shall determine upon re-marriage.</p> | <p>Amendment of section 35 of Cap 160.</p> |
| <p>7. Section 36 of the principal Act is amended —</p> <p>(a) in subsection (1) by —</p> <p style="padding-left: 40px;">(i) inserting the words “subsect to subsection (1A) at the beginning of paragraph (c); and</p> <p style="padding-left: 40px;">(ii) deleting the proviso; and</p> <p>(b) by inserting the following new subsection immediately after subsection (1) —</p> <p style="padding-left: 40px;">(1A) The interest of a surviving spouse under subsection (1)(c) shall determine upon re-marriage.</p> | <p>Amendment of section 36 of Cap 160.</p> |

8. Section 39 of the principal Act is amended in subsection (1) —

Amendment of section 39 of Cap 160.

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

(a) parents in equal share; or if dead

(b) by deleting paragraph (b) and substituting therefor the following new paragraph—

(b) surviving parent; or if none

9. The principal Act be amended by inserting the following Schedule immediately after the Ninth Schedule-

Insertion of Tenth Schedule in Cap 160

FOURTH SCHEDULE

(s. 32)

1. Tana River
2. Lamu
3. Garissa
4. Wajir
5. Mandera
6. Marsabit
7. Isiolo
8. Turkana
9. West Pokot
10. Samburu
11. Narok
12. Kajiado

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of this Bill is to amend the Law of Succession Act to provide for gender equity in succession matters. The Bill in amending the Law of Succession Act seeks to ensure that the Act provides for gender equity with regards to succession matters. The Bill thus ensures that the widow and widower lose their life interest in the whole of the remainder of the net intestate estate once they re-marry.

The Bill further seeks to exclude community land from the ambit of succession.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill deals with succession matters which essentially touch on land and other movable and immovable property of a deceased person. Succession matters have implications on the well-being of members of the society especially dependants of the deceased person.

The stability and continuity of life of the dependants of a deceased person contribute greatly to the economy and security of a county.

The Bill is therefore a Bill concerning county government in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 16th January, 2020.

ABSHIRO HALAKE,
Senator.

Section 29 of Cap 160 of which it is proposed to amend—

29. Meaning of dependant

For the purposes of this Part, "dependant" means—

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and
- (c) where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

Section 32 of Cap 160 of which it is proposed to amend—

32. Excluded property

The provisions of this Part shall not apply to—

- (a) agricultural land and crops thereon; or
- (b) livestock, in various Districts set out in the Schedule: West Pokot, Wajir, Samburu, Lamu, Turkana, Garissa, Isiolo, Kajiado, Marsabit, Tana River, Mandera, Narok

Section 33 of Cap 160 of which it is proposed to amend—

33. Law applicable to excluded property

The law applicable to the distribution on intestacy of the categories of property specified in section 32 shall be the law or custom applicable to the deceased's community or tribe, as the case may be.

Section 35 of Cap 160 of which it is proposed to amend—

Where intestate has left one surviving spouse with no children

35. (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—

- (a) the personal and household effects of the deceased absolutely; and
- (b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

(2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.

(3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.

(4) Where an application is made under subsection (3), the court shall have power to award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so, what order, shall have regard to—

- (a) the nature and amount of the deceased's property;
- (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;
- (c) the existing and future means and needs of the applicant and the surviving spouse;
- (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
- (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
- (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will (if any); and
- (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.

(5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

Section 36 of Cap 160 of which it is proposed to amend—

Where intestate has left one surviving spouse but no child or children

36. (1) Where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to—

- (a) the personal and household effects of the deceased absolutely; and
- (b) the first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the greater; and a life interest in the whole of the remainder:

Provided that if the surviving spouse is a widow, such life interest shall be determined upon her re-marriage to any person.

(2) The Minister may, by order in the Gazette, vary the amount specified in paragraph (b) of subsection (1).

(3) Upon the determination of a life interest created under subsection (1), the property subject to that interest shall devolve in the order of priority set out in section 39.

Section 39 of Cap 160 of which it is proposed to amend—

Where intestate has left no surviving spouse or children

39. (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—

- (a) father; or if dead
- (b) mother; or if dead
- (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
- (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
- (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.