

## LAW OF SUCCESSION (AMENDMENT) ACT, 2021

On 17<sup>th</sup> November 2021, the President assented into law the Law of Succession (Amendment) Act, 2021 (the “Act”). The Act, will become operational 14 days after, publication as an Act of Parliament in the Kenya Gazette. It is currently awaiting such publication. Its publication will result in amending certain provisions of the current Law of Succession Act, Cap 160 (“LSA”) which governs the administration of a deceased’s estate.

### The key changes are as follows:

- ✓ **Intermeddling** is prohibited. **Intermeddling** is defined under the Act as:
  - taking possession of, disposing of or using property of the deceased without proper legal authority under the Act or any other applicable law;
  - ejecting by force or by coercion a surviving spouse or child from a matrimonial home; or
  - the unlawful dealing with the deceased person’s estate.
- ✓ **Spouse:** The Act now defines and limits a ‘spouse’ to a husband or a wife, and excludes former wives.



**Rachel Mbai**

**Partner**



**Jeanette Ngatia**

**Senior Associate**

- ✓ **Dependants:** The current legislation defines dependants to include the wife or wives, or former wife or wives, as dependents. The Act makes a change to this by removing all references to wives and former wives and replacing it with the term *spouse*. This means former wives will not be recognised as dependants for purposes of succession matters.
- ✓ **Husbands:** The current legislation recognizes husbands of a deceased as a dependant if he was maintained by his wife immediately prior to her death. This has now been deleted under the Act. The effect of this deletion is that a husband no longer has to prove maintenance to be deemed a dependant. A widower automatically qualifies as a dependant as a matter of right, regardless of whether or not he was maintained by his wife before her death.
- ✓ **Re-Marriage:** The rights and life interests of a surviving *spouse* shall determine and cease to exist upon re-marriage. This is a shift from the current LSA which provides that only a widow would lose her life interest if she re-married. The Act has substituted *widow* and replaced it with the term *spouse* (which term includes husband), such that the interest of a surviving spouse whether widow or widower shall cease upon re-marriage.
- ✓ Where a person dies leaving no surviving spouse or children, the deceased estate will be distributed equally between the parents. This is

a departure from the LSA which states that the deceased's estate will first go to the father and thereafter the mother.

## Conclusion

The amendments seek to address the gender disparity contained in the LSA by promoting gender equality. While there is still further work to be done on this, the Act is a step in the right direction towards bridging the gender gap in succession matters.

We shall continue to keep you updated on any further developments. In case of any queries, please contact:

**Rachel Mbai:** [RMbai@kapstrat.com](mailto:RMbai@kapstrat.com)

**Jeanette Ngatia:** [JNgatia@kapstrat.com](mailto:JNgatia@kapstrat.com)