

**THE LAW OF SUCCESSION (AMENDMENT) ACT, 1976**

**No. 8 of 1976**

*Date of Assent: 7th September, 1976*

*Date of Commencement: By Notice*

**An Act of Parliament to amend the Law of Succession Act, 1972**

ENACTED by the Parliament of Kenya, as follows:—

**1. This Act may be cited as the Law of Succession (Amendment) Act, 1976.**

Short title.

**2. Section 3 of the Law of Succession Act, 1972 (hereinafter referred to as the principal Act) is hereby amended—**

Amendment of section 3 of No. 14 of 1972.

(a) in subsection (1)—

(i) by the insertion in the definition of “net estate” after the word “debts” of the words “and liabilities”; and

(ii) by the insertion in the definition of “net intestate estate” after the word “expenses” wherever it occurs of the words “debts, liabilities and estate duty”;

(b) by the deletion of subsection (2) and the substitution therefor of the following new subsection (2)—

(2) References in this Act to “child” or “children” shall include any child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to any female person, any child born to her out of wedlock, and, in relation to any male person, any child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.

(c) by the deletion of subsection (3) and the substitution therefor of the following new subsection (3)—

(3) A child born to a female person out of wedlock, and a child as defined by subsection (2) of this section as the child of a male person, shall have relationship to other persons through her or him, as the case may be, as though such child had been born to her or him in wedlock.

(d) by the insertion after subsection (3) of the following new subsection—

(4) Where the date of birth of any person is unknown or cannot be ascertained, that person shall

be treated as being of full age for the purposes of this Act if he has apparently attained the age of eighteen years, and shall not otherwise be so treated.

Amendment of  
section 5 of  
No. 14 of 1972.

3. Section 5 of the principal Act is hereby amended by the deletion in subsection (1) of the words "and may by such will declare that succession to his estate shall be governed by any law he chooses" and by the substitution therefor of the words "and may thereby make any such disposition by reference to any secular or religious law that he chooses".

Amendment of  
section 13 of  
No. 14 of 1972.

4. Section 13 of the principal Act is hereby amended by the deletion in subsection (2) of the words "an additional independent witness" and by the substitution therefor of the words "at least two additional competent and independent witnesses".

Amendment of  
section 26 of  
No. 14 of 1972.

5. Section 26 of the principal Act is hereby amended by the deletion of the words "in Kenya";

Amendment of  
section 33 of  
No. 14 of 1972.

6. Section 33 of the principal Act is hereby amended by the deletion of the commas and words "tribe, religion or sect" and by the substitution therefor of the words and comma "or tribe,".

Amendment of  
section 35 of  
No. 14 of 1972.

7. Section 35 of the principal Act is hereby amended in subsection (4)—

(a) by the deletion in paragraphs (b), (c) and (e) of the word "widow" and by the substitution therefor of the words "surviving spouse"; and

(b) by the deletion of paragraphs (f) and (g) and by the substitution therefor of the following new paragraphs (f) and (g)—

(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.

Amendment of  
section 36 of  
No. 14 of 1972.

8. Section 36 of the principal Act is hereby amended in paragraph (b) of subsection (1) by the deletion of the word "two" and by the substitution therefor of the word "twenty".

9. Section 37 of the principal Act is hereby amended by the deletion of the words "adult children" and by the substitution therefor of the words "children of full age".

Amendment of section 37 of No. 14 of 1972.

10. Section 46 of the principal Act is hereby amended—

Amendment of section 46 of No. 14 of 1972.

(a) in subsection (2) by the substitution of a colon for the full stop at the end and by the insertion immediately thereafter of the following proviso—

Provided that if such last known place of residence of the deceased is situated in a municipality, or when the deceased dies outside Kenya where-soever his property is situated, the person to whom a report is made under subsection (1) of this section shall not take the action which he is required to take under this subsection unless and until he has first reported the death to the Public Trustee, who may if he so wishes himself take such action instead of such person.; and

(b) by the insertion after subsection (4) of the following new subsection—

(5) Any person who is required to take the steps referred to in subsection (2) of this section—

(a) shall forthwith report to the Public Trustee the death of the person concerned; and

(b) notify the Public Trustee of the steps taken by him pursuant to that subsection.

10A. The principal Act is amended by the repeal of section 47 and the substitution therefor of the following new section—

Replacement of section 47 of No. 14 of 1972.

Jurisdiction of High Court.

47. The High Court shall have jurisdiction to make any grant of representation or to determine any dispute under this Act:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

10B. Section 48 of the principal Act is hereby amended—

Amendment of section 48 of No. 14 of 1972.

(a) by the deletion of the words "or a District Magistrate" which appear in the third line; and

- (b) by the deletion of the provision and the substitution therefor of the following new proviso—

Provided that for the purpose of this section of this Act, in any place where both the High Court and the Resident Magistrate's Court are available the High Court shall have exclusive jurisdiction to make grants of representation and to determine disputes under this Act.

Amendment of section 49 of No. 14 of 1972.

**10C.** Section 49 of the principal Act is hereby amended—

- (a) by the deletion of the brackets and number "(1)" in the first line;
- (b) in the present subsection (1), by the deletion of the words "or District Magistrate within whose territorial jurisdiction" and the substitution therefor of the words "within whose area";
- (c) in paragraphs (i) and (iii) of the proviso to the present subsection (1), by the deletion of the words "territorial jurisdiction" and the substitution therefor in both places of the word "area";
- (d) in paragraph (iii) of the proviso to the present subsection (1), by the deletion of the words "and District Magistrate"; and
- (e) by the deletion of subsection (2).

Replacement of section 50 of No. 14 of 1972.

**10D.** The principal Act is amended by the repeal of section 50 and the substitution therefor of the following new section—

Appeals of High Court.

50. An appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate the gross value of which does not exceed one hundred thousand shillings and the decision of the High Court on such appeal shall be final.

Amendment of section 55 of No. 14 of 1972.

**11.** Section 55 of the principal Act is hereby amended by the insertion after the word "assets" of the words "constituting a net estate".

Amendment of section 58 of No. 14 of 1972.

**12.** Section 58 of the principal Act is hereby amended in paragraph (a) by the insertion after the word "corporation" of the words "or is the Public Trustee".

**13.** Section 65 of the principal Act is hereby amended by the deletion of the word and comma "intestate," and by the substitution therefor of the commas and words "intestate, or the Public Trustee,".

Amendment of section 65 of No. 14 of 1972.

**14.** Section 66 of the principal Act is hereby amended—

Amendment of section 66 of No. 14 of 1972.

(a) in paragraph (a) by the deletion of the words "widow or widows" and by the substitution therefor of the words "surviving spouse or spouses";

(b) in paragraph (b) by the deletion of the words "Act; and" and by the substitution therefor of the word "Act;";

(c) by the deletion of paragraph (c) and by the substitution therefor of the following new paragraph—

(c) the Public Trustee; and;

(d) by the insertion after paragraph (c) of the following new paragraph—

(d) creditors;

**15.** Section 79 of the principal Act is hereby amended by the deletion of the word "and" where it occurs for the second time.

Amendment of section 79 of No. 14 of 1972.

**16.** The First Schedule to the principal Act is hereby amended in paragraph 20 by the deletion of the commas and words "shall be construed to include an illegitimate child, and the terms "son", "daughter", "grandchild" and "issue" and similar words shall be construed to include persons of illegitimate descent" and by the substitution therefor of the commas and words ", "son", "daughter", "grandchild", and "issue" and similar words shall be construed in accordance with the definition of "child" in subsection (2) and with the provisions of subsection (3) of section 3 of this Act".

Amendment of paragraph 20 of First Schedule to No. 14 of 1972.

**17.** The First Schedule to the principal Act is hereby amended in paragraph 35 by the deletion of the word "to" where it occurs for the second time.

Amendment of paragraph 35 of First Schedule to No. 14 of 1972.

**18.** The Fourth Schedule to the principal Act is hereby amended in item (b) of paragraph 4 by the deletion of the words "the lives" and by the substitution therefor of the words "a specified life or specified lives".

Amendment of paragraph 4 of Fourth Schedule to No. 14 of 1972.

**19.** The Fourth Schedule to the principal Act is hereby amended in subparagraph (2) of paragraph 18 by the deletion of the figures "14" and by the substitution therefor of the figure "3".

Amendment of paragraph 18 of Fourth Schedule to No. 14 of 1972.