

KENYA SCHOOL OF LAW



EXAMINATION FOR ADMISSION  
TO THE ROLL OF ADVOCATES

**ATP 102: PROBATE AND ADMINISTRATION**

WEDNESDAY 20<sup>TH</sup> NOVEMBER, 2013

DURATION: 3 HOURS

**Instructions to Candidates**

- (a) Candidates should attempt **FOUR** questions.
- (b) **Answer Question One and at least one question from Section Two.**
- (c) All questions carry 15 marks each.
- (d) Marks shall be lost for illegibility.

PLEASE TURN OVER

## SECTION ONE

1. Mr. Mavuno, a wealthy man, owned several farms in the Rift Valley and three houses in Milimani, Nakuru, as well as a large farm in Nyeri.

Mavuno lived with his wife Maria and two sons, Joash and John in one of the palatial Milimani houses. Their happy family life was shattered on 1<sup>st</sup> January 2010 when Maria was killed by a speeding tanker on Naivasha Road as she drove to Nakuru from Nairobi.

After the demise of Maria, Mavuno began to suffer from insomania and migraines and from time to time, his neighbours would see him walking around his compound calling out:

“Maria dear, what are you doing over there? Come back and make me our favourite steak”

His neighbours and the two sons became concerned and encouraged him to seek medical attention, but he declined to do so.

Mavuno died three months later, leaving a will. During the funeral, two women appeared claiming that they were Mavuno’s wives. One of them who had two daughters, claimed that she had been cohabiting with Mavuno at Bondeni for the past nine years. The other stated that she got married to Mavuno under African Customary Law twenty years before his demise and although he had divorced her claiming that she was a witch, he continued to support her two sons who were, at the time of Mavuno’s demise studying Engineering at the University of Nairobi.

After Mavuno’s funeral service and burial, the two sons of Maria went to see the family lawyer with the will. The lawyer noted that Mavuno had bequeathed his entire estate to the two sons but the said will was signed by Mavuno and the two sons only. In the meantime, the two women and their four children have gone to see a lawyer for legal advice on their fate.

- (a) Discuss in detail the advice the two lawyers would give their respective clients. **(10 marks)**  
(b) What specific steps would be required of each lawyer in pursuit of the interests of their respective clients? **(5 marks)**
2. Critics of section 3(5) of the Law of Succession argue that the Section sanctions adultery and bigamy while undermining the institution of marriage by encouraging breach of marriage contracts. They contend that a situation where a woman who had felt secure because she contracted a monogamous marriage and has a marriage certificate realizes upon the demise of her husband that she has to share her deceased spouse’s estate with strangers, who in the first instance disrupted her monogamous marriage is extremely distressful. They therefore demand an urgent solution to this problem because it has not cured the mischief for which it was enacted.

In view of the foregoing sentiments, discuss in depth, with the aid of decided cases, the impact of section 3(5) of the Law of Succession Act. **(15 marks)**