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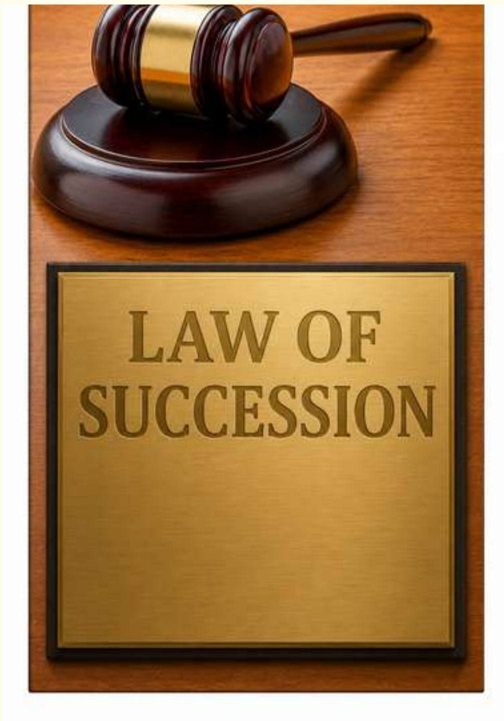
THE LAW OF SUCCESSION

by AMM LAW AFRICA

When a person dies, does the person listed as the next of kin, in relation to funds held in the deceased's accounts become entitled to the said funds as a beneficiary?

In most instances people tend to believe that when they are listed as "**the next of kin**" by account holders in financial institutions this entitles them to the deceased persons property "*hereinafter* "**estate**"" upon their death. Unfortunately, this is not the correct position in accordance with Kenyan Law and in particular, The Law of Succession.



The Law of Succession is the branch of law that primarily deals with how the estate of a deceased person is inherited by his beneficiaries through "**Transmission**". Transmission in relation to succession is where the proprietorship/ownership of the estate moves from the deceased person to his beneficiaries through the **operation of law**, or simply the deceased is not actively involved in the movement of the said property.

Forms of succession

There are two forms of succession within the Kenyan Legal Context: Testate succession and Intestate Succession.

Testate succession involves the making of a valid will capable of taking effect by a person referred to as a "testator" in which he appoints an "executor" (if male) or "executrix (if female)" to distribute his property in the will according to his wishes.

It is noteworthy that a will only takes effect upon the **death** of the testator and the executor derives all power from the will. The testator may at anytime before his death revoke the will or alter the contents through a codicil.

Intestate Succession / Intestacy is defined expressly in **section 34** of the Law of Succession Act, Chapter 160, Laws of Kenya which provides that "**A person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect**." When a person dies and there is no valid will or the will presented is incapable of taking effect, the property devolves under the laws of intestacy. The person who manages the said property is appointed by a competent court and called "the administrator" (if male) or "administratix" (if female).

So who then is a next of kin and what is their role in intestate succession?

This then begs the question what happens when a person dies intestate (without leaving a valid will capable of taking effect) and has listed a certain individual as the next of kin, for example, in relation to a bank account, does the "next of kin" automatically become a beneficiary?

The simple answer is **NO**. **Being listed as a next of kin does not automatically make one a beneficiary.**

In Mathias Kong'ani Rupia & Another v Roselyne Wesonga Shikuya & Another [2008] KEHC 3444 (KLR) the court stated the following regarding the definition of the term next of kin

"***Meanwhile "Barron's dictionary on Legal Terms" gives the following definition of the phrase "Next of Kin***";

The term is used generally with two meanings: (1) nearest blood relations according to the law of consanguinity, and (2) those entitled to take under statutory distribution of intestate's estates. In the latter case, the term is not necessarily confined to relatives by blood, but may include a relationship existing by reason of marriage and may well embrace persons who, in the natural sense of the word bear no relationship at all."

Further in In re Estate of Kamolo & Kinyang (Deceased's) [2026] KEHC 7198 (KLR) the Court stated the following,

"***Although ordinarily a next of kin is not necessarily a person to inherit one's estate but a person to be contacted in case of emergency. A beneficiary on the other hand is one who is entitled to inherit from the deceased***."

Conclusion

From the above mentioned case law, it is evident that being listed as next of kin is simply for purposes of communication in the event an emergency arises. It is not for purposes of succession and anyone may be listed as a next of kin. This does **not** automatically make them a beneficiary to the estate of the deceased and the laws of intestacy shall have to be followed for the funds held in the said account to devolve to the proper beneficiaries of the estate.