



# LEGAL ALERT

## ESTATE PLANNING THROUGH NOMINATIONS: THE LEGAL EFFECT OF NOMINATIONS IN KENYAN SAVINGS AND INVESTMENTS.

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Estate planning ensures that an individual's assets are distributed according to their wishes after death. When a person dies, different rights accrue depending on the relationship with the deceased. Spouses and children are usually considered "automatic" beneficiaries and do not need to prove dependency. Other relatives, such as parents, must demonstrate dependency at the time of death. While heirs often appear to have superior rights over property, there are circumstances where the rights of other individuals, such as joint landowners and nominees, can override those of heirs.

### NOMINATION

A nomination is a formal instruction in which an individual (the nominator) designates one or more persons (nominees) to receive benefits from financial instruments upon their death. These instruments include life insurance policies, pension schemes, bank accounts, cooperative societies, company shares, and SACCO accounts. Nominees can be family members, friends, partners, or any person chosen by the nominator. Crucially, nominated benefits do not form part of the deceased's estate and are therefore not subject to probate or distribution under a will.

### LEGAL FRAMEWORK

Kenyan law provides a clear framework for nominations across various financial instruments to ensure that nominated beneficiaries receive their benefits directly. **Under Section 111 of the Insurance Act (Cap 487)**, policyholders can nominate one or more beneficiaries to receive life insurance proceeds upon death. The nomination must be recorded with the insurer, either in the policy or by endorsement, and the policyholder may change or revoke nominees at any time. Importantly, nomination does not transfer ownership of the policy but guarantees the contractual right for the nominee to receive payment without probate delays. Similarly, the **Cooperative Societies Act and SACCO Societies Act** require members to nominate beneficiaries for their shares or funds, ensuring that payments bypass the estate and go directly to the nominated individuals, facilitating faster and dispute-free transfers. Under **Section 46 of the Retirement Benefits Act (Act No. 3 of 1997)**, retirement scheme members must nominate beneficiaries who will receive benefits directly upon the member's death, with such benefits excluded from the deceased's estate.

### JUDICIAL APPROACH: COURT DECISIONS ON NOMINATIONS

Kenyan courts have consistently reinforced the principle that nominated assets take precedence over claims by heirs. One of the earliest illustrations is **In re Estate of Carolyne Achieng' Wagah (Deceased) [2015] eKLR**, where the court clarified that even in the presence of a will, nominated assets, such as pension benefits and insurance proceeds, cannot be distributed under probate but must instead be paid to the nominees. Following this, in **Benson Mutuma Muriungi v Chief Executive Officer Kenya Police SACCO and Another (2016 eKLR)**, the court confirmed that funds subject to nomination do not form part of the nominator's estate and therefore cannot pass under a will or vest in a personal representative.



More recently, in **Kenya Commercial Bank v Isaac Ingati Abongo (2020 eKLR)**, the court affirmed that policyholders may nominate beneficiaries during their lifetime, and the proceeds must be paid directly to the nominees. This position was further strengthened in **Re Estate of Waziri Mohammed Sudi (2022 eKLR)**, where the court emphasized that life insurance policies are subject to nomination under section 111(1) of the Insurance Act and must be paid to the nominated individuals.

### **WHOSE RIGHTS PREVAIL: DEPENDANTS OR NOMINEES?**

Taken together, these judicial decisions make it clear that nominees' rights prevail over those of dependants. Once an asset is nominated, it is legally removed from the estate and cannot be claimed by heirs or dependants, even if they argue a need for maintenance. For instance, a life insurance policy nominated to specific beneficiaries must be paid directly to them, and other dependants have no legal claim over it. The courts' consistent approach underscores that nominations are binding, legally protected, and override inheritance claims from the deceased's family members.

### **PRACTICAL IMPLICATIONS FOR ESTATE PLANNING**

Nominations offer a secure and efficient way to direct specific assets to chosen beneficiaries. Individuals should regularly update their nominations, particularly after life events such as marriage, divorce, or the birth of children. Nominated assets should not be included in a will, as the will cannot override the nomination. Selecting nominees carefully and clearly allocating shares reduces potential disputes and ensures assets pass directly to the intended recipients without legal complications.

### **Conclusion**

Nominations in Kenya provide a legally recognized, straightforward, and effective method for passing on assets. The law, supported by court decisions, guarantees that nominated assets bypass the estate and take precedence over heirs' claims. Properly used, nominations protect an individual's legacy, reduce the risk of disputes, and ensure that assets are distributed according to the nominator's wishes.

Should you have any questions on this legal alert, please do not hesitate to contact us,



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