Understanding Life interest in Succession Law

Life interest arises in cases of intestacy—that is, when a person dies without leaving a valid will—and is survived by a spousewith or without children.

The Law of Succession Act (Cap. 160 of the Laws of Kenya) provides the legal framework for how life interest operates in such situations, outlining the rights of the surviving spouse and the eventual devolution of the estate to the children.

The surviving spouse will become the Personal Representative of the Estate of the deceased and accoding to Section 84 of the Law of Succession Act, Where the estate of a deceased person involves continuing trusts—such as a life interest for a surviving spouse, or where there are minor beneficiaries—the law provides that the personal representatives shall act as trustees of the estate.

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Section 35 of the Law of Succession Act governs the distribution of an intestate estate where the deceased is survived by a spouse and children. It provides that the surviving spouse shall be entitled to the personal and household effects of the deceased absolutely.

In addition to this, the spouse is granted a **life interest in the whole residue of the net intestate estate.** This means the spouse may use and benefit from the estate during their lifetime, but does not take full ownership of it. Notably, where the surviving spouse is a widow, this life interest is subject to termination upon her remarriage.

The section also confers a power of appointment upon the surviving spouse. This power allows the spouse to distribute part or all of the capital of the net intestate estate to the surviving children by way of gift taking immediate effect.

However, this power is limited in two key respects:

- it cannot be exercised through a will, and
- it cannot be used to make gifts that take effect at a future date.

In other words, the appointment must be immediate and inter vivos.

Importantly, Section 35(3) offers a protective mechanism for children of the deceased. If any child believes that the surviving spouse has unreasonably exercised—or failed to exercise—the power of appointment, they are permitted to apply to the court.

This is how Application for Reasonable provision is done in the case of intestacy.

The court may then allocate the applicant's share, with or without varying any prior distributions made. This provision ensures a measure of accountability and fairness in how the life interest and the associated powers are exercised by the surviving spouse.

Conditions for sale of property held under life interest

A surviving spouse who holds a life interest under Section 35 (where the deceased is survived by a spouse and children) or Section 36 (where the deceased is survived by a spouse but no children) may, under specific conditions, sell property that is subject to that life interest.

This sale, however, is not automatic and is only permitted if it is **necessary for the maintenance of the surviving spouse.** Furthermore, the sale must be made with the consent of all co-trustees and all children who are of full age. Where such unanimous consent is not possible, the spouse may instead seek and obtain authorization from the court.

However, in cases involving immovable property, such as land or buildings, the law is stricter. Even if all other parties consent, the sale of immovable property during the life interest period always requires the prior consent of the court.