

NEWSLETTER



↓ **IN THIS NEWSLETTER YOU WILL FIND:**

**REGISTRATION OF DATA HANDLERS IN
KENYA**

&

**SUPREME COURT'S DECISION ON THE
RIGHT OF APPEAL IN SUCCESSION
MATTERS**



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INTRODUCTION

The rapid digitization of services in Kenya has led to an increased collection and processing of personal data by both public and private entities. To safeguard the privacy rights of individuals, Kenya enacted the Data Protection Act, 2019 which establishes a comprehensive legal framework governing the processing of personal data.

One of the key compliance mechanisms under the Act is the mandatory registration of data handlers, specifically data controllers and data processors, with the Office of the Data Protection Commissioner (ODPC). Registration promotes accountability, transparency, and regulatory oversight in the handling of personal data.

LEGAL FRAMEWORK GOVERNING REGISTRATION

The obligation to register data handlers is primarily provided for under Part III of the Data Protection Act, 2019, which prohibits any person from acting as a data controller or data processor without registration by the Data Commissioner.

The Act is further operationalized through the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021 which provide detailed procedures, thresholds, and requirements for registration.

These regulations established the formal system for registration of entities processing personal data in Kenya.

MEANING OF DATA CONTROLLERS AND DATA PROCESSORS

Data Controller

A data controller is a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purpose and means of processing of personal data – ***Section 2 of the Data Protection Act.***

Examples include:

- Financial institutions collecting customer data
- Employers processing employee information
- Online platforms collecting user data

Data Processor

A data processor is a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller typically under a contractual relationship and without deciding the purpose of processing – ***Section 2 of the Data Protection Act.***

Examples include:

- Cloud storage providers
- Payroll service providers
- IT service companies managing databases

An organization may also register as both a controller and processor depending on the nature of its data processing activities.

ENTITIES REQUIRED TO REGISTER

Under Kenyan law, registration is mandatory for entities that meet specific thresholds or engage in certain activities. The Commissioner determines the threshold by considering:

- the nature of industry;
- the volumes of data processed;
- whether sensitive personal data is being processed; and
- any other criteria the Data Commissioner may specify.

Entities required to register include those that:

- Have an annual turnover or revenue exceeding KES 5 million, or
- Have more than ten employees, or
- Process personal data in sectors classified as high-risk.

High-risk sectors requiring registration include:

- Financial services
- Telecommunications
- Healthcare services
- Education institutions
- Property management
- Hospitality industry
- Direct marketing activities
- Transport services
- Businesses that process genetic data
- Gambling
- Political canvassing.

ENTITIES EXEMPT FROM REGISTRATION

Certain small businesses may be exempt from mandatory registration.

Entities are generally exempt if they:

- Have annual turnover below KES 5 million, and
- Employ fewer than ten employees, provided they do not process personal data in the specified high-risk sectors.

However, even exempt entities must still comply with general data protection principles under the Data Protection Act.

REGISTRATION PROCEDURE

Registration of data handlers in Kenya is conducted electronically through the ODPC online portal.

The process involves the following steps:

Online Application

Applicants submit an application in the prescribed form through the ODPC registration portal.

Submission of Required Information

Applicants must provide:

- Organizational details including the details of the data protection officer
- Description of personal data and sensitive data processed
- Purpose of processing
- Categories of data subjects
- Declaration of the number of employees
- Security measures adopted
- Contact information of the organization.

Supporting documents may include:

- Incorporation documents
- Contact details of the organization
- Details of processing activities

Payment of Registration Fees

Applicants are required to pay prescribed fees depending on factors such as turnover and number of employees.

Review by the Data Commissioner

The Data Commissioner reviews the application to determine compliance with legal requirements.

Issuance of Certificate

Where the application is approved, the applicant receives a certificate of registration, which is valid for two years.

The certificate must be renewed before expiry.

REGISTER OF DATA HANDLERS

The Data Commissioner maintains a public register of data controllers and processors containing:

- Names and contact details of registered entities
- Categories of personal data processed
- Business address
- Details of data protection officers where applicable.

This register promotes transparency and accountability in the processing of personal data.

OFFENCES AND PENALTIES FOR NON-COMPLIANCE

Failure to register where required constitutes an offence under Kenyan law.

Possible penalties include:

- A fine not exceeding KES 3 million,
- Imprisonment for up to ten years, or
- Both.

Providing false information during registration or failing to renew registration may also attract sanctions.

IMPORTANCE OF REGISTRATION

Registration of data handlers plays several important roles in Kenya's data protection regime:

- Enhances transparency and accountability in data processing
- Enables regulatory oversight by the Data Commissioner
- Protects the privacy rights of individuals
- Promotes trust in digital services and electronic commerce.

CONCLUSION

The registration of data controllers and data processors is a central pillar of Kenya's data protection framework.

Through the Data Protection Act, 2019 and the accompanying Registration Regulations, Kenya has established a regulatory system that ensures organizations processing personal data operate transparently and responsibly.

Compliance with the registration requirement not only fulfills a legal obligation but also strengthens data governance practices, protects individual privacy, and supports the growth of Kenya's digital economy.

RIGHT TO APPEAL IN SUCCESSION MATTERS

The Supreme Court has in ***Eliud Mwenda Wandu v Kevin Wanjohi Muchira [2026]*** clarified the position on whether a litigant has an automatic right of appeal to the court of Appeal in succession matters arising from a decision of the High Court exercising its original jurisdiction.

Factual Background

Peter Wandu Mwenje passed away in 1998 leaving behind his estate and two wives, Annah whom he contracted a statutory marriage and Jane whom he inherited from his late brother. The Magistrates court in Kerugoya found that both Annah and Jane were widows of the deceased and ordered that both be appointed as joint administrators of the estate.

Jane applied for confirmation of the grant at the High court and the court proceeded to distribute the estate of the deceased in accordance with Section 40 of the Law of Succession Act. On appeal, the Court of Appeal in Nyeri held that the appeal before it arose from a judgment of the High Court in the exercise of its original jurisdiction in confirming the grant in issue as opposed to from the exercise of the High Court's appellate jurisdiction and therefore parties were required to seek leave of the court. As no leave had been sought or obtained, the court found the appeal to be incompetent and accordingly struck it out.

Analysis

The question on the right of appeal, arises against the backdrop of conflicting decisions of the Court of Appeal on the issue.

One school of thought holds that **leave is a jurisdictional prerequisite before** an appeal may lie to the Court of Appeal in succession matters arising from the High Court's original jurisdiction. This was emancipated in ***Boit v Kumin [2025]*** where the court held that where there is no express provision for the right to appeal, parties are required to seek leave.

On the other hand, the competing view posits that **Article 164(3)(a)** of the Constitution confers an **unfettered right of appeal** from the High Court to the Court of Appeal, thereby dispensing with the requirement for leave as determined in ***Re Estate of R.B.C [2023]***.

Supreme Court's decision

The court held that the Law of Succession Act and the Probate and Administration Rules do **not** contain any express provision requiring leave for appeals from decisions of the High Court rendered in the exercise of its original jurisdiction. In the absence of such express stipulation, the requirement for leave in succession jurisprudence cannot be said to arise from statute, but rather from judicial interpretation.

The Supreme court was of the view that there is no legal basis for imposing a requirement of leave as a prerequisite for lodging an appeal to the Court of Appeal against a decision of the High Court rendered in the exercise of its original jurisdiction in a succession matter. Such a requirement, not being anchored in either the Constitution or statute, cannot be properly sustained.

The Supreme court went further to state that it would be **discriminatory** to require litigants in succession matters where proceedings originate in subordinate courts to enjoy a right of appeal but deny a corresponding avenue where the High court is the court of first instance.

Conclusion

The court is desirous of promoting equality and access to justice thus parties in succession matters where High court exercised original jurisdiction **enjoy an automatic right of appeal to the Court of Appeal.**



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LEGAL MAXIM OF THE MONTH

"UBI JUS, IBI REMEDIUM"

TRANSLATION:

WHERE THERE IS A RIGHT, THERE IS A REMEDY.

EXPLANATION: THIS MAXIM EXPRESSES A CORNERSTONE OF LEGAL ACCOUNTABILITY THAT THE LAW DOES NOT RECOGNISE A RIGHT WITHOUT ALSO PROVIDING A MEANS TO ENFORCE OR VINDICATE IT. IF A PERSON'S LEGAL RIGHT HAS BEEN VIOLATED, THE COURTS MUST BE CAPABLE OF OFFERING REDRESS. A RIGHT WITHOUT A REMEDY IS, IN PRACTICAL TERMS, NO RIGHT AT ALL.

PRACTICAL RELEVANCE:

THIS PRINCIPLE HAS DRIVEN THE DEVELOPMENT OF EQUITY, COMMON LAW REMEDIES, AND ACCESS TO JUSTICE JURISPRUDENCE. IT CHALLENGES LEGAL SYSTEMS TO CONTINUALLY CLOSE GAPS WHERE RIGHTS EXIST ON PAPER BUT GO UNENFORCED IN PRACTICE A PARTICULARLY RESONANT THEME IN CONSTITUTIONAL AND HUMAN RIGHTS LAW.