



LEGAL TAKE

— PRIVATE CLIENT · GUIDE

Family Businesses in Kenya: Governance, Employment and Succession

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Family businesses are the backbone of the Kenyan economy. Most are built on trust, loyalty and informal arrangements, which work well while the founder is in charge and the family is small. As the business and the family grow, the same informality becomes the main source of risk. This guide covers the three areas where we see families most often caught out: governance, employment and succession.

KEY POINTS

- Separate the business from the family: the board runs the company, a family council speaks for the family, and each needs its own rules.
- Family members who work in the business are employees in law. They need written contracts, defined roles and the same processes as everyone else.
- Succession is more than a will. Holding companies, shareholder agreements and family trusts decide whether control passes smoothly or ends up in court.

1. Governance: the board and the family council

For leaders of family-owned enterprises, governance is no longer a back-office concern. The most common failure we see is a single forum, often a family dinner, doing the work of the board, the shareholders and the family at once. Decisions are made without records, family tensions spill into the business, and non-family managers and lenders cannot see who is accountable.

The answer is not to choose between the board and the family, but to let each do its own job.

FORUM	WHAT IT DOES	WHO SITS ON IT	WHAT GOVERNS IT
Board of directors	Sets strategy, oversees management, approves budgets, major contracts and borrowing.	Directors, ideally including at least one independent director as the business grows.	Companies Act, 2015, the articles of association and the directors' general duties.
Shareholders	Appoint directors, approve major changes such as new shares, sale of the business and changes to the articles.	Family members and any holding company or trust that owns shares.	Companies Act, 2015, the articles and any shareholders' agreement.

FORUM	WHAT IT DOES	WHO SITS ON IT	WHAT GOVERNS IT
Family council	Speaks for the wider family: values, who may work in the business, education of the next generation, dividend expectations and family disputes.	Representatives of each branch or generation, whether or not they work in the business.	A family constitution or charter, backed by binding documents where it matters.

A family constitution records how the family will behave as owners. On its own it is usually a statement of intent rather than an enforceable contract. The rules that must bind, such as who may own shares, how shares are valued on exit and how deadlock is broken, belong in the articles of association and a shareholders' agreement.

WHAT A FAMILY CONSTITUTION SHOULD COVER

- Who may own shares, and what happens on marriage, divorce or death.
- Who may work in the business, on what qualifications and terms.
- Dividend policy and how family members are paid for their roles.
- Appointment of directors, including independent directors.
- How disagreements are raised and resolved, starting with mediation.
- How a family member can exit, and how their shares are valued.

2. Employment: contracts for family members

Roles in family businesses are often assigned verbally, and formal contracts are missing or out of date. That works until a family member leaves on bad terms, a sibling is promoted over another, or the Kenya Revenue Authority asks how salaries were set. The Employment Act, 2007 applies to family members in the same way as to anyone else.

Written contracts. A contract of service for three months or more must be in writing and set out the job, pay, hours, leave and notice. Family members are no exception.

Three hats, three documents. A family member may be an employee, a director and a shareholder at once. Salary belongs to the job, fees to the directorship and dividends to the shares. Mixing them causes tax and fairness problems.

Defined roles and reporting lines. Job descriptions and reporting lines allow non-family managers to manage family members without fear of being overruled.

Fair process. Before dismissing an employee for misconduct or poor performance, the employer must give reasons and a hearing. A family member who is removed informally can bring an unfair termination claim.

Statutory deductions. PAYE, NSSF, the Social Health Insurance Fund and the Affordable Housing Levy apply to family employees on the same basis as others.

Confidentiality and restraints. Family members see the business's most sensitive information. Confidentiality obligations and, where reasonable, restraint clauses protect the business if they leave.

3. Succession: future-proofing the family legacy

Succession planning now goes well beyond drafting a will. Families who plan early can keep the business running, protect assets from disputes and creditors, use tax reliefs that are available, and distribute wealth to the next generation transparently.

1 Map what the family owns, and how.

List land, shares, accounts and other assets, and confirm whose name each is in. Many disputes begin with assets held informally or in the wrong name.

2 Put a holding structure in place.

A family holding company or other special purpose vehicle can hold the operating business and property, so that ownership changes happen at holding level without disturbing the business.

3 Consider a family trust.

Trusts are now governed by the Trust Administration Act, 2026. A registered trust can hold shares or property for the family, separate ownership from control and reduce the risk of the estate being fragmented on death.

4 Align the shareholders' agreement.

Pre-emption rights, transfer restrictions and valuation rules keep shares within the family and give a fair exit to those who want to leave.

5 Make wills and powers of attorney.

Wills deal with what remains outside the structure. Powers of attorney allow trusted people to act if the founder is unwell or unavailable.

6 Plan the leadership transition.

Identify and prepare successors, involve independent directors and set a timetable. A handover planned over years is very different from one forced by illness or death.

Transfers into companies and trusts can attract stamp duty and capital gains tax, with reliefs available in some cases. Dependants who are not adequately provided for can also ask the court for provision under the Law of Succession Act, so structures should be designed with the whole family in mind.

SIGNS IT IS TIME TO ACT

- The founder is the only person who can sign, approve or access key accounts.
- The second generation is joining the business, or marrying.
- Family members work in the business without written contracts.
- Property and shares are held in individual names with no plan for what happens next.
- Lenders, investors or senior hires are asking about governance.

TALK TO US

Every situation is different. This is where we get specific to yours.

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