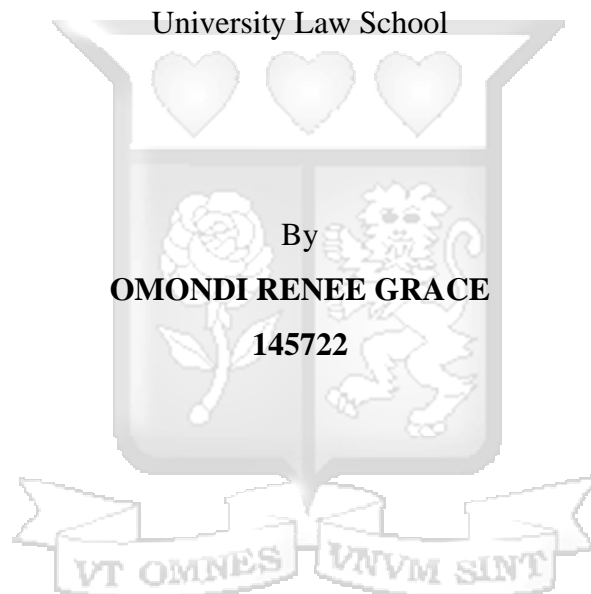


**Estate Planning in the Digital Age: Adapting the Law of Succession Act to  
Address Challenges Presented by Digital Assets.**

Submitted in partial fulfillment of the requirements of the Bachelor of Laws Degree, Strathmore



University Law School  
By  
**OMONDI RENEE GRACE**  
**145722**

Prepared under the supervision of


Dr. Peter Kwenjera

March 2025

11684 Words



## Declaration

I, **OMONDI RENEE GRACE** do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: ..... 

Date: 10<sup>th</sup> March 2025

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: .....  

Dr. Peter Kwenjera

Date: 10<sup>th</sup> March 2025

## Acknowledgments

I am deeply grateful to God; His grace has been sufficient throughout this journey, and I have witnessed His fullness. To my supervisor, Dr. Peter Kwenjera thank you for your invaluable guidance, insightful feedback and unwavering support throughout the writing of this dissertation. Your expertise has been instrumental in shaping this work. I extend my heartfelt thanks to my family, whose love and prayers have given me strength through this journey. To my friends, thank you for your constant motivation during the challenging moments. This dissertation would not have been possible without each of you, and I sincerely appreciate your support.



## List of Legal Instruments

Constitution of Kenya, 2010.

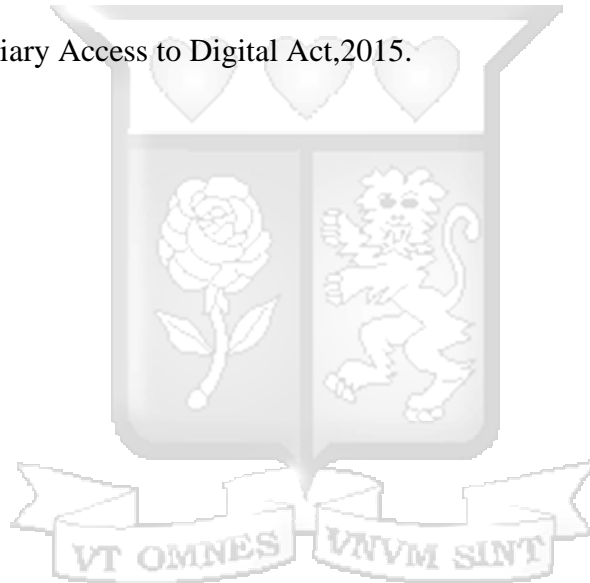
Data Protection Act (2019).

Law of Succession Act, Cap 160, Laws of Kenya.

The Law of Contract Act, Cap 23, Laws of Kenya.

Stored Communications Act, U.S.C.

Revised Uniform Fiduciary Access to Digital Act, 2015.



## List of Cases

Ajemian v. Yahoo Inc. (2013), Massachusetts Court of Appeals, United States.

Re Estate of Ellsworth (2005), Michigan Court of Appeals, United States.

Re Facebook Inc (2012), United States District Court, Northern District of California.

Re Facebook, Inc., Consumer Privacy User Profile Litigation (2019), Northern District of California, United States.



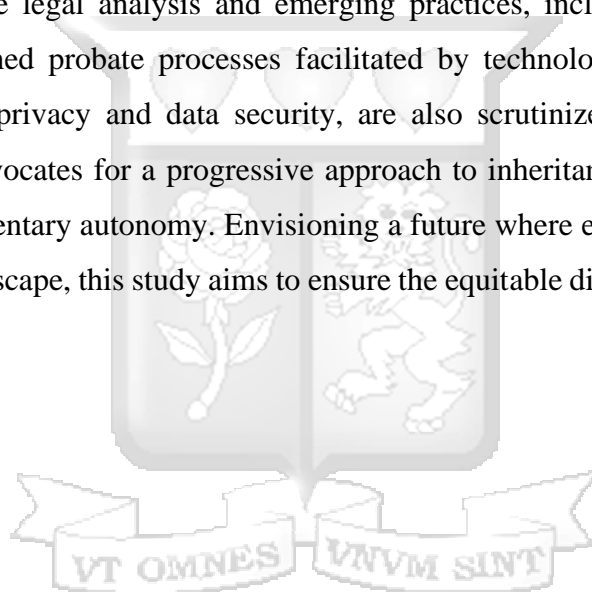
## List of Abbreviations

|          |                                    |
|----------|------------------------------------|
| CoK 2010 | Constitution of Kenya 2010         |
| DSP      | Data Service Providers             |
| IP       | Intellectual Property              |
| US/USA   | United States                      |
| NFTs     | Non-fungible tokens                |
| TOS      | Terms of service                   |
| GDPR     | General Data Protection Regulation |



## Abstract

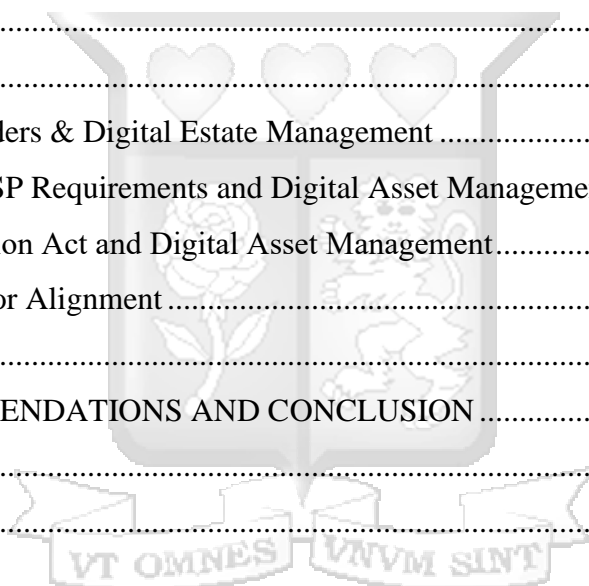
In the era of digital dominance, estate planning faces a daunting challenge: adapting to the complexities of digital assets within existing legal frameworks. This study explores the urgent need to amend the Law of Succession Act to accommodate the realities of the digital age. The surge in digital assets, spanning cryptocurrencies, social media profiles, and cloud-stored documents, reshapes the landscape of inheritance, exposing gaps in current laws and leaving individuals vulnerable to legal ambiguities. Through a comprehensive examination drawing on legal, technological, and societal perspectives, this study identifies shortcomings in asset classification, valuation, and transfer within succession law. It proposes innovative reforms informed by comparative legal analysis and emerging practices, including redefined property definitions and streamlined probate processes facilitated by technological integration. Ethical considerations, such as privacy and data security, are also scrutinized. By confronting these challenges, the study advocates for a progressive approach to inheritance law, rooted in equity, transparency, and testamentary autonomy. Envisioning a future where estate planning seamlessly navigates the digital landscape, this study aims to ensure the equitable distribution of digital assets in the digital era.



## Table Contents

|  |           |
|--|-----------|
| Declaration .....                                  | i         |
| Acknowledgments .....                              | ii        |
| List of Legal Instruments .....                    | iii       |
| List of Cases .....                                | iv        |
| List of Abbreviations .....                        | v         |
| Abstract .....                                     | vi        |
| <b>CHAPTER 1: INTRODUCTION .....</b>               | <b>1</b>  |
| 1.1 Background .....                               | 1         |
| 1.2 Problem Statement .....                        | 3         |
| 1.3 Research Objectives .....                      | 3         |
| 1.3.1 General Objective .....                      | 3         |
| 1.3.2 Specific objectives .....                    | 4         |
| 1.4 Research Questions .....                       | 4         |
| 1.5 Justification .....                            | 4         |
| 1.6 Hypothesis .....                               | 5         |
| 1.7 Theoretical Framework .....                    | 5         |
| 1.8 Literature Review .....                        | 6         |
| 1.8.1 Digital Assets and Inheritance Law .....     | 6         |
| 1.8.2 The Online Persona .....                     | 7         |
| 1.8.3 Digital assets and Intestacy .....           | 8         |
| 1.9 Methodology .....                              | 9         |
| 1.10 Research Limitations .....                    | 10        |
| 1.11 Chapter Breakdown .....                       | 10        |
| 1.12 Timeline .....                                | 11        |
| <b>CHAPTER 2: CONCEPTUAL FRAMEWORK .....</b>       | <b>13</b> |
| 2.1 Introduction .....                             | 13        |
| 2.2 Defining Digital Assets .....                  | 13        |
| 2.3 Digital Assets as Property .....               | 14        |
| 2.4 Nature of Digital Assets .....                 | 16        |
| 2.5 Digital Assets and Intellectual Property ..... | 18        |

|  |    |
|--|----|
| 2.6 Conclusion .....   | 20 |
| CHAPTER 3: VARIATIONS IN LEGAL FRAMEWORKS FOR DIGITAL ASSETS.....                    | 21 |
| 3.1 Introduction.....  | 21 |
| 3.2 Kenya’s Law of Succession Act .....  | 22 |
| 3.3 OVERVIEW OF USA LEGISLATION.....   | 23 |
| 3.3.1 Stored Communications Act.....   | 24 |
| 3.3.2 Computer Fraud and Abuse (CFAA).....   | 25 |
| 3.4 State Specific Approaches to Regulation of Digital Assets.....                   | 27 |
| 3.5 Conclusion .....   | 28 |
| CHAPTER 4: DIGITAL SERVICE PROVIDERS AND DATA PROTECTION IN ESTATE<br>PLANNING ..... | 30 |
| 4.1 Introduction.....  | 30 |
| 4.2 Digital Service Providers & Digital Estate Management .....                      | 30 |
| 4.3 Conflicts Between DSP Requirements and Digital Asset Management.....             | 32 |
| 4.4 Kenya’s Data Protection Act and Digital Asset Management.....                    | 33 |
| 4.5 Proposed Strategies for Alignment .....  | 34 |
| 4.6 Conclusion .....   | 36 |
| CHAPTER 5: RECOMMENDATIONS AND CONCLUSION.....                                       | 37 |
| 5.1 Introduction.....  | 37 |
| BIBLIOGRAPHY.....  | 40 |



# CHAPTER 1: INTRODUCTION

## 1.1 Background

As lives increasingly resonate through the digital realm, the question of how digital footprints are passed becomes a legal puzzle. As wealth, memories, and identities in the digital realm are stored online; from cryptocurrencies to social media profiles, there is a need to reconcile the Law of Succession Act with the complexities associated with digital assets and their rightful allocation upon an individual's demise.

The landscape of personal assets has undergone a radical transformation, largely driven by the digitization of wealth and the emergence of online identities. Traditionally, estate planning has focused on physical assets such as real estate, investments and personal belongings.<sup>1</sup> However, the rise of digitalization through social media accounts and the increasing use of virtual currency has made estate planning more complex. Digital assets encompass a wide array of possessions such as social media accounts, cryptocurrency holdings, and cloud-stored documents to online businesses and intellectual property.<sup>2</sup> As individuals increasingly amass substantial virtual wealth, a well-structured legal framework is necessary to regulate the succession and inheritance of digital assets.

As Kenya witnesses an increase in internet indulgence and growth of digital entrepreneurship, individuals are amassing substantial virtual estates that lack clear guidelines for handling them after their death.<sup>3</sup> This is brought about by the lack of provisions within existing legal frameworks to account for digital assets leading to potential nuances during succession. Platforms such as social media sites and email providers often have policies that dictate what happens to an account when the user passes away. These policies can vary widely, ranging from freezing the account to deleting it entirely. This can create challenges for the deceased loved ones who may want access to their online presence for various reasons such as preserving

---

<sup>1</sup>Section 2, Law of Succession Act, (1982).

<sup>2</sup> Kutler N, 'Protecting Your Online You: A New Approach to Handling Your Online Persona after death', University of California, 2019,5.

<sup>3</sup> Gatuyu, "Managing Digital Assets in Kenya: Regulatory Framework, Practices and Future Prospects"<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2693072](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2693072)> November 22, 2015.

memories or closing accounts tied to financial or personal information.<sup>4</sup> Furthermore, the right to be forgotten becomes particularly relevant. It allows individuals to have personal data removed from the internet.<sup>5</sup> In line with the Law of Succession Act, incorporating the right in is essential for managing digital estates, as the current legislation lacks provisions for digital assets. Amending the Act to include this right and establishing a regulatory authority would help protect the privacy of deceased individuals and ensure proper handling of their digital legacies.

As of 2019, mobile operators handed over Ksh. 500 million in unclaimed mobile money to the government, highlighting that the owners were not found or were presumed dead.<sup>6</sup> With over 90% of Kenyans using mobile phone networks and transacting billions, the lack of regulations leaves many assets, including mobile money, unclaimed or inaccessible by heirs.<sup>7</sup> While M-PESA has implemented procedures for next-of-kin claims, there is no specific law governing the inheritance of digital assets such as cryptocurrencies, online businesses, or digital property like Bitcoin.<sup>8</sup> The decentralized nature of these assets complicates succession as courts cannot enforce inheritance over anonymous, virtual accounts. Chief Justice David Maraga acknowledged the importance of addressing this issue, but the legal vacuum persists, posing challenges in cases involving digital inheritance, especially where no will is present.<sup>9</sup>

This study aims to critically assess the current legal framework, specifically the Law of Succession Act in Kenya, in addressing the complex challenges surrounding the inheritance of digital assets. By exploring the intersection of technology, law, and societal changes, it also

---

<sup>4</sup> Kutler N, 'Protecting Your Online You: A New Approach to Handling Your Online Persona after death', University of California, 2019,5.

<sup>5</sup> Mokuri E, 'Data Protection in Kenya: The case of the Right to be Forgotten' Published LLB Dissertation, Strathmore Law School, Nairobi, 2016,25.

<sup>6</sup> Kamau Muthoni, No law for inheritance of digital assets or property, Judiciary reveals, 2018, <https://www.standardmedia.co.ke/article/20011284484/no-law-for-inheritance-of-digital-assets-or-property-judiciary-reveals> on 16 March 2019.

<sup>7</sup> Kamau Muthoni, No law for inheritance of digital assets or property, Judiciary reveals, 2018, <https://www.standardmedia.co.ke/article/20011284484/no-law-for-inheritance-of-digital-assets-or-property-judiciary-reveals> on 16 March 2019.

<sup>8</sup> Ignacio Mas and Dan Radcliffe, 'Mobile money go viral in Kenya' 32 *Capco Institute's Journal of Financial Transformation*, 2011.

<sup>9</sup> Kamau Muthoni, No law for inheritance of digital assets or property, Judiciary reveals, 2018, <https://www.standardmedia.co.ke/article/20011284484/no-law-for-inheritance-of-digital-assets-or-property-judiciary-reveals> on 25 May 2021.

seeks to draw lessons from the United States and identify best practices in legal frameworks governing digital asset inheritance. Moreover, it seeks to propose practical amendments to ensure a seamless and equitable succession process for both tangible and digital assets. In an era dominated by virtual wealth accumulation, the paper's significance lies in its potential to shape a modern and comprehensive approach to estate planning, ultimately contributing to a more inclusive and equitable transfer of wealth in the digital age.

## **1.2 Problem Statement**

Section 3 of the Law of Succession Act provides definitions and terms related to property inheritance but lacks a specific definition or provision for digital assets. This creates a gap in the legal framework, especially considering the rapid growth of digital assets, such as online accounts, cryptocurrencies, and intellectual property in the digital space. While the Act addresses traditional movable and immovable assets, it does not account for the unique nature of digital assets, which can hold both significant economic and sentimental value. As a result, without clear legal guidance, issues such as disputes over digital assets, access to online accounts, and the distribution of virtual property remain unresolved. This legal gap raises concerns about privacy, access to credentials, and proper valuation of digital assets during estate distribution, leading to delays, potential conflicts, and the risk of assets being overlooked in the succession process.

## **1.3 Research Objectives**

### **1.3.1 General Objective**

The aim of this paper is to critically assess the current legal framework, specifically the Law of Succession Act in Kenya, in addressing the complex challenges surrounding the inheritance of digital assets.

### 1.3.2 Specific objectives

- a. To conduct a comprehensive review of the legal framework governing the inheritance of social media accounts, cryptocurrencies, and digital files in Kenya, identifying key legal considerations and challenges.
- b. To draw lessons from the United States and identify best practices in legal frameworks governing digital asset inheritance.
- c. To propose strategies and amendments to streamline the inheritance process within Kenya's legal framework.

### 1.4 Research Questions

- a. What legal considerations govern the inheritance of social media accounts, cryptocurrencies and digital files in Kenya?
- b. What variations exist in the USA to address the inclusion and management of digital assets in estate planning?
- c. In what ways can advancements in technology and legal innovation be harnessed to facilitate the smooth transition of digital legacies in Kenya's estate planning?

### 1.5 Justification

The digitization of assets has revolutionized estate planning practices, presenting unprecedented challenges that traditional legal frameworks, such as the Law of Succession Act, are ill-equipped to address. The Act is inadequate for the digital age, as it lacks provisions for the recognition, access, management, privacy, and valuation of digital assets. Moreover, it fails to address emerging issues like the right to be forgotten, leaving digital estates poorly protected and managed within the current estate planning processes.

In Kenya, where the digital economy is rapidly expanding, there is a pressing need to adapt existing laws to adequately account for digital assets like cryptocurrencies, social media accounts, and cloud-stored documents. However, the legal treatment of these assets remains unclear, leading to uncertainties and potential disputes in estate administration. This paper is

crucial as it seeks to fill this gap in knowledge and provide practical solutions to navigate the complexities of digital asset succession. By examining the challenges presented by digital assets under the Law of Succession Act and proposing necessary amendments, this research aims to ensure the equitable treatment and effective management of digital estates in Kenya. Furthermore, this paper will have broader implications for the legal and financial sectors, shaping future policies and practices surrounding estate planning in the digital age.

## **1.6 Hypothesis**

In revolutionizing Kenya's Law of Succession Act to embrace the digital era, a more agile and equitable estate planning framework emerges, seamlessly integrating tangible and digital assets. This transformation not only safeguards post-mortem privacy but positions Kenya as part of the pioneer in modern legal landscapes, ensuring a swift and just inheritance process for the wealth of today's interconnected world.

## **1.7 Theoretical Framework**

*Legal Realism*, by Oliver Holmes argues that the law should be grounded in the realities of the world and how it affects society rather than relying on rigid principles and doctrines. It is relevant when considering the limitations of the current Law of Succession Act in Kenya as it was crafted before the emergence of digital assets such as cryptocurrencies and online accounts. Realism emphasizes that the law must evolve to meet the needs of a changing society and hence the integration of digital assets in estate planning remains effective in the legal framework in today's technological world.

Moreover, legal realism approaches advocate for the amendments in the Law of Succession Act by ensuring that administrators and beneficiaries can access and manage digital estates, protect the privacy of digital information and appreciating the worth of digital assets. This theory ensures that the challenges posed by digital assets in succession are resolved promoting fair and equitable distribution of digital assets.

## 1.8 Literature Review

### 1.8.1 Digital Assets and Inheritance Law

The article "Digital assets and inheritance law: How to create fundamental principles of digital succession system?" by Paweł Sz wajdler addresses the pressing need for fundamental principles to regulate the succession of digital assets in the context of inheritance law. Sz wajdler aims to bridge the gap between theoretical considerations and practical implications by offering a comprehensive overview of the complexities of digital assets in estate planning and inheritance law.<sup>10</sup> He centers his article around the challenges faced due to lack of applicable legal regulations in the field of digital succession and the need to develop a legal theory of digital succession to accommodate the changing landscape of estate planning in the digital age.<sup>11</sup>

Sz wajdler's article presents compelling arguments regarding the necessity of establishing fundamental principles for the succession of digital assets. Furthermore, it provides practical proposals for legislators, consumers, digital service providers, and the judiciary to navigate the complexities of digital succession and adapt their practices to align with the evolving nature of digital assets.<sup>12</sup> The article delves into examining the theoretical and practical aspects surrounding digital assets in inheritance law, offering valuable insights into the development of essential principles for digital asset succession.<sup>13</sup> While lacking case studies, the article's key findings emphasize the urgency of addressing challenges in this domain, providing

---

<sup>10</sup> Sz wajdler P, "Digital assets and inheritance law: How to create fundamental principles of digital succession system?" International Journal of Law and Information Technology, 2023, 1, <<https://academic.oup.com/ijlit/article-abstract/31/2/144/7248529?redirectedFrom=full-text>> on 22nd August 2023.

<sup>11</sup> Sz wajdler P, "Digital assets and inheritance law: How to create fundamental principles of digital succession system?" International Journal of Law and Information Technology, 2023, 2, <<https://academic.oup.com/ijlit/article-abstract/31/2/144/7248529?redirectedFrom=full-text>> on 22nd August 2023.

<sup>12</sup> Sz wajdler P, "Digital assets and inheritance law: How to create fundamental principles of digital succession system?" International Journal of Law and Information Technology, 2023, 17, <<https://academic.oup.com/ijlit/article-abstract/31/2/144/7248529?redirectedFrom=full-text>> on 22nd August 2023.

<sup>13</sup> Sz wajdler P, "Digital assets and inheritance law: How to create fundamental principles of digital succession system?" International Journal of Law and Information Technology, 2023, 13, <<https://academic.oup.com/ijlit/article-abstract/31/2/144/7248529?redirectedFrom=full-text>> on 22nd August 2023.

actionable insights for adapting legal frameworks to accommodate the complexities of digital assets in estate planning.<sup>14</sup>

The article is relevant to this dissertation as it focuses on establishing fundamental principles for digital succession, aligning with the imperative to adapt legal frameworks to address specific challenges arising from digital assets in estate planning.

### 1.8.2 The Online Persona

Noam Kutler's article, "Protecting Your Online You: A New Approach to Handling Your Online Persona After Death," seeks to delve into the complexities of digital assets within estate planning. It revolves around adapting traditional succession laws to navigate the complexities of online personas, emphasizing the ethical and legal considerations surrounding the posthumous control and digital legacies.<sup>15</sup>

Kutler constructs compelling arguments, advocating for the recognition of the inherent value of one's online persona and the need to incorporate digital assets into estate planning. He proposes an approach to managing digital assets within the probate process, backed by a comprehensive legal and analytical framework.<sup>16</sup> The article underpins the limitations of contract law in addressing posthumous control of digital assets, asserting the necessity for legislative amendments to safeguard online personas after death.<sup>17</sup>

Employing a legal and analytical approach, Kutler draws on existing probate law, court rulings, and legal frameworks to substantiate his proposed paradigm shift. Despite its strengths in offering a thorough legal analysis and structured argumentation, the article may be limited by its focus primarily on legal aspects, with limited exploration of broader societal and

---

<sup>14</sup> Szwajdler P, "Digital assets and inheritance law: How to create fundamental principles of digital succession system?" International Journal of Law and Information Technology, 2023, 24, <<https://academic.oup.com/ijlit/article-abstract/31/2/144/7248529?redirectedFrom=full-text>> on 22nd August 2023.

<sup>15</sup> Kutler N, "Protecting your online you; A new approach of handling your online persona after death" , Berkeley Technology Law Journal, 2011, 1643 <<https://www.jstor.org/stable/24118668>>2011.

<sup>16</sup> Kutler N, "Protecting your online you; A new approach of handling your online persona after death" , Berkeley Technology Law Journal, 2011, 1654 <<https://www.jstor.org/stable/24118668>>2011.

<sup>17</sup> Kutler N, "Protecting your online you; A new approach of handling your online persona after death" , Berkeley Technology Law Journal, 2011, 1650 <<https://www.jstor.org/stable/24118668>>2011.

technological implications. Moreover, while legislative amendments are discussed, practical challenges in their implementation are not extensively addressed.

The key findings underscore the imperative for legislative amendments to accommodate digital assets in the probate process, emphasizing the inclusion of digital assets in estate planning discussions.<sup>18</sup> Kutler's article is highly relevant to the broader discussion on estate planning in the digital age, aligning with adapting legal frameworks to keep pace with technological advancements.

### 1.8.3 Digital assets and Intestacy

Laura McCarthy's article "Digital Assets and Intestacy" focuses on the challenges posed by digital assets in the context of intestacy and estate planning. It aims to shed light on the complexities arising from the absence of clear legislation regarding digital assets and intestacy, advocating for the adaptation of laws to accommodate the digital age.<sup>19</sup> McCarthy contends that the widespread existence of digital assets poses a notable challenge to estate planning in the contemporary digital era, primarily because of the absence of specific laws governing the succession of such assets.<sup>20</sup> The article emphasizes the pressing need to modify laws related to intestacy to effectively distribute digital assets among potential beneficiaries.<sup>21</sup> Additionally, it argues on how digital assets are continuously evolving, influencing the landscape of modern estate planning and the distribution of digital property to heirs.<sup>22</sup> It also highlights the

---

<sup>18</sup> Kutler N, "Protecting your online you; A new approach of handling your online persona after death" , Berkeley Technology Law Journal, 2011,1664 <<https://www.jstor.org/stable/24118668>>2011.

<sup>19</sup> McCarthy L," Digital Assets and Intestacy," Boston University Journal of Science and technology Law,2015,382,  
<[https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402collection=journals\\_index=>](https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402collection=journals_index=>) 2015.

<sup>20</sup> McCarthy L," Digital Assets and Intestacy," Boston University Journal of Science and technology Law,2015,384,  
<[https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402collection=journals\\_index=>](https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402collection=journals_index=>) 2015.

<sup>21</sup> McCarthy L," Digital Assets and Intestacy," Boston University Journal of Science and technology Law,2015,384,  
<[https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402collection=journals\\_index=>](https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402collection=journals_index=>) 2015.

<sup>22</sup> McCarthy L," Digital Assets and Intestacy," Boston University Journal of Science and technology Law,2015,388,  
<[https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402collection=journals\\_index=>](https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402collection=journals_index=>) 2015.

complexities surrounding copyright ownership of digital assets and the implications for intestacy laws.<sup>23</sup>

A legal analysis approach is used to draw on existing laws, regulations, and scholarly literature to examine the challenges and implications of digital assets in the context of intestacy.<sup>24</sup> McCarthy impressively explores the various types of digital assets, including photographs, videos, emails, financial records, and intellectual property, providing a nuanced understanding of the scope of digital assets in estate planning.<sup>25</sup> However, the article could benefit more with an in-depth analysis of potential solutions or best practices for integrating digital assets into intestacy laws.

The article's insights and arguments contribute significantly to the broader discussion in this dissertation on estate planning in the digital age and the need to accommodate digital assets within succession laws.

## 1.9 Methodology

This study will employ a doctrinal legal research approach, with a primary focus on the analysis of legal principles and doctrines relevant to estate planning in the digital age. Data will be gathered from primary legal sources, including statutes, case law, and legislative documents, as well as secondary sources such as legal commentaries, scholarly articles, and textbooks. The methodology will involve an examination of the Law of Succession Act and be supplemented by an in-depth review of international legal frameworks and comparative analysis where applicable. Emphasis will be placed on scrutinizing issues pertaining to inheritance, property rights, privacy, and contract law, particularly as they relate to digital assets.

---

<sup>23</sup> McCarthy L, "Digital Assets and Intestacy," Boston University Journal of Science and technology Law, 2015, 387, [https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402&collection=journals\\_index](https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402&collection=journals_index) => 2015.

<sup>24</sup> McCarthy L, "Digital Assets and Intestacy," Boston University Journal of Science and technology Law, 2015, 389, [https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402&collection=journals\\_index](https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402&collection=journals_index) => 2015.

<sup>25</sup> McCarthy L, "Digital Assets and Intestacy," Boston University Journal of Science and technology Law, 2015, 405, [https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402&collection=journals\\_index](https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402&collection=journals_index) => 2015.

## 1.10 Research Limitations

In conducting this research, several limitations are anticipated that may affect the scope and depth of the study. Firstly, constraints on data availability may arise due to the accessibility and comprehensiveness of legal sources related to digital asset inheritance laws in Kenya.. The rapidly evolving nature of digital assets and the lack of legislation in this area mean that relevant legal sources, such as updated statutes, case law, and regulatory guidance, may be scarce.. Additionally, the lack of specific legal precedents or detailed case studies involving digital asset inheritance in Kenya could limit the ability to draw definitive conclusions or make a fully nuanced analysis of the challenges on digital assets into existing legal frameworks.

## 1.11 Chapter Breakdown

### Chapter 1: *Introduction*

It will act as an introduction to this study, laying the ground for the following chapters. It will outline key components such as research questions, objectives, and the theoretical framework to be utilized. The aim of this chapter is to establish the context and scope of the research, providing readers with a clear understanding of its purpose. Additionally, it will serve as a guide for interpreting the findings of subsequent chapters, offering readers a roadmap to navigate the progression of the study.

### Chapter 2: *Conceptual Framework of Digital Assets in Kenya*

It defines and categorizes various digital assets, such as cryptocurrencies, digital files, social media accounts, and online businesses, and examines the treatment of digital assets as property and how they overlap with Intellectual property rights. It highlights the unique nature of digital assets and the challenges it creates in succession planning.

### Chapter 3: *Variations in Treatment of Digital Assets in Estate Planning Laws*

Explores variations in estate planning laws, particularly in the USA, regarding digital asset treatment. It examines different state approaches in recognizing and regulating digital assets, including definitions, access requirements, and transfer procedures. By comparing these laws, the chapter identifies best practices to inform Kenyan estate planning law adaptation.

#### Chapter 4: *Data Service Providers and Data Protection in Estate Planning*

This chapter looks into the role of digital service providers (DSP) in managing digital assets after death, focusing on their policies for account access, data transfer, and deletion. It examines conflicts between DSP terms of service and legal requirements for estate planning. Additionally, the chapter evaluates Kenya's Data Protection Act regarding the privacy and management of digital estates and proposes strategies to align DSP practices and data protection regulations with effective estate planning frameworks, incorporating international best practices.

#### Chapter 5: *Recommendations and Conclusion*

This chapter will be the conclusion exploring how technology and legal innovation can facilitate smooth digital asset transition in Kenyan estate planning. Investigating technologies such as smart contracts and legal strategies, it highlights potential benefits and challenges. It will thereby conclude the discussion by restating the main claims of the paper and provide recommendations as to how best the Kenyan jurisdiction should address this issue.

### **1.12 Timeline**

1. *Proposal Submission:*

March 2024

2. *Conceptual Framework of Digital Assets in Kenya:*

October 2024

3. *Variations in Treatment of Digital Assets in Estate Planning Laws*

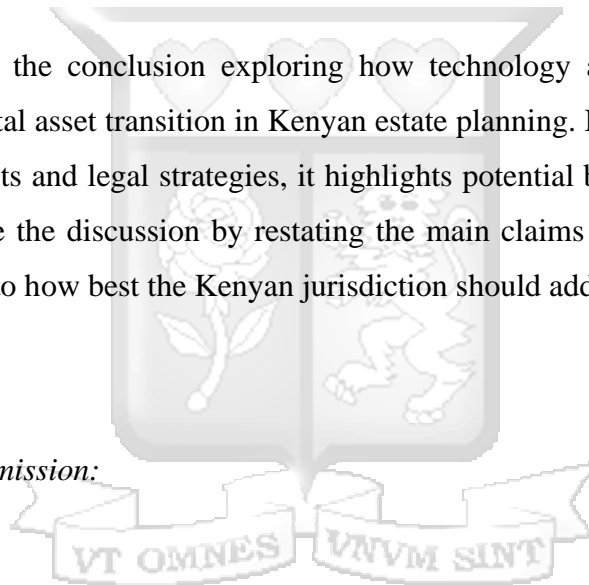
November 2024

4. *Data Service Providers and Data Protection in Estate Planning*

December 2024

5. *Recommendations and Conclusion*

January 2025



6. *Submission of dissertation:*

March 2025



## CHAPTER 2: CONCEPTUAL FRAMEWORK

### 2.1 Introduction

Digital assets are reshaping how wealth is defined and inherited. This chapter aims to define and categorize different types of digital assets. It examines the treatment of digital assets as property and looks into their overlap with intellectual property rights. It highlights how the distinctive nature of digital assets, such as intangibility and reliance on technology, can pose challenges for succession planning and emphasizes the need for clear legal guidelines to manage and inherit them effectively.

### 2.2 Defining Digital Assets

The concept of digital assets has gained considerable attention due to the digitalization of the economy, leading to the emergence of new forms of wealth circulation.<sup>26</sup> Digital assets are defined as items of economic value that exist in electronic form and can be owned, transferred, or managed<sup>27</sup>, including cryptocurrencies, tokens, domain names, social media accounts, digital files, virtual gaming property, and other forms of data. A crucial feature of digital assets is their "binary" form of existence which is self-contained, uniquely identifiable and holds value.<sup>28</sup> Binary data differentiates digital assets from other types of property, as they exist in a digital environment composed of numerical values (0s and 1s) and are stored on computer systems.<sup>29</sup>

Access to this information is possible through a computer, storage drive, smartphone, internet, or server, often facilitated by a third party such as an internet service provider.<sup>30</sup> A digital assets value is linked to the data it contains; the data gives the asset its worth whether financial or

---

<sup>26</sup> Hopkins J, 'Afterlife in the Cloud: Managing a Digital Estate' 5 *Hastings Science and Technology Law Journal* 2013, 221.

<sup>27</sup> Toygar A, 'A New Asset Type: Digital Asset' 22 [Journal of International Technology and Information Management](#) 4, 2013,113.

<sup>28</sup> Kharitonova Y, 'Digital Assets and Digital Inheritance' Lomonosov Moscow State University, 2021,3 <[https://www.researchgate.net/publication/349678915\\_Digital\\_assets\\_and\\_digital\\_inheritance](https://www.researchgate.net/publication/349678915_Digital_assets_and_digital_inheritance)>February 2021.

<sup>29</sup> Agarwal S, 'A Comprehensive Study on Scope and Challenges in Digital Inheritance' 7 *International Journal of Scientific Research in Computer Science Engineering and Information Technology*,2,2021,3.

<sup>30</sup> Agarwal S, 'A Comprehensive Study on Scope and Challenges in Digital Inheritance' 7 *International Journal of Scientific Research in Computer Science Engineering and Information Technology*,2,2021,3.

sentimental.<sup>31</sup> For example, a Bitcoin's value is derived from its scarcity and utility within the blockchain system, while a sentimental photograph stored on a cloud server derives its value from the personal meaning it holds.<sup>32</sup>

Despite their intangibility, digital assets hold a substantial role in the modern and financial realms which are now integral to economic transactions and social interactions. Their reliance on third party platforms for storage and access brings out the complexity in determining ownership, control and transferability and hence raises important questions about their alignment with traditional property concepts and whether they meet the criteria for property.

### 2.3 Digital Assets as Property

Considering the rapid growth in economic importance and the peculiar features of digital assets, some believe they should be treated as property. Property has conventionally formed part of the very foundation of the legal infrastructure and has influenced economic and social order over centuries.<sup>33</sup> Property is not defined by what we own, rather it is defined as a bundle of rights in things around us.<sup>34</sup> The characteristic of ownership involves the right to use, transfer, exclude and control.<sup>35</sup> These assets exhibit property-like characteristics, such as exclusivity, control, and the potential for transfer, yet their classification as property remains a contentious issue.<sup>36</sup>

The exclusivity of digital assets is a key feature that aligns digital assets as property. This is seen as digital assets are often protected by credentials such as passwords and encryption keys that ensure that only authorized individuals can access.<sup>37</sup> An example is cryptocurrencies which are controlled by private keys which grants owners both security and control over the

---

<sup>31</sup> Heather C, 'The 'New' New Property: Dealing with Digital Assets on Death' Queen's University Belfast School of Law, 12, 2012, 4.

<sup>32</sup> Perez D, Digital Succession: Addressing the Disposition of Juan's Online Digital Assets Upon His Death, 'Philippine Law Journal 91, 2018, 388-415.

<sup>33</sup> Wyczik J, 'Ownership in the 21st century: property law of digital assets' *Information & Communications Technology Law*, 2024, 2 <https://doi.org/10.1080/13600834.2024.2408917> on 9 December 2024.

<sup>34</sup> Kariuki F, 'Property Law' Strathmore University Press, Nairobi, 2016, 2.

<sup>35</sup> Kariuki F, 'Property Law' Strathmore University Press, Nairobi, 2016, 7.

<sup>36</sup> Carpenter A, Katyal K, and Riley R, 'In Defense of Property' 118 *Yale LJ* 1022, 2008.

<sup>37</sup> Wyczik J, 'Ownership in the 21st century: property law of digital assets' *Information & Communications Technology Law*, 2024, 2 <https://doi.org/10.1080/13600834.2024.2408917> on 9 December 2024.

asset.<sup>38</sup> Traditionally, one can own property as a right,<sup>39</sup> however, digital assets diverge from this due to their reliance on licensing agreements and contractual terms. Social media accounts are governed by terms of service that limit ownership rights.<sup>40</sup> This contractual model contrasts with traditional property rights, where ownership includes the right to transfer or devise the asset upon death.

Moreover, the nature of digital assets complicates their classification within the common law distinction between choses in possession which are tangible property and choses in action which are intangible rights enforceable by legal action.<sup>41</sup> Cryptocurrencies resist that binary categorization as they are neither things, in any conventional sense, nor familiar contractual rights.<sup>42</sup> Moreover, Bitcoin, if anything, takes value from its perceived scarcity, and it does most of its running on blockchain.<sup>43</sup> While the crypto assets are bereft of any tangible form and contractual basis, several jurisdictions recognize them as intangible property.<sup>44</sup> For example, courts in several jurisdictions recognize cryptocurrencies as intangible property since their history can be verifiable through distributed ledgers.<sup>45</sup> At the same time, these assets share a coincidence with intellectual property rights. However, often they lack traceable creators or owners which raises several legal uncertainties.<sup>46</sup>

Legally, digital assets challenge the framework of property rights. In Kenya the Law of Succession Act does not clearly define digital assets as to whether they amount to property resulting in ambiguity in their management and transfer upon death.<sup>47</sup> In contrast, the US Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA),<sup>48</sup> provides a framework that recognizes digital assets as property. It describes digital assets as electronic

---

<sup>38</sup> Millar J, 'Trust, property and social capital in the digital economy,' Cambridge University Press, 2018,43.

<sup>39</sup> Kariuki F, 'Property Law' Strathmore University Press, Nairobi,2016, 2.

<sup>40</sup> Kutler N, "Protecting your online you; A new approach of handling your online persona after death" , Berkeley Technology Law Journal, 2011,1664 <<https://www.jstor.org/stable/24118668>>2011.

<sup>41</sup> Bell A, 'A theory of property' 90 *Cornell Law Review* 2004, 531.

<sup>42</sup> Lee L, 'Examining the Legal Status of Digital Assets as Property: A Comparative Analysis of Jurisdictional Approaches' *SSRN*, 2024, 4 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4807135](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4807135) on 9 December 2024.

<sup>43</sup> Woxholth J, 'Competing claims to crypto-assets' 28 *Uniform Law Review* 2, 2023, 231.

<sup>44</sup> Wyczik J, 'Ownership in the 21st century: property law of digital assets'4.

<sup>45</sup> Garcia-Teruel M, 'The digital tokenization of property rights. A comparative perspective' 41 *Computer Law & Security Review*, 2021,4.

<sup>46</sup> Lee L, 'Examining the Legal Status of Digital Assets as Property: A Comparative Analysis of Jurisdictional Approaches'5.

<sup>47</sup> Section 3, Law of Succession Act, (Chapter 160 of 2012).

<sup>48</sup> Revised Uniform Fiduciary Access to Digital Act (2015).

records that individuals have ownership rights or interests in.<sup>49</sup> Clearly, to integrate digital assets into estate planning, legal systems must reconcile these challenges by balancing contractual and property rights, ensuring they are adequately protected and transferable in the digital age.

A universal definition of digital assets, combined with a legal framework that acknowledges their property-like nature, will not only streamline their management but also enable efficient succession planning, ensuring digital assets are adequately protected, transferable, and capable of contributing to economic and social systems in the digital age.

## 2.4 Nature of Digital Assets

Digital assets fall into a wide array of categories which range from financial instruments to virtual entertainment and social connections.<sup>50</sup> Financial instruments include platforms like PayPal, banks, and credit unions that manage money or facilitate online transactions.<sup>51</sup> Ownership of the funds in these accounts may appear to be very straightforward however challenges arise when it comes to granting beneficiaries access after the account holder's death.<sup>52</sup> Additional concerns may arise due to digital fraud and the security of online financial assets in the hands of beneficiaries. Without clear laws that secure transfer systems requiring strong authentication and verification processes, beneficiaries are then at risk of unauthorized access to accounts.<sup>53</sup> This may lead to phishing attacks targeting families resulting in the loss of funds.

Moreover, *share trading* is another significant category.<sup>54</sup> It involves ownership and safe transfer of investors' value of stocks which are held by the Central Depository and Settlement Corporation accounts regulated by the Central Bank of Kenya.<sup>55</sup> The accounts ensure secure

---

<sup>49</sup> Section 2, Revised Uniform Fiduciary Access to Digital Act (2015).

<sup>50</sup> Kharitonova Y, 'Digital Assets and Digital Inheritance' Lomonosov Moscow State University, 2021,3

<sup>51</sup> Magenge R, Mutuku M, 'Beyond Land and Cash: Exploring Africa's Digital Inheritance Regime' Medium, 2024,3<<https://policy.medium.com/beyond-land-cash-exploring-africas-digital-inheritance-regime-a3703dd2a8b8>> on 12 August 2024.

<sup>52</sup> Kristina J, 'Estate Planning for Digital Assets' Shumaker, Loop&Kendrick, LLP,2014,2.

<sup>53</sup> Odeyo E, 'Exploring financial inclusion in Kenya through cryptocurrencies: a case for a regulatory framework' unpublished, Strathmore Law School, Nairobi, 2021.

<sup>54</sup> Magenge R, Mutuku M, 'Beyond Land and Cash: Exploring Africa's Digital Inheritance Regime' Medium, 2024,3<<https://policy.medium.com/beyond-land-cash-exploring-africas-digital-inheritance-regime-a3703dd2a8b8>> on 12 August 2024.

<sup>55</sup> <https://www.cdsckenya.com/>

record keeping and transactions, but succession planning is blurred by platform specific terms. Similarly, SportPesa which is known for online betting, holds digital wallets where the users accumulate balances that possess financial value.<sup>56</sup> This is kind of similar to shares or CDSC accounts in which these assets are tied to their financial value and their transfer may be complicated due to privacy laws and platform specific terms.<sup>57</sup>

*Social media* platforms such as YouTube, Instagram, X, among others hold personal data and social capital.<sup>58</sup> The profiles are valuable in a non-monetary sense but are licensed to users. Transferring control over these profiles may be restricted due to lack of the legal right to do so.<sup>59</sup> Moreover, *content holders* like Spotify and Amazon, ownership is constrained by licensing agreements. Despite purchasing digital books or music, users do not own these assets.<sup>60</sup> Instead, platforms like Amazon clarify that their content is licensed and non-transferable.<sup>61</sup> This creates a challenge for estate planning, as beneficiaries cannot inherit these collections of digital content in the same way that they could with physical media like books. In addition, *content creation*, blogs and podcasts generate intellectual property that may have value. Whether these assets can be passed on depends on the platform's terms of service and whether intellectual property rights are retained by the creator.<sup>62</sup>

*Virtual currency*, such as cryptocurrency, is not subject to licensing agreements and can be passed on like traditional financial assets.<sup>63</sup> To access these posthumously, requires that the private keys needed for access must be securely passed to beneficiaries; without them, the cryptocurrency could be lost forever.<sup>64</sup> Similarly, *cloud storage platforms* like Dropbox and

---

<sup>56</sup> <https://www.ke.sportpesa.com/en/sports-betting/football-1/>

<sup>57</sup> Kristina J, 'Estate Planning for Digital Assets' Shumaker, Loop&Kendrick, LLP, 2014, 2 <<https://www.shumaker.com/Templates/media/files/pdf/news/publications/-insights-estate-planning.pdf>> Spring 2014.

<sup>58</sup> Kutler N, "Protecting your online you; A new approach of handling your online persona after death", Berkeley Technology Law Journal, 2011, 1664, 2.

<sup>59</sup> Kutler N, 'Protecting Your Online You: A New Approach to Handling Your Online Persona after death', University of California, 2019, 5.

<sup>60</sup> Magenge R, Mutuku M, 'Beyond Land and Cash: Exploring Africa's Digital Inheritance Regime' Medium, 2024, 3 <<https://pollicy.medium.com/beyond-land-cash-exploring-africas-digital-inheritance-regime-a3703dd2a8b8>> on 12 August 2024.

<sup>61</sup> Muigua K, 'Is Kenya Prepared to Embrace Digital Dispute Resolution' Africa The Lawyer, 2023, 2, accessed on 9 September 2023.

<sup>62</sup> Kutler N, 'Protecting Your Online You: A New Approach to Handling Your Online Persona after death', University of California, 2019, 5.

<sup>63</sup> Natalie M, 'Property Interests in Digital Assets: the rise of digital feudalism', 38, 10 February 2017, 1101.

<sup>64</sup> Natalie M, 'Property Interests in Digital Assets: the rise of digital feudalism', 38, 10 February 2017, 1101.

iCloud, which store personal data such as documents and photos, operate under licensing agreements, complicating posthumous access.<sup>65</sup> Without proper planning, valuable or sentimental data stored on these platforms may become inaccessible to heirs after the owner's demise.

The varied characteristics of digital assets creates complexities in estate planning particularly concerning ownership and access. Without proper legal measures, beneficiaries may struggle to inherit or manage these assets after the owner's demise.

## 2.5 Digital Assets and Intellectual Property

The intersection of digital assets and intellectual property(IP) creates unique considerations in succession planning particularly when it comes to ownership and rights management.<sup>66</sup> One major challenge within succession law is determining whether digital assets should be classified as intellectual property which would impose certain restrictions on their inheritance, or whether they should be treated as freely transferable assets that can be bequeathed without limitations.<sup>67</sup> Digital assets such as cryptocurrencies, non-fungible tokens (NFTs) and digital art, often have an aspect of intellectual creations embodied in them as they are produced through software and blockchain technology.<sup>68</sup> For example, cryptocurrencies are created using computer programs and are meant to be shared widely. They usually operate under open-source licenses, which means that no single entity has full control over them.<sup>69</sup> Consequently, succession planning for these assets requires an understanding of how digital assets fit into the IP landscape, especially when it comes to rights management and transfer after death.

---

<sup>65</sup> Magenge R, Mutuku M, 'Beyond Land and Cash: Exploring Africa's Digital Inheritance Regime' Medium, 2024,3<<https://pollicy.medium.com/beyond-land-cash-exploring-africas-digital-inheritance-regime-a3703dd2a8b8>> on 12 August 2024.

<sup>66</sup> Kharitonova Y, 'Digital Assets and Digital Inheritance' Lomonosov Moscow State University, 2021,5 <[https://www.researchgate.net/publication/349678915\\_Digital\\_assets\\_and\\_digital\\_inheritance](https://www.researchgate.net/publication/349678915_Digital_assets_and_digital_inheritance)>February 2021.

<sup>67</sup> Kharitonova Y, 'Digital Assets and Digital Inheritance' Lomonosov Moscow State University, 2021,5 <[https://www.researchgate.net/publication/349678915\\_Digital\\_assets\\_and\\_digital\\_inheritance](https://www.researchgate.net/publication/349678915_Digital_assets_and_digital_inheritance)>February 2021.

<sup>68</sup> Akhilesh G, 'What are Digital Assets?' The Balance,2021,2<<https://www.thebalancemoney.com/what-are-digital-assets-5207790>>on 23 November 2023.

<sup>69</sup> Kitili J, 'Digital Assets Unveiled: Deciphering Intellectual Property Rights and Privacy Considerations Centre for Intellectual Property and Information Technology,2024,2.

Digital assets can be divided into those that can be protected by IP laws and those that exist purely as digital properties each having a distinct approach in succession planning.<sup>70</sup> Intellectual Property Rights safeguard interests of creators by having legal frameworks such as copyright, trademarks and patents that protect original works from infringement.<sup>71</sup> Due to the risks of unauthorized distribution and digital piracy, estate planners should incorporate protections in wills and trusts to help creators bequeath their digital assets while retaining control.<sup>72</sup> This makes it essential to have clear instructions on how these assets are to be managed and distributed ensuring that IP retains its value for future generations.

The integration of blockchain technology into digital asset management adds a significant layer of complexity for succession planning in Kenya.<sup>73</sup> Blockchain not only facilitates the creation, storage, and transfer of digital assets but also provides a transparent and immutable record of transactions, enhancing ownership verification.<sup>74</sup> This provenance tracking is crucial for establishing the authenticity of digital items, such as NFTs and digital art, allowing creators to control the distribution and usage of their works even after their death. However, this reliance on blockchain introduces new legal considerations regarding the rights associated with digital ownership versus traditional property forms.<sup>75</sup> Unlike how traditional property can be transferred through legal documents such as wills, digital assets often depend on private keys and digital wallets.<sup>76</sup> These technical requirements need appropriate planning to ensure that their heirs receive the necessary credentials to access and manage these assets after the owner's assets.

---

<sup>70</sup> Kharitonova Y, 'Digital Assets and Digital Inheritance' Lomonosov Moscow State University, 2021,5 <[https://www.researchgate.net/publication/349678915\\_Digital\\_assets\\_and\\_digital\\_inheritance](https://www.researchgate.net/publication/349678915_Digital_assets_and_digital_inheritance)>February 2021.

<sup>71</sup> Ray 'Til Death Do us Part: A proposal for handling Digital Assets after Death', 47 Real Property, Trust and Estate Law Journal,3,2013,599.

<sup>72</sup> Kharitonova Y, 'Digital Assets and Digital Inheritance' Lomonosov Moscow State University, 2021,5 <[https://www.researchgate.net/publication/349678915\\_Digital\\_assets\\_and\\_digital\\_inheritance](https://www.researchgate.net/publication/349678915_Digital_assets_and_digital_inheritance)>February 2021.

<sup>73</sup> Deloitte, 'Blockchain and Digital Assets' <<https://www2.deloitte.com/us/en/pages/about-deloitte/solutions/blockchain-digital-assets-definition.html>> accessed on 24 August 2024.

<sup>74</sup> Deloitte, 'Blockchain and Digital Assets' <<https://www2.deloitte.com/us/en/pages/about-deloitte/solutions/blockchain-digital-assets-definition.html>> accessed on 24 August 2024.

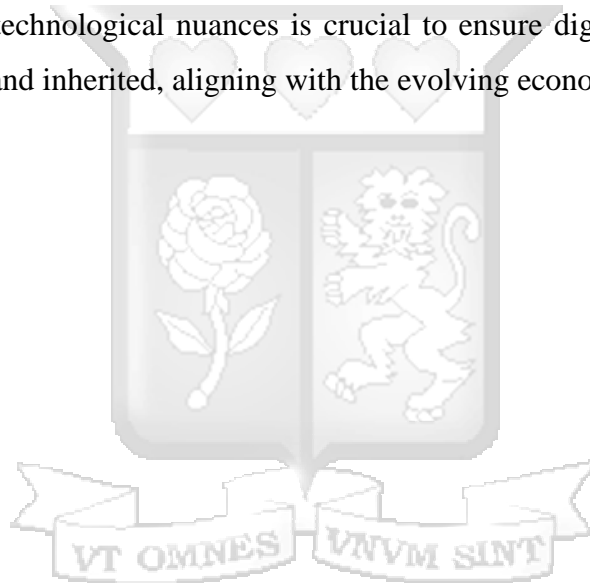
<sup>75</sup> Kitili J, 'Digital Assets Unveiled: Deciphering Intellectual Property Rights and Privacy Considerations Centre for Intellectual Property and Information Technology,2024,2.

<sup>76</sup> Kharitonova Y, 'Digital Assets and Digital Inheritance' Lomonosov Moscow State University, 2021,5 <[https://www.researchgate.net/publication/349678915\\_Digital\\_assets\\_and\\_digital\\_inheritance](https://www.researchgate.net/publication/349678915_Digital_assets_and_digital_inheritance)>February 2021.

Succession planning for digital assets must address its relationship with IP while ensuring heirs can access their assets. Balancing creator rights with secure credential transfer helps retain value for future generations. This ensures seamless management and inheritance of digital wealth.

## 2.6 Conclusion

The conflict in defining digital assets highlights the difficulty in classification, ownership and transferability especially in succession planning. While some jurisdictions have begun recognizing digital assets as property, Kenya's legal framework remains underdeveloped, creating gaps in estate planning. A unified legal approach that balances contractual rights, property rights, and technological nuances is crucial to ensure digital assets are effectively managed, protected, and inherited, aligning with the evolving economic and social landscape.



## CHAPTER 3: VARIATIONS IN LEGAL FRAMEWORKS FOR DIGITAL ASSETS

### 3.1 Introduction

In today's digital age, where personal and financial activities increasingly take place online, the question of how digital assets are inherited has become more pressing.<sup>77</sup> In Kenya, this issue remains largely unaddressed by existing laws. The Law of Succession Act does not specifically address the inheritance of digital assets or personal data, leaving a significant gap in the legal framework.<sup>78</sup> Currently, it is presumed that digital assets in intestate matters would pass to the next of kin under the Law of Succession Act.<sup>79</sup> However, this assumption is complicated by differing terms and conditions imposed by service providers, which limit access to a deceased person's digital data. For example, mobile money services like Mpesa requires the claimant to provide several documents such as statutory declaration and grant of Probate for inspection and approval which is a lengthy process.<sup>80</sup>

A newspaper article from 2018 illustrated this gap by indicating the consequences of lack of laws on digital inheritance in Kenya in cases such as the 500 million in unclaimed mobile money.<sup>81</sup> This absence of clear regulations not only limits access to valuable digital property but also raises issues for individuals and families reliant on digital assets as sources of income.<sup>82</sup> In the U.S., the rise of digital assets has reshaped estate planning, with federal laws such as the Stored Communications Act (SCA) and the Computer Fraud and Abuse Act (CFAA) playing major roles since the 1980s as shall be discussed in the next chapter. This chapter examines Law of Succession Act in Kenya, outlines its limitations concerning digital assets, and draws insights from the approaches taken in the U.S.

---

<sup>77</sup> Banta N, 'Property interests in digital assets: The rise of digital feudalism' 38 *Cardozo L. Rev.* 4, 2016, 1099.

<sup>78</sup> Labharam A, 'Inheritance of personal data: the future of succession in the metaverse', *KICTANet*, 2022, [Inheritance of personal data: the future of succession in the metaverse | KICTANet Think Tank](#) on 25 November 2025.

<sup>79</sup> Part V, Law of Succession Act, (Chapter 160 of 2012).

<sup>80</sup> [M-PESA Next of Kin Claim](#) on 2 February 2025.

<sup>81</sup> Muthoni K, 'No law for Inheritance of digital assets or property, Judiciary reveals' *The Standard*, Jun 18, 2018 [No law for inheritance of digital assets or property. Judiciary reveals](#) on 25 November 2024.

<sup>82</sup> Labharam A, 'Inheritance of personal data: the future of succession in the metaverse' 1.

### 3.2 Kenya's Law of Succession Act

The Law of Succession Act was designed to offer a framework for the administration and distribution of a deceased person's estate.<sup>83</sup> Section 3 defines 'estate' as the free property of a deceased person; this definition, while it seems to be comprehensive, is deeply rooted in a pre-digital era, focusing on traditional forms of property such as land and physical goods.<sup>84</sup> The Act's scope fails to accommodate the rapid evolution of wealth storage and management particularly the rise of digital assets.<sup>85</sup> The omission is glaring, given the increasing prevalence of digital wealth in modern estates.

A key flaw in the Act is its narrow interpretation of 'property'. Currently, wealth is no longer confined to the physical and tangible assets since digital currency, online business and intellectual property stored in cloud based accounts form a substantial part of individuals' estates.<sup>86</sup> Yet, Section 3 of the Act remains silent on these forms of property providing no guidance on how they should be managed and distributed.<sup>87</sup> Absent statutory provisions, executors and heirs are left to navigate complex digital systems with little to no legal recourse. This failure to recognize and address digital assets leaves a substantial portion of an estate potentially lost or inaccessible, depriving heirs of their rightful inheritance.<sup>88</sup>

Even more problematic is the intersection between digital assets and the private contracts that often govern them.<sup>89</sup> For instance, social media accounts are usually bound by strict service agreements that dictate access and transferability. Under these agreements, accounts may be deleted, frozen, or inaccessible after death, further complicating inheritance.<sup>90</sup> For instance,

---

<sup>83</sup>Section 2, Law of Succession Act, (Chapter 160 of 2012).

<sup>84</sup>Law of Succession Act (Cap 160), Laws of Kenya.

<sup>85</sup> Section 2, Law of Succession Act, (Chapter 160 of 2012).

<sup>86</sup> Muigua K, 'Is Kenya Prepared to Embrace Digital Dispute Resolution' Africa The Lawyer, 2023, 2, <<https://thelawyer.africa/2023/09/09/kenya-preparedness-for-digital-dispute-resolution/>> on 9 September 2023.

<sup>87</sup> Section 3, Law of Succession Act, (Chapter 160 of 2012).

<sup>88</sup> See generally Gatuyu Justice, 'Managing digital assets in Kenya: Regulatory framework, practices and future prospects' November 2015.

<sup>89</sup> Kitili J, 'Digital Assets Unveiled: Deciphering Intellectual Property Rights and Privacy Considerations Centre for Intellectual Property and Information Technology, 2024, 4, <<https://cipit.org/digital-assets-unveiled-deciphering-intellectual-property-rights-and-privacy-considerations/>> on 21 May 2024.

<sup>90</sup> Nzomo V, 'Social Media and the Law of Succession: A Kenyan Scenario' CIPIT Insights, 2014, 3, <<https://cipit.strathmore.edu/social-media-and-the-law-of-succession-a-kenyan-scenario/>> on 22 September 2014.

under the terms of service of social media platforms like X, accounts are not transferable upon death unless explicitly provided for, and this provision does not align with the intentions of the Law of Succession Act, which assumes seamless transfer of property.<sup>91</sup> The Act remains entirely silent on how such contractual obligations should be reconciled with the rights of heirs under succession law. This disconnect leaves executors in a precarious legal situation, particularly when seeking access to assets governed by these agreements.

In 2019, due to the lack of a legal framework that addressed digital assets in estate planning, Mobile operators in Kenya handed over Ksh 500 million as unclaimed mobile money to the government that belonged to people who were dead or had been presumed to be dead.<sup>92</sup> Mpesa has implemented procedures to allow next of kin to claim the deceased's mobile money. This is more of an exception than a rule as such mechanisms are rare and not uniformly applied across other digital platforms or assets.<sup>93</sup>

While the Law of Succession Act was comprehensive when first enacted, it is now outdated in its application to the modern, digital world. Section 3, in particular, must be amended to address the complex realities of digital wealth, ensuring that all forms of property, both tangible and intangible, can be inherited and managed effectively. The next section shall inform such amendments by evaluating the United States legal framework on digital asset management.

### **3.3 OVERVIEW OF USA LEGISLATION**

This comparative analysis of U.S. laws on digital asset ownership, transferability, and inheritance reveals how digital assets are managed differently in federal and state courts. It is particularly important in the US due to technical advances and regulatory considerations. Understanding these legislative frameworks demonstrates the complications of digital asset

---

<sup>91</sup> Nzomo V, 'Social Media and the Law of Succession: A Kenyan Scenario' CIPIT Insights, 2014, 3 <<https://cipit.strathmore.edu/social-media-and-the-law-of-succession-a-kenyan-scenario/>> on 22 September 2014.

<sup>92</sup> Kamau Muthoni, No law for inheritance of digital assets or property, Judiciary reveals, 2018, <<https://www.standardmedia.co.ke/article/20011284484/no-law-for-inheritance-of-digital-assets-or-property-judiciary-reveals>> on 16 March 2019.

<sup>93</sup> Kamau Muthoni, No law for inheritance of digital assets or property, Judiciary reveals, 2018, <<https://www.standardmedia.co.ke/article/20011284484/no-law-for-inheritance-of-digital-assets-or-property-judiciary-reveals>> on 16 March 2019.

regulation and effects on estate planning, consumer rights, and financial security. The analysis is relevant to this research to illustrate how international practices might guide more structured and legal digital asset management in different contexts in Kenya.

### 3.3.1 Stored Communications Act

The Stored Communications Act (SCA), enacted by Congress in 1986, was designed to protect the privacy of electronic communications.<sup>94</sup> At the time, Congress aimed to address how the rise of internet communications affected privacy rights under the Fourth Amendment.<sup>95</sup> The SCA specifically prevents service providers, such as those offering email or cloud services, from disclosing the contents of a user's electronic communications without consent.<sup>96</sup> This act has become increasingly relevant in today's digital world, where people store a significant amount of personal data online.<sup>97</sup>

Nonetheless, the SCA includes several important exceptions.<sup>98</sup> First, while it restricts providers from sharing the content of communications, it does allow them to provide non-content information, such as the name and address linked to an account, to non-governmental entities.<sup>99</sup> This can be compared to revealing the outside of an envelope, which contains the sender's information, but not the letter inside.<sup>100</sup> Moreover, the Act allows providers to disclose content information to an agent of the recipient.<sup>101</sup> Lastly, the most significant exception allows

---

<sup>94</sup> Walker D, 'The new uniform digital assets law: estate planning and administration in the information age,' 52, *Real Prop. Tr. & Est. LJ*, 2017, 52.

<sup>95</sup> Medina M, 'The Stored Communications Act: An Old Statute for Modern Times' 63 *Am. UL Rev.* 2, 2013, 267.

<sup>96</sup> DeSousa P, 'Self-storage units and cloud computing: Conceptual and practical problems with the Stored Communications Act and its bar on ISP disclosures to private litigants,' *Geo. LJ*, 102, 2013, 247.

<sup>97</sup> Nyala V, 'Ensuring the Future: The Critical Role of Succession Planning for Digital Assets,' *MMS Advocates*, 2024 [Ensuring the Future: The Critical Role of Succession Planning for Digital Assets - MMS Advocates](#) on 24 October 2024.

<sup>98</sup> Walker D, 'The new uniform digital assets law: estate planning and administration in the information age,' 55.

<sup>99</sup> Section 2702(a)(3), Stored Communications Act (1986).

<sup>100</sup> Wexler R, 'Privacy as Privilege: The Stored Communications Act and Internet Evidence' 134 *Harv. L. Rev.* 2, 2020, 2721.

<sup>101</sup> Section 2702(b)(1), Stored Communications Act (1986).

providers to disclose content-based information if they receive the lawful consent of the communication's originator, an addressee, or the subscriber.<sup>102</sup>

When it comes to digital assets of deceased or incapacitated individuals, determining what constitutes lawful consent becomes challenging.<sup>103</sup> Although executors have legal authority to manage a decedent's estate under state law, this authority does not automatically grant them the right to provide lawful consent under the SCA.<sup>104</sup> In a 2008 incident involving Sahar Daftary, a model who died under unclear circumstances, her executors wanted to access to her Facebook account, believing it had evidence regarding her death.<sup>105</sup> When the executors attempted to obtain a subpoena for the account, Facebook argued that the SCA prevented them from sharing the account's contents without consent.<sup>106</sup> The court sided with Facebook and declined to rule on whether the executors had the authority to grant lawful consent under the SCA.<sup>107</sup>

Even if the court granted the executors lawful consent under the SCA, the language of the Act remains discretionary due to the use of the word "may".<sup>108</sup> This creates a situation where many providers, fearing legal liability or litigation, are hesitant to share a deceased person's digital assets, even when executors present a valid claim.<sup>109</sup> Consequently, executors often face significant barriers in accessing digital accounts leaving digital assets inaccessible or locked indefinitely after death.<sup>110</sup>

### **3.3.2 Computer Fraud and Abuse (CFAA)**

The Computer Fraud and Abuse Act (CFAA) is a significant federal law that addresses unauthorized access to computers and protects digital information from hacking and other

---

<sup>102</sup> Section 2702(b)(3), Stored Communications Act (1986).

<sup>103</sup> Walker D, 'The new uniform digital assets law: estate planning and administration in the information age,' 55.

<sup>104</sup> Section 8, Revised Uniform Fiduciary Access to Digital Act (2015).

<sup>105</sup> Wexler R, 'Privacy as Privilege: The Stored Communications Act and Internet Evidence', 2721.

<sup>106</sup> Re Facebook Inc (2012), United States District Court, Northern District of California.

<sup>107</sup> Re Facebook Inc (2012), United States District Court, Northern District of California.

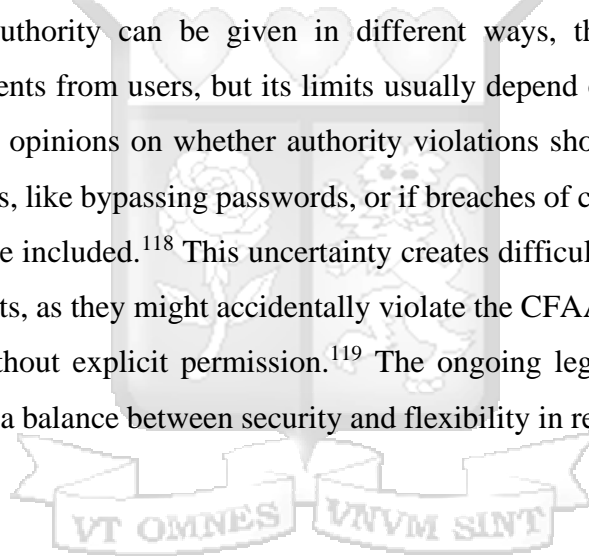
<sup>108</sup> Section 2702(b), Stored Communications Act (1986).

<sup>109</sup> Walker D, 'The new uniform digital assets law: estate planning and administration in the information age,' 56.

<sup>110</sup> Medina M, 'The Stored Communications Act: An Old Statute for Modern Times' 267.

malicious activities.<sup>111</sup> The CFAA was first enacted in 1986 and has since been amended severally to expand what it covers. It now includes computers that are connected to the internet, federal systems, and those utilized by financial institutions.<sup>112</sup> The statute does not clearly define “hacking” but suggests that it is all forms of illegal actions that involve getting into computers without permission or going beyond the access that was allowed.<sup>113</sup> Such ambiguity has enabled legislators to use the CFAA to tackle different types of computer misuse. However, it has also sparked discussions about how it should be interpreted.<sup>114</sup> The Act is crucial for protecting digital assets, but the vague definitions creates some legal uncertainty.<sup>115</sup>

Furthermore, the CFAA really revolves around ideas such as “authority,” “exceeds authorized access,” and “without authorization,” but the statute fails to provide clear definitions for any of these terms.<sup>116</sup> Authority can be given in different ways, through permissions from employers or agreements from users, but its limits usually depend on the specific context.<sup>117</sup> Courts have different opinions on whether authority violations should be seen only through technological methods, like bypassing passwords, or if breaches of contract, violating terms of service, should also be included.<sup>118</sup> This uncertainty creates difficulties for those in charge of managing digital assets, as they might accidentally violate the CFAA by accessing a deceased person's accounts without explicit permission.<sup>119</sup> The ongoing legal discussions show how important it is to find a balance between security and flexibility in regard to managing digital assets.<sup>120</sup>



---

<sup>111</sup> Congressional Research Service, *Cybercrime and the Law: Computer Fraud and Abuse Act (CFAA) and the 116th Congress*, 21 September 2020, 3.

<sup>112</sup> Sollitto N, ‘What is the Computer Fraud and Abuse Act (CFAA)?’ *Up Guard*, 2024,8 [What is the Computer Fraud and Abuse Act \(CFAA\)? | Up Guard](#) n 18 November 2024.

<sup>113</sup> Ohm P, ‘The Computer Fraud and Abuse Act After Van Buren’ *American Constitution Society*, 2024,8 [The Computer Fraud and Abuse Act After Van Buren | ACS](#) on 18 November 2024.

<sup>114</sup> Hourican S, ‘CFAA and Van Buren: A Half-Measure for a Wholly Ineffective Statute’ 47 *Seton Hall Legis. J* 1, 2023, 30.

<sup>115</sup> Congressional Research Service, *Cybercrime and the Law: Computer Fraud and Abuse Act (CFAA) and the 116th Congress*, 4.

<sup>116</sup> Congressional Research Service, *Cybercrime and the Law: Computer Fraud and Abuse Act (CFAA) and the 116th Congress*, 6.

<sup>117</sup> Lee J, ‘Death and Live Feeds: Privacy Protection in Fiduciary Access to Digital Assets’ *Colum. Bus. L. Rev.*, 2015, 654.

<sup>118</sup> Ohm P, ‘The Computer Fraud and Abuse Act After Van Buren’ 10.

<sup>119</sup> Hourican S, ‘CFAA and Van Buren: A Half-Measure for a Wholly Ineffective Statute’ 30.

<sup>120</sup> Wilbur S, ‘What Does This Mean: Examining Legislative Ambiguities in the Cybersecurity Act of 2015 and the Potential for a Future Circuit Split on Interpretation’ 48 *Seton Hall L. Rev.* 1, 2017, 275.

Nonetheless, this Act imposes civil and criminal penalties on anyone who accesses a computer without permission or goes beyond their authorized access to obtain information from a protected computer.<sup>121</sup> All 50 U.S. states also have laws against unauthorized computer access or hacking.<sup>122</sup> When evaluating whether a fiduciary has legal authority under the CFAA, two key issues arise. First, whether the fiduciary has clear legal authority to access the decedent's or incapacitated person's computer or digital assets under state law or the governing estate documents.<sup>123</sup> Secondly, whether accessing these assets would violate the terms of service agreements (TOSAs) linked to the digital accounts.<sup>124</sup> Even if a fiduciary has legal authority, they could may still violate the CFAA if their actions breach the terms of a TOSA.<sup>125</sup>

### 3.4 State Specific Approaches to Regulation of Digital Assets

Several U.S. states have enacted laws to regulate access to digital assets after an individual's demise or incapacitation.<sup>126</sup> In Alabama, along with Alaska, California, Georgia, and Colorado, the Revised Uniform Fiduciary Access to Digital Assets Act allows a decedent's personal representative or trustee to manage and control digital assets and electronic communications.<sup>127</sup> This law ensures that fiduciaries have legal authority to handle digital property, ensuring a smooth transition during estate administration.<sup>128</sup>

In Connecticut, the state has a more specific approach under SB 262 (Public Act No. 05-136), which focuses on email and social media accounts.<sup>129</sup> To access these digital assets, an executor must present a death certificate and official documentation of their appointment.<sup>130</sup> This process provides legal access to a deceased individual's emails or social networking

---

<sup>121</sup> Walker D, 'The new uniform digital assets law: estate planning and administration in the information age,' 57.

<sup>122</sup> Anderson A, 'The computer fraud and abuse act: Hacking into the authorization debate,' *Jurimetrics*, 2013, 449.

<sup>123</sup> Scaniffe N, 'A New Gold Rush: How Trust Law Can Incentivize Prudent Cryptocurrency Estate Planning and Increase State Revenue' *Quinnipiac Prob. LJ*, 2022, 171.

<sup>124</sup> Elrod L and Spector G, 'Review of the Year 2018–2019 in Family Law' *Family Law Quarterly*, 2020, 268.

<sup>125</sup> Klein A and Parthemer M, 'Who will delete the digital you: Understanding fiduciary access to digital assets,' *Prob. & Prop*, 30, 2016, 32.

<sup>126</sup> Tarney G, 'A call for legislation to permit the transfer of digital assets at death,' *Cap. UL Rev*, 40, 2012, 773.

<sup>127</sup> Everplans, *State-by-State Digital Estate Planning Laws*, 2024, 2.

<sup>128</sup> Nyala V, 'Ensuring the Future: The Critical Role of Succession Planning for Digital Assets,' 5.

<sup>129</sup> Everplans, *State-by-State Digital Estate Planning Laws*, 3.

<sup>130</sup> Pinch R, 'Protecting digital assets after death: Issues to consider in planning for your digital estate,' *Wayne L. Rev*, 60, 2014, 545.

accounts, enabling representatives to manage crucial online communications and interactions after death.<sup>131</sup> Delaware and Florida have also adopted detailed laws regarding digital asset management.<sup>132</sup> Delaware's House Bill recognizes the growing importance of online life, allowing fiduciaries to access and control digital assets of incapacitated individuals, decedents, or trust beneficiaries.<sup>133</sup> Similarly, Florida's Senate Bill 494 establishes procedures for disclosing digital assets and grants legal authority to guardians or other fiduciaries over these assets.<sup>134</sup> Both states ensure that fiduciaries can navigate the complexities of managing digital accounts after death while following specific legal protocols.<sup>135</sup>

### 3.5 Conclusion

Kenya can adopt several best practices from the U.S. regarding the regulation of digital assets in estate planning.<sup>136</sup> First, Kenya can introduce a legal framework similar to the RUFADAA, which grants fiduciaries the power to manage digital assets posthumously or incapacitation.<sup>137</sup> This would ensure clarity and consistency in managing digital accounts.<sup>138</sup> Additionally, Kenya can follow Connecticut's approach of requiring official documentation, such as death certificates, to access digital assets to prevent unauthorized access.<sup>139</sup> Furthermore, the recognition of the increasing significance of online life outlines the importance of comprehensive laws that account for the management of digital property.

Furthermore, Kenya can explore new ideas to tackle the challenges that exist in the US.<sup>140</sup> For example, policymakers in the ICT sector could introduce mandates that require tech companies to teach people about their rights and responsibilities when it comes to inheriting digital

---

<sup>131</sup> Tarney G, 'A call for legislation to permit the transfer of digital assets at death,' 774.

<sup>132</sup> Everplans, *State-by-State Digital Estate Planning Laws*,5.

<sup>133</sup> Scaniffe N, 'A New Gold Rush: How Trust Law Can Incentivize Prudent Cryptocurrency Estate Planning and Increase State Revenue' *Quinnipiac Prob. LJ*, 2022, 171; House Bill is a designation used in the United States to identify proposed legislation introduced in the House of Representatives of a state.

<sup>134</sup> Elrod L and Spector G, 'Review of the Year 2018–2019 in Family Law' *Family Law Quarterly*, 2020, 269.

<sup>135</sup> Pinch R, 'Protecting digital assets after death: Issues to consider in planning for your digital estate,' 546.

<sup>136</sup> Nyala V, 'Ensuring the Future: The Critical Role of Succession Planning for Digital Assets',6.

<sup>137</sup> Walker D, 'The new uniform digital assets law: estate planning and administration in the information age,'56.

<sup>138</sup> Nyala V, 'Ensuring the Future: The Critical Role of Succession Planning for Digital Assets',7.

<sup>139</sup> Everplans, *State-by-State Digital Estate Planning Laws*,5.

<sup>140</sup> Nyala V, 'Ensuring the Future: The Critical Role of Succession Planning for Digital Assets',8.

assets.<sup>141</sup> Kenya could use a centralized method to make managing digital assets easier for fiduciaries, instead of the different approaches used by U.S. states.<sup>142</sup> Also, lawmakers should implement appropriate dispute resolution mechanisms to deal with disagreements between user agreements and inheritance rules.<sup>143</sup>



---

<sup>141</sup> Kibwage B, ‘Consumer protection in Kenya in the age of decentralized virtual currency’ unpublished, Strathmore University, Nairobi, 2021, 34.

<sup>142</sup> Prinsloo P and Rogers K, ‘Data privacy on the African continent: Opportunities, challenges and implications for learning analytics’, 896.

<sup>143</sup> Saidakhrarovich S, ‘Digitalization in inheritance law’ 10 *World Bulletin of Management and Law* 1, 2022, 24.

## CHAPTER 4: DIGITAL SERVICE PROVIDERS AND DATA PROTECTION IN ESTATE PLANNING

### 4.1 Introduction

The digital era has transformed the processes by which individuals generate, preserve, and disseminate assets.<sup>144</sup> It has prompted significant inquiries regarding the administration of these digital estates post-mortem.<sup>145</sup> Digital service providers (DSPs) significantly influence this process via their policies regarding account access, data transfer, and deletion.<sup>146</sup> This chapter evaluates various policy issues related to digital asset ownership, access, and control after death. It sheds light on the lack of a cohesive legal framework to regulate these assets.

The existing frameworks of property, contract, and probate laws inadequately address the distinct and dynamic aspects of digital inheritance.<sup>147</sup> This creates a legal gap that has not been sufficiently addressed by market solutions or social norms.<sup>148</sup> This chapter also assesses the implications for privacy and digital estate management by focusing on the interrelation between DSP terms of service and Kenya's Data Protection Act. Additionally, it suggests strategies to harmonize DSP practices and data protection regulations with international best practices.

### 4.2 Digital Service Providers & Digital Estate Management

DSPs provide digital tools, platforms, and services that help individuals and businesses navigate the digital environment more easily.<sup>149</sup> They provide a variety of services, including cloud storage, social media, financial services, e-commerce, and communication options.<sup>150</sup> In

---

<sup>144</sup> Banta N, 'Property interests in digital assets: The rise of digital feudalism' 1099.

<sup>145</sup> Park Y, Sang Y, Lee H and Jones-Jang S, 'The Ontology of Digital Asset After Death: Policy Complexities, Suggestions and Critique of Digital Platforms' 22 *Digital Policy, Regulation and Governance* 1, 2020, 4.

<sup>146</sup> Frosio G and Geiger C, 'Taking Fundamental Rights Seriously in the Digital Services Act's Platform Liability Regime' 29 *European Law Journal* 1, 2023, 34.

<sup>147</sup> Subotnik E, 'Copyright and the Living Dead? Succession Law and the Postmortem Term' 29 *Harvard Journal of Law & Technology*, 2015, 77.

<sup>148</sup> Park Y, Sang Y, Lee H and Jones-Jang S, 'The Ontology of Digital Asset After Death: Policy Complexities, Suggestions and Critique of Digital Platforms' 5.

<sup>149</sup> Putrevu J and Mertzanis C, 'The Adoption of Digital Payments in Emerging Economies: Challenges and Policy Responses' 26 *Digital Policy, Regulation and Governance* 5, 2024, 479.

<sup>150</sup> Aegis S, 'Kenya's Digital Ecosystem in 2024: Insights and Opportunities' *Smith Corp*, 2024,1 - [Kenya's Digital Ecosystem in 2024: Insights and Opportunities](#) on 5 December 2024.

today's economy, it is crucial for DSPs to continue evolving to offer infrastructure and solutions that empower users across all aspects of their digital lives.<sup>151</sup> In Kenya, companies like Safaricom, Meta, and Google are really important in the daily lives of individuals.<sup>152</sup> They offer reliable platforms for money transfers, like M-Pesa, and provide cloud services that help manage data effectively.<sup>153</sup> Their policies on the handling of digital assets after one's death will help in determining how such assets shall be treated upon the owner's demise.<sup>154</sup>

DSPs have set up various policies to handle account access after a user passes away, usually focusing on privacy and security.<sup>155</sup> In Kenya, M-Pesa, which is run by Safaricom, locks a deceased user's account to stop any unauthorized transactions from happening.<sup>156</sup> The next of kin needs to submit several documents to access the funds. These documents include a death certificate, a statutory declaration, a grant of probate or letters of administration, and a letter from local provincial authorities confirming their relationship to the deceased.<sup>157</sup> This process is thorough and makes sure that the digital financial assets of someone who has passed away are only accessible to the actual beneficiaries.<sup>158</sup>

In a similar way, global DSPs such as Facebook enable memorialization, which maintains the account by retaining the photos and posts while preventing logins.<sup>159</sup> Some platforms, like Apple, let users choose legacy contacts who can access certain types of data without needing proprietary content.<sup>160</sup> Such policies show how DSPs are striving to find a balance between

---

<sup>151</sup> Frosio G and Geiger C, 'Taking Fundamental Rights Seriously in the Digital Services Act's Platform Liability Regime' 35.

<sup>152</sup> [Kenya Tech Trends 2023 | Safaricom Newsroom](#)

<sup>153</sup> Stadler C, 'M-PESA: Why The World's First Large Mobile Payment Platform Keeps On Winning' *Forbes*, 2024, 1 [M-PESA: Why The World's First Large Mobile Payment Platform Keeps On Winning](#) on 5 December 2024.

<sup>154</sup> Putrevu J and Mertzanis C, 'The Adoption of Digital Payments in Emerging Economies: Challenges and Policy Responses' 480.

<sup>155</sup> Jagannath R and Jain A, 'Browser-in-the-middle attacks: A comprehensive analysis and countermeasures' 7 *Security and Privacy* 5, 2024, 410.

<sup>156</sup> Tyce M, 'Beyond the neoliberal-statist divide on the drivers of innovation: A political settlement reading of Kenya's M-Pesa success story' 125 *World Development*, 2020, 104621.

<sup>157</sup> Wamathai J, 'How next of kin can access Mpesa money when their loved one dies' *Hapa Kenya*, 2018, 1 [How next of kin can access Mpesa money when their loved one dies - Hapa Kenya](#) on 5 December 2024.

<sup>158</sup> Tyce M, 'Beyond the neoliberal-statist divide on the drivers of innovation: A political settlement reading of Kenya's M-Pesa success story' 104621.

<sup>159</sup> McGuigan L, *Selling the American People: Advertising, Optimization, and the Origins of AdTech*, MIT Press, Cambridge, 2023, 31.

<sup>160</sup> Morton et al, 'Equitable Interoperability: The "Supertool" of Digital Platform Governance' 40 *Yale J. on Reg.* 1013, 2023.

keeping things secure and making them accessible.<sup>161</sup> However, they may cause some issues for beneficiaries without pre-existing access arrangements.

### 4.3 Conflicts Between DSP Requirements and Digital Asset Management

DSPs and their terms of service complicate the issues surrounding digital inheritance.<sup>162</sup> One major issue is the lack of direct access to digital assets due to service agreements.<sup>163</sup> Many DSPs retain significant control over user accounts, stipulating in their terms that accounts are non-transferable upon death.<sup>164</sup> In a certain case, the relatives of a deceased Marine requested Yahoo email access to manage his assets. Yahoo's privacy standards restricted access, and the court upheld Yahoo's position due to its contractual terms of service.<sup>165</sup> Such court decisions mean that valuable assets, such as music libraries or eBooks, often cannot be passed on to heirs which leads to potential losses to the deceased's estate.<sup>166</sup> This limitation outlines a gap between the practical realities of digital ownership and the legal framework needed to ensure inheritance rights.<sup>167</sup>

Further, the service agreements that govern account access are often fluid, with DSPs retaining the ability to unilaterally alter terms without notice.<sup>168</sup> This lack of consistency complicates efforts by beneficiaries to manage or access digital assets.<sup>169</sup> For example, Gmail allows access to accounts of deceased users if certain criteria are met, such as proof of death and a legal claim.<sup>170</sup> However, there is no standardized approach across platforms which creates uncertainty for heirs. Moreover, some services, like Skype, lack provisions allowing users to

---

<sup>161</sup> Jagannath R and Jain A, 'Browser-in-the-middle attacks: A comprehensive analysis and countermeasures' 410.

<sup>162</sup> Park Y, Sang Y, Lee H and Jones-Jang S, 'The Ontology of Digital Asset After Death: Policy Complexities, Suggestions and Critique of Digital Platforms' 5.

<sup>163</sup> Pedersen C, 'Digital assets after death' *Journal of Accountancy*, 2019, [Digital assets after death - Journal of Accountancy](#) on 6 December 2024.

<sup>164</sup> Aegis S, 'Kenya's Digital Ecosystem in 2024: Insights and Opportunities' 1.

<sup>165</sup> Re Estate of Ellsworth (2005), Michigan Court of Appeals, United States.

<sup>166</sup> Park Y, Sang Y, Lee H and Jones-Jang S, 'The Ontology of Digital Asset After Death: Policy Complexities, Suggestions and Critique of Digital Platforms' 5.

<sup>167</sup> Akramov A., 'The Impact of Digitalization in Inheritance Law' 4 *Qubahan Academic Journal* 3, 2024, 111.

<sup>168</sup> Micheli M, Ponti M, Craglia M and Berti Suman A., 'Emerging models of data governance in the age of datafication' 7 *Big Data & Society* 2, 2020, 6.

<sup>169</sup> Park Y, Sang Y, Lee H and Jones-Jang S, 'The Ontology of Digital Asset After Death: Policy Complexities, Suggestions and Critique of Digital Platforms' 6.

<sup>170</sup> Harbinja E, 'Emails and death: Legal issues surrounding post-mortem transmission of emails' 43 *Death Studies* 7, 2019, 440.

delete accounts, leaving beneficiaries without a clear mechanism to manage or dispose of the deceased's digital presence.<sup>171</sup>

Adding to these challenges is the absence of a legal framework governing digital inheritance, both in Kenya and globally.<sup>172</sup> Despite the growing significance of digital assets, ranging from social media profiles to financial accounts, many jurisdictions lack comprehensive legislation addressing their inheritance.<sup>173</sup> In Kenya, where digital adoption is high, this gap is particularly evident. With over 26 million mobile money subscriptions and substantial volumes of digital transactions, questions of asset transfer and ownership have become increasingly pressing.<sup>174</sup> Legislation is urgently needed to define digital assets, establish their transmissibility, and ensure they are included in estate planning.<sup>175</sup> Without such measures, the disconnect between service agreements and inheritance laws continues to hinder effective management of digital estates.<sup>176</sup>

#### **4.4 Kenya's Data Protection Act and Digital Asset Management**

The Data Protection Act, 2019, is a landmark legislation in ensuring the protection of individuals' privacy and data rights against a rapidly digitizing environment.<sup>177</sup> It lays out clear principles regarding the processing, collection, and storage of personal data, including consent and the rights of data subjects.<sup>178</sup> The Act requires that the handling of personal information should be transparent to ensure that data custodians act responsibly.<sup>179</sup> While the Act has

---

<sup>171</sup> Schnitzler T, Farke F, Pöpper C and Dürmuth M., 'Exploring user perceptions of deletion in mobile instant messaging applications' 6 *Journal of Cybersecurity* 1, 2020, 16.

<sup>172</sup> Park Y, Sang Y, Lee H and Jones-Jang S, 'The Ontology of Digital Asset After Death: Policy Complexities, Suggestions and Critique of Digital Platforms'7.

<sup>173</sup> Lopez A, 'Posthumous privacy, decedent intent, and post-mortem access to digital assets' 24 *Geo. Mason L. Rev.*, 2016, 183.

<sup>174</sup> Barke S, 'Assessment of advanced digital skills gap in Kenya using the design reality gap research framework' unpublished, University of Nairobi, Nairobi, 2021, 34.

<sup>175</sup> Park Y, Sang Y, Lee H and Jones-Jang S, 'The Ontology of Digital Asset After Death: Policy Complexities, Suggestions and Critique of Digital Platforms'8.

<sup>176</sup> Schnitzler T, Farke F, Pöpper C and Dürmuth M., 'Exploring user perceptions of deletion in mobile instant messaging applications'17.

<sup>177</sup> Nyawara O, 'Regulation of Fintech: analysis of data protection provisions aimed at protecting consumers in Kenya' unpublished, Strathmore University, Nairobi, 2021, 23.

<sup>178</sup> Part IV, Data Protection Act (2019).

<sup>179</sup> Section 30, Data Protection Act (2019).

provisions on access, correction, and erasure of data, it fails to expressly provide for what happens after one's death.

Lack of explicit rules concerning post-mortem access and control of digital assets, upon death, leaves beneficiaries and administrators of estates with difficult or no ways to access or take ownership of these assets.<sup>180</sup> This is particularly a challenge in the context of Kenya's digital economy, with ever-growing use of mobile money and increased internet penetration.<sup>181</sup> Though the Act under Section 26 confers on individuals a right to rectification or erasure of personal data, it has not extended this right to personal representatives or heirs.<sup>182</sup> This creates uncertainty in estate planning and inheritance, with incredibly valuable digital assets left to the whims of service providers that often employ restrictive terms of service.<sup>183</sup> The Act, therefore, with all the progressiveness accorded to it in many other respects, does little to address this highly critical issue of digital inheritance.<sup>184</sup> Therefore, it requires several amendments or complimentary legislation to cover this area.

#### 4.5 Proposed Strategies for Alignment

Integrating DSP practices and data protection rules with estate planning requires ethical principles and contextual adaptation.<sup>185</sup> First, DSPs should establish ethical guidelines that favor users' post-life digital rights.<sup>186</sup> Using Nissenbaum's concept of contextual integrity, DSPs can create policies that address changing social expectations of privacy and digital property ownership.<sup>187</sup> This technique allows for personalized solutions based on the exact type of digital material or the user's preferences. For example, global platforms such as Google

---

<sup>180</sup> Park Y, Sang Y, Lee H and Jones-Jang S, 'The Ontology of Digital Asset After Death: Policy Complexities, Suggestions and Critique of Digital Platforms',7.

<sup>181</sup> Barke S, 'Assessment of advanced digital skills gap in Kenya using the design reality gap research framework',37.

<sup>182</sup> Section 26, Data Protection Act (2019).

<sup>183</sup> Lopez A, 'Posthumous privacy, decedent intent, and post-mortem access to digital assets' 183.

<sup>184</sup> Arunda B, 'The Impacts of Emerging Technologies in the Future of Law and Legal Practice: A Case of Kenya' Typesetting by, 2020, 212 <https://journalofcmsd.net/wp-content/uploads/2021/04/VOLUME-6-ISSUE-2-April-1.pdf#page=223> on 6 December 2024.

<sup>185</sup> Mattsson U, *Controlling Privacy and the Use of Data Assets-Volume 2: What is the New World Currency-Data or Trust?* 1st ed, CRC Press, Boca Raton, 2023, 26.

<sup>186</sup> Judiciary, SIMPLIFIED RESOURCE TOOL ON INHERITANCE AND RELATED FAMILY LAW PRACTICE IN KENYA, 2018,31.

<sup>187</sup> Banerjee S, 'Geosurveillance, location privacy, and personalization' 38 *Journal of Public Policy & Marketing* 4, 2019, 486.

and Facebook have begun to create tools such as legacy contacts or an inactive account manager, which allow users to choose trusted individuals to handle their accounts after they pass away.<sup>188</sup> Kenya can adopt these approaches by requiring DSPs to provide comparable user-friendly tools for managing digital legacies.<sup>189</sup>

In addition, the integration of digital inheritance within the legal framework can draw from international best practices like the creation of detailed inventories of digital assets.<sup>190</sup> It could involve compiling a comprehensive list of all online accounts such as social media profiles and financial platforms together with access credentials. Executors and heirs can efficiently transfer or manage these assets in light of the deceased wishes or how they see fit.<sup>191</sup> In a certain case, siblings needed access to their deceased brother's email account. Yahoo denied access citing the Stored Communications Act and its TOS.<sup>192</sup> Nonetheless, the court remanded the case to examine Yahoo's conditions' enforceability after ruling that federal law did not prevent access. This verdict underlines the necessity for regulations that explicitly enable fiduciaries access to digital assets, even where DSP conditions prohibit it.

Kenya could adapt its Data Protection Act to clearly recognize digital assets as property that is inheritable, with provisions that would allow beneficiaries to access or transfer such assets in an orderly manner.<sup>193</sup> Drawing from countries like USA, where courts have ruled on cases involving access to the accounts of the deceased, Kenya can create clear guidelines that balance the rights of beneficiaries and the confidentiality promised by service agreements.<sup>194</sup>

Meanwhile, advocacy and digital literacy projects reinforce all of the above legal and ethical approaches.<sup>195</sup> In Kenya, such a role could be greatly complemented through Civil Society

---

<sup>188</sup> Gach K and Brubaker J, 'Getting your Facebook affairs in order: User expectations in post-mortem profile management' 5 Proceedings of the ACM on Human-Computer Interaction, 2021, 5.

<sup>189</sup> Banta N, 'Property interests in digital assets: The rise of digital feudalism' 1099.

<sup>190</sup> PBL Law Group, *Digital Asset International Estate Planning: A Global Perspective on Digital Assets in Estate Planning*, 2024, 2.

<sup>191</sup> Conway H and Grattan S, 'The 'New' New Property: Dealing with Digital Assets on Death' 9 *Modern Studies in Property Law*, 2017, 100.

<sup>192</sup> *Ajemian v. Yahoo! Inc.* (2013), Massachusetts Court of Appeals, United States.

<sup>193</sup> Judiciary, SIMPLIFIED RESOURCE TOOL ON INHERITANCE AND RELATED FAMILY LAW PRACTICE IN KENYA,32.

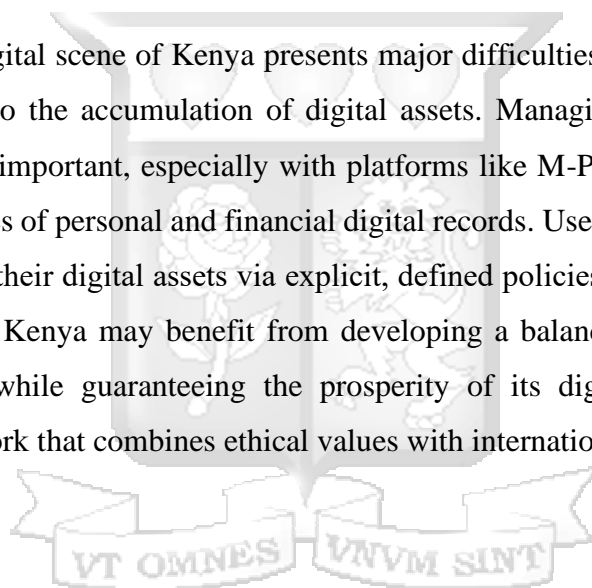
<sup>194</sup> Leuz C, 'Different approaches to corporate reporting regulation: How jurisdictions differ and why' 40 *Accounting and Business Research* 3, 2010, 232.

<sup>195</sup> Gach K and Brubaker J, 'Getting your Facebook affairs in order: User expectations in post-mortem profile management'6.

organizations, for example, Kenya’s own Kenya Privacy Network that raise awareness on digital rights but extend into digital assets in estate planning.<sup>196</sup> The promotion of international models, like the “Digital Legacy Association” initiated in the UK, aims at public awareness in undertaking precautionary steps, such as maintaining up-to-date digital wills.<sup>197</sup> Digitally capable programs could thus support citizens not only in preserving digital property from certain kinds of cyber fraud, but also ultimately preserve it for one’s heirs.<sup>198</sup> Kenya can provide a full package in the management of digital estates by combining legal reforms, ethical principles, and public education in a manner that respects individual rights as well as societal needs.

#### **4.6 Conclusion**

The fast-changing digital scene of Kenya presents major difficulties for data governance and estate planning due to the accumulation of digital assets. Managing assets after death has become increasingly important, especially with platforms like M-Pesa and others serving as significant repositories of personal and financial digital records. Users ought to be empowered to choose the fate of their digital assets via explicit, defined policies consistent with Kenya’s Data Protection Act. Kenya may benefit from developing a balanced strategy that respects personal autonomy while guaranteeing the prosperity of its digital economy. It should implement a framework that combines ethical values with international best practices.



---

<sup>196</sup> Huggins C, & Frosina N, ‘ICT-driven projects for land governance in Kenya: disruption and e-government frameworks’ 82 *GeoJournal*, 2017, 647.

<sup>197</sup> Sofka C J, Gibson A, & Silberman D R, *Postmortal Society*, Routledge, London, 2017, 178.

<sup>198</sup> Akramov A., ‘The Impact of Digitalization in Inheritance Law’ 112.

## CHAPTER 5: RECOMMENDATIONS AND CONCLUSION

### 5.1 Introduction

This study aimed to evaluate the effectiveness of Kenya's legal framework, specifically the Law of Succession Act, in managing the inheritance of digital assets. The Act defined traditional assets but did not address the distinct characteristics of digital assets, including cryptocurrencies, social media accounts, and digital intellectual property. The omission has consequently created significant legal uncertainties, thus making estate planning and inheritance procedures cumbersome. The current study will analyze the existing legal framework in Kenya, review the best practices from other jurisdictions, such as the United States, and provide recommendations of how Kenya's laws may be adapted to the continuously changing digital environment.

First, the study noted that the clear definitions and regulations of the status of digital assets in the context of the Law of Succession Act were lacking, making it impossible to resolve the challenges of digital assets access, valuation, and distribution. Chapter two confirmed that digital assets hold significant economic and sentimental values, but estate planning approaches face many challenges. In the absence of explicit legal guidelines, disputes regarding ownership, delays in succession proceedings, and potential privacy violations often occurred. The research delineated optimal methodologies within the United States, wherein state-specific legal approaches articulated definitions of digital assets and instituted explicit protocols for access and transfer. Overall, the legislations illustrated the significance of incorporating digital assets into estate planning, providing essential insights for legal reform in Kenya.

Furthermore, Chapter four analyzed the function of DSPs in the administration of digital assets post-mortem, revealing discrepancies between DSP terms of service and legal obligations. It also emerged that digital service providers tend to favor their policies ahead of the succession laws about access to or management of digital estates by heirs. This chapter reviews Kenya's Data Protection Act. It acknowledges that although the law offers some levels of privacy protection, it was inadequate in addressing the peculiarities of digital inheritance. This gap calls for an alignment of DSPs in line with the best practice in estate planning to ensure that the rights of the deceased persons and heirs are well protected. In addition, this research study

also suggests legal reforms such as amendment to the Law of Succession Act, public education, and creation of awareness on the use of digital assets in estate planning. All measures steps are necessary in addressing the challenges that relate to digital inheritance in Kenya.

## **5.2 Recommendations and areas of further Research**

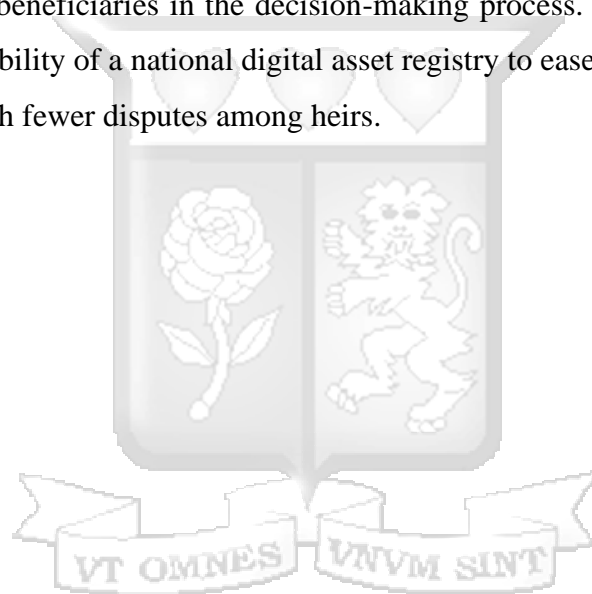
In regard to filling the legal gaps concerning digital asset succession, Kenya should focus on formulating laws that clearly define digital assets and their inheritance. Drawing insights from USA laws like RUFADAA, Kenya could adopt a comprehensive framework that balances access rights with privacy concerns. A central digital asset registry could help track and authenticate ownership, reducing disputes. Further, Kenyan law should mandate service provider compliance with inheritance rights, ensuring next of kin can access essential digital records.

Essentially, the amendments to the Law of Succession Act should incorporate clear provisions concerning digital assets, defining protocols of access, methods of valuation, and manner of transfer. Similarly, the Data Protection Act may be extended to recognize internet agreements and their position in estate planning. They are supposed to develop efficient dispute resolution mechanisms to help resolve conflicts that will arise in cases of a mismatch between DSP terms and the set rules of inheritance. Legal reforms can be combined with public awareness campaigns for better results to let people make informed choices about their digital legacy.

On the technological front, Kenya could harness smart contract technologies to streamline the transition of digital assets. Smart contracts could automate the execution of testamentary provisions, eliminating delays and costly court processes. For example, smart contracts can safely encode a testator's assets and then release them to beneficiaries once death is confirmed. Moreover, smart contracts could be integrated with Kenya's existing legal framework by linking them to national registries or identity verification systems, ensuring that only authorized individuals can execute them. This would minimize the risk of fraudulent claims and unauthorized access, addressing concerns related to security and privacy. However, there needs to be checks put in place for when private keys are lost, or assets become inaccessible. Thus, extending the concept of internet agreements to include smart contracts would help to

legitimate their use in estate planning. It would also help to build strong regulatory control, ensuring their proper incorporation into Kenya's legal framework.

Future research could focus on the socio-legal implications of integrating blockchain and smart contracts into Kenya's estate planning. Such studies could investigate how these technologies might coexist with traditional practices, such as oral will, and their effects on access to justice for marginalized communities. It would also be ideal to compare international frameworks, especially the successes and limitations of similar models in the United States and the United Kingdom, as a means of informing a localized approach. Furthermore, there is a need to assess the ethical dimensions of digital asset management, especially regarding privacy, autonomy, and the inclusion of beneficiaries in the decision-making process. Lastly, future researchers can evaluate the feasibility of a national digital asset registry to ease estate administration and ensure fair access with fewer disputes among heirs.



## **BIBLIOGRAPHY**

### **Books**

Mattsson U, *Controlling Privacy and the Use of Data Assets-Volume 2: What is the New World Currency–Data or Trust?* 1st ed, CRC Press, Boca Raton, 2023.

McGuigan L, *Selling the American People: Advertising, Optimization, and the Origins of AdTech*, MIT Press, Cambridge, 2023.

Sofka C J, Gibson A, & Silberman D R, *Postmortal Society*, Routledge, London, 2017.

### **Dissertations**

Odeyo E, 'Exploring financial inclusion in Kenya through cryptocurrencies: a case for a regulatory framework' unpublished, Strathmore Law School, Nairobi, 2021.

Barke S, 'Assessment of advanced digital skills gap in Kenya using the design reality gap research framework' unpublished, University of Nairobi, Nairobi, 2021.

Kibwage B, 'Consumer protection in Kenya in the age of decentralized virtual currency' unpublished, Strathmore University, Nairobi, 2021.

Mokuri E, 'Data Protection in Kenya: The case of the Right to be Forgotten' Published LLB Dissertation, Strathmore Law School, Nairobi, 2016.

Nyawara O, 'Regulation of Fintech: analysis of data protection provisions aimed at protecting consumers in Kenya' unpublished, Strathmore University, Nairobi, 2021.

### **Journals**

Agarwal S, 'A Comprehensive Study on Scope and Challenges in Digital Inheritance' 7 International Journal of Scientific Research in Computer Science Engineering and Information Technology,2,2021.

Akramov A., 'The Impact of Digitalization in Inheritance Law' 4 *Qubahan Academic Journal* 3, 2024

- Banerjee S, 'Geosurveillance, location privacy, and personalization' 38 *Journal of Public Policy & Marketing* 4, 2019.
- Banta N, 'Property interests in digital assets: The rise of digital feudalism' 38 *Cardozo L. Rev.* 4, 2016.
- Conway H and Grattan S, 'The 'New' New Property: Dealing with Digital Assets on Death' 9 *Modern Studies in Property Law*, 2017.
- DeSousa P, 'Self-storage units and cloud computing: Conceptual and practical problems with the Stored Communications Act and its bar on ISP disclosures to private litigants,' *Geo. LJ*, 102,2013.
- Elrod L D & Spector R G, 'Review of the Year 2018–2019 in Family Law' *Family Law Quarterly*, 2020, 265-312.
- Frosio G and Geiger C, 'Taking Fundamental Rights Seriously in the Digital Services Act's Platform Liability Regime' 29 *European Law Journal* 1, 2023
- Gach K and Brubaker J, 'Getting your Facebook affairs in order: User expectations in post-mortem profile management' 5 *Proceedings of the ACM on Human-Computer Interaction*, 2021
- Harbinja E, 'Emails and death: Legal issues surrounding post-mortem transmission of emails' 43 *Death Studies* 7, 2019.
- Hopkins J, 'Afterlife in the Cloud: Managing a Digital Estate' 5 *Hastings Science and Technology Law Journal* 2013, 221.
- Hourican S, 'CFAA and Van Buren: A Half-Measure for a Wholly Ineffective Statute' 47 *Seton Hall Legis. J* 1, 2023
- Huggins C, & Frosina N, 'ICT-driven projects for land governance in Kenya: disruption and e-government frameworks' 82 *GeoJournal*, 2017.
- Ignacio Mas and Dan Radcliffe, 'Mobile money go viral in Kenya' 32 *Capco Institute's Journal of Financial Transformation*, 2011.

- Jagannath R and Jain A, 'Browser-in-the-middle attacks: A comprehensive analysis and countermeasures' 7 *Security and Privacy* 5, 2024.
- Klein, Sasha A., and Mark R. Parthemer. "Who will delete the digital you: Understanding fiduciary access to digital assets." *Prob. & Prop.*,30,2016.
- Kutler N, 'Protecting Your Online You: A New Approach to Handling Your Online Persona after death', University of California, 2019,5.
- Lee J, 'Death and Live Feeds: Privacy Protection in Fiduciary Access to Digital Assets' *Colum. Bus. L. Rev.*, 2015.
- Leuz C, 'Different approaches to corporate reporting regulation: How jurisdictions differ and why' 40 *Accounting and Business Research* 3, 2010.
- Lopez A, 'Posthumous privacy, decedent intent, and post-mortem access to digital assets' 24 *Geo. Mason L. Rev.*, 2016.
- McCarthy L," Digital Assets and Intestacy," Boston University Journal of Science an technology Law,2015,382,  
<<https://heinonline.org.ezproxy.library.strathmore.edu/HOL/Page?handle=hein.journals/jstl21&id=402> collection=journals index=> 2015.
- Medina M, 'The Stored Communications Act: An Old Statute for Modern Times' 63 *Am. UL Rev.* 2, 2013, 267.
- Morton et al, 'Equitable Interoperability: The "Supertool" of Digital Platform Governance' 40 *Yale J. on Reg.* 1013, 2023.
- Park Y, Sang Y, Lee H and Jones-Jang S, 'The Ontology of Digital Asset After Death: Policy Complexities, Suggestions and Critique of Digital Platforms' 22 *Digital Policy, Regulation and Governance* 1, 2020
- Pinch R, 'Protecting digital assets after death: Issues to consider in planning for your digital estate,' *Wayne L. Rev.*,60,2014.

- Prinsloo P and Rogers K, 'Data privacy on the African continent: Opportunities, challenges and implications for learning analytics,' 53, *British Journal of Educational Technology*, 4, 2022.
- Putrevu J and Mertzanis C, 'The Adoption of Digital Payments in Emerging Economies: Challenges and Policy Responses' 26 *Digital Policy, Regulation and Governance* 5, 2024
- Saidakhrarovich S, 'Digitalization in inheritance law' 10 *World Bulletin of Management and Law* 1, 2022.
- Scaniffe N, 'A New Gold Rush: How Trust Law Can Incentivize Prudent Cryptocurrency Estate Planning and Increase State Revenue' *Quinnipiac Prob. LJ*, 2022, 171.
- Schnitzler T, Farke F, Pöpper C and Dürmuth M., 'Exploring user perceptions of deletion in mobile instant messaging applications' 6 *Journal of Cybersecurity* 1, 2020.
- Subotnik E, 'Copyright and the Living Dead? Succession Law and the Postmortem Term' 29 *Harvard Journal of Law & Technology*, 2015
- Tarney G, 'A call for legislation to permit the transfer of digital assets at death,' *Cap. UL Rev.* 40, 2012.
- Toygar A, 'A New Asset Type: Digital Asset' 22 *Journal of International Technology and Information Management* 4, 2013, 113.
- Tyce M, 'Beyond the neoliberal-statist divide on the drivers of innovation: A political settlement reading of Kenya's M-Pesa success story' 125 *World Development*, 2020.
- Walker D, 'The new uniform digital assets law: estate planning and administration in the information age,' 52, *Real Prop. Tr. & Est. LJ*, 2017.
- Wexler R, 'Privacy as Privilege: The Stored Communications Act and Internet Evidence' 134 *Harv. L. Rev.* 2, 2020.
- Wilbur S, 'What Does This Mean: Examining Legislative Ambiguities in the Cybersecurity Act of 2015 and the Potential for a Future Circuit Split on Interpretation' 48 *Seton Hall L. Rev.* 1, 2017, 275.

## Newspapers

Kamau Muthoni, No law for inheritance of digital assets or property, Judiciary reveals, 2018, <https://www.standardmedia.co.ke/article/20011284484/no-law-for-inheritance-of-digital-assets-or-property-judiciary-reveals> on 16 March 2019.

## Articles

Aegis S, 'Kenya's Digital Ecosystem in 2024: Insights and Opportunities' *Smith Corp*, 2024,1 - Kenya's Digital Ecosystem in 2024: Insights and Opportunities on 5 December 2024. Se 3

Akhilesh G, 'What are Digital Assets?' *The Balance*,2021,2<<https://www.thebalancemoney.com/what-are-digital-assets-5207790>>on 23 November 2023.

Anderson A, 'The computer fraud and abuse act: Hacking into the authorization debate,' *Jurimetrics*,2013.

Arunda B, 'The Impacts of Emerging Technologies in the Future of Law and Legal Practice: A Case of Kenya' Typesetting by, 2020, 212 <https://journalofcmsd.net/wp-content/uploads/2021/04/VOLUME-6-ISSUE-2-April-1.pdf#page=223> on 6 December 2024.

Bidman D, 'Digital Assets "Are Property" Under English Law' legal features,2019, 1<<https://www.legalfutures.co.uk/latest-news/digital-assets-property-under-english-law>> on 19 November 2019.

Gatuyu, "Managing Digital Assets in Kenya: Regulatory Framework, Practices and Future Prospects"< [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2693072](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2693072)> November 22, 2015.

Heather C, 'The 'New' New Property: Dealing with Digital Assets on Death' Queen's University Belfast School of Law, 12, 2012, 4<<https://ssrn.com/abstract=3289171>> on 22 February 2023.

Kharitonova Y, 'Digital Assets and Digital Inheritance' Lomonosov Moscow State University, 2021,3

<[https://www.researchgate.net/publication/349678915\\_Digital\\_assets\\_and\\_digital\\_Inheritance](https://www.researchgate.net/publication/349678915_Digital_assets_and_digital_Inheritance)>February 2021.

Kitili J, 'Digital Assets Unveiled: Deciphering Intellectual Property Rights and Privacy Considerations' Centre for Intellectual Property and Information Technology,2024,2,<<https://cipit.org/digital-assets-unveiled-deciphering-intellectual-property-rights-and-privacy-considerations/>> on 21 May 2024.

Kristina J,'Estate Planning for Digital Assets' Shumaker, Loop Kendrick, LLP,2014,2,<<https://www.shumaker.com/Templates/media/files/pdf/news/publications/-insights-estate-planning.pdf>> Spring 2014.

Labharam A, 'Inheritance of personal data: the future of succession in the metaverse', *KICTANet*, 2022, Inheritance of personal data: the future of succession in the metaverse | KICTANet Think Tank on 25 November 2025.

Magenge R,Mutuku M,'Beyond Land and Cash: Exploring Africa's Digital Inheritance Regime' Medium, 2024,3<<https://pollicy.medium.com/beyond-land-cash-exploring-africas-digital-inheritance-regime-a3703dd2a8b8>> on 12 August 2024.

Muigua K,'Is Kenya Prepared to Embrace Digital Dispute Resolution' Africa The Lawyer,2023,2,<<https://thelawyer.africa/2023/09/09/kenya-preparedness-for-digital-dispute-resolution/>>on 9 September 2023.

Natalie M, 'Property Interests in Digital Assets: the rise of digital feudalism', 38, 10 February 2017, 1101.

Nyala V, 'Ensuring the Future: The Critical Role of Succession Planning for Digital Assets,' MMS Advocates, 2024 Ensuring the Future: The Critical Role of Succession Planning for Digital Assets - MMS Advocates on 24 October 2024.

Nzomo V, 'Social Media and the Law of Succession: A Kenyan Scenario' CIPIT Insights,2014,3<<https://cipit.strathmore.edu/social-media-and-the-law-of-succession-a-kenyan-scenario/>>on 22 September 2014.

Ohm P, 'The Computer Fraud and Abuse Act After Van Buren' American Constitution Society, 2024,8 The Computer Fraud and Abuse Act After Van Buren | ACS on 18 November 2024.

Pedersen C, 'Digital assets after death' *Journal of Accountancy*, 2019, Digital assets after death - Journal of Accountancy on 6 December 2024.

Sollitto N, 'What is the Computer Fraud and Abuse Act (CFAA)?' Up Guard, 2024,8 What is the Computer Fraud and Abuse Act (CFAA)? | Up Guard n 18 November 2024.

Stadler C, 'M-PESA: Why The World's First Large Mobile Payment Platform Keeps On Winning' *Forbes*, 2024, 1 M-PESA: Why The World's First Large Mobile Payment Platform Keeps On Winning on 5 December 2024.

Szwajdler P, "Digital assets and inheritance law: How to create fundamental principles of digital succession system?" *International Journal of Law and Information Technology*,2023,13,<<https://academic.oup.com/ijlit/article-abstract/31/2/144/7248529?redirectedFrom=full-text>> on 22nd August 2023.

Wamathai J, 'How next of kin can access Mpesa money when their loved one dies' *Hapa Kenya*, 2018,1 How next of kin can access Mpesa money when their loved one dies - Hapa Kenya on 5 December 2024.

## **Reports**

Congressional Research Service, *Cybercrime and the Law: Computer Fraud and Abuse Act (CFAA) and the 116th Congress*, 21 September 2020.

Everplans, *State-by-State Digital Estate Planning Laws*,2024.

Judiciary, *Simplified Resource Tool on Inheritance and Related Family Law Practice in Kenya*, 2018.