

respondent pending hearing and determination of this application inter-partes /or further orders of the court.

4. An order do issue directing the director of pensions from further releasing the deceased retirement benefits/gratuity funds in

respect of deceased TSC number 189325 and Pension number PC373245 to the respondent pending determination of all the beneficiaries and/or further orders of the court.

5. The respondent herein be compelled by this Honourable Court to give an account of deceased retirement benefits/gratuity funds in respect of deceased TSC number 189325 and Pension number PC373245 received by herself from the teachers commission.

6. The TSC be ordered to provide a certified copy of all the contents of the file of NAZARIO GITONGA KANAMPIU (Deceased) TSC No. 189325 and Pension number PC373245 to the applicant herein within five (15) days of being served with the order. 7).

7. That the Honourable Court be pleased to order that the deceased funds/benefits held at the Teachers Commission be shared equally between the two wives of the deceased for the benefit of their respective houses.

8. The cost of this application be in the cause.

2. The application is premised on the grounds that after the demise of the deceased herein, his 1st wife namely Damaris Karoki fraudulently

applied and received part payment of his gratuity and pension through his TSC No. 189325 and pension No. APN/PC373245, thus depriving the 2nd house their rightful share. Upon the death of a member of a

scheme, the benefits payable therefrom form part of his estate for purposes of administration.

3. The Respondent swore a replying affidavit on 23/7/2025 in opposition to the application. She concurred that the Applicant was indeed a son

of the deceased, and was not objected to his appointment as a co-administrator of the estate. She and the deceased solemnized their marriage on 30/12/2000 at Igoji Catholic Church, and thus the assertions by the Applicant that the deceased had 2 wives are baseless. She was nominated by the deceased to receive his benefits and was only required to furnish proof of death and confirm the relationship with the deceased. Upon receipt of the gratuity and pension in her bank account, she voluntarily remitted Ksh. 50,000 to each of the 4 children of the deceased, including the Applicant herein, as a gesture of respect and not fulfilment of any legal obligation. In her view, the benefits paid directly by the deceased's employer or pension authority do not ordinarily form part of the free property of the estate, and are not subject to distribution under the Law of Succession Act. She was nonetheless ready and willing to

account for all such funds and to participate in a proper administration of the estate once a full grant is issued and confirmed. She prayed for the dismissal of the application as it seeks substantive reliefs which fall outside the narrow scope of a grant ad colligenda bona.

4. The application was canvassed by way of written submissions, which were duly filed by counsel.

Disposition

5. Having considered the application and the submissions on record, I find the issue for determination to be whether the orders sought ought to be issued.
6. Section 36A of the Retirement Benefits Act provides that, ***“Upon the death of a member of a scheme, the benefit payable from the scheme shall not form part of the estate of the member for the purpose of administration and shall be paid out by the trustees in accordance with the scheme rules.”***
7. Regulation 23 of the Retirement Benefits (Occupations Retirement Benefits Schemes) Regulations, provides that, ***“The scheme rules shall provide that upon the death of a member, the benefits***

payable from the scheme shall be paid to the nominated beneficiary and if the deceased member had not named the beneficiary, then the trustees shall exercise their discretion in the distribution of the benefits to the dependants of the deceased member, provided that the trustees may refuse to pay the

nominated beneficiary and the reasons for such refusal shall be so recorded.”

8. While the Respondent contends that the deceased executed a nomination in her favour, no documentary evidence has been tendered in support thereof.
9. The provisions of Regulation 23 of the Retirement Benefits (Occupations Retirement Benefits Schemes) Regulations are candid that where no such nomination is made, the benefits are payable to the dependants of the deceased.
10. In ***Isaac Ingati Abong’ & another v Kenya Commercial Bank Limited [2015] KEHC 2154 (KLR)***, the court (C. Mwita J, as he then was) espoused that; ***“The pension payment cannot be said to be a***

free property of the deceased. The retirement Benefits Act has also excluded pension from a deceased person's estate for purposes of administration. However, that does not mean the dependants of the deceased are not entitled to payments. The applicants as dependants of the deceased are entitled to payments from the scheme in terms of both the Trust Deed and the Rules thereto. The respondents upon learning that the deceased's estate had administrators who were dependants of the deceased, should have moved to find out who they were and make

payments in accordance with the Trust Deed and Rules. They could have even placed a caveat on the account and only release the money that was due to the dependants instead of debiting the account with all the amount that had been paid into the deceased's account. The assertion by the respondent that the money is not payable for reasons that the deceased had no dependants is far-fetched. As stated elsewhere in this ruling, the fact that the deceased did not mention the dependants was not in law conclusive. Under the Trust Deed, they were entitled to payments. On whether the applicants have a cause of action, it is clear that the benefits were for the deceased and upon death, her dependants. I do not therefore agree with submissions on behalf of the respondent, that the petitioners/applicants have no cause of action. They are dependants of the

deceased and the scheme was for both the employee during her life-time and thereafter to her dependants. The applicants are dependants of the deceased and both in law and under the Trust Deed, they are entitled to benefit from the deceased's entitlement under the scheme."

11. It is not in dispute that the Applicant was a son of the deceased herein. On whether the Applicant's mother was a 2nd wife of the deceased, the Respondent has sufficiently demonstrated that she was the only legal wife of the deceased, and there being no proof of dissolution of that marriage, the deceased lacked the legal capacity to contract another marriage. Consequently, the Applicant's mother cannot be recognized as a dependant for purposes of these proceedings.

12. I find that the Applicant, being a dependant of the deceased, is entitled to benefit from the retirement benefits of his deceased father.

13. The upshot from the foregoing is that the application dated 9/4/2025 is merited and it is allowed in terms of prayer 5.

14. The Respondent will therefore render account to the Applicant within 40 days from the date hereof, of the deceased retirement benefits/gratuity funds in respect of deceased's TSC Number

189325 and pension Number PC 373245 received by herself from
the Teachers Service Commission.

15.Mention on 9/6/2026.

DATED AND DELIVERED AT MERU THIS 12TH DAY OF MARCH, 2026.

S.M. GITHINJI
JUDGE

In the Presence of:-

Miss Pauline Kanyeki for the Respondent

Mr. Kiogora Mugambi for the Petitioner (absent)