



Family Trusts – Who are they for and do they work?

As Kenya's middle and upper-middle class expands, the question of wealth preservation and management is certainly a hot-button topic within families. Even amidst the most cordial of relations, there can be a fair deal of contention as to just how to pass the baton and secure one's legacy for future generations. Globally, **a whopping 70 percent of wealthy families dissipate their wealth by the second generation, and 90 percent by the third.**¹ These sobering statistics serve as a reminder that planning is essential for wealth management & succession planning. If Rome was not built in a day, it certainly can be torn down rather quickly.



A scene of the 'good life' in Kenya's capital, Nairobi. Credit: Bryan Mutiso

Whereas family offices (formally referred to locally as family companies) provide a robust and flexible mechanism for managing family affairs and distributions and have exploded in popularity across the globe, these are still subject to many taxes and can be quite costly and administratively complex to run. Yet, truth be told (we aren't here to preach doomsday scenarios, after all), **wealth dissipation may not exclusively come down to wanton behaviour** by one's successors. With family offices, for instance, even the most well-thought-out structure may not be fit for purpose vis a vis the intended beneficiaries. There may be divergent, even incompatible interests, lifestyles, philosophies, and so forth. There may equally be fraught relations and mistrust – a sad reality for many families. Indeed, this is where the benefactor-beneficiary relationship becomes key. Knowing the strengths, weaknesses, needs, capacities & capabilities of those set to inherit, as well as the scope of beneficence (i.e. not just how many beneficiaries, but how much, and how many generations into the future you wish to benefit from your wealth) is paramount to lasting succession.

So, what vehicles exist today, in our context, to drive this agenda at a family level? **Trusts, unlike the myriad other options, offer a suite of options for ownership, the most wide-ranging tax benefits, and several discretions.** Family trusts, more specifically, are attuned to the needs of, well, families, and cater to things like education, healthcare, housing, and so on.

¹ Source: Vanguard report, as quoted in the Financial Times <https://www.ft.com/content/00d4ad2a-e41d-4c6e-92fd-e5cfce6cd7a4>

In Kenya, family trusts have been operative since 2021, with the coming into effect of the *Trustees (Perpetual Succession) Amendment Act*. Still, trusts serving families have existed in Kenya in some shape or form, and indeed can take any shape or form to cater to the whims of the donor or settlor. What is crucial to the success of any trust, in our informed view, is the level of due diligence and/or consultation done with trustees (those who will manage the trust instrument, itself), as well as immediate beneficiaries.

Not to toot our own horn, but **it really is worth every shilling getting a professional to assist in the creation of a trust**, because just as self-drafted wills can lead to unnecessary tax obligations, among other unintended consequences, the intricacies of trusts law mandate a keen eye for detail, which only comes with years of experience.

Other considerations one should have when thinking about a family trust, include the shifting demographic and economic landscape. For one, we are living longer on average, meaning passing off wealth, or at least full control of it, may be ill-advised until an older age. Relatedly, old age almost inevitably brings health complications that can be burdensome to families to the point of dissipating wealth. Moreover, the economic realities of today mean children are often still living at home with their parents until much later in life, leading to friction, especially as property values surge, home ownership gets out of reach



for the young, and elderly parents are deemed to no longer need the expansive family home. In other circumstances, new 'later-life' relations – such as where divorce, or death, or re-marriage occur – could further complicate succession planning. Careful consideration also needs to be given to the fact that your portfolio is not static, meaning it can grow. Therefore, knowing what assets will be put into the trust and when can enhance efficiency, minimise conflict, and reduce overall costs.

All in all, it should be noted **no single vehicle of wealth preservation & management offers a silver bullet**. Instead, a mix of things like insurance policies, wills, gifts made during one's lifetime, etc. should form part of your wider toolkit for navigating your wealth and succession plans.

For personalised advice on how to go about setting up a family trust, or even just to inquire more, please get in touch with us via email info@rmmandcompanyadvocates.com or call us on **0707 611 019** briefly explaining what it is you're interested in exploring or setting up and we'll get back to you with a scheduled appointment.

Written by **Bryan Mutiso, B.A., LLB, MSc., ACI Arb**
Strategy & Business Development Lead at **RMM Advocates LLP**

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