

LAWS OF KENYA

THE LAW OF SUCCESSION ACT

CHAPTER 160



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CHAPTER 160

THE LAW OF SUCCESSION ACT

Commencement: 1st July, 1981

An Act of Parliament to amend, define and consolidate the law relating to intestate and testamentary succession and the administration of estates of deceased persons; and for purposes connected therewith and incidental thereto

PART I- PRELIMINARY

1. This Act may be cited as the Law of Succession Act and shall come into operation on 1st July, 1981.

2. (1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.

(2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act.

(3) Subject to subsection (4), the provision of this Act shall not apply to testamentary or intestate succession to the estate of any person who at the time of this death is a Muslim to the intent that in lieu of such provisions the devolution of the estate of any such person shall be governed by Muslim law.

(4) Notwithstanding the provisions of subsection (3), the provisions of Part VII relating to the administration of estates shall where they are not inconsistent with those of Muslim law apply in case of every Muslim dying before, on or after the 1st January, 1991.

3. (1) In this Act, except where the context otherwise requires -
 “active service” means service with the armed forces or merchant marine on a field of military operations or at sea, or proceeding to or from, or under orders to proceed to, or in being in some place for the purpose

14 of 1972,
 7 of 1975,
 8 of 1976,
 16 of 1977,
 13 of 1978,
 10 of 1981,
 6 of 1984,
 19 of 1984,
 18 of 1986,
 21 of 1990,
 L.N.93/1981,
 L.N.223/1992,
 L.N.266/1995,
 L.N.295/1995,
 L.N.392001,
 L.N.143/2002.

Short title and commencement.
 L.N 93/1981.

Application of Act.
 13 of 1978,
 Sch.,
 21 of 1990.

Interpretation.
 8 of 1976, s.2,
 10 of 1981,
 21 of 1990.

of proceeding to, a field of military operations or sea;

“administrator” means a person to whom a grant of letters of administration has been made under this Act;

“agricultural land” means land used for agricultural purposes which is not within a municipality or a township or a marker, but does not include land registered under the provisions of any written law;

“authorized investment”, with reference to the investment of any fund, means an investment of such type as is authorized for investment of that fund by any will applying thereto, or as is for the time being authorized by any written law for the investment of trust funds;

“charitable purpose” includes the relief of poverty, the advancement of education, the advancement of religion, and any other purpose of a public nature and capable of administration by a court of law which benefits the community at large or the inhabitants or a particular class of inhabitants of a particular locality;

“codicil” means a testamentary instrument made in relation to a will, explaining, altering or adding to its dispositions or appointments, and duly made and executed as required by the provisions of this Act for the making and execution of a will;

“competent witness” means a person of sound mind and full age;

“court” means a court having jurisdiction under this Act in the matter in question;

“demonstrative legacy” means a testamentary gift which is in its nature general but which manifests an intention that the gift shall be primarily satisfied out of a specified fund or a specified part of the property of the testator, but shall, upon failure of that fund or property, be met from the general estate;

“estate” means the free property of a deceased person;

“executor” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided;

“free property”, in relation to a deceased person, means the property of which that person was legally competent freely to dispose during his lifetime, and in respect of which his interest has not been terminated by his death;

“full age” means having attained the age of eighteen years;

“general legacy” means a testamentary gift, whether specific or general, of property described in general terms to be provided out of the general estate of the testator, whether or not also charged on any specific part of his estate;

“general power of appointment” means an unfettered power of appointment to such object or objects as the appointor may think fit;

“general residuary bequest” means a testamentary gift of all the property of the testator not otherwise disposed of;

“house” means a family unit comprising a wife, whether alive or dead at the date of the death of the husband, and the children of that wife;

“income” includes rents and profits;

“independent witness” means a witness who is not a beneficiary under a will or the spouse of any such beneficiary;

“limited residuary bequest” means a testamentary gift which, but for some specific limitation therein expressed or implied, would constitute a general residuary bequest;

“minor” means any person who is not of full age;

“Muslim” means any person who professes the religion of Islam and accept the unity of God and Muhammed as his prophet;

“Muslim law” means the law applicable to a person who is a Muslim at the time of his death;

“net estate” means the estate of a deceased person after payment of reasonable funeral expenses, debts and liabilities, expenses of obtaining probate or letters of administration, other reasonable expenses of administration and estate duty, if any;

“net intestate estate” means the estate of a deceased person in respect of which he has died intestate after payment of the expenses, debts, liabilities and estate duty set out under the definition of “net estate”, so far as the expenses, debts, liabilities and estate duty are chargeable against that estate;

“particular residual bequest” means a testamentary gift of all of a particular property not otherwise disposed of;

“pecuniary legacy” includes an annuity, a general legacy, a demonstrative legacy so far as it is not discharged out of the specified fund or property, and any other general direction by the testator for the payment of money, including all death duties free from which any gift is made to take effect;

“personal and household effects” means clothing and articles of personal use and adornment, furniture, appliances, pictures, ornaments, food, drink, utensils and all other articles of household use or decoration normally to be associated with a matrimonial home, but does not include any motor vehicle or any other thing connected with the business or profession of the deceased;

“personal representative” means the executor or administrator of a deceased person;

“portion” means provision by a parent or person *in loco parentis* to establish a child in life;

“power of appointment” means power vested in some person to determine the disposition of property of which that person is not the owner;

“probate” means the certificate of a court of competent jurisdiction that a will, of which a certified copy is attached in the case of a written will, has been proved a valid will with a grant of representation to the executor in respect of the estate;

“purchaser” means a purchaser for money or money’s worth;

“representation” means the probate of a will or the grant of letters of administration;

“special legacy” means a testamentary gift of a particular part of the

property of the testator, which identifies that part by a sufficient description, whether in specific or in general terms, and manifests an intention that that part shall be enjoyed or taken in the state and condition indicated by that description;

“special power of appointment” means power of appointment to such object or objects within a special description or class as the appointor may think fit;

“trust corporation” means an incorporated banking or insurance or guarantee or trust company having a subscribed capital of not less than five hundred thousand shillings, or any body corporate which has a subscribed capital of not less than five hundred thousand shillings and which is for the time being empowered (by or under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers), to undertake trusts, but for so long a time only as that body corporate shall not, by any prospectus, circular, advertisement or other document issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the Consolidated Fund in respect of any act or omission of that body corporate when acting as an executor or administrator:

Provided that a body corporate which would be a trust corporation but for the fact that its subscribed capital is less than five hundred thousand shillings may act as executor or administrator in any case with the leave of the court on giving such security as the court may determine, and thereupon for the purpose of so acting as executor or administrator that corporation shall have all the rights and privileges conferred on a trust corporation by this Act;

“wife” includes a wife who is separated from her husband and the terms “husband” and “spouse”, “widow” and widower” shall have a corresponding meaning;

“will” means the legal declaration by a person of his wishes or intentions regarding the disposition of his property after his death, duly made and executed according to the provisions of Part II, and includes a codicil.

(2) References in this Act to “child” or “children” shall include a child conceived but not yet born (as long as that child is subsequently born alive) and, in relation to a female person, a child born to her out of wedlock, and, in relation to a male person, a child whom he has expressly recognized or in fact accepted as a child of his own or for whom he has voluntarily assumed permanent responsibility.

(3) A child born to a female person out of wedlock, and a child as defined by subsection (2) as the child of a male person, shall have relationship to other persons through her or him as though the child had been born to her or him in wedlock.

(4) Where the date of birth of any person is unknown or cannot be ascertained, that person shall be treated as being of full age for the purposes of this Act if he has apparently attained the age of eighteen years, and shall not otherwise be so treated.

(5) Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife for the purposes of this Act, and in particular sections 29 and 40 thereof, and her children are accordingly children within the meaning of this Act.

4. (1) Except as otherwise expressly provided in this Act or by any other written law -

Law applicable to succession.

(a) succession to immovable property in Kenya of a deceased person shall be regulated by the law of Kenya, whatever the domicile of that person at the time of his death;

(b) succession to the movable property of a deceased person shall be regulated by the law of the country of the domicile of that person at the time of his death.

(2) A person who immediately before his death was ordinarily resident in Kenya shall, in the absence of proof of domicile elsewhere, be presumed to have been domiciled in Kenya at the date of death.

PART II- WILLS

Capacity

5. (1) Subject to the provisions of this Part and Part III, any person who is of sound mind and not a minor may dispose of all or any of his free property by will, and may thereby make any disposition by reference to any secular or religious law that he chooses.

Persons capable of making wills and freedom of testation. 8 of 1976, s.3.

(2) A female person, whether married or unmarried, has the same capacity to make a will as does a male person.

(3) Any person making or purporting to make a will shall be deemed to be of sound mind for the purpose of this section unless he is, at the time of executing the will, in such a state of mind, whether arising from mental or physical illness, drunkenness, or from any other cause, as not to know what he is doing.

(4) The burden of proof that a testator was, at the time he made any will, not of sound mind, shall be upon the person who so alleges.

Appointment
by will of
executor.

6. A person may, by will, appoint an executor or executors.

Wills caused
by fraud,
coercion
importunity or
mistake.

7. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, or has been induced by mistake, is void.

Formalities

Forms of
wills.

8. A will may be made either orally or in writing.

Oral wills.

9. (1) No oral will shall be valid unless -
(a) it is made before two or more competent witnesses; and
(b) the testator dies within a period of three months from the date of making the will:

Provided that an oral will made by a member of the armed forces or merchant marine during a period of active service shall be valid if the testator dies during the same period of active service notwithstanding the fact that he died more than three months after the date of making the will.

(2) No oral will shall be valid if, and so far as, it is contrary to any written will which the testator has made, whether before or after the date of the oral will, and which has not been revoked as provided by sections 18 and 19.

Proof of oral
wills.
13 of 1978,
Sch.

10. If there is any conflict in evidence of witnesses as to what was said by the deceased in making an oral will, the oral will shall not be valid except so far as its contents are proved by a competent independent witness.

Written wills.

11. No written will shall be valid unless -

- (a) the testator has signed or affixed his mark to the will, or it has been signed by some other person in the presence and by the direction of the testator;
- (b) the signature or mark of the testator, or the signature of the person signing for him, is so placed that it shall appear that it was intended thereby to give effect to the writing as a will;
- (c) the will is attested by two or more competent witnesses, each of whom must have seen the testator sign or affix his mark to the will, or have seen some other person sign the will, in the presence and by the direction of the testator, or have received from the testator a personal acknowledgement of his signature or mark, or

of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

12. If a testator, in a will or codicil, refers to another document then actually written, and expressing any part of his intentions, that document, where it is clearly identified as the document to which the will refers, shall be considered as forming part of the will or codicil in which it is referred to.

Incorporation of papers by reference.

13. (1) A will shall not be considered as insufficiently attested by reason of any benefit thereby given, either by way of bequest or by way of appointment to any person attesting it, or to his or her spouse.

Effect of gift to attesting witness. 8 of 1976, s. 4.

(2) A bequest to an attesting witness (including any direction as to payment of costs or charges) or a bequest to his or her spouse shall be void unless the will is also attested by at least two additional competent and independent witnesses, in which case the bequest shall be valid.

14. No person, by reason of his being an executor of a will, shall be disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

Witness not disqualified by being executor.

15. Notwithstanding the provisions of this Part, any written will executed before the commencement of this Act shall, whether the testator dies before or after the commencement of this Act, be treated as properly executed if it was executed according to the requirements of the law in force at the date of execution.

Existing wills.

16. Notwithstanding the provisions of this Part, every will, whether of movable or immovable property, and whether executed before or after the commencement of this Act, shall be treated as properly executed if its execution conformed, either at the time of execution or at the time of the testator's death, to the law in force -

Formal validity of other wills.

- (a) in the state where it was executed; or
- (b) in the state where the property is situated; or
- (c) in the state where, at the time of its execution or the testator's death, he was domiciled; or
- (d) in a state of which the testator was a national either at the time of its execution or on his death.

Revocation, Alteration and Revival

17. A will may be revoked or altered by the maker of it at any

Will may be revoked or

altered. time when he is competent to dispose of his free property by will.

Revocation of will.

18. (1) Save as provided by section 19, no will or codicil, or any part thereof, shall be revoked otherwise than by another will or codicil declaring an intention to revoke it, or by the burning, tearing or otherwise destroying of the will with the intention of revoking it by the testator, or by some other person at his direction.

(2) A written will shall not be revoked by an oral will.

Revocation of will by testator's marriage.

19. A will shall be revoked by the marriage of the maker; but where a will is expressed to be made in contemplation of marriage with a specified person, it shall not be revoked by the marriage so contemplated.

Effect of obliteration, interlineation or alteration in will.

20. (1) No obliteration, interlineation or other alteration made in a written will after the execution thereof shall have any effect unless the alteration is signed and attested as a written will is required to be under section 11:

Provided that a will as so altered shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of the will opposite or near to the alteration, or is referred to in a memorandum written at the end or some other part of the will and so signed and attested.

(2) Where a typewritten or printed will purports to have been executed by the filling in of any blank spaces, there shall be a presumption that the will has been duly executed.

Revival of will.

21. (1) No will which has been in any manner wholly revoked shall be revived otherwise than by the re-execution thereof.

(2) Where only part of a will has been revoked, that part shall not be revived otherwise than by the re-execution thereof or by a subsequent will or codicil showing an intention to revive it.

Construction

Construction of wills.

22. Wills shall be construed in accordance with the provisions of the First Schedule.

Failure of Dispositions

Failure of testamentary dispositions.

23. Testamentary gifts and dispositions shall fail by way of lapse or ademption in the circumstances and manner and to the extent provided by the Second Schedule.

Election

24. Beneficiaries under testamentary gifts or dispositions shall be put to election in the circumstances and manner and to the extent provided by the Third Schedule.

Election.

25. (*Repealed by 6 of 1984*).

PART III- PROVISION FOR DEPENDANTS

26. Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.

Provision for dependants not adequately provided for by will or on intestacy. 8 of 1976, s.5.

27. In making provision for a dependant the court shall have complete discretion to order a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.

Discretion of court in making order.

28. In considering whether any order should be made under this Part, and if so what order, the court shall have regard to -

- (a) the nature and amount of the deceased's property;
- (b) any past, present or future capital or income from any source of the dependant;
- (c) the existing and future means and needs of the dependant;
- (d) whether the deceased had made any advancement or other gift to the dependant during his lifetime;
- (e) the conduct of the dependant in relation to the deceased;
- (f) the situation and circumstances of the deceased's other dependants and the beneficiaries under any will;
- (g) the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.

Circumstances to be taken into account by court in making order. L.N.256/1976.

29. For the purposes of this Part, "dependant" means -

- (a) the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death;
- (b) such of the deceased's parents, step-parents, grand-parents,

Meaning of dependant.

grandchildren, step-children, children whom the deceased had taken into his family as his own, brothers and sisters, and half-brothers and half-sisters, as were being maintained by the deceased immediately prior to his death; and

- (c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.

Limitation of time.

30. No application under this Part shall be brought after a grant of representation in respect of the estate to which the application refers has been confirmed as provided by section 71.

PART IV- GIFTS IN CONTEMPLATION OF DEATH

Characteristics.

31. A gift made in contemplation of death shall be valid, notwithstanding that there has been no complete transfer of legal title, if-

- (a) the person making the gift is at the time contemplating the possibility of death, whether or not expecting death, as the result of a present illness or present or imminent danger; and
- (b) a person gives movable property (which includes any debt secured upon movable or immovable property) which he could otherwise dispose of by will; and
- (c) there is delivery to the intended beneficiary of possession or the means of possession of the property or of the documents or other evidence of title thereto; and
- (d) a person makes a gift in such circumstances as to show that he intended it to revert to him should he survive that illness or danger; and
- (e) the person making that gift dies from any cause without having survived that illness or danger; and
- (f) the intended beneficiary survives the person who made the gift to him:

Provided that -

- (i) no gift made in contemplation of death shall be valid if the death is caused by suicide;
- (ii) the person making the gift may, at any time before his death, lawfully request its return.

PART V- INTESTACY

Excluded property.
L.N.94/1981.

32. The provisions of this Part shall not apply to -

- (a) agricultural land and crops thereon; or
 - (b) livestock,
- in various Districts set out in the Schedule.

SCHEDULE

West Pokot	Wajir
Turkana	Garissa
Marsabit	Tana River
Samburu	Lamu
Isiolo	Kajiado
Mandera	Narok

33. The law applicable to the distribution on intestacy of the categories of property specified in section 32 shall be the law or custom applicable to the deceased's community or tribe, as the case may be.

Law applicable to excluded property. 8 of 1976, s.6.

34. A person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect.

Meaning of intestacy.

35. (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to -

Where intestate has left one surviving spouse and child or children. 8 of 1976, s. 7, 16 of 1977, Sch.

- (a) the personal and household effects of the deceased absolutely; and
- (b) a life interest in the whole residue of the net intestate estate:

Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.

(2) A surviving spouse shall, during the continuation of the life interest provided by subsection (1), have a power of appointment of all or any part of the capital of the net intestate estate by way of gift taking immediate effect among the surviving child or children, but that power shall not be exercised by will nor in such manner as to take effect at any future date.

(3) Where any child considers that the power of appointment under subsection (2) has been unreasonably exercised or withheld, he or, if a minor, his representative may apply to the court for the appointment of his share, with or without variation of any appointment already made.

(4) Where an application is made under subsection (3), the court may award the applicant a share of the capital of the net intestate estate with or without variation of any appointment already made, and in determining whether an order shall be made, and if so what order, shall have regard to -

- (a) the nature and amount of the deceased's property;
- (b) any past, present or future capital or income from any source of the applicant and of the surviving spouse;
- (c) the existing and future means and needs of the applicant and the surviving spouse;
- (d) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
- (e) the conduct of the applicant in relation to the deceased and to the surviving spouse;
- (f) the situation and circumstances of any other person who has any vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under his will, if any; and
- (g) the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did, and any other application made under this section.

(5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

Where intestate has left one surviving spouse but no child or children.
8 of 1976, s. 8.

36. (1) Where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to -

- (a) the personal and household effects of the deceased absolutely; and
- (b) the first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the greater; and
- (c) a life interest in the whole of the remainder:

Provided that if the surviving spouse is a widow, that life interest shall be determined upon her re-marriage to any person.

(2) The Minister may, by order in the Gazette, vary the amount specified in paragraph (b) of subsection (1).

(3) Upon the determination of a life interest created under subsection (1), the property subject to that interest shall devolve in the order of priority set out in section 39.

Powers of spouse during life interest.
8 of 1976, s. 9.

37. A surviving spouse entitled to a life interest under the provisions of section 35 or 36, with the consent of all co-trustees and all children of full age, or with the consent of the court, may, during the period of the life interest, sell any of the property subject to that interest

if it is necessary for his own maintenance:

Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.

38. Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

Where intestate has left a surviving child or children but no spouse.

39. (1) Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority -

Where intestate has left no surviving spouse or children.

- (a) father; or if dead
- (b) mother; or if dead
- (c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
- (d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
- (e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.

(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.

40. (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

Where intestate was polygamous.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

41. Where reference is made in this Act to the “net intestate estate”, or the residue thereof, devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predecease him and who attain that age or so marry, in which case the issue shall take through degrees, in equal shares, the share which their parent would have taken had he not predeceased the intestate.

Property devolving upon child to be held in trust.

Previous benefits to be brought into account.

42.Where -

- (a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or
- (b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35,

that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

PART VI- SURVIVORSHIP

Presumption of survivorship.

43.Where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, the deaths shall, for all purposes of this Act, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder:

Provided that, in the case of spouses who died in those circumstances, the spouses shall be presumed to have died simultaneously.

PART VII- ADMINISTRATION OF ESTATES

Application of Part. 7 of 1975, Sch.

44. (1) The provisions of this Part shall not, in cases of intestacy, apply to those types of property mentioned in section 32.

(2) The Minister may, after consultation with the Chief Justice, by order in the Gazette, suspend in any area referred to in the order all or any of sections 45, 46, 48 and 49.

(3) Where the operation of sections 48 and 49 is suspended in any area, the High Court may make a grant of representation in respect of the estate of a deceased person whose last known place of residence was in that area, whether the value of the estate exceeds or does not exceed one hundred thousand shillings.

(4) In this section “area” means a province, district or other part of Kenya.

Protection

No intermeddling with property of deceased person.

45. (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.

(2) Any person who contravenes the provisions of this section

shall -

- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- (b) be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

46. (1) Whenever it becomes known to any police officer or administrative officer that any person has died, he shall, unless aware that a report has already been made, forthwith report the fact of the death to the assistant chief of the sub-location or to the chief or administrative officer of the area where the deceased had his last known place of residence.

Duties of officers in relation to protection, etc., of deceased's property.
8 of 1976, s. 10.

(2) Any person to whom a report is made under subsection (1) shall -

- (a) at the request of any person who appears to have a legitimate interest in the estate of the deceased; or
- (b) if no application for representation in respect of the estate has been made within one month after the date of the death of the deceased,

forthwith proceed to the last known place of residence of the deceased and take all necessary steps for the protection of his free property found there, for ascertainment of his other free properties (if any), for ascertainment of all persons appearing to have any legitimate interest in succession to or administration of his estate, and for the guidance of prospective executors or administrators as to formalities and duties:

Provided that if the last known place of residence of the deceased is situated in a municipality, or when the deceased dies outside Kenya wherever his property is situated, the person to whom a report is made under subsection (1) shall not take the action which he is required to take under this subsection unless and until he has first reported the death to the Public Trustee, who may if he so wishes himself take the action instead of that person.

(3) If any person to whom a report is made under subsection (1) finds that there is any free property of the deceased, or that the person appearing to have the greatest legitimate interest in succession to or administration of his estate is resident in any other sub-location or area, he shall forthwith report those facts to the assistant chief, chief or administrative officer of that other sub-location or area, who shall thereupon take, in respect of the property or persons, the steps prescribed by subsection (2).

(4) An assistant chief, chief or administrative officer becoming aware that there is in his sub-location or area any free property of a

deceased person, or that there are resident in his sub-location or area any persons appearing to have the greatest legitimate interest in succession to or administration of the estate of a deceased person, but that no grant of representation in respect of that estate has yet been made, shall, at the request of any person who appears to have any legitimate interest in that estate, and without waiting for a report under this section, forthwith take, in respect of the property or persons, the steps prescribed by subsection (2).

(5) A person who is required to take the steps referred to in subsection (2) -

- (a) shall forthwith report to the Public Trustee the death of the person concerned; and
- (b) notify the Public Trustee of the steps taken by him pursuant to that subsection.

Jurisdiction

Jurisdiction of High Court. 16 of 1977, Sch.

47. The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by resident magistrates appointed by the Chief Justice.

Jurisdiction of magistrates. 16 of 1977, Sch., 21 of 1990.

48. (1) Notwithstanding any other written law which limits jurisdiction, but subject to the provisions of section 49, a resident magistrate shall have jurisdiction to entertain any application other than an application under section 76 and to determine any dispute under this Act and pronounce such decrees and make such orders therein as may be expedient in respect of any estate the gross value of which does not exceed one hundred thousand shillings:

Provided that for the purpose of this section in any place where both the High Court and a resident magistrate's court are available, the High Court shall have exclusive jurisdiction to make all grants of representation and determine all disputes under this Act.

(2) For the avoidance of doubt it is hereby declared that the Kadhis' courts shall continue to have and exercise jurisdiction in relation to the estate of a deceased Muslim for the determination of questions relating to inheritance in accordance with Muslim law and of any other question arising under this Act in relation to such estates.

Territorial jurisdiction of magistrates.

49. The resident magistrate within whose area a deceased person had his last known place of residence shall, if the gross value of the estate of the deceased does not exceed one hundred thousand shillings, have in

respect of that estate the jurisdiction conferred by section 48:

8 of 1976, s.
10C.

Provided that -

- (i) the magistrate may, with the consent or by the direction of the High Court, transfer the administration of an estate to any other resident magistrate where it appears that the greater part of the estate is situated within the area of that other magistrate or that there is other good reason for the transfer;
- (ii) if the deceased had his last known place of residence outside Kenya, the High Court shall determine which magistrate shall have jurisdiction under this section;
- (iii) every resident magistrate shall have jurisdiction, in cases of apparent urgency, to make a temporary grant of representation limited to collection of assets situated within his area and payments of debts, regardless of the last known place of residence of the deceased.

50. (1) An appeal shall lie to the High Court in respect of any order or decree made by a resident magistrate in respect of any estate and the decision of the High Court thereon shall be final.

Appeals to
High Court.
8 of 1976, s.
10D,
13 of 1978,
Sch.,
21 of 1990.

(2) An appeal shall lie to the High Court in respect of any order or decree made by a Kadhis' Court in respect of the estate of a deceased Muslim and, with the prior leave thereof in respect of any point of Muslim law, to the Court of Appeal.

50A. The Chief Justice may in consultation with the Chief Kadhi, make rules of court for the better carrying into effect in relation to the estates deceased Muslims of the provisions of sections 47, 48, 49 and 50 and, in particular for regulating the exercise of the jurisdiction conferred by this Act.

Power to
make rules.
21 of 1990.

Application for Grant

51. (1) An application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

Application
for grant.

(2) An application shall include information as to -

- (a) the full names of the deceased;
- (b) the date and place of his death;
- (c) his last known place of residence;
- (d) the relationship (if any) of the applicant to the deceased;
- (e) whether or not the deceased left a valid will;
- (f) the present addresses of any executors appointed by any such valid will;

- (g) in cases of total or partial intestacy, the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of his or hers then deceased;
- (h) a full inventory of all the assets and liabilities of the deceased; and
- (i) such other matters as may be prescribed.

(3) Where it is alleged in an application that the deceased left a valid will -

- (a) if it was written, the original will shall be annexed to the application, or if it is alleged to have been lost, or destroyed otherwise than by way of revocation, or if for any other reason the original cannot be produced, then either -
 - (i) an authenticated copy thereof shall be so annexed; or
 - (ii) the names and addresses of all persons alleged to be able to prove its contents shall be stated in the application;
- (b) if it was oral, the names and addresses of all alleged witnesses shall be stated in the application.

(4) No omission of any information from an application shall affect the power of the court to entertain the application.

Wilful and reckless statements in application for grant.

52. Any person who, in an application for representation, wilfully or recklessly makes a statement which is false in any material particular shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.

Forms of Grant

Forms of Grant

53. A court may -

- (a) where a deceased person is proved (whether by production of a will or an authenticated copy thereof or by oral evidence of its contents) to have left a valid will, grant, in respect of all property to which the will applies, either -
 - (i) probate of the will to one or more of the executors named therein; or
 - (ii) if there is no proving executor, letters of administration with the will annexed; and
- (b) if and so far as there may be intestacy, letters of administration in respect of the intestate estate.

54. A court may, according to the circumstances of each case, limit a grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule.

Limited grants.

55. (1) No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71.

No distribution of capital before confirmation of grant.

(2) The restriction on distribution under subsection (1) does not apply to the distribution or application before the grant of representation is confirmed of any income arising from the estate and received after the date of death whether the income arises in respect of a period wholly or partly before or after the date of death.

8 of 1976, s. 11, 18 of 1986.

Persons Entitled to a Grant

56. (1) No grant of representation shall be made -

No grant to certain persons.

- (a) to any person who is a minor, or of unsound mind, or bankrupt; or
- (b) to more than four persons in respect of the same property.

(2) No grant of letters of administration, with or without the will annexed, shall be made to a body corporate other than the Public Trustee or a trust corporation.

57. No grant of representation shall be made to a syndic or nominee on behalf of a body corporate:

Grant to body corporate.

Provided that, where a body corporate applies for a grant of probate or (in the case of a trust corporation) letters of administration, the application may be signed, and any necessary affidavits may be sworn, by an officer authorized in that behalf by the body corporate or the directors or governing body thereof.

58. (1) Where a continuing trust arises -

- (a) no grant of letters of administration in respect of an intestate estate shall be made to one person alone except where that person is the Public Trustee or a Trust Corporation.
- (b) no grant of letters of administration with the will annexed shall be made to one person alone except where-
 - (i) that person is the Public Trustee or a Trust Corporation; or
 - (ii) in the will the testator has appointed one or more trustees

Number of administrators where there is a continuing trust.
18 of 1986.

for the continuing trust who are willing and able to act.

(2) Where an application for a grant of letters of administration in respect of an intestate estate is made by one person alone and a continuing trust arises the court shall, subject to section 66, appoint as administrators the applicant and not less than one or more than three persons as proposed by the applicant which failing as chosen by the court of its own motion.

Renunciation of executorship.

59. A person who has been appointed by a will as an executor thereof may, either by oral declaration before the court or by writing under his hand, renounce executorship, and shall thereafter be finally precluded from applying for grant of probate of that will.

Probate where there are several executors.

60. When several executors are appointed, probate may be granted to them all simultaneously, or at different times.

Discovery of codicil after grant of probate.

61. (1) If a codicil is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

(2) If different executors are appointed by the codicil, the probate of the will shall be revoked, and a new probate granted of the will and the codicil together.

No grant of administration until citation issued to executor.

62. When a person who has been appointed by a will as an executor thereof has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to renounce his executorship or apply for a grant of probate of the will:

Provided that -

- (i) when one or more of several executors have proved a will, the court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved; and
- (ii) there may be such limited grants of letters of administration in accordance with the provisions of section 54 as may, in the opinion of the court, be necessitated by any special circumstances.

Grant of administration to universal or residuary legatee.

63. When a deceased has made a will, but -

- (a) he has not appointed an executor; or
- (b) the only executors appointed are legally incapable of acting, or have renounced their executorship, or have died before the testator or before receiving a grant of probate of the will, or have

failed within the time limited by a citation to apply for probate thereof; or

- (c) all proving executors have died before completing administration of all the property to which the will applies,

a universal or residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

64. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative shall have the same right to administration with the will annexed as the residuary legatee.

Right to administration of representative of deceased residuary legatee.

65. When there is no executor, and no residuary legatee or representative of the residuary legatee, or if every such person declines or is incapable of acting, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or the Public Trustee, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor nor residuary legatee nor representative of legatee. 8 of 1976, s.13.

66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference-

Preference to be given to certain persons to administer where deceased died intestate. 8 of 1976, s. 14.

- (a) surviving spouse or spouses, with or without association of other beneficiaries;
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
- (c) the Public Trustee; and
- (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

Procedure on Grants

67. (1) No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for the grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has

Notice of application for grant.

expired.

(2) A notice under subsection (1) shall be exhibited conspicuously in the court-house, and also published in such other manner as the court directs.

Objections to application.

68. (1) Notice of any objection to an application for a grant of representation shall be lodged with the court, in such form as may be prescribed, within the period specified by the notice, or such longer period as the court may allow.

(2) Where notice of objection has been lodged under subsection (1), the court shall give notice to the objector to file an answer to the application and a cross-application within a specified period.

Procedure after notice and objections.
L.N.256/1976,
16 of 1977,
Sch.

69. (1) Where a notice of objection has been lodged under subsection (1) of section 68, but no answer or no cross-application has been filed as required under subsection (2) of that section, a grant may be made in accordance with the original application.

(2) Where an answer and a cross-application have been filed under subsection (2) of section 68, the court shall proceed to determine the dispute.

Powers of courts.

70. Whether or not there is a dispute as to the grant, a court may, before making a grant of representation -

- (a) examine any applicant on oath or affirmation; or
- (b) call for further evidence as to the due execution or contents of the will or some other will, the making of an oral will, the rights of dependants and of persons claiming interests on intestacy, or any other matter which appears to require further investigation before a grant is made; or
- (c) issue a special citation to any person appearing to have reason to object to the application.

Confirmation of Grants

Confirmation of grants.
18 of 1986,
19 of 1984.

71. (1) After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.

(2) Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may-

- (a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or

- (b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 inclusive, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be unadministered; or
- (c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or
- (d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.

(2A) Where a continuing trust arises and there is only one surviving administrator, if the court confirms the grant, it shall, subject to section 66, appoint as administrators jointly with the surviving administrator not less than one or more than three persons as proposed by the surviving administrator which failing as chosen by the court of its own motion.

(3) The court may, on the application of the holder of a grant of representation, direct that the grant be confirmed before the expiration of six months from the date of the grant if it is satisfied-

- (a) that there is no dependant, as defined by section 29, of the deceased or that the only dependants are of full age and consent to the application;
- (b) that it would be expedient in all the circumstances of the case so to direct.

(4) Notwithstanding the provisions of this section and sections 72 and 73, where an applicant files, at the same time as the petition, summons for the immediate issue of a confirmed grant of representation the court may, if it is satisfied that -

- (a) there is no dependant, as defined by section 29, of the deceased other than the petitioner;
- (b) no estate duty is payable in respect of the estate; and
- (c) it is just and equitable in all circumstances of the case, immediately issue a confirmed grant of representation.

72. No grant of representation shall be confirmed until the court

- (a) is satisfied that no application under Part III is pending; and
- (b) has received a certificate from the Estate Duty Commissioner that he is satisfied that all estate duty payable in respect of the

Grants not to be confirmed in certain circumstances.

estate concerned has been or will be paid, or that no estate duty is payable in respect thereof; or

(c) is itself satisfied that no estate duty is payable in respect of the estate concerned.

Duty of court to give notice to holder of grant to apply for confirmation

73. The court shall, within one year from the date of any grant of representation, give notice to the holder of the grant to apply for confirmation thereof.

Alteration and Revocation of Grants

Errors may be rectified by court.

74. Errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.

Procedure where codicil discovered after grant.

75. If, after the grant of letters of administration with the will annexed or after confirmation thereof, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Continuing trust arising. 18 of 1986.

75A. (1) If, after confirmation of the grant of letters of administration at any time there is a continuing trust and only one surviving administrator, that administrator shall without delay apply to the court to appoint, subject to section 66, as administrators jointly with him not less than one or more than three persons as proposed by him, which failing as chosen by the court of its own motion.

(2) If a sole surviving administrator fails to apply to the court in accordance with subsection (1) within three months of there being a continuing trust and only one surviving administrator, on the application of any interested party in, or a creditor or debtor of the estate or of its own motion, the court may appoint additional administrators in accordance with subsection (1).

Revocation or annulment of grant.

76. A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion -

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either -
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.

Sealing of Commonwealth and Foreign Grants

77. (1) Where a court or other authority, having jurisdiction in matters of probate or administration in any Commonwealth country or in any other foreign country designated by the Minister by notice in the Gazette, has, either before or after the commencement of this Act, granted probate or letters of administration, or an equivalent thereof, in respect of the estate of a deceased person, that grant may, on being produced to, and a copy thereof deposited with, the High Court, be sealed with the seal of that court, and thereupon shall be of the same force and effect, and have the same operation in Kenya, as if granted and confirmed by that court.

Sealing of Commonwealth and foreign grants.

(2) Before sealing a grant under subsection (1) the High Court -

- (a) shall satisfy itself as to the payment of estate duty as provided by section 72;
- (b) may require such evidence as it thinks fit concerning the domicile of the deceased person;
- (c) may, on the application of any creditor of the estate, require that adequate security be given for the payment of debts due from the estate to creditors residing in Kenya.

78. For the purposes of this Act, a duplicate of any grant sealed with the seal of a court or other authority in a Commonwealth or foreign country, or a copy thereof certified as correct by, or duly on behalf of, that

Duplicate or copy of foreign grant to have same effect

as original. court or authority, shall have the same effect as the original.

Powers and Duties of Personal Representatives

Property of deceased to vest in personal representative.

79. The executor or administrator to whom representation has been granted shall be the personal representative of the deceased for all purposes of that grant, and, subject to any limitation imposed by the grant, all the property of the deceased shall vest in him as personal representative.

When grant takes effect.

80. (1) A grant of probate shall establish the will as from the date of death, and shall render valid all intermediate acts of the executor or executors to whom the grant is made consistent with his or their duties as such.

(2) A grant of letters of administration, with or without the will annexed, shall take effect only as from the date of the grant.

Powers and duties of personal representatives to vest in survivor on death of one of them.

81. Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of the trust until the court has made a further grant to one or more persons jointly with him.

Powers of personal representatives.

82. Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers -

- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arise out of his death for his estate;
- (b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that -

- (i) the purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and
- (ii) no immovable property shall be sold before confirmation of the grant;

- (c) to assent, at any time after confirmation of the grant, to the vesting of a specific legacy in the legatee thereof;
- (d) to appropriate, at any time after confirmation of the grant, any of the assets vested in them in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased or any other interest or share in his estate, whether or not the subject of a continuing trust, as may seem just and reasonable to them according to the respective rights of the persons interested in the estate of the deceased, and for that purpose to ascertain and fix (with the assistance of a duly qualified valuer, where necessary) the value of the respective assets and liabilities of the estate, and to make any transfer which may be requisite for giving effect to the appropriation:

Provided that, except so far as otherwise expressly provided by any will -

- (i) no application shall be made so as to affect adversely any specific legacy;
- (ii) no appropriation shall be made for the benefit of a person absolutely and beneficially entitled in possession without his consent, nor for the purpose of a continuing trust without the consent of either the trustees thereof (not being the personal representatives themselves) or the person for the time being entitled to the income thereof, unless the person whose consent is so required is a minor or of unsound mind, in which case consent on his behalf by his parent or guardian (if any) or by the manager of his estate (if any) or by the court shall be required.

83. Personal representatives shall have the following duties -

- (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;

Duties of personal representatives. 18 of 1986.

- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

Personal representatives to act as trustees in certain cases.

84. Where the administration of the estate of a deceased person involves any continuing trusts, whether by way of life interest or for minor beneficiaries or otherwise, the personal representatives shall, unless other trustees have been appointed by a will for the purpose of the trust, be the trustees thereof:

Provided that, where valid polygamous marriages of the deceased person have resulted in the creation of more than one house, the court may at the time of confirmation of the grant appoint separate trustees of the property passing to each or any of those houses as provided by section 40.

Assent necessary to complete legatee's title.

85. (1) The assent of the executor shall be necessary to complete the title of the legatee to a specific legacy.

(2) Assent may be verbal, and either express or implied from the conduct of the executor, and shall be sufficient to divest his interest as

executor therein, and (subject to any registration required by any other written law) to transfer the subject of the bequest to the legatee.

(3) When the executor is a legatee his assent to his own specific legacy shall be necessary to complete his title thereto as legatee.

(4) The assent of the executor to a specific legacy shall give effect thereto from the death of the testator.

86. Debts of every description enforceable at law and owed by or out of an estate shall be paid before any legacy.

Debts to be paid before legacies.

87. If an estate is subject to any contingent liabilities, a personal representative shall not be bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Personal representatives not bound to pay legacies without indemnity. Abatement and refunding of legacies.

88. Legacies shall abate and be refunded according to the provisions of the Sixth Schedule.

89. (1) Where an application for a grant of probate or letters of administration shows by the inventory therein that the estate the subject thereof will, after payment of funeral and other expenses, be insolvent, the court shall of its own motion order the administration of that estate in bankruptcy as provided by section 121 of the Bankruptcy Act.

Insolvent estates.

Cap.53.

(2) If and so soon as any personal representative knows or has reason to believe that the estate in respect of which probate or letters of administration have been granted to him will prove to be insolvent, he shall forthwith petition for administration thereof in bankruptcy.

(3) This section shall have effect notwithstanding anything contained in the Bankruptcy Act.

90. Personal representatives shall invest funds to provide for legacies in the manner and according to the provisions set out in the Seventh Schedule; and legacies shall carry interest in accordance with those provisions.

Investment of funds to provide for legacies and interest on legacies.

91. Where a person not having his domicile in Kenya has died leaving assets both in Kenya and in the country in which he had his domicile at the time of his death, and there has been a grant of representation in Kenya with respect to the assets there, and a grant of representation in the country of domicile with respect to the assets in that country, the personal representatives in Kenya, after having given such notices as are required by paragraph 5 of the Sixth Schedule and after having discharged, at the expiration of the time therein named, such lawful claims as have come to

Transfer of assets from Kenya to personal representatives in country of domicile for distribution.

their notice, may, instead of themselves distributing any surplus or residue of the deceased's property to persons residing out of Kenya who are entitled thereto, transfer, with the consent of the personal representatives in the country of domicile, the surplus or residue to those personal representatives for distribution to those persons.

Protection of persons acting on representation.

92. (1) Any person making or permitting to be made any payment or disposition in good faith under a grant of representation shall be indemnified and protected in so doing, notwithstanding any defects or circumstances whatsoever affecting the validity of the grant.

(2) Where a grant of representation is revoked or varied, payments and dispositions made in good faith to a personal representative under that grant before the revocation or variation thereof shall be a valid discharge to the person making them, and a personal representative who has acted under the revoked or varied grant may retain and reimburse himself in respect of any payment made by him which any other person to whom representation is afterwards granted might have properly made:

Provided that a personal representative who so acted shall account for all payments, dispositions, retentions or reimbursements made by him to the person or person to whom representation is afterwards granted.

Validity of transfer not affected by revocation of representation.

93. (1) A transfer of any interest in immovable or movable property made to a purchaser either before or after the commencement of this Act by a person to whom representation has been granted shall be valid, notwithstanding any subsequent revocation or variation of the grant either before or after the commencement of this Act.

(2) A transfer of immovable property by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged nor provided for.

Neglect or misapplication of assets by personal representatives.

94. When a personal representative neglects to get in any asset forming part of the estate in respect of which representation has been granted to him, or misapplies any such asset, or subjects it to loss or damage, he shall, whether or not also guilty of an offence on that account, be liable to make good any loss or damage so occasioned.

Offences by personal representatives.
18 of 1986.

95. (1) Any personal representative who, as regards the estate in respect of which representation has been granted to him -

(a) wilfully or recklessly neglects to get in any asset forming part of the estate, misapplies any such asset, or subjects any such asset to loss or damage; or

- (b) wilfully fails to produce to the court any such inventory or account as is required by the provisions of paragraphs (e) and (g) of section 83; or
- (c) wilfully or recklessly produces any such inventory or account which is false in any material particular; or
- (d) knowing or having reason to believe that the estate will prove to be insolvent, continues to administer it without petitioning for administration thereof in bankruptcy,

shall be guilty of an offence, and shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

(2) Any personal representative who, as regards the estate in respect of which representation has been granted to him if at any time there is a continuing trust and he is the sole surviving administrator, wilfully fails to apply to the court within three months in accordance with section 75A for the appointment of further administrators shall be guilty of an offence and shall be liable to a fine not exceeding five thousand shillings.

PART VIII- MISCELLANEOUS

96. (1) Notwithstanding any other provision of this Act, a person who, while sane, murders another person shall not be entitled directly or indirectly to any share in the estate of the murdered person, and the persons beneficially entitled to shares in the estate of the murdered person shall be ascertained as though the murderer had died immediately before the murdered person.

Sane murderer not to share in victim's estate.

(2) For the purpose of this section the conviction of a person in criminal proceedings of the crime of murder shall be sufficient evidence of the fact that the person so convicted committed the murder.

97. The Rules Committee may make rules of procedure generally for the carrying out of the purposes and provisions of this Act and, without prejudice to the foregoing generality, rules of procedure may prescribe -

Rules.

- (a) the procedure to be followed by a court in determining applications under section 26 or subsection (3) of section 35;
- (b) the procedure to be followed by a court in granting probate or letters of administration;
- (c) the procedure to be followed in the case of a dispute as to a grant;

(d) the form and manner in which applications under section 26 and subsection (3) of section 35 and applications for grants are to be made, grants are to be issued, grants are to be limited, notices are to be given, or inventories or accounts are to be produced;

(e) the fees to be paid on an application or grant, or on any other procedure related thereto.

Transitional. **98.** Any proceedings commenced under any written law or part thereof repealed by this Act shall, so far as practicable, be continued under this Act.

Repeal. **99.** The laws set out in the Eighth Schedule are repealed.

Amendments. **100.** The Acts set out in the first column of the Ninth Schedule are amended, in relation to the provisions thereof specified in the second column of that Schedule, in the manner specified in relation thereto in the third column of that Schedule.

Saving. **101.** Except as otherwise expressly provided in this Act, nothing therein shall affect the provisions of –

Cap. 167. (a) the Trustee Act;

Cap.168. (b) the Public Trustee Act;

Cap.290. (c) the Trusts of Land Act;

Cap.199. (d) sections 218 to 222 of the Armed Forces Act concerning estates of deceased soldiers.

8 of 1976,
ss.16 and 17.

FIRST SCHEDULE

(s.22)

CONSTRUCTION OF WILLS

General Rules

Wording of will. **1.** It is not necessary, in order to give effect to any disposition, that any technical words be used in a will, but only that the wording be such that the intention of the testator can be known therefrom.

Meaning of clause to be collected from entire will. **2.** The meaning of any clause in a will is to be ascertained from the entire instrument, and all the provisions of the will are to be construed with reference to each other; but where two clauses or provisions are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

FIRST SCHEDULE-(*Contd.*)

3. Every will shall be construed, with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will:

Will speaks from death as to property comprised in it.

Provided that, in respect of the subject of a specific legacy, there shall be a presumption that the will speaks as at the date of its actual execution.

4. Merely negative words in a will shall not be sufficient to exclude a person entitled on intestacy and in order to effect such an exclusion there must be an actual gift to some other definite object.

Negative words insufficient to exclude person entitled on intestacy.

5. Subject to the provisions of paragraph 2, an express and positive gift cannot be controlled by reason assigned, or by subsequent ambiguous words, or by inference and argument from other parts of the will, and is not affected by a subsequent inaccurate recital of, or reference to, its contents:

Express gift cannot be controlled by reason assigned, etc.

Provided that, in cases of ambiguity or doubt, recourse may be had to such reference in order to assist the construction.

6. Implication shall be admissible only in the absence of an express disposition, and shall not be admissible to control an express disposition.

Implication admissible only in absence of express disposition.

7. Words and limitations contained in a will may be transposed, supplied or rejected, where such a course is warranted by the immediate context or the general scheme of the will, but not merely on a conjectural hypothesis of the testator's intention, and obvious clerical errors may be corrected.

Words may be supplied, rejected, etc.

8. Technical words shall be presumed to be employed in their technical sense, unless the context clearly indicates the contrary.

Technical words.

9. Words in general shall be construed in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected from the will and that other sense can be ascertained.

Words in general.

10. Words occurring more than once in a will shall be presumed to be used always in the same sense unless the context clearly indicates the contrary or unless the words are applied to different subjects.

Words occurring more than once.

FIRST SCHEDULE-(*Contd.*)

Additional words.

11. Where a testator uses an additional word or phrase, an additional meaning shall be presumed unless the context clearly indicates the contrary.

Words construed so as to make them operative

12. When a clause or disposition is capable of two meanings, according to one of which it has some effect, and according to the other of which it can have no effect, the former shall be preferred.

Intention to be given effect to.

13. Where for any reason effect cannot be given completely to the testator's apparent intention, effect shall nevertheless be given thereto so far as is possible.

Rules of construction not to be strained to validate gift.

14. The rules of construction shall not be strained in order to bring a gift within the rules of law, but, where the will admits of two constructions, the construction which will render the gift valid shall be preferred:

Provided that where a gift, valid in the first instance, is modified by some subsequent clause in the same will or in a codicil thereto in such manner as to render the preceding gift void for remoteness, the modifying clause, if separable from the original gift, shall be rejected as if the will or codicil had never contained it.

Inconvenience or absurdity of gift.

15. The inconvenience or absurdity of a gift, or the fact that the testator did not foresee all the consequences of his disposition, shall not be a ground for varying the construction of the will where the terms are unambiguous; but, where the terms of any gift or disposition are ambiguous, the more rational of two constructions shall be preferred.

Construction not to be varied by subsequent events.

16. The construction of a will shall not be varied by events subsequent to its execution, but in determining the meaning of particular expressions regard may be had to circumstances which, at the date of execution, were capable of arising subsequent to that date.

Presumption against intestacy.

17. A testator shall be presumed to calculate against intestacy; and, subject to the provisions of paragraph 14, a construction avoiding intestacy shall be preferred.

Presumption as regards gift over.

18. A testator shall be presumed to calculate on the dispositions in his will taking effect; and a gift over shall not, in the absence of clear intention, be construed as providing exclusively for lapse or other initial failure of the original gift.

Independent gifts.

19. Unless a design to connect them appears from the will, independent gifts shall be construed separately and without relation to one another, notwithstanding that it may be conjectured from the

FIRST SCHEDULE-(Contd.)

circumstances that the testator had the same intention with regards to all such gifts.

20. Unless a contrary intention appears from the will, the terms “child”, “son”, “daughter”, “grandchild”, and “issue” and similar words shall be construed in accordance with the definition of “child” in subsection (2) and with the provisions of subsection (3) of section 3 of this Act.

References to child, etc., to include illegitimate child, etc.

21. Unless a contrary intention appears from the will, where a testator declares that his property shall devolve according to Islamic law, the Islamic law applicable shall be the law of the sect or school of Islamic law to which the deceased belonged.

References to application of Islamic law to mean law of sect or school of testator.

22. The several particular rules of construction provided by the following paragraphs shall apply if, and so far only, as a contrary intention is not expressed or implied in the will, and shall have effect subject to the terms of the will.

Particular rules of construction.

Descriptions

23. (1) Where the words used in a will to designate or describe a legatee, or a class of legatees, sufficiently show what is meant, an error in the name or description shall not prevent the legacy from taking effect, and it shall be sufficient for this purpose if the legatee, or class of legatees, is so designated as to be distinguished from every other person or class.

Misnomer or misdescription of object.

(2) A mistake in the name of a legatee may be corrected by a description of that legatee and a mistake in the description of a legatee may be corrected by the name of that legatee.

(3) Where the words used in a will to designate or describe a legatee are applicable to two or more persons or classes of persons, or partly to one and partly to another person or class, the legatee or class of legatees may be ascertained from the general context and the surrounding circumstances.

24. If the thing which the testator intended to bequeath can be sufficiently identified from the description of it given in the will, but some parts of the description do not apply, such parts of the description shall be rejected as erroneous, and the gift shall take effect:

Rejection of erroneous particulars in description of subjects.

Provided that, if a will mentions several circumstances as descriptive of the thing which the testator intends to bequeath, and there was any property in respect of which all those circumstances existed at the date of execution of the will, the gift shall be considered as limited to that

FIRST SCHEDULE-(*Contd.*)

property, and no part of the description shall be rejected as erroneous because the testator had at the date of his death other property to which that part of the description does not apply.

Gift or disposition void for uncertainty. **25.** A gift or disposition not expressive of any definite intention shall be void for uncertainty:

Provided that-

- (i) no gift for charitable purposes shall be void for uncertainty of the object; or
- (ii) no gift whereby the legatee is expressly or impliedly given a right of selection, purchase or disposition shall be void merely by reason of the uncertainty arising from that right.

Gift presumed to comprise whole interest of testator. **26.** Where property is bequeathed to any person, the gift shall be presumed to comprise the whole interest of the testator in that property, unless it appears from the will that only a restricted interest was intended for him.

Construction of bequest which refers to person as existing. **27.** The object of a gift which refers to a person or persons as existing shall be construed as at the date of the will, unless a contrary intention clearly appears therein.

Residuary Bequests

Effect of general residuary bequest. **28.** A general residuary bequest shall comprise all free property of the testator as at the date of his death, whether or not acquired after the date of the will, of which he has not otherwise disposed, and shall include all free property of which he may have attempted but failed to dispose, even though expressly excepted from the gift.

Effect of limited residuary bequest. **29.** A limited residuary bequest shall have the same effect as a general residuary bequest, subject only to the specific limitation therein expressed or implied.

Effect of particular residuary bequest. **30.** A particular residuary bequest shall comprise all free property of the testator falling under the particular description as at the date of his death, of which he has not otherwise disposed, and shall include all such property of which he may have attempted but failed to dispose.

Effect of failure of share of residue. **31.** The failure of any gift of a share in a residuary bequest, whether general, limited or particular, shall not result in that share accruing to the other shares therein, but, subject only to any subsequent residuary bequest, shall create an intestacy in respect of that share.

FIRST SCHEDULE-(*Contd.*)*General Legacy of Property not Possessed*

32. Notwithstanding the provisions of paragraphs 8 to 14 of the Second Schedule, where a general legacy is in the form of a gift of a specified type of property which is not at the time of the testator's death included in his estate, the value of that gift shall, if it can be ascertained, be met from the testator's general estate, but if the value thereof cannot be ascertained the gift shall fail.

General legacy of property not in testator's possession.

Annuities

33. Where an annuity is created by will, the legatee shall be entitled to receive it for his life only, unless a contrary intention appears by the will, notwithstanding that the annuity is directed to be paid out of the income of a specified fund or specified property.

Annuity created by will payable for life only, unless contrary intention appears by will.

34. Where there is the gift of an annuity for the maintenance and education of the beneficiary, that annuity shall be deemed to be given for the life of the beneficiary.

Annuities for maintenance and education.

35. Where a will directs that an annuity shall be provided for any person out of the proceeds of property generally, or where money is bequeathed to be invested in the purchase of an annuity for any person, the legatee may either have an annuity purchased for him or receive forthwith the money appropriated for that purpose by the will.

Where will directs that annuity be provided out of property or where money bequeathed to be invested in purchase of annuity.

36. (1) Where there is a direct gift of an annuity, or where a will manifests an intention that an annuity shall be charged on the capital of the testator's residuary estate, the annuity shall constitute a charge upon that capital.

Relation of annuity to residuary estate.

(2) In all other cases, in default of specific provision, the annuity shall be payable only out of the income of the residuary estate.

(3) In default of provision to the contrary, an annuity payable only out of the income of the residuary estate, or of a specified fund or of specified property, shall constitute, together with all arrears thereof, a continuing charge on the whole of the income.

FIRST SCHEDULE-(Contd.)

Commence-
ment of annu-
ity and time
for payment
when no time
fixed by will.

37. When an annuity is given by will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of one year after that event:

Provided that, where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the quarter or month, as the case may be, immediately after the testator's death; and shall, if the personal representatives think fit, be paid when due but the personal representatives shall not be bound to pay it until the expiry of twelve months after the testator's death.

Dates of suc-
cessive pay-
ments directed
to be made
within given
time or on day
certain.

38. Where there is a direction that the first payment of an annuity shall be made within any specified period of time after the death of the testator, or on a day certain, the next payment to be made, and subsequent payments, shall be made accordingly.

Apportion-
ment.

39. If an annuitant dies in the interval between the times for payment of his annuity, an apportioned share of the annuity shall be paid to his personal representatives.

Gifts of Income

Gift of income
for indefinite
period.

40. Where the income of any fund, property or residuary estate is bequeathed to any person, and the will affords no indication of an intention that the enjoyment of the gift should be of limited duration, the principal, as well as the income, shall belong to the legatee.

Gifts for Special Purposes

Effect of gift
for special
purpose.

41. Where a gift is bequeathed solely for the benefit of the legatee, then, notwithstanding that words are added to the gift expressing a purpose for which the gift is made, the legatee shall be entitled to claim the gift without applying it to that purpose, whether or not the purpose be expressed in obligatory terms: Provided that-

- (i) where the gift is made subject to a gift over of any surplus remaining after the purpose has been fulfilled, the provisions of this paragraph shall apply only to so much of the gift as is necessary for that purpose;
- (ii) the provisions of this paragraph shall not apply where the purpose specified is so expressed as to create a condition or a discretionary trust with gift over, nor where the legatee is a minor.

FIRST SCHEDULE-(Contd.)

42. Where a gift of a sum of money is directed to be applied solely for the benefit of a person in a certain way, but the time within which the gift is to be expended is left in the discretion of the personal representatives or of trustees, the beneficiary shall not, so long as the personal representatives or the trustees properly exercise their discretion, demand payment of the money, but if he dies before the money is so applied, his personal representatives shall be immediately entitled to the money.

Effect of discretion as to time.

Conditional Gifts

43. No precise form of words shall be necessary to create a condition in a will, and any expression disclosing such an intention of the testator shall have that effect.

Express words unnecessary.

44. Any condition shall be void which-

Void conditions.

- (a) requires the performance of an illegal act, or is not legally enforceable; or
- (b) is contrary to law, morality or public policy; or
- (c) is uncertain, or is too vague to be enforced; or
- (d) offends against any law as to accumulations, remoteness, or perpetuities; or
- (e) is impossible *ab initio*, or becomes impossible by the act or default of the testator, or by an act of any court; or
- (f) is repugnant to the gift to which it is annexed; or
- (g) is in total restraint of the marriage of any person other than a widow; or
- (h) is attached to a gift of capital to a widow, in total restraint of her marriage, without providing for any gift over on default; or
- (i) forbids dispute of the will, without providing for any gift over on default; or
- (j) restrains alienation, voluntary or involuntary, of the subject of the gift:

Provided that nothing in this subparagraph shall affect or render void any discretionary trust with gift over, or any life estate made determinable on bankruptcy.

45. (1) A condition shall be either precedent, in that the performance thereof is made to precede the vesting of a gift in interest, or subsequent, in that the non-performance thereof is made to determine a gift antecedently vested in interest.

Condition either precedent or subsequent.

(2) In case of doubt, construction of a condition as a condition subsequent shall be preferred to construction as a condition precedent.

FIRST SCHEDULE-(Contd.)

Effect of void condition.

46. (1) Where a gift is made upon a condition subsequent which is void, the gift shall be absolute.

(2) Where a gift is made upon a condition precedent which is void, the gift shall be void if-

- (a) the void condition is the sole motive of the bequest; or
- (b) the impossible nature of the condition was unknown to the testator; or
- (c) the condition is illegal as involving the performance of an unlawful act, but in all other cases the gift shall be absolute.

Effect of impossibility supervening.

47. (1) Where a gift is made upon a condition subsequent which was valid *ab initio*, but which has, for any reason, become impossible before being performed, the gift shall be absolute.

(2) Where a gift is made upon a condition precedent which was valid *ab initio*, but which has, for any reason other than the act or default of the testator or an act of any court, become impossible before being performed, the gift shall be void.

Legatee bound by legal conditions.

48. Where a legatee has taken a gift subject to a valid condition, he shall be estopped by his act of taking the gift from subsequently insisting on rights which, by the terms of the conditions, he is bound to release, or from declining a duty which he is required by the condition to perform.

One or two separate and independent bequests to same person may be accepted and the other refused.

49. Where a will contains two separate and independent gifts to the same person, the legatee may take one of them, and may refuse the other, although either or both of the gifts was made upon condition.

Time in which conditions must be performed.

50. Where a gift is made upon a condition, and no time is specified for its performance, the legatee shall perform the condition within a reasonable time:

Provided that-

- (i) where the condition is for the benefit of another person, then, in the absence of any specified time in which the condition is to be performed, the legatee shall perform the condition upon demand being made by that other person;
- (ii) where the condition is the happening of a specified uncertain event beyond the control of the legatee, the gift shall take effect if that event happens before the gift is payable or distributable, but not thereafter.

FIRST SCHEDULE-(*Contd.*)

51. The performance of a condition shall be such as to constitute a substantial compliance with the terms of the condition:

Performance generally.

Provided that, in respect of time, there shall be strict compliance where there is any express gift over.

52. Where a gift is made upon a valid condition, ignorance of that condition shall not protect the legatee from the consequences of his default, unless ignorance is attributable to the act of default of some person who benefits by breach of that condition.

Ignorance of condition.

Gifts to Executors

53. If a gift is bequeathed to a person who is named an executor of the will for his own benefit, and is not given independently of the office of executor, there shall be a presumption that he is not intended to take the gift unless he proves the will or otherwise unequivocally manifests an intention to act as executor.

Legatee named as executor cannot take unless he shows intention to act as executor.

Vesting and Divesting of Gifts

54. (1) A gift shall vest in the legatee in interest when his entitlement to the gift, whether in possession or reversion, or to be enjoyed in possession at some future time, becomes certain.

Meaning and effect of vesting.

(2) Where the legatee dies before receiving possession of a gift already vested in him in interest, that gift, unless divested by his death, shall pass to his personal representative.

(3) Where the legatee dies before a gift vests in him in interest, the gift shall have no effect:

Provided that a gift over which is contingent only upon a collateral event, irrespective of the legatee attaining a specified age or surviving a specified period, shall vest in the personal representatives of the legatee if that event happens after his death.

55. A direction that a gift shall vest at any given time shall, unless it appears from the will to refer to vesting in possession, be construed as referring to vesting in interest.

Direction for vesting.

56. If a gift be made in general terms, without specifying any particular time for the vesting thereof, the legatee shall have a vested interest therein from the day of the death of the testator, or so soon thereafter as he comes into existence or the terms of the gift may otherwise permit.

Time of vesting of general terms.

FIRST SCHEDULE-(*Contd.*)

Vesting of contingent gifts.

57. If a gift be made in terms which clearly indicate that the interest of the legatee shall be contingent upon the happening of some uncertain event (other than the performance of a void condition not itself avoiding the gift), the interest shall not vest in the legatee until the event has happened

Gift may vest subject to subsequent divesting.

58. A gift may be made to vest immediately on the testator's death or on the happening of a specified event, notwithstanding that, by the terms of the will, it is subject to subsequent divesting on the happening or not happening of some uncertain event.

Absolute gift with enjoyment postponed.

59. Where a substantive gift is made subject only to a direction that it shall not be paid or delivered to the legatee until the happening of some future event, the legatee shall acquire an immediate vested interest, although vesting in possession shall be postponed in accordance with the direction:

Provided that a mere direction that the legatee attains an age exceeding full age shall be inoperative after he attains full age.

Direction for payment without substantive gift.

60. Where the gift consists solely in a direction to pay or distribute at a future age, or upon the happening of some future event (other than performance of a void condition not itself avoiding the gift) without any substantive gift, the gift shall not vest in interest until that future age is attained or that future event occurs:

Provided that when the payment or distribution appears to be postponed merely for the convenience of the fund or the property, as the case may be, the vesting shall not be deferred as provided in this paragraph.

Gift subject to attaining certain age or marrying.

61. Where a gift is made to a legatee and the attainment of a certain age or marriage is introduced into and made a constituent part of the description or character of the legatee, the vesting of the gift in interest shall be postponed until the attainment of that age or marriage, as the case may be.

Effect of interim direction for maintenance.

62. Where, under the terms of any gift, the vesting thereof purports to be postponed to a given age and the gift is accompanied by a direction that the intermediate income shall be applied for the maintenance of the legatee, the gift shall vest in interest immediately, whether or not he attains that age:

FIRST SCHEDULE-(Contd.)

Provided that this rule shall not apply to the gift of an entire fund to be distributed among a class of persons equally on attaining a given age.

63. Where the terms of a will are ambiguous in respect of the vesting, contingency or divesting of a gift, it shall, subject to all other rules of construction, be so construed as to give the legatee a vested rather than a contingent interest.

Ambiguity of vesting contingency or divesting

Satisfaction

64. Where a debtor bequeaths a gift to his creditor, and the gift is equal to or greater than the debt, there shall be a presumption that the gift is intended to satisfy the debt, and not to be taken in addition to payment of the debt:

Presumed satisfaction of debt.

Provided that this presumption shall arise only in respect of a debt contracted before the date of execution of the will.

65. Where a person who is under an obligation by contract to provide a portion for his child, or for some other person to whom he stands *in loco parentis*, fails to do so, but makes a gift to that child or other person by will, there shall be a presumption that the gift is intended to satisfy that portion, so far as the gift extends.

Presumed satisfaction of portion.

66. A gift made by will shall not of itself raise any presumption that the gift is intended to satisfy or to take the place of a gift, whether or not of equal amount, previously made to the same person by the testator in contemplation of death.

No presumed satisfaction of gift made previously in contemplation of death.

Additional and Substituted Gifts

67. Where a testator has purported to make two gifts to the same person, and a question arises whether he intended to make the second gift instead of or in addition to the first, and if there is nothing in the will or wills to show what he intended, the following rules shall have effect in determining the construction to be put upon the will or wills-

Two gifts to same person.

- (a) if the same specific thing is bequeathed twice to the same legatee by the same will, or by separate wills, he shall be entitled to receive that specific thing only;
- (b) where one and the same will purports to make, in two places, a gift to the same person of the same quantity or amount of anything, he shall be entitled to one of those gifts only;

FIRST SCHEDULE-(Contd.)

- (c) where two gifts of unequal amount are given to the same person by the same will, the legatee shall be entitled to both gifts;
- (d) where two gifts, whether equal or unequal in amount, are given to the same legatee by separate wills, the legatee shall be entitled to both gifts.

Liabilities Incidental to Gifts

Liability for charges.

68. (1) Where the free property of a deceased person includes an interest in property which at the time of his death is charged with the payment of money, whether by way of mortgage, charge, lien (including a lien for unpaid purchase money), pledge or otherwise, and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment and every part of the interest, according to its value, shall bear a proportionate part of the payment.

(2) Any contrary or other intention shall not be deemed to be signified by a general direction for payment of debts out of any residuary estate, or by a charge of debts upon any residuary estate, unless the intention is further signified by words expressly or by necessary implication referring to the payment so charged.

(3) A periodical payment in the nature of land revenue or in the nature of rent in respect of any period prior to the death of the testator is not a payment contemplated by this rule.

Completion of testator's title to things bequeathed to be at cost of his estate.

69. Where anything is to be done to complete the testator's title to the thing bequeathed, other than a payment with which that thing is charged at the date of his death, it shall be done at the cost of his estate.

Exoneration of legatee's immovable property for which land revenue or rent payable periodically.

70. Where there is a gift of any interest in immovable property, in respect of which payment in the nature of land revenue or in the nature of rent has to be made periodically, the estate of the testator shall (as between the estate and the legatee) make good the payments or a proportion of them, as the case may be, up to the day of his death.

Exoneration of specific legatee's securities.

71. In the absence of any direction in the will, any call or other payment due from the testator at the time of his death in respect of any securities, of which there is a specific legacy, if it is not then charged upon those securities by way of lien or otherwise, shall, as between the testator's estate and the legatee, be borne by the estate, but if any call or

FIRST SCHEDULE-(*Contd.*)

other payment becomes due in respect of those securities after the testator's death, it shall, as between the testator's estate and the legatee, be borne by the legatee, if he accepts the gift.

72. Where a portion of a fund is specifically bequeathed and a legacy is directed to be paid out of the same fund, the portion specifically bequeathed shall first be paid to the legatee thereof, and the demonstrative legacy shall be paid out of the residue of the fund, and, so far as the residue shall be deficient, out of the general assets of the testator, in exoneration of the specific legacy.

Order of payment when legacy directed to be paid out of fund the subject of specific legacy.

73. The costs of preservation, transfer or delivery of the subject of a specific legacy shall be borne by the legatee.

Expenses to be borne by legatee.

Gifts to Survivors

74. (1) Where a gift is in effect made to such of certain persons as shall be surviving at some period, but the exact period is not specified, it shall go to such of them as shall be alive at the time of payment or distribution and capable of taking.

Gifts to such of certain persons as shall be surviving at some period not specified.

(2) The provisions of this paragraph shall apply whether the gift is to vest in possession immediately on the death of the testator, or at some time subsequent thereto upon the termination of a prior interest:

Provided that, where the time of payment of distribution depends upon the happening of two events, one of which is personal, and the other of which is not personal, to the legatee, the gift shall, subject to all other rules of construction, be construed as referring to the happening of the former event exclusively.

Exercise of Powers

75. Unless a contrary intention is clearly expressed or implied in the will-

Execution of power of appointment by general legacy or residuary bequest.

- (a) a general legacy or limited residuary bequest shall be construed to include any property falling within the general description of that legacy or bequest over which the testator may have a general power of appointment by will and shall operate as an execution of that power as regards that property; and
- (b) a general residuary bequest shall be construed to include any property over which the testator may have a general power of appointment by will and shall operate as an execution of that power:

FIRST SCHEDULE-(Contd.)

Provided that, unless an intention in that behalf is clearly expressed or implied in the will, no such gift shall in either event be construed as an exercise of any power of revocation and new appointment.

Execution of special powers.

76. No general legacy or general residuary bequest shall be construed as an execution of any special power of appointment unless an intention in that behalf is clearly expressed or implied in the will.

Particular residuary bequests.

77. No particular residuary bequest shall be construed as an execution of any general or special power of appointment unless an intention in that behalf is clearly expressed or implied in the will.

Implied gifts to objects of special power in default of appointment.

78. Where by a will any special power of appointment is given over property, but no provision is made in the event of default of appointment, the property shall, in default of any such appointment or so far as it may not extend, belong to all the objects of the power in equal shares, subject to all appointments made thereunder being brought into account.

SECOND SCHEDULE

(s.23)

FAILURE OF TESTAMENTARY DISPOSITIONS

By Lapse

Principle of lapse.

1. (1) Save as is provided in this Schedule no gift or disposition shall confer any benefit on any person who predeceases the testator, and where a gift or disposition fails on this account it is said to “lapse”.

(2) Subject to the provisions of section 43 of this Act, the burden of proving that a legatee or appointee under a will has survived the testator shall lie upon the person alleging survivorship.

(3) A statement in a will that there shall be no lapse shall have no effect, except and so far as a further legatee or appointee, capable of taking, is designated.

Exceptions.

2. (1) Unless a contrary intention appears in the will, there shall be no lapse in either of the following cases -

(a) where the gift or disposition is made in discharge of a moral obligation recognized by the testator; or

(b) where the gift or disposition is in favour of any child or other issue of the testator, for any estate or interest not determinable at

SECOND SCHEDULE-(*Contd.*)

or before the death of the child or other issue and the child or other issue, as the case may be, leaves issue surviving the testator,

but in either case the gift or disposition shall take effect as if the deceased legatee had died immediately after the testator.

(2) Where a gift or disposition is in favour of a described class of persons, notwithstanding that one or more of the class is named, and any member of that class survives to take a vested interest, there shall be no lapse but the survivor or survivors shall take the whole:

Provided that, if property is bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but the vesting of their interest is deferred until a time later than the death of the testator, by reason of a prior bequest or otherwise, the property shall at that time go to such of them capable of taking as are then alive and to the personal representatives of any of them otherwise capable of taking who have died since the death of the testator.

3. Where there is a gift or disposition to several named persons, who do not constitute a class for the purpose of the will, and one or more of those persons predecease the testator, then -

Gift to several named persons..

- (a) if an intention appears from the will that those persons should take as joint tenants, or that only the survivors of them should take, there shall be no lapse, if any of them survives the testator and is capable of taking the whole; but
- (b) if an intention appears from the will that those persons should take as tenants in common, and no intention appears therefrom that only the survivors of them should take, there shall be a lapse in respect of the share or shares of any of those persons predeceasing the testator, subject only to the provisions of paragraph 2.

4. Where one gift is charged on the subject of another gift -

Charges of gifts on gifts.

- (a) if the encumbered gift lapses, the charge shall continue to have effect notwithstanding the lapse;
- (b) if the encumbering gift lapses, the legatee of the encumbered gift shall take the whole subject thereof free of the charge, unless a contrary intention is expressed or implied in the will.

5. The lapse of a limited interest shall accelerate the interests in remainder expectant on the determination of the limited interest.

Lapse of limited interests.

SECOND SCHEDULE-(*Contd.*)

Effect on gifts over. **6.** Where a gift or disposition is made to one person with a gift over to another person in such circumstances that the gift over would fail if the original legatee survived the testator, the lapse of the original gift or disposition shall result in the gift over taking effect.

General effect of lapse. **7.** Subject only to the foregoing provisions of this Schedule, if a gift or disposition lapses, the property or interest in the subject thereof shall pass under any residuary bequest which, but for the gift or disposition, would have applied to the property or interest:

Provided that, if there is no such residuary bequest, or if the lapsed gift or disposition is itself a share of the residuary bequest and there is no ulterior residuary bequest under which it can pass, then there shall be intestacy in respect of the property or interest.

By Ademption

Principal of ademption. **8.** (1) If property which has been specifically bequeathed does not belong to the testator at the time of his death, or has been converted into property of a different kind, the gift cannot take effect by reason of the subject thereof having been withdrawn from the operation of the will; and where a gift fails on this account it is said to be “adeemed”.

(2) There must be a substantial change in the subject of a specific legacy to cause ademption and a merely nominal change shall not have that effect.

Change of subject without testator’s consent. **9.** Where property specifically bequeathed undergoes a change between the date of the will and the testator’s death, and the change is caused by a wrongful conversion, the gift shall not be adeemed, but where the change is caused by the authority of any written law, whether or not approved by the testator, there shall be ademption unless the written law effecting the conversion provides otherwise.

Gift of interest in fund. **10.** The gift of an interest in a fund shall not be adeemed by any sale or change of investment of the fund by the persons having control thereof, nor shall it be adeemed by the testator receiving it before his death, whether or not thereafter sold or reinvested by him, if it can at his death be followed and distinguished.

Non-ademption of demonstrative legacy. **11.** A demonstrative legacy shall not be adeemed by reason that the property on which it is charged by the will does not exist at the time of the death of the testator, or has been converted into property of a different kind, but it shall, in that case, be paid out of the general estate of the testator.

SECOND SCHEDULE-(Contd.)

12. The revival of a will shall not revive an adeemed gift, so as to give the legatee any interest in any property then representing the original subject of the adeemed gift.

Revival of will does not revive adeemed legacy.

13. Apart from any intention which may be expressed or implied in the terms of the will itself, there shall be no presumption of intention that ademption shall or shall not in any particular circumstances result:

No presumption of intention.

Provided that the intention of the testator, to be ascertained according to the ordinary rules of construction, shall always be relevant to determine the precise subject of the gift.

14. Where a testator makes a gift by will to any person for a specific purpose, or to any child or other person to whom he stands *in loco parentis* by way of portion, and after the date of execution of that will provides by deed of settlement or otherwise for the same purpose or by way of portion for the same child or other person, there shall be a presumption that the gift is adeemed by the subsequent provision, so far as the subsequent provision extends.

Ademption by subsequent provision.

THIRD SCHEDULE (s.24) ELECTION

1. (1) Where a person, by a will validly made in accordance with Part II of this Act, purports to dispose of any property which is not his own, and bequeaths a gift to the person to whom that property belongs, the legatee accepting the gift so bequeathed to him may elect to give effect to the testator's attempted disposition or to enforce his proprietary rights against that disposition.

Principle of election.

(2) If a legatee elects under this paragraph to enforce proprietary rights, he shall make compensation, out of the gift bequeathed to him, to the person whom he has thereby disappointed, and the amount of the compensation shall be assessed on the value of the attempted disposition as at the date of the testator's death, but shall not exceed the value of the gift bequeathed to the person electing to enforce his proprietary rights.

2. Where a testator purports to dispose of property which belongs to more than one person, every such person, if also a beneficiary under the will of that testator, shall have the right of election provided by paragraph 1, to the extent of his interest in that property.

Where property belongs to more than one person.

3. It shall be immaterial to any case of election whether the testator, in purporting to dispose of property which is not his own, was aware of

Testator's ignorance immaterial.

THIRD SCHEDULE-(*Contd.*)

his lack of title, or proceeded on the erroneous supposition that he was exercising a power of disposition which belonged to him.

Legatee's
ignorance
material.

4. A person shall not be bound to elect until all circumstances which may influence his election are known to him, and, if a person elects in ignorance of any material facts, he shall not be bound by that election.

Implied
election.

5. Where there is no express election, it may be implied or inferred from acts, or from failure to dissent, but such an inference shall not arise unless the legatee actually knows of his right to elect.

Postponement
in case of
disability.

6. In case of any disability of a legatee entitled to elect, the election shall be postponed until the disability ceases, or until the election is made by some competent authority or representative.

Extrinsic
evidence
inadmissible
to prove
intention.

7. In order to raise a case of election the intention of the testator to dispose of the property not belonging to him must be apparent on the face of the will, and extrinsic evidence shall not be admissible.

Cases to
which doctrine
does not apply.

- 8.** The principles of election set out in this Schedule shall not apply
- (a) to creditors; or
 - (b) to legatees who hold the property of which the testator has attempted to dispose in some capacity other than that in which the gift is made to them; or
 - (c) where the property of which the testator has attempted to dispose does not belong either to the testator or to the legatee, nor to any case where the legatee cannot by his own lawful act give effect to that disposition; or
 - (d) where the legatee, although subsequently becoming the owner of the property of which the testator has attempted to dispose, is not the owner of that property at the date of the testator's death; or
 - (e) to persons who, although taking no direct gift under the will, derive an indirect benefit therefrom.

Application to
appointments
under powers.

9. The principles of election set out in this Schedule shall apply to cases of invalid appointments under powers, but not where -

- (a) the testator clearly shows he is aware that the appointment is of doubtful validity;

THIRD SCHEDULE-(*Contd.*)

(b) the appointment is made to objects of the power absolutely, with merely a condition or proviso in favour of strangers to the power; or

(c) the appointment is void for remoteness.

FOURTH SCHEDULE

(*Deleted by 6 of 1984.*)

FIFTH SCHEDULE

(s. 54)

FORMS OF LIMITED GRANT

Grant Limited in Duration

1. When a will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of the copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost will.

2. When a will is in the possession of a person residing out of Kenya who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Probate of copy where original exists.

3. Where no will of a deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

Grant for the Use and Benefit of Others having Right

4. When any executor is absent from Kenya and there is no executor within Kenya willing to act, letters of administration with the will annexed may be granted to the attorney of the absent executor for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration, with will annexed to attorney of absent executor.

5. When any person to whom, if present, letters of administration with the will annexed might be granted is absent from Kenya, letters of administration with the will annexed may be granted to his attorney, limited as above mentioned.

Administration with will annexed to attorney of

absent person who if present would be entitled to administer.

FIFTH SCHEDULE-(*Contd.*)

Administration to attorney of absent person entitled to administer in case of intestacy.

6. When a person entitled to administration in case of intestacy is absent from Kenya and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

Administration during minority of sole executor or residuary legatee.

7. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of the minor, or to such other person as the court shall think fit until the minor has attained full age, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

8. When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained full age.

Administration for use and benefit of person of unsound mind.

9. If a sole executor or a sole universal or residuary legatee or a person who would be solely entitled to the estate of the intestate according to the rules for the distribution of intestates' estates be a person of unsound mind, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the court may think fit to appoint for the use and benefit of the person of unsound mind until he becomes of sound mind.

Administration *pendente lite*.

10. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate, and the administrator shall be subject to the immediate control of the court and shall act under its direction.

Grants for Special Purposes

Probate limited to purpose specified in will.

11. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

FIFTH SCHEDULE-(*Contd.*)

- 12.** If an executor appointed generally gives an authority to an attorney to prove a will on his behalf and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly. Administration with will annexed limited to particular purpose.
- 13.** Where a person dies leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to that property, may be granted to the person beneficially interested in the property, or to some other person on his behalf. Administration limited to property in which person has beneficial interest.
- 14.** When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased therein, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties, touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution. Administration limited to suit.
- 15.** If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the grant has been made is absent from Kenya, the court may grant, to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect. Administration limited to purpose of becoming party to suit to be brought against administrator.
- 16.** Where it appears to the court to be necessary or convenient to appoint some person to administer an estate or any part thereof other than the person who would in ordinary circumstances be entitled to a grant of representation, the court may, having regard to all the circumstances of the case, appoint such other person to be administrator and grant letters of administration, whether limited or otherwise, as it shall think fit. Appointment of person not normally entitled to a grant.

Grants with Exception

- 17.** Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to that exception. Probate or administration with will annexed subject to exception.

FIFTH SCHEDULE-(Contd.)

Administra-
tion with
exception.

18. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to that exception.

Grants of the Rest

Probate or
administration
of rest.

19. Whenever a grant, with exception, of probate, or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Grant of Effects Unadministered

Grant of ef-
fects unadmin-
istered.

20. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering that part of the estate.

Administra-
tion when
limited grant
expired and
still some part
of estate unad-
ministered.

21. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

SIXTH SCHEDULE

(ss.88 and 91)

ABATEMENT AND REFUNDING OF LEGACIES

Abatement

Abatement of
general
legacies.

1. (1) If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportion, and the personal representative has no right to pay one legatee in preference to another nor to retain any money on account of legacy to himself or to any person for whom is a trustee:

Provided that nothing contained herein shall prejudice or affect the priority of the remuneration to which any personal representative may be entitled under the will (including any general legacy which is expressly or impliedly conditional on his proving the will) or otherwise.

SIXTH SCHEDULE-(*Contd.*)

(2) For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

2. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

3. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee shall have a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until the fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he shall be entitled to rank for the remainder against the general assets as for a legacy of the amount of the unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

4. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

5. Where personal representatives have given such notice as may be prescribed for creditors and others to send in their claims against the estate of the deceased, the personal representatives shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets of the estate or any part thereof, in discharge of any lawful claims of which they have notice, and shall not be liable for the assets so distributed to any person of whose claim they have not had notice at the time of distribution:

Distribution after notice.

Provided that nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received them respectively.

Refunding

6. Where personal representatives have paid any legacy which, but for the payment, would have been liable to abatement in accordance with the foregoing provisions of this Schedule, they shall be entitled to call upon the legatee to refund the amount by which the legacy should have been abated-

Refund of legacy to personal representatives.

(a) if the legacy was paid under any order of the court; or

SIXTH SCHEDULE-(*Contd.*)

(b) if and so far as the abatement is rendered necessary by discovery of a debt of which, notwithstanding compliance with the provisions of section 90 of this Act, the personal representatives had no notice at the time of voluntary payment of the legacy, but not otherwise.

Creditors may call upon legatee to refund.

7. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund the legacy, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the personal representatives was voluntary or not.

When legatee not satisfied or compelled to refund he cannot oblige one paid in full to refund.

8. If the assets of a testator's estate were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund the legacy in accordance with the provisions of paragraph 7, cannot oblige another legatee who has received payment in full to refund his legacy, whether that legacy was paid to him with or without suit, although the assets have subsequently become deficient by waste on the part of the personal representatives.

When unsatisfied legatee must first proceed against personal representatives if solvent.

9. If the assets of the testator's estate were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy shall, before he can call on a satisfied legatee to refund, first proceed against personal representatives, if they or any of them be solvent, but, if no personal representative be solvent or liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion:

Provided that the refunding by one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been abated if the estate had been properly administered.

Refund when legacy has become due on performance of condition within further time allowed.

10. Where the time prescribed by the will for the performance of a condition has elapsed without the condition having been performed, and the personal representatives have thereupon, without fraud, distributed the assets of the testator's estate, in that case, if further time has for any reason been allowed by the court for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the personal representatives, but those to whom he has paid it shall be liable to refund the amount.

Refunding to be without interest.

11. In all cases arising under this Schedule any refunding shall be without interest.

SEVENTH SCHEDULE

(s. 90)

INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES AND INTEREST ON LEGACIES

Investment

1. Where a general legacy is given for life, the sum bequeathed shall, at or before the end of a year after the death of the testator, be invested in any authorized investment:

Investment of sum bequeathed where general legacy given for life.

Provided that, where an annuity is given and no fund is charged by the will with its payment or appropriated by the will to answer it, a sum sufficient to produce the annuity shall be invested in any authorized investment.

2. (1) Where a general legacy is given to be paid at a future time, the personal representatives shall invest a sum sufficient to meet it in any authorized investment

Investment of general legacy to be paid at future time.

(2) The intermediate interest from the investment shall, unless expressly or by implication payable to the legatee or another, form part of the residue of the testator's estate.

3. Where a gift is contingent, the personal representatives shall not be bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee, if any, on his giving sufficient security for the payment of the legacy if and when it becomes due.

Transfer to residuary legatee subject to contingent gift.

4. Where a testator has given any property to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's death invested in an authorized investment shall be converted into money and invested in such an investment.

Investment of residue bequeathed for life without direction to invest in particular securities.

5. Until conversion and investment are completed in accordance with the provisions of this Schedule, or with the terms of the will, as the case may be, the person who would for the time being be entitled to the income of the fund when so invested shall receive interest at the rate of six per centum per annum upon the market value (to be computed as at the date of the testator's death) of such part of the fund as has not yet been so converted and invested.

Interest payable pending conversion and investment.

SEVENTH SCHEDULE-(*Contd.*)*Interest*

What contingent and future testamentary gifts carry the intermediate income.

6. (1) A contingent or future as well as an immediate specific legacy and a residuary bequest not contingent in its terms of property, whether immovable or movable, shall, subject to the provisions of section 25 of this Act and paragraph 5 of this Schedule, carry the intermediate income of that property from the death of the testator, except so far as the income, or any part thereof, may be otherwise expressly disposed of.

(2) In the case of any contingent or future gift, either specific or residuary, not falling under the provisions of subparagraph (1), the bequest shall not comprise the intermediate income of the property or fund bequeathed between the death of the testator and the vesting of the bequest.

Interest on general legacy.

7. Where no time has been fixed for the payment of a general legacy, interest shall begin to run from the expiration of one year from the testator's death; but where a time has been fixed for payment, interest shall begin to run from the time fixed; and in either event the interest up to that period shall form part of the residue of the testator's estate:

Provided that interest shall run from the death of the testator where

- (i) the legacy is bequeathed in satisfaction of a debt; or
- (ii) the testator was a parent or more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, and no specific sum is given by the will for maintenance; or
- (iii) the legacy is bequeathed to a minor with a direction to pay for his maintenance thereout.

No interest on arrears of annuity within first year of testator's death.

8. No interest shall be payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

9. Where a sum of money is directed to be invested to produce an annuity, interest shall be payable on that sum from the death of the testator until so invested.

10. The rate of interest payable under paragraphs 6 to 9 (inclusive) shall, unless otherwise expressly provided, be six per centum per annum. Rate of interest.

11. The provisions of paragraphs 6 to 9 (inclusive) shall apply in so far as a contrary intention does not appear from the will. Application.

EIGHTH SCHEDULE

(s. 99)

LAWS REPEALED

The Indian Succession Act of India	Act X of 1865.
The Hindu Wills Act of India	Act XXI of 1870.
The Probate and Administration Act of India....	Act V of 1881.
The Hindu Succession Act	Cap. 158.
The Administration of Estates by Corporations Act....	Cap. 163.
The Commonwealth Probates Act.....	Cap. 166.
The Africans' Wills Act	Cap. 169.
The Colonial Probates Act 1892 of England (as applied to Kenya).	

NINTH SCHEDULE

(s. 100)

LAWS AMENDED

The Evidence Act (Cap. 80). s.113 Delete.
s.114 Delete

Insert after section 118 -
Presumption 118A. Where it is
of death. proved that a person has
not been heard of for seven
years by those who might be
expected to have heard of him
if he were alive, there shall
be a rebuttable presumption
that he is dead.

The Mohammedan Marriage, s.4 Delete.
Divorce and Succession
Act (Cap.156).

The Workmen's Compensation s.3(1) Delete the definition of
Act (Cap. 236). "member of the family" and
substitute -
"member of the family"
means husband, wife, parent,
stepparent, grandparent, son,
daughter, stepchild, grandchild,
brother or sister, half-brother or
half-sister, and includes also an
adopted child and a child whom
the workman had accepted as a
member of his family.

The Registered Land Act ss.120 and 121 Delete.
(Cap. 300).

'The Estate Duty Act s. 49 (1) Delete "no grant of
(Cap. 483). representation shall be made"
in the second line and substitute
"and save as provided in section
72 of the Law of Succession Act,
no grant of representation shall be
confirmed".

SUBSIDIARY LEGISLATION**Rules under section 97**

THE PROBATE AND ADMINISTRATION RULES

ARRANGEMENT OF RULES

Rule

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[Subsidiary]

Rule

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23- Citation to propound a document as a will.

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35- Grant to trust corporation.

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Rule

[Subsidiary]

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[Subsidiary]

L.N.104/1980.

THE PROBATE AND ADMINISTRATION RULES

PART I - PRELIMINARY

Citation and commencement.

1. These Rules may be cited as the Probate and Administration Rules and shall come into operation upon the date of commencement of the Act.

Interpretation.

2. In these Rules, except where the context otherwise requires -

“applicant” means a person who is applying or has applied for a grant or other relief under the Act or these Rules;

“authenticated copy” of a document means a copy of the document which is printed, type-written or produced in a permanent form by a photographic process and which bears at foot a certificate in Form 29 signed and dated by a judge, magistrate, the Registrar or a deputy registrar of the High Court, the Registrar-General or a deputy or assistant registrar-general;

“authorized agent” means an agent authorized by his principal in writing;

“caveator” has the meaning assigned to it by rule 15 (2);

“certified copy” has the same meaning as “authenticated copy” save that the certificate may alternatively be signed by an advocate;

“child” has the meaning assigned to it by section 3 (2) of the Act;

“citor” means the person seeking the issue of a citation under Part VI;

“court” means a judge of the High Court or a resident magistrate;

“district registrar” means a deputy registrar of the High Court and also an executive officer of the Resident Magistrate’s Court or other official for the time being appointed by the Chief Justice to have charge of the administration of a High Court district registry or a resident magistrate’s registry;

“district registry” means a registry other than the principal registry;

“Form” means the appropriate form set out in the First Schedule;

“grant” means a grant of representation, whether a grant of probate or of letters of administration with or without a will annexed, to the estate of a deceased person;

“High Court district registry” means a registry of the High Court other than the principal registry;

“letters of administration” means letters of administration intestate or with the will annexed;

“Mombasa registry” means the probate registry of the High Court at Mombasa;

“objector” means a person who has lodged an objection under rule 17 to the issue of a grant; [Subsidiary]

“personal applicant” means an applicant (not being a trust corporation or the Public Trustee) who has applied for a grant otherwise than through an advocate;

“personal representative” means a person to whom a grant of representation has been made and is still subsisting;

“prescribed fee” means the appropriate fee prescribed in the Third Schedule;

“principal registry” means the principal probate registry of the High Court at Nairobi;

“protester” means a person who has filed a protest under rule 40 (6) against the confirmation of a grant;

“registrar” means the Registrar of the High Court (who shall be the registrar of the principal registry and is herein referred to as the principal registrar) or a district registrar;

“registry” means a probate registry of the High Court or of the Resident Magistrate’s Court and includes the principal registry;

“resident magistrate’s registry” means a district registry for the time being attached to the Resident Magistrate’s Court;

“signed” in relation to a will includes the affixing of a mark or thumbprint;

“will” includes a codicil;

“written will” means a will the entire of which is written, and does not include any oral instructions or observations given or made by the testator or any person by his direction prior to or at the time of execution of the will.

PART II-THE REGISTRIES

3. (1) The principal registry and every High Court district registry or resident magistrate’s registry shall be under the control of the Registrar of the High Court as principal registrar.

Probate registries.

(2) There shall be a High Court district registry or a resident magistrate’s registry at such places as the Chief Justice may from time to time by notice in the Gazette appoint.

4. (1) A district registrar shall send to the principal registry a notice in Form 73 of every application made in his registry for a grant as soon as may be after the application has been filed and no such grant may be signed by the court until the receipt from the principal registry of a certificate in Form 30 to the effect that no other application made in respect of the estate of the deceased has been granted or notified to the principal registry as pending; and such certificate shall be dispatched promptly by the principal registry to the district registrar.

Duties of district registrars in relation to principal registry.

[Subsidiary]

(2) The notice referred to in subrule (1) shall be accompanied by an index card in Form 59 stating the full name and address of the deceased, his domicil and the date and place of his death, so far as these are known; and such index cards shall be filed by the principal registry, together with similar index cards to be prepared by the principal registry upon the filing therein of applications in that registry for grants, in a separate file in alphabetical order according to the names of the deceased persons.

(3) Where any such notice is received from a district registry the principal registry shall examine all other notices of applications for grants received from the several district registries and all applications for grants at the principal registry so far as may be necessary for the purpose of ascertaining whether an application for a grant in respect of the estate of that deceased person has been made in more registries than one, and shall communicate with each district registrar as occasion may require in relation thereto.

(4) A district registrar shall, once in every month or at such other intervals of time as the Chief Justice may direct, send to the principal registry a return in Form 103 of all grants made or confirmed by him and not included in a previous return, together with a copy of every grant or confirmation mentioned in such list, certified by him in Form 29 to be correct.

(5) Each registrar shall file and preserve every original written will of which a grant has been made or confirmed at his registry subject to such regulations with respect to the removal, preservation or inspection of wills as may from time to time be made by the Chief Justice.

Record of grants to be maintained at principal registry.

5. A record shall be kept in the principal registry of every grant issued by that registry and every district registry and shall be open to public inspection upon payment of the prescribed fee.

Depository for wills of living persons.

6. (1) There shall be provided in the principal registry a safe and convenient depository for the custody of the wills of living persons, and any testator may on his personal application or the application of his advocate deposit his will in a sealed packet therein on payment of the prescribed fee and subject to regulations made by the Chief Justice.

(2) No will while deposited under subrule (1) shall be withdrawn by or be open to inspection during the lifetime of the depositor by any person other than the depositor or his authorized agent.

(3) Every will while so deposited may be withdrawn or inspected at any time by the depositor or his authorized agent on payment of the prescribed fee and on production of satisfactory evidence that the will was

made by the depositor and deposited by him or his authorized agent. [Subsidiary]

(4) Any person other than the testator who has in his possession a document which it appears might be the original or a copy of a will of any person may deposit it in the principal registry without payment of a fee together with a written statement showing how and when it came into his possession, and every such document shall for the purposes of this rule be treated as a will.

(5) Any person depositing a will under this rule shall complete in duplicate and deliver to the registry with the instrument a deposit docket in Form 40 to be supplied by the registry and the registrar and forthwith return to him the duplicate copy of the docket stamped by the registry.

(6) There shall be maintained in the principal registry a register in chronological order of the wills deposited under this rule, together with a card index in alphabetical order recording the names and addresses of the testators and the dates of deposit.

(7) Upon proof of the death of the testator the will may be inspected by and copies supplied to any executor named therein or his authorized agent and such other person as the principal registrar may decide; and the principal registrar, after making and retaining a copy thereof certified by a registrar for his records, shall deliver the will to such person as the court may direct.

PART III-APPLICATIONS FOR GRANTS OF REPRESENTATION

7. (1) Subject to the provisions of subrule (9), where an applicant seeks a grant of representation to the estate of a deceased person to whose estate no grant or no grant other than one under section 49 or a limited grant under section 67 of the Act has been made, the application shall be by petition in the appropriate Form supported by an affidavit in one of Forms 3 to 6 as appropriate containing, so far as they may be within the knowledge of the applicant, the following particulars -

Application for grant: general provisions.

- (a) the full names of the deceased;
- (b) the date and place of his death, his last known place of residence, and his domicile at date of death;
- (c) whether he died testate or intestate and, if testate, whether his last will was written or oral, and the place where and the date upon which it was made;
- (d) a full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities;
- (e) in cases of total or partial intestacy -
 - (i) the names, addresses, marital state and description of

[Subsidiary]

all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with section 39 (1) of the Act;

- (ii) whether any and if so which of those persons is under the age of eighteen years or is suffering from any mental disorder, and, if so, details of it;
- (iii) for the purposes of determining the degree of consanguinity reference shall be made to the table set out in the Second Schedule;

- (f) the relationship (if any) which the applicant bore to the deceased or the capacity in which he claims;
- (g) if the deceased died testate leaving a written will, the names and present addresses of any executors named therein; and
- (h) the postal and residential addresses of the applicant.

(2) There shall be exhibited in the affidavit a certificate or a photocopy of a certificate of the death of the deceased or such other written evidence of the death as may be available.

(3) The petition may be filed in the principal registry or a High Court district registry or, in the case of a deceased the gross value of whose estate does not exceed one hundred thousand shillings, in a resident magistrate's registry or, in the case of an application to the Resident Magistrate's Court under section 49 of the Act, in a resident magistrate's registry within the area of that court in which the deceased had his last known place of residence; and upon its being so filed and until it has been considered and determined, the court may, upon request and payment of the prescribed fee, afford inspection of the will or copy will to any person having an interest in the estate; and any such inspection shall take place during office hours in the registry in the presence of an officer of the registry.

(4) The registrar shall cause to be inserted, at the cost of the applicant, in the Gazette and, if he so decides, in a daily newspaper, and to be exhibited conspicuously in the courthouse attached to the registry where the application is intended to be made, a notice of the application for the grant in Form 60 inviting objections thereto to be made known to that registry within a period, to be specified in the notice, of not less than thirty days from the date of the last of such publications.

(5) Where the grant sought is one of probate of a written will or of letters of administration with the written will annexed there shall be lodged in the registry on the filing of the petition the original of the will or, if the will is alleged to have been lost or destroyed otherwise than by way of revocation or for any other reason cannot be produced, then a copy authenticated by a competent court or otherwise to the satisfaction

of the court.

[Subsidiary]

(6) Where the grant sought is one of letters of administration with a written will annexed the applicant shall satisfy the court before the issue of the grant that every executor appointed by the will who is living at the time of the application either has consented in writing to the issue of the grant to the applicant, or has renounced his executorship, or has been issued with a citation calling upon him either to renounce his executorship or to apply for a grant of probate of the will.

(7) Where a person who is not a person in the order of preference set out in section 66 of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has -

- (a) renounced his right generally to apply for a grant; or
- (b) consented in writing to the making of the grant to the applicant;
- or
- (c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.

(8) Where a grant of administration is sought jointly by more persons than one (but not exceeding four) the provisions of this rule shall apply to all applicants save that the affidavit need be sworn by one only.

(9) This rule shall not apply to applications brought under the provisions of rule 36, 37, 42 or 48.

- 8. (1) An applicant for a grant may apply either as a personal applicant or through an advocate.
- (2) An applicant shall not apply through an agent other than an advocate.
- (3) An application for a grant through an advocate may be made otherwise than by post at any registry and may be made by post at such registries as the Chief Justice directs.

Application for grant made through advocate.

- 9. (1) A personal applicant may apply for a grant in person at any registry.
- (2) A personal applicant may not apply through an advocate or agent.
- (3) A personal application shall not be proceeded with - .
- (a) if an application has already been made by an advocate on behalf of the same applicant and has not been withdrawn:

Personal application for grant.

Provided that where such an applicant at any time in writing withdraws his instructions to the advocate and thereafter gives notice in writing to the registry of his intention to act in person he may do so; or

[Subsidiary]

(b) if the registrar so directs for reasons to be recorded.

(4) After a written will of a deceased has been deposited in a registry by a personal applicant it may not be delivered to the applicant or to any other person unless in special circumstances the registrar, for reasons to be recorded by him, so directs.

(5) If a personal applicant desires, at any time after making his application but prior to the issue of the grant applied for, to cease to be a personal applicant in relation to that application and to continue with such application through an advocate he may do so by filing in the registry at which the application was made a notice in Form 63 of intention to act through an advocate and containing an express appointment of some person to be his advocate in the matter, together with the name and address of the advocate and his acceptance in writing of such appointment.

(6) No legal advice shall be given to a personal applicant by an officer of a registry.

Application for order presuming death.

10. An application for an order presuming the death of a person of whose death there is no sufficient written evidence and to whose estate a grant is sought shall be made by summons to the court and shall be supported by an affidavit setting out the grounds of the application

Application for grant in additional names.

11. Where it is desired to describe the deceased in a grant by more names than the applicant shall state in the application the usual name or names of the deceased and shall also state the reason for the inclusion of the other name or names in the grant.

Application for limited grant under Fifth Schedule to the Act.

12. An application for a grant of representation to be limited in any of the several respects described in the Fifth Schedule to the Act shall be by petition in the appropriate Form and shall be supported by such evidence by affidavit in Form 19 as is required by these Rules including such evidence as is sufficient to establish the existence of the facts and circumstances relative to the particular respect in which the grant is to be limited.

Application for proof of oral will.

13. (1) An application for proof of an oral will or of letters of administration with a written record of the terms of an oral will annexed shall be by petition in Form 78 or 92 and be supported by such evidence on affidavit in Form 4 or 6 as the applicant can adduce as to the matters referred to in rule 7, so far as relevant, together with evidence as to -

- (a) the making and date of the will;
- (b) the terms of the will;
- (c) the names and addresses of any executors appointed;
- (d) the names and addresses of all the alleged witnesses before whom the will was made;

- (e) whether at the respective dates both of the making of the will and of his death the deceased was a member of the armed forces or merchant marine engaged on the same period of active service; [Subsidiary]
- (f) whether the deceased at any time executed or caused to be executed a written will.

(2) Subject to the provisions of subrule (1) the provisions of these Rules relating to applications for probate of written wills or of letters of administration with such wills annexed shall apply in relation to applications for the proof of oral wills.

14. (1) An applicant for a grant may amend his application before the making of the grant by notice in Form 62 to be filed in the registry in which his original application was filed and serving forthwith a copy of such notice upon every objector who has lodged an objection and cross-application in the matter; and he shall pay to every such objector such costs (if any) as the court may direct: Amendment or withdrawal of application for grant.

Provided that where the proposed amendment is of a minor nature the registrar may permit the amendment to be made forthwith without notice to any party.

(2) An applicant for a grant may withdraw his application at any time before the making of the grant by notice in Form 65 and shall pay to the other parties to the proceedings such costs (if any) as the court may direct.

(3) Every district registry shall forthwith upon the filing in it of a notice of amendment or withdrawal of an application for a grant notify the principal registry accordingly.

(4) If at the time of the filing of a notice of withdrawal of an application there has been filed in any registry an objection to the making of the grant, that registry shall forthwith notify in writing every person who has filed an objection therein.

(5) A notice of withdrawal of an application for a grant shall preclude the making of a subsequent application by the same person for a grant in relation to the same deceased.

PART IV—CAVEATS AND OBJECTIONS TO APPLICATIONS FOR THE MAKING OR CONFIRMING OF GRANTS

15. (1) Any person who wishes to ensure that he shall receive notice of any application either for the making or the confirming of a grant of representation to the estate of a particular deceased person may enter a caveat in any registry. Caveats, objections and warnings.

[Subsidiary]

(2) Any person who wishes to enter a caveat (herein called the caveator) may do so by completing and signing Form 28 in the appropriate book at the registry, paying the prescribed fee, and obtaining an acknowledgement of entry from the proper officer, or by sending through the post at his own risk a caveat in Form 28, signed by him and accompanied by the prescribed fee, to the registry in which he wishes the caveat to be entered.

(3) No caveat shall be entered by or on behalf of more persons than one.

(4) Where a caveat is entered by an advocate on behalf of a caveator, the name and postal address of the caveator shall be stated in the caveat in addition to those of the advocate.

(5) Every district registry shall immediately upon receipt of a caveat forward a copy thereof to the principal registry where it shall be filed and retained.

(6) The principal registrar shall maintain a comprehensive index of caveats entered in any registry (including the principal registry) and, on receiving an application for the making or confirming of a grant, or notice of an application made in a district registry, shall forthwith cause the index to be searched to ascertain if any caveat has been lodged in the matter.

(7) Where it appears that a caveat has been lodged against the making or confirming of a grant to the estate of a deceased and that such a grant has been applied for in any registry, the principal registry shall forthwith notify the registrar at that registry of the name and particulars of the caveator.

(8) The registrar shall not allow any grant to be made or confirmed in his registry if he has knowledge of the existence of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the making or confirming of a grant on the day on which the caveat is lodged.

(9) Where it appears to the principal registrar that an application has been made in any registry for the making of a grant to the estate of a deceased in regard to which a caveat has been lodged and is subsisting, the principal registrar shall send a notice in Form 112 to the caveator warning him of the making of the application and notifying him that if he wishes to object to the making of the proposed grant he must, pursuant to the provisions of section 68 (1) of the Act, lodge such objection in the principal registry within thirty days, or such longer period as the registry for reasons to be recorded may allow, from the receipt of such notification,

in default of which the caveat shall cease to have effect with respect to the making of such grant. [Subsidiary]

16. (1) Any person who wishes to bring to the notice of the court any matter as to the making or contents of the will of a deceased (whether written or oral), the rights of dependants or of persons who might be entitled to interests on the intestacy of the deceased, or any other matter which might require further investigation before a grant is made or confirmed, may file in any registry in which an application for a grant to the estate has been made or in the principal registry an affidavit giving full particulars of the matter in question.

Notice to court of facts relevant to application for grant.

(2) No fee shall be payable on the filing of such a statement.

(3) Upon the filing of such a statement the registrar may take such action thereon as he deems fit.

17. (1) Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7 (4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or 77 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.

Objections, answers and cross-applications.

(2) A request by an intending objector for an extension under section 68 (1) of the Act of the period specified in the notice under rule 7 (4) shall be made to the registry at which the application for a grant was made or by which the notice was issued, as the case may be, by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant.

(3) There shall be maintained at each registry a register of objections, answers and cross-applications in which the registrar shall enter particulars of every objection, answer and cross-application lodged under this rule in the registry and of every withdrawal of objection and withdrawal and amendment of every answer or cross-application under this rule.

(4) Upon receipt of an objection in triplicate within the period referred to in subrule (1), or an extension thereof, the registrar shall forthwith file and retain the original thereof and cause an appropriate entry to be made in the register and shall transmit forthwith by registered post a notification in Form 61 of the receipt of the objection, together with a copy thereof, to the person or to each of the persons by whom the application for a grant has been made and also, save where the objection is lodged in

[Subsidiary] the principal registry, transmit a copy of the notice and objection to the principal registrar by whom it shall be filed and retained.

(5) The registrar of the registry in which the objection is lodged shall forthwith upon the lodgment of the objection cause a notice in Form 67 to be sent to the objector, by registered post or otherwise as he may think fit, requiring him to file in the registry within such period as the registrar may specify in the notice an answer in Form 25 to the petition for a grant together with a petition by way of cross-application in Form 84, supported by affidavit, for a grant to the estate of the deceased to be made to the objector.

(6) If within the period specified in subrule (5) the objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the petitioner and the objector of the time and place set for the hearing of the petition, answer and cross-application.

(7) An objector may at any time prior to the filing of his answer and cross-application withdraw his objection by filing in the registry in Form 66 a notice of withdrawal of objection and serving upon the petitioner personally or by registered post a copy of such notice of withdrawal, in which event the objection shall cease to have effect and the objector shall not be liable for any costs or expenses which may have been occasioned to the applicant by reason of the objection:

Provided that an objector who has withdrawn his objection shall not be entitled to file a further objection in respect of the same application for a grant.

(8) An objector who wishes to amend his answer or his cross-application prior to the making of the grant may do so by filing in the registry in which his objection was lodged an amended answer and cross-application, a copy of which, unless the registrar otherwise directs, he shall serve forthwith upon the applicant for the grant:

Provided that where the proposed amendment is of a minor nature the registrar may permit the amendment to be made forthwith, notification whereof, unless the registrar otherwise directs, the objector shall thereupon give to the applicant in writing.

(9) An objector who wishes to withdraw his answer and cross-application may do so by filing a notice in Form 64 in the same registry as that in which he filed his answer and cross-application and, unless the registrar otherwise directs, by serving a copy thereof upon each of the other parties; and he shall thereupon become liable to pay to the other

parties to the proceedings such sum (if any) by way of costs and expenses as the court may direct. [Subsidiary]

(10) When an answer and cross-application have been withdrawn pursuant to subrule (9), the objection pursuant to which such answer and cross-application were filed shall be deemed also to have been withdrawn and the registry at which the notice of withdrawal is filed shall forthwith notify the principal registry of that fact.

(11) So long as an objection which has been lodged has not been withdrawn pursuant to subrule (10) no grant shall be made by any registry to the estate of the deceased prior to the expiration of the period for the filing by the objector of an answer and cross-application specified by the court under section 68 of the Act.

(12) The principal registrar shall maintain a comprehensive index of objections entered in any registry (including the principal registry), and on being made aware of an application for a grant having been made in any such registry he shall cause the index to be searched and shall notify that registry in the event of an objection having been lodged in any registry against the making of such grant.

(13) Where two or more answers and cross-applications have been filed in response to the same petition then, unless the registrar otherwise directs, they shall all be heard together with the petition.

(14) No registrar shall make a grant if he has knowledge of the existence of an effective objection lodged in any registry in respect of the estate of the deceased:

Provided that an objection shall not operate to invalidate a grant made not less than twenty-one days after the period specified for inviting objections under section 67 of the Act but before knowledge or notification of the lodging of the objection is received by the registrar making the grant.

(15) Where an objector in his objection, answer and cross-application expressly limits his objection to the making of the grant applied for to a challenge to the due execution of the alleged written or oral will and similarly restricts his right to call or cross-examine witnesses solely in regard to matters which might tend to disprove or prove such execution, he shall not be required to pay the costs or expenses of any other party to the proceedings unless the court before which the hearing takes place is of the opinion that there was no reasonable ground for challenging the execution.

[Subsidiary]

PART V-RENUNCIATION

Renunciation of probate or of right to apply for administration.

18. (1) A renunciation of probate whether of a written or an oral will, or of the right to apply for administration, may be in one of the Forms 98 to 102 as appropriate.

(2) A renunciation of probate by an executor, whether by oral declaration or in writing, shall not operate as a renunciation of any right which he may have to a grant of letters of administration in some other capacity unless he expressly renounces such right.

(3) Unless the court otherwise directs for reasons to be recorded, a renunciation of a right to apply for letters of administration intestate may not be retracted.

Where one of several executors neither renounces nor applies for grant.

19. (1) Where there are more executors than one and the application for a grant is made by one or more but not by all the executors, those not so applying or any of them may, if they have not renounced probate, apply subsequently to be thereafter joined by endorsement on the grant.

(2) Before such an application is heard the court shall, unless it for reasons to be recorded otherwise directs, require the existing grant and all certified copies thereof already issued to be filed in the registry for endorsement.

Death of executor who has not renounced.

20. Where an executor has predeceased the testator or has survived the testator but has died before a grant is applied for and without having renounced, a certificate or other evidence acceptable to the court of the death of such executor shall, unless the court for reasons to be recorded otherwise directs, be filed before the making of the grant.

PART VI-CITATIONS

Citations generally.

21. (1) Every citation shall be drawn by the applicant in one of the Forms 31 to 36 as appropriate and settled by the registrar of the registry from which, upon payment of the prescribed fee, it is to be issued.

(2) Every averment in a citation, and such other information as the registrar may require, shall be verified by an affidavit in one of the Forms 20 to 24 as appropriate sworn by the citor or, if there are two or more citors, by one of them:

Provided that the registrar may in special circumstances, for reasons to be recorded, accept an affidavit sworn by the citor's advocate.

(3) Every citation shall be served on the person cited either personally

or by acknowledged registered post unless the registrar directs some other mode of service, which may include notice by advertisement. [Subsidiary]

(4) Except where a will is not in the citor's possession and the registrar is satisfied that it is impracticable to require it to be filed, every will referred to in a citation shall be filed in the registry from which the citation is to issue but before such issue takes place.

(5) A person who has been cited to appear may, within fifteen days of service of the citation upon him, inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under rule 22 (5) or rule 23 (2), enter an appearance either in the principal registry or in the Mombasa registry by filing Form 27 and shall forthwith thereafter serve on the citor a copy of that Form sealed with the seal of the registry:

Provided that the registrar may in any case at the time of issue of the citation increase the period of fifteen days to such period as he thinks fit.

(6) The provisions of this rule shall apply also to the issue of a citation by direction of the court under section 71 (2) (d) of the Act.

22. (1) A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.

Citation to accept or refuse or to take a grant.

(2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the last survivor of such executors or of any beneficiary under the will.

(3) A citation in Form 35 calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of three months from the death of the deceased:

Provided that no citation to take a grant shall issue while proceedings as to the validity of the will are pending.

(4) A person cited who is willing to accept or take a grant may petition the court for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.

(5) If the time limited for appearance has expired and the person cited has not entered an appearance in either the principal registry or the Mombasa registry, the citor may-

[Subsidiary]

(a) in the case of a citation under subrule (1), petition the court (if he has not already done so) for a grant to himself;

(b) in the case of a citation under subrule (2), apply to the court by summons for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;

(c) in the case of a citation under subrule (3), apply to the court by summons on notice to the person cited for an order requiring such person to take a grant within a specified time or for a grant to himself or to some other person specified in the application.

(6) An application under subrule (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.

(7) If the person cited has entered an appearance but has not within 30 days after his appearance applied for a grant under subrule (4), or has failed to prosecute his application with reasonable diligence, the citor may -

(a) in the case of a citation under subrule (1), petition the court for a grant to himself;

(b) in the case of a citation under subrule (2), apply by summons to the court for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of subrule (5);

(c) in the case of a citation under subrule (3), apply by summons to the court for an order requiring the person cited to take a grant within a specified time or petition the court for a grant to himself or to some other person specified in the petition,

and the application shall in each case be served on the person cited.

Citation to propound a document as a will.

23. (1) A citation to propound a document as a will shall be supported by an affidavit in Form 23 and be directed to the executors named therein (if any) and still living and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired and no person cited has entered an appearance in either the principal registry or the Mombasa registry, or if no person who has appeared proceeds with reasonable diligence to propound the document, the citor may petition the court for a

grant as if the document were not a valid will and the court before making a grant may direct such inquiries and make such orders as it thinks fit. [Subsidiary]

24. (1) The court may, on the application by summons supported by affidavit of any person claiming to be beneficially interested in the estate of a deceased, or of its own motion, make an order requiring any other person to bring into any High Court registry any document being or appearing to be a testamentary instrument executed by, or in the presence and by the direction of, the deceased which is shown to be in the possession or under the control of such other person; and if it be not shown that any such document is in the possession or under the control of such other person but it appears that there are reasonable grounds for believing that he has knowledge of any such document the court may direct such other person to attend for the purpose of being examined in open court or in chambers respecting it or to answer upon oath interrogatories in the matter and if so directed to produce and lodge in court such document.

Order to bring in a will or to attend for examination.

(2) If any person served with an order under subrule (1) denies that any document being or appearing to be a testamentary instrument executed by or in the presence and by the direction of the deceased person referred to in the summons is in his possession or under his control he may file an affidavit to that effect.

(3) Where a person served with an order under subrule (1) has in his possession or under his control a document referred to in such summons by virtue of his having been an advocate or other professional advisor acting for the deceased person by whom or by whose direction the document was executed, or for or in relation to his estate, or of his having been appointed an executor or trustee of the deceased person, he shall, in complying with the order, so inform the court in writing.

(4) If a person served with an order under subrule (1) fails to comply therewith so far as lies in his power he may be committed to prison for contempt of court for such period not exceeding twelve months as the court shall decide.

PART VII-MAKING OF GRANTS

25. (1) Every grant made and issued through the principal registry or a High Court district registry shall be in one of Forms 41 to 52 as appropriate and shall be signed by a judge of the High Court and sealed with the seal of that registry.

Signing, sealing and issue of grants.

(2) Every grant made and issued through a resident magistrate's registry shall be in one of Forms 41 to 53 as appropriate and shall be signed by a resident magistrate and sealed with the seal of that registry.

[Subsidiary]

(3) The court shall not make a grant until all inquiries which it may require to be made have been answered to its satisfaction, and it may require proof of the identity of the deceased and of the applicant.

(4) Except with the leave of the court given for reasons to be recorded, no grant shall be made within fifteen days of the death of the deceased.

(5) The court after the making of a grant may at any time and from time to time require the personal representative to render to the court a true account of the estate of the deceased and of his administration of it.

(6) A grant may be made either to a single person (including the Public Trustee or a trust corporation) or jointly to two or more persons (including a trust corporation) not exceeding four.

Grants of letters of administration.

26. (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.

(2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.

(3) Unless the court otherwise directs for reasons to be recorded, administration shall be granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

Exceptions to rules as to priority.

27. Nothing in rule 26 shall operate to prevent a grant being made to any person to whom a grant may be made, or may be required to be made, under the Act.

Grant where deceased died domiciled outside Kenya.

28. Where the deceased died domiciled outside Kenya, the court may make a grant -

(a) to the person entrusted with the administration of the estate by a court having jurisdiction at the place where the deceased died domiciled; or

(b) to a person entitled to administer the estate by the law of the place where the deceased died domiciled; or

- (c) if there is no such person as is mentioned in paragraph (a) or (b) or if in the opinion of the court the circumstances so require, to such other person as the court directs; or
- (d) if the court considers that a grant should be made to not less than two administrators, to such person as the court may direct jointly with any such person as is mentioned in paragraph (a) or (b) or with any other person:

Provided that without any such grant under this rule -

- (i) probate of a will which is admissible to proof may be granted if the will appoints a named person as executor or describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, to that person;
- (ii) where the whole of the estate in Kenya consists of immovable property a grant limited thereto may be made by the court in accordance with the law which would have been applicable if the deceased had died domiciled in Kenya.

29. (1) In the exercise of its discretion as to the person to be appointed an administrator (with or without the will annexed) the court shall endeavour to satisfy itself as to the financial solvency of such person and, having regard to the nature and extent of the estate of the deceased likely to come to his hands, as to the probability of his being able properly to complete the administration of the estate.

Court may require to be satisfied as to solvency of administrator.

(2) For the purpose of subrule (1) the court may require the proposed administrator to furnish an affidavit in Form 12 as to his means.

(3) As a condition of granting letters of administration (whether with or without the will annexed) the court may, for reasons to be recorded and subject to the following provisions of this rule, require one or more sureties to guarantee that they will make good, within any limit imposed by the court pursuant to subrule (8) on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of a breach by the administrator of his duties as such.

(4) A guarantee given in pursuance of any such requirement shall take effect for the benefit of every person interested in the administration of the estate of the deceased as if contained in a contract under seal made by the surety or sureties with every such person and, where there are two or more sureties, as if they had bound themselves jointly and severally.

[Subsidiary]

(5) Every guarantee shall be in Form 56, 57 or 58, as the case may be, and no action shall be brought on any such guarantee without the leave of the High Court previously obtained.

(6) This rule shall not apply where administration is granted to the Public Trustee or to a widow of the deceased or, except in special circumstances and for reasons to be recorded, where it is granted to -

- (a) a trust corporation;
- (b) an advocate of the High Court holding a current practising certificate who has never (save at his own request) been struck off the roll of advocates or suspended from practising as an advocate;
- (c) a public officer acting in his official capacity;
- (d) a person specifically authorized in writing by a Government Department to apply for administration and to act as such administrator if appointed;
- (e) the attorney of an executor who is absent from Kenya, there being no executor within Kenya who is willing to act, for the use and benefit of his principal and limited until such principal shall obtain probate or letters of administration granted to himself.

(7) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an advocate or by a commissioner for oaths or other person authorized by law to administer an oath.

(8) Unless the court otherwise directs -

- (a) a guarantee shall be given by two sureties, except where either the gross value of the estate does not exceed Sh. 10,000 or a corporation is a proposed surety, and in such cases one surety shall suffice;
- (b) no person shall be accepted as a surety unless he or it is ordinarily resident in Kenya;
- (c) no officer of a registry shall be accepted as a surety;
- (d) the liability of the surety or sureties under a guarantee shall be such sum as the court thinks fit but shall not exceed the gross amount of the estate as sworn on the application for the grant:

Provided that the court may in any case where the gross amount has in its opinion been underestimated require that before confirmation of the grant the amount of the guarantee shall be increased to such amount as it thinks fit;

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(e) every surety, other than a corporation, shall justify in Form 11.

(9) Where the proposed surety is a corporation there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the registrar that its assets are sufficient to discharge all claims which may be made against it under any guarantee which it has given or is likely to give for the purposes of these Rules:

Provided that the court may, instead of requiring an affidavit in every case, accept an affidavit made not less often than once in every year together with an undertaking by the corporation to notify the court forthwith in the event of any alteration in its constitution affecting its powers to become a surety under these Rules.

30. Where evidence of the law of a country outside Kenya is required on any application for a grant, the affidavit of any person who practises, or has practised, as a barrister, solicitor, advocate or other legal practitioner in that country and who is conversant with its law may be accepted by the court unless the deponent is a person claiming to be entitled to the grant or his attorney, or is the spouse of any such person or attorney:

Evidence of foreign law.

Provided that the court may in special circumstances accept the affidavit of some other person who does not otherwise possess the qualifications required by this rule if the court is satisfied, on grounds to be recorded, that by reason of such person's official position or otherwise he has knowledge of the relevant law of the country in question.

31. Where a gift to any person fails by reason of section 13 (2) of the Act, such person shall not have any right to a grant as a beneficiary named in the will, but such failure shall not of itself prejudice his right to a grant in any other capacity.

Grant to attesting witness.

32. (1) Where in the case of intestacy the person to whom a grant could otherwise be made is an infant, administration for his use and benefit until he attains the age of eighteen years may, subject to subrule (2), be granted to both parents of the infant jointly or to the surviving parent or to the statutory or testamentary guardian of the infant or to any guardian appointed by a court of competent jurisdiction.

Grant intestate on behalf of infant.

[Subsidiary]

(2) Notwithstanding anything in this rule, administration intestate for the use and benefit of an infant until he attains the age of eighteen years may be granted by the court to any person assigned as guardian by order of the court in default of, or jointly with, or to the exclusion of, any such person as is mentioned in subrule (1); and such an order may be made on the petition of the intended guardian, who shall file an affidavit in support of the application and, if required by the court, an affidavit of fitness sworn by a responsible person.

Grant where infant a co-executor.

33. Where one of two or more executors is an infant, probate may be granted by the court to the other executor or executors not under disability, with power reserved of making the like grant to the infant on his attaining the age of eighteen years; and administration with the will annexed for the use and benefit of the infant until he attains the age of eighteen years may be granted by the court only if the executor or executors who is or are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

Infant's right to probate not to be renounced on his behalf.

34. An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

Grant to trust corporation.

35. (1) Any trust corporation wishing to petition for a grant shall file with its petition evidence that it is a trust corporation within the definition thereof in section 3 of the Act and an undertaking to inform the principal registry of any change in its eligibility.

(2) The principal registry shall maintain a register of trust corporations to which grants have been issued under subrule (1) and shall on request supply copies of the register and all amendments thereto to the Mombasa registry.

(3) There shall be produced with every petition by a trust corporation a copy certified by the advocate for the petitioner of the power of attorney or other authority of the officer of the corporation making the application which the registry shall note and return.

(4) Every application by a trust corporation for a grant shall be made in the principal registry or the Mombasa registry.

Grant *ad colligenda bona* under s. 67 of the Act.
L.N. 223
/1992

36. (1) Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration *ad*

colligenda bona defuncti of the estate of the deceased.

[Subsidiary]

266/1995,
L.N.143/2002.

(2) Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until a further grant is made.

(3) Application for such a grant shall be by petition in Form 85 signed by the applicant in the presence of not less than two adult witnesses supported by an affidavit containing the material facts together with the reasons for the application and showing the urgency of the matter and shall be made at the principal registry or at the Mombasa, Kisumu, Nakuru, Nyeri, Kisii, Kakamega, Meru, Machakos, Eldoret and Bungoma registries.

(4) The provisions of rule 7 (4) shall not apply to applications under this rule.

(5) Copies of the proceedings and of the grant when issued shall be served upon such persons (if any) and in such manner as the court shall direct.

37. (1) Every application to a resident magistrate under section 49 of the Act for a temporary grant of representation limited to the collection of assets and payment of debts shall be by petition in Form 97A signed by the applicant in the presence of not less than two adult witnesses supported by an affidavit containing the material facts and showing the reasons for the application and the apparent urgency of the matter and exhibiting copies of the two notices which have been published pursuant to the provisions of section 29 (1) of the Trustee Act.

Temporary grant by resident magistrate under s. 49 of the Act. Cap. 167.

(2) A grant made under this rule shall be in Form 53 and, unless a shorter time is directed by the court, shall expire at the end of six months after its making and shall be limited to the collection of assets of the deceased situated within the area of the resident magistrate by whom it is made and the payment of debts of the deceased.

38. (1) The making of a grant of representation under rule 36 or 37 shall be without prejudice to the right of the representative so appointed or of any other person to apply under any other provision of these Rules for a grant of representation to the deceased.

Grant under rule 36 or 37 not to prejudice making of full grant.

(2) Upon the making of a grant under any provision of these Rules other than rules 36 and 37, any earlier grant made under either of those rules

[Subsidiary] (in this subrule called the temporary grant) shall cease to have effect, but without prejudice to any act or other thing lawfully done thereunder, and the holder of the temporary grant shall forthwith surrender that temporary grant and account to the court for all the assets collected and shall be given credit for any payments properly made and expenses properly incurred by him as such holder.

Right of assignee to a grant.

39. (1) Where all the persons entitled to the estate of the deceased (whether under a will or on intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace, in the order of preference for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest preference.

(2) Where there are two or more assignees, administration may be granted with the consent of the other or others to any one or more (not exceeding four) of them.

(3) In any case where administration is applied for by an assignee, a copy of the instrument of assignment certified by an advocate or magistrate shall be lodged in the registry.

PART VIII- CONFIRMATION, SEALING, RECTIFICATION AND REVOCATION OF GRANTS

Application for confirmation of grant.

40. (1) Where the holder of a grant which has not been confirmed seeks confirmation of the grant he shall apply for such confirmation by summons in Form 108 in the cause in which the grant was issued, supported by an affidavit in Form 8 or 9 exhibiting the grant together with an estate duty compliance certificate or other satisfactory evidence that no estate duty is payable and setting out the full names of the deceased person to whose estate the grant relates, and he shall satisfy the court that no application under Part III of the Act is pending.

(2) An application for confirmation by virtue of section 71 (3) of the Act shall be by summons in Form 109 in the cause and the applicant shall in addition to the requirements of subrule (1) satisfy the court by affidavit in Form 18 that there is in existence no dependant of the deceased and that it is expedient in all the circumstances of the case that the grant be confirmed before the expiration of six months from its date of making.

(3) Save in the case of whole or partial intestacy or where the application is brought by virtue of section 71 (3) of the Act, there shall be filed with the summons an affidavit containing the following information and particulars so far as known to the applicant -

(a) the names, ages and addresses of the children of the deceased by whom he was survived (whether or not they were being maintained by him immediately prior to his death) and of such

of his parents, step-parents, grand-parents, grand-children whom he had taken into his family as his own, brothers, sisters, half-brothers and half-sisters, as were living at his death and were being maintained by him immediately prior thereto with full details of the manner and extent and for what period they were being or had been so maintained;

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(b) in the case of a male deceased, his wife or wives or former wife or wives living at his death and, in the case of a female deceased, her surviving husband if he was being maintained by her immediately prior to her death with full details of the manner and extent and for what period he was being or had been so maintained.

(4) Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined.

(5) Where it appears to the principal registrar that an application has been made in any registry for the confirmation of a grant to the estate of a deceased in regard to which a caveat has been entered pursuant to rule 15 and is subsisting, the principal registrar shall send a notice in Form 111 to the caveator warning him of the making of the application and notifying him that if he wishes to object to the confirmation of the grant he must file in duplicate an affidavit of protest in Form 10 in the principal registry within fifteen days (or such longer period as the registry for reasons to be recorded may allow) from the receipt of the notice, in default of which the caveat shall cease to have effect in regard to the confirmation of the grant.

(6) Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection.

(7) The registrar shall without delay forward to the applicant a copy of each protest filed in the cause under subrule (5) or (6).

(8) Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit.

[Subsidiary]

(9) In giving directions the magistrate's court may in a case before it either order that the application for confirmation should proceed in that court, or at the request of any party or of its own motion order that it be transferred to the High Court and give all necessary consequential directions in that behalf to enable the application to be dealt with by the High Court.

Hearing of
application for
confirmation.

41. (1) At the hearing of the application for confirmation the court shall first read out in the language or respective languages in which they appear the application, the grant, the affidavits and any written protests which have been filed and shall then hear the applicant and each protester and any other person interested, whether such persons appear personally or by advocate or by a representative.

(2) The court may either confirm the grant or refer it back for further consideration by the applicant or adjourn the hearing for further evidence to be adduced or make any other order necessary for satisfying itself as to the expediency of confirming the applicant as the holder of the grant or concerning the identities, shares and interests of the persons beneficially entitled and any other issue which has arisen including the interpretation of any will.

(3) Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71 (2) of the Act, proceed to confirm the grant.

(4) In proceedings under subrule (3), unless the court otherwise directs, the personal representative of the deceased shall be the applicant seeking determination of the question, and the person claiming so to be beneficially interested together with the residuary legatee or other person to be appointed by the court to represent the residuary estate shall be the respondents; and the court in such proceedings shall give all necessary directions relative to the prosecution thereof including the safeguarding of the share or estate so appropriated and set aside and the provision of costs.

(5) Where the court in exercise of its power under section 71 (2) (a) of the Act directs that a grant be confirmed it shall cause a certificate of such confirmation in Form 54 to be affixed to the grant together with the seal of the court and shall appoint a date not more than six months

ahead, by which time the accounts of the completed administration shall be produced to the court for its approval. [Subsidiary]

(6) Where the court, in exercise of its power under section 71 (2) (b) of the Act, instead of confirming a grant already issued directs the issue of a confirmed grant, this grant may be in Form 55.

(7) On production of the accounts in court any person beneficially entitled and any creditor may appear and be heard before the court's approval is given.

(8) The approval of the accounts in court may be dispensed with if all persons beneficially entitled have signed as consenting to the accounts as produced.

(9) On the date for approval of the accounts and on any adjourned date application may be made for an adjournment to a fixed date not longer than three months away.

42. (1) An application under section 77 of the Act for the sealing of a grant issued by a court or other authority of a Commonwealth country or other country to which that section applies shall be made to the principal registry or to the Mombasa registry by the person to whom the grant was made or by his attorney empowered in writing to apply on his behalf.

Sealing of grant issued in another country.

(2) Every such application shall be brought by petition in Form 81 or 82 supported by affidavit in Form 7 and shall be dealt with by a judge of the High Court.

(3) There shall be produced on every such application either -
(a) the original grant; or

(b) a duplicate of the grant sealed with the seal of the court or other authority which issued the grant; or

(c) a copy of the grant certified by or on behalf of such court or authority; or

(d) the original power of attorney (if any) in exercise of which the application is made.

(4) There shall be filed in the registry with every such application

(a) a certificate from the Estate Duty Commissioner either to the effect that all estate duty payable to him has been or will be paid or to the effect that no such duty is payable, or alternatively such evidence as the registrar shall require that no such duty is

[Subsidiary]

- payable;
- (b) true copies of the instruments produced under subrule (3);
- (c) unless the registrar otherwise directs, a full inventory of the assets and liabilities of the estate of the deceased in Kenya;
- (d) such evidence (if any) as the court may require as to the domicile of the deceased; and
- (e) such proof (if any) as the registrar may require of or in relation to the death of the deceased.

(5) Where it is sought to seal a grant of representation issued in another country the court may on the application of a creditor require the applicant to give, within a time to be limited and in accordance with section 77 (2) (c) of the Act, adequate security in Form 58 specifically for the payment of debts due from the estate to creditors residing within the jurisdiction.

(6) The registrar shall cause to be inserted in the Gazette and to be exhibited conspicuously in the courthouse attached to the registry a notice in Form 71 of the application for the sealing, inviting objections thereto to be made known to that registry within a period to be specified in the notice of not less than thirty days from the date of such respective publications.

(7) At the expiry of the notice, if there is no objection and all the necessary requirements have been complied with, the court may make an order for sealing the grant.

(8) A limited or temporary grant may be sealed only upon the filing of a certificate from the issuing court or authority that the grant to be sealed is, on the date of application, still valid and in force.

(9) Every grant lodged for sealing shall include or be accompanied by a copy of any will to which the grant relates certified as correct by or under the authority of the court or authority by which the grant was made, which copy shall be filed in the registry.

(10) If prior to the expiration of the notice referred to in subrule (5) an objection in writing has been filed in the registry through which the application for sealing is made, the registrar shall forthwith submit the objection to the court for directions whereupon the court shall require the objector within a time to be limited to file evidence by affidavit in support of the objection, in default of which the objection shall be deemed to have been withdrawn:

Provided that the judge may for reasons to be recorded extend such [Subsidiary] time prior to its expiration.

(11) Where an objector has filed his objection and affidavit as required by subrule (10) the court shall give directions for the hearing of the objection.

(12) On sealing a grant the registrar shall endorse on the grant under the seal of the High Court a certificate confirming that the grant has been sealed for use within Kenya by an order of the High Court and giving the date of the order.

(13) The registrar shall send notice in Form 72 of the sealing to the court or authority which made the grant.

(14) Where notice is received in the principal registry of the sealing in another country of a Kenya grant, notice of any amendment or revocation of the grant shall forthwith be sent by the principal registrar to the court by which it was sealed.

43. (1) Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of the death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued.

Rectification
of grant.

(2) Unless at the time of issue of the summons the registrar otherwise directs there shall be filed with the summons an affidavit in Form 13 by the applicant containing such information as is necessary to enable the court to deal with the matter.

(3) The summons, together with the affidavit (if any), shall without delay be laid by the registrar before the court which may either grant the application without the attendance of any person or direct that it be set down for hearing on notice to the applicant and to such other persons (if any) as the court shall think fit.

44. (1) Where any person interested in the estate of the deceased seeks pursuant to the provisions of section 76 of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate's registry.

Revocation or
annulment of
grant.

[Subsidiary]

(2) There shall be filed with the summons an affidavit of the applicant in Form 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him -

- (a) whether the applicant seeks to have the grant revoked or annulled and the grounds and facts upon which the application is based; and
- (b) the extent to which the estate of the deceased has been or is believed to have been administered or to remain unadministered, together with any other material information.

(3) The summons and affidavit shall without delay be placed by the registrar before the High Court on notice in Form 70 to the applicant for the giving of directions as to what persons (if any) shall be served by the applicant with a copy of the summons and affidavit and as to the manner of effecting service; and the applicant, upon the giving of directions, shall serve each of the persons so directed to be served with a notice in Form 68, and every person so served may file an affidavit stating whether he supports or opposes the application and his grounds therefor.

(4) When the persons (if any) so directed to be served (or such of them as the applicant has been able to serve) have been served with a copy of the proceedings, the matter shall be placed before the High Court on notice by the court to the applicant and to every person so served, and the court may either proceed to determine the application or make such other order as it sees fit.

(5) Where the High Court requires that notice shall be given to any person of its intention of its own motion to revoke or annul a grant on any of the grounds set out in section 76 of the Act the notice shall be in Form 69 and shall be served on such persons as the court may direct.

PART IX-APPLICATIONS UNDER SPECIAL PROVISIONS OF THE ACT

Application
under s.26 of
the Act.

45. (1) Every application to the court under section 26 of the Act shall, where a grant has been applied for or made but not confirmed, be brought by summons in Form 106 in that cause, or, where no grant has been applied for, be brought by petition in Form 96; and the summons or petition and supporting affidavit shall be filed in the registry and copies thereof served upon the personal representative of the deceased:

Provided that, if representation has not been granted to any person, a copy of the petition and supporting affidavit shall be served upon the persons who appear to be entitled to apply for a grant under the Act.

(2) The application shall be supported by evidence on affidavit in

Form 15 or 16 stating that no grant of representation to the estate of the deceased has been confirmed and containing, so far as may be within the knowledge of the applicant, the following information and particulars -

- (a) the date of the death of the deceased and whether he died testate or intestate and, if testate, the date of his last will and whether oral or written;
- (b) the relationship of the applicant to the deceased and the grounds upon which, having regard to the provisions of section 29 of the Act, the applicant claims to have been a dependant of the deceased at the time of his death;
- (c) the name and address of every other dependant of the deceased at the time of his death;
- (d) whether the deceased made any gift in contemplation of death (whether or not falling within the provisions of section 31 of the Act) and, if so, the nature, amount and value thereof;
- (e) whether a grant to the estate of the deceased has been issued and, if so, to whom and upon what date;
- (f) the nature, situation and amount of the deceased's property and the value of his net estate;
- (g) any past, present or future capital or income of the applicant derived or expected to be derived from any source;
- (h) the existing and future means and needs of the applicant;
- (i) whether the deceased had during his lifetime made any advancement or other gift to the applicant;
- (j) the conduct of the applicant in relation to the deceased;
- (k) the situation and circumstances of the deceased's other dependants (if any) and of the beneficiaries under any will of the deceased; and
- (l) the general circumstances of the case including the deceased's reasons for not making provision for the applicant.

(3) Copies of the proceedings shall be served upon such persons (if any) as the court may direct.

(4) The application shall without delay be set down by the registry

[Subsidiary] before the court for hearing upon notice to the applicant and to such persons as have been served with the proceedings and to such other persons (if any) as the court may direct.

(5) At the hearing of the application the court shall have regard to the information and particulars referred to in subrule (2) and also to such evidence as may be adduced as to the conduct of the applicant in relation to the deceased as required by paragraph (e) of section 28 of the Act.

Application
under s. 35 (3)
of the Act.

46. (1) Every application to the court under section 35 (3) of the Act shall be brought by summons in Form 105 in the cause in which the grant was confirmed and shall pray for the appointment to the applicant of such share of the estate of the deceased as the court thinks fit; and the application shall be supported by an affidavit in Form 17 verifying the contents of the summons and setting out the particulars required in section 35 (4) of the Act so far as the deponent is able, as follows -

- (a) whether the deceased had been married more than once under any system of law permitting polygamy and if so specifying the system and stating the number of spouses of the deceased living at the date of his death;
- (b) the name of each spouse by whom the deceased was survived and whether each such spouse is living and, if so, his or her place of residence or, if not living, the date and place of his or her death;
- (c) whether any spouse (if a widow) has re-married;
- (d) the nature, situation and amount of the deceased's property and of the capital of his or her net intestate estate other than personal and household effects and the extent to which such property and capital are comprised in the house, as defined in section 3 of the Act, (if any) to which the applicant belongs;
- (e) whether any valid appointment of such estate has been made by the surviving spouse of the deceased pursuant to the power conferred by section 35 (2) of the Act and, if so, in what manner;
- (f) the full name, age, sex and last known address of each other child of the deceased by whom he or she was survived;
- (g) particulars of the existing and future means and needs of the applicant and of the surviving spouse;
- (h) particulars of any past, present or future capital or income from any source of the applicant and of each surviving spouse;
- (i) whether the deceased had made any advancement or other gift

to the applicant during his lifetime or by will;

[Subsidiary]

(j) the situation and circumstances of any other person who has any interest in the net intestate estate of the deceased or (where the deceased died intestate as to part only of his estate) as a beneficiary under his will; and

(k) the general circumstances of the case including the reasons for the withholding or exercising by the surviving spouse of the power of appointment conferred by section 35 (2) of the Act, the manner employed and particulars of any other application made under that section and the awarding of any property to the applicant under the provisions of section 26 or 35 of the Act.

(2) The summons and all supporting affidavits shall be filed in the registry and copies served upon the surviving spouse, any surviving children of the same spouse and upon such other persons as the registrar in writing directs.

(3) Upon the hearing of the application the court may direct that notice be given to such other persons as it deems fit and that such additional information be made available to the court as may be expedient to enable it to hear and determine the application or make such other order as the court considers proper.

47. (1) Every application under section 61 (1) of the Act for a grant of probate of a codicil discovered after the will was proved shall be by summons in the cause in which the will was proved which shall be filed in the registry through which the original grant was made to the applicant.

Applications
under s. 61
(1) or
75 of the Act.

(2) The codicil shall be lodged in the appropriate registry with or prior to the filing of the summons.

(3) The summons shall be supported by an affidavit of the applicant identifying the codicil and stating the reasons so far as they may be known to him why the codicil was not submitted for proof together with the will and such further facts as may be necessary for consideration by the court.

(4) The provisions of this rule shall apply *mutatis mutandis* to every application under section 75 of the Act for the addition of a codicil to a grant of letters of administration with the will annexed:

Provided that where the applicant is not one of the persons to whom the grant was made a copy of the summons and of the codicil and of every supporting affidavit shall be served upon every such person, if living, not

[Subsidiary] less than twenty-one days before the hearing of the application and every such person shall be named as a respondent to the application.

(5) The court may require the applicant and every respondent to file such further affidavits as may be necessary.

Application under s. 61 (2) of the Act.

48. (1) Every application under section 61 (2) of the Act for the revocation of a grant of probate of a will (or of a will and one or more codicils) and the grant of a new probate of the will (or of the will with one or more codicils) together with a codicil discovered subsequently to the grant (in this rule referred to as the new codicil) shall be by petition in Form 97 in the cause in which probate has been granted, which petition shall be filed in the registry through which the grant of probate was issued.

(2) The new codicil shall be lodged with the petition.

(3) The petition shall be supported by an affidavit of the applicant in Form 14A identifying the new codicil and stating the reasons so far as they may be known to him why such codicil was not submitted for proof together with the will and such further facts as may be necessary for consideration by the court.

(4) Every executor to whom probate of the will (or of the will with one or more codicils) has been granted shall be named as a respondent to the application and be served with copy of the petition and of the new codicil and of every supporting affidavit not less than 21 days prior to the hearing of the application.

(5) Where there is no executor of the will or none can be found for the purpose of being served under subrule (4), the applicant shall apply to the court in Form 70A for directions as to service of the petition and supporting affidavit.

(6) The court may require the applicant and every respondent to file such further affidavits as are necessary.

Applications not otherwise provided for.

49. A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.

PART X-PROVISIONS RELATING TO WILLS

Wills registers.

50. At every registry there shall be maintained a register called the wills register for that registry in which the following information shall be recorded relating to every will of a deceased person in regard to which an application is made -

- (a) the name of the testator; [Subsidiary]
- (b) the cause number;
- (c) the serial number assigned to the will;
- (d) the date of filing of the will and of the issue of any grant;
- (e) where a grant has been confirmed, the date of confirmation.

51. All original wills, or court authenticated copies thereof, of which probate of letters of administration with the will annexed have been granted by or applied for in any registry, shall be retained by and preserved among the records of that registry unless removed therefrom pursuant to regulations made under these Rules. Retention of original wills of deceased.

52. (1) A photocopy of every will in respect of which an application for a grant is made shall be marked by the signature of the applicant and shall also be exhibited in any affidavit or declaration which may be required under these Rules as to the validity, terms, physical condition or date of execution of the will. Marking of wills and furnishing of translations.

(2) Where the will is written in any language other than English there shall be an English translation thereof, made by a person competent to do so, annexed to the application for the grant; and the translation shall be verified by the translator in the following manner -

“I (A.B.) a(*occupation*)
of(*full address*) declare that I have
read and perfectly understood the language and character of the original
will of
.....(*name of deceased*) which is written in the
language and that the above is a true and accurate English translation
thereof.”

53. (1) Where the registrar considers that in any particular case a photographic copy of the original written will would not be satisfactory for purposes of record, he may require an engrossment suitable for photographic reproduction to be lodged. Engrossment of wills for purposes of record.

(2) Where a written will contains alterations which are not admissible to proof there shall be lodged an engrossment of the will in the form in which it is intended to be or has been proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and, if it is one to which subrule (2) applies, it shall be made bookwise on durable paper following continuously from page to page on both sides of the paper.

[Subsidiary]

(4) Where any pencil or chalk writing appears on a will there shall be lodged a copy of the will or of the pages or sheets containing the pencil or chalk writing in which there shall be underlined in red ink those portions which appear in pencil or chalk in the original.

Evidence as to
due execution
of written will.

54. (1) Where a written will contains no attestation clause or the attestation clause is insufficient or where it appears to the court that there is some doubt about the due execution of the will, the court shall, before admitting the will to proof, require an affidavit of due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.

(2) If no affidavit can be obtained in accordance with subrule (1) the court may, if it thinks fit having regard to the desirability of protecting the interests of any person who may be prejudiced by the will, accept evidence on affidavit from any person it may think fit to show that the signature on the will is in the handwriting of the deceased, or evidence of any other matter which may raise a presumption in favour of the due execution of the will.

(3) Before admitting to proof a written will which appears to have been signed by a blind or illiterate testator or by another person by direction of such a testator, or which appears to be written in a language with which the testator was not wholly familiar, or which for any other reason gives rise to doubt as to such testator having had knowledge of the contents of the will at the time of its execution, the court shall satisfy itself that the testator had such knowledge by requiring an affidavit stating that the contents of the will had been read over to, and explained to, and appeared to be understood by, the testator immediately before the execution of the will.

- (4) If the court, after considering the evidence -
- (a) is satisfied that a written will was not duly executed, it shall refuse probate and shall mark the will accordingly;
 - (b) is doubtful whether the will was duly executed, it shall make an order for hearing and give such directions in regard thereto as it deems fit.

Evidence as to
terms, condi-
tions and date
of execution
of written will.

55. (1) Where there appears in a written will any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed by section 20 of the Act or by the re-execution of the will or by the execution of a codicil, the court may require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved:

Provided that this subrule shall not apply to any alteration which appears to the court to be of no practical importance. [Subsidiary]

(2) If from any mark on a will it appears to the court that some other document has been attached to the will, or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the court may require the other document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as it thinks fit.

(3) Where there is doubt as to the date on which a written or oral will was executed or made the court may require such evidence as it thinks necessary to establish the date.

56. Any appearance of attempted revocation of a written will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation of a written will by the testator, and every fact or circumstance leading to a presumption of revocation of an oral will by the testator, shall be accounted for to the satisfaction of the court.

Apparent revocation of written or oral will.

57. (1) The court may require an affidavit from any person it thinks fit for the purpose of satisfying itself as to any of the matters referred to in rules 54, 55 and 56, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution or making of a will the deponent shall depose to the manner in which the will was executed or made.

Affidavit of facts relative to rr. 54, 55 and 56.

(2) Where by reason of any of the matters referred to in rules 54, 55 and 56 the court is of the opinion that a petition should be filed under the provisions of rule 7 it may so direct.

PART XI-LITIGIOUS PROCEEDINGS

58. (1) Every application under these Rules which relates to the will, or to the devolution of property on the intestacy, of a deceased person in regard to whom or whose property there are no proceedings either pending or concluded under the Act shall be headed "In the Matter of the Estate of (name) Deceased" and shall be given by the registry in which it is made a cause number which shall identify the registry and the year of commencement of the proceedings, and all such applications within such registry shall be numbered consecutively for that year

Title and cause number of proceedings.

(2) Where at the time of the making of an application relating to the will, or to the devolution of property on the intestacy, of a deceased person there are pending or have previously been proceedings under the Act regarding that or any other will or the property of such person,

[Subsidiary] the application shall be made in and bear the cause number of those proceedings

.(3) Where proceedings under the Act are transferred by order of the court from one registry to another the original cause number shall be amended by the addition thereto after the name of the transferring registry of the words “now (*name of the new registry*)”.

Form of proceedings.

59. (1) Save where otherwise provided in these Rules every application to the court or to a registry shall be brought in the form of a petition, caveat or summons as may be appropriate.

(2) In the case of a pending proceeding the court or a registrar may of its or his own motion or at the request of any party, but without a formal application, cause the matter to be set down for mention before the court or registrar upon notice to such persons (if any) as the court or registrar may direct.

(3) Unless otherwise directed by the court every application shall be heard in chambers in the presence only of the parties, their advocates and such other persons as the court or registrar may permit.

(4) Every petition and cross-application for a grant shall be signed by the petitioner in the presence of his advocate or not less than two other adult witnesses who must sign giving their names, addresses and descriptions.

(5) A summons shall be in one of Forms 104 to 110 as appropriate and be signed by the applicant or his advocate.

(6) Save where it is otherwise provided in these Rules there shall be filed with every application such affidavits (if any) setting out such material facts and exhibiting such documents as the applicant may think necessary.

Entry of appearance.

60. Every interested person (whether or not he has been served with notice thereof) who wishes to be heard upon or to oppose any application, and has not already appeared in the proceedings, shall enter an appearance in Form 26 in the registry in which the application is made giving his address for service, and may file such affidavits as he considers proper, to each of which the applicant may with leave of the court file an affidavit in reply.

Application to be considered by registrar.

61. (1) Every application shall without delay be considered by the registrar who shall give all necessary directions as to the time and place of the hearing and as to the giving of notice of the proceedings to such

persons as he shall determine to be interested in or affected by the matter, [Subsidiary]
for which purpose he may require the applicant to attend in chambers.

(2) When the registrar has given the necessary directions the applicant shall thereafter give notice of the application in Form 75 within such time and to such persons as the registrar has directed.

62. (1) The registrar may hear and determine any matter brought before him or may at the request of any party thereto or of his own motion transfer it or any other matter or question before him to the court for determination. Registrar may hear application or transfer it to court.

(2) Save where otherwise provided any party who is aggrieved by any decision of a registrar may require the registrar to record the decision in writing and furnish a copy thereof to the aggrieved party who may appeal by summons to the court, which summons shall be filed in the registry within 14 days after the recording of such decision.

63. (1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX, together with the High Court (Practice and Procedure) Rules, shall apply so far as relevant to proceedings under these Rules. Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules. Cap. 21, Sub. Leg. Cap. 8, Sub. Leg.

(2) Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.

64. Where during the hearing of any cause or matter any party desires to provide evidence as to the application or effect of African customary law he may do so by the production of oral evidence or by reference to any recognized treatise or other publication dealing with the subject, notwithstanding that the author or writer thereof shall be living and shall not be available for cross-examination. Application of African customary law.

PART XII-MISCELLANEOUS PROVISIONS

65. (1) Every document other than a testamentary instrument filed in any registry shall bear at foot the name and an address for service within Kenya of the advocate or other person by whom it is presented for filing together with the name and address of the person on whose behalf it is so presented. Service of documents.

(2) The address for service for the purpose of this rule shall be -

[Subsidiary]

- (a) in the case of an advocate, his place of business; and
 (b) in any other case, the postal address within the jurisdiction of the person by whom the document is filed.

(3) The court or registrar may direct that any document for the service of which no other provision is made by these Rules shall be served on such person or persons as the court or registrar may direct

(4) Where by these Rules or by any direction given under subrule (3) a document relative to proceedings under the Act is required to be served on any person, it shall be served -

- (a) In the case of proceedings before the court, not less than fourteen clear days before the hearing; and
 (b) in the case of proceedings before a registrar, not less than four clear days before the hearing,

unless the court or registrar at or prior to the hearing otherwise directs.

(5) Unless the court or registrar for reasons to be recorded otherwise directs or these Rules otherwise provide, every notice or document required to be given to or served upon any person who has not entered an appearance nor given an address for service shall be given or served in accordance with the provisions of Order V of the Civil Procedure Rules.

Cap.21, Sub.
Leg.

Affidavits.

66. Where provision is made in any rule for the filing by any person of an affidavit for a specific purpose that provision shall be construed as enabling that person in a proper case to file more affidavits than one for that purpose.

Enlargement
of time.

67. Where any period is fixed or granted by these Rules or by an order of the court for the doing of any act or thing, the court upon request or of its own motion may from time to time enlarge such period notwithstanding that the period originally fixed or granted may have expired.

Official copies
of wills, grants
and other
documents.

68. Where copies of any documents lodged, filed or issued in or from a registry are required such copies may, subject to the provisions of these Rules, be obtained from the registry, and such may be photographic copies with the seal of the registry and certified under the hand of a registrar to be true copies.

Costs.

69. The costs of all proceedings under these Rules shall be in the discretion of the court.

Forms.

70. The forms set out in the First Schedule, with such adaptations, additions and amendments as may be necessary, shall, when appropriate, be used in all proceedings under these Rules: Provided that the Chief Justice may by notice in the Gazette vary the forms and prescribe such other or

additional forms as he thinks fit.

[Subsidiary]

71. (1) The fees to be paid in proceedings under these Rules shall be those set out in the Third Schedule and shall be paid in cash. (2) The Chief Justice may from time to time by notice in the Gazette amend the Third Schedule.

Court fees.

72. (1) Subject to the provisions of the Act and in any particular case to any direction given by the court, these Rules shall apply to every application and proceeding which is pending on the date on which they come into operation but not so as to invalidate anything previously done or made in lawful compliance with the practice and procedure existing and in force at the time.

Application of Rules to pending proceedings.

(2) If any question arises as to the application of the Act or of these Rules to any such pending proceedings it may be referred to the court or a registrar for determination.

73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Saving of inherent powers of court.

74. The Probate and Administration (Contested Suits) Rules, 1940, are revoked.

Revocation.
G.N.264/1940.

FIRST SCHEDULE

(r. 70)

FORMS

Rule 70 of these Rules provides that the forms in this Schedule, with such adaptations, additions and amendments as may be necessary, shall when appropriate be used in all proceedings under the Rules, with the proviso that the Chief Justice may by notice in the Gazette vary the forms and prescribe such other or additional forms as he thinks fit.

Section 72 of the Interpretation and General Provisions Act (Cap. 2) provides that, save as is otherwise expressly provided, whenever any form is prescribed by any written law, an instrument or document which purports to be in that form shall not be void by reason of any deviation therefrom which does not affect the substance of the instrument or document and which is not calculated to mislead.

Although the collection of forms in this Schedule does not purport to provide for every circumstance that may arise, it contains the majority of the forms which, adapted when necessary, will be found to be of general use by legal practitioners and members of the public.

[Subsidiary]

TABLE OF FORMS

(All references are to form numbers)

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FORM 1

(rr.58,65)

GENERAL HEADING AND ADDRESS FOR SERVICE**1. GENERAL HEADING**

Unless otherwise indicated and subject to the provisions of rule 58 as to litigious proceedings the heading of each form should be as one of the following-

(1) Non-litigious proceedings.

Forms not initiating litigious proceedings or relating to existing proceedings should be headed-

In the Matter of the Estate of AB (*full name and alternatives, if any*) Deceased.

(2) Litigious proceedings in the High Court.

Forms initiating or relating to existing proceedings in the High Court should be headed-

In the High Court of Kenya at
 Succession Cause No. H.C. of 19
 In the Matter of the Estate of CD (*full name and alternatives, if any*) Deceased.

(3) Litigious proceedings in the Resident Magistrate's Court.

Forms initiating or relating to existing proceedings in the Resident Magistrate's Court should be headed-

In the Resident Magistrate's Court at
 Succession Cause No. R.M. of 19
 In the Matter of the Estate of EF (*full name and alternatives, if any*) Deceased.

(4) For applications where there are no litigious proceedings either pending or concluded under the Act see rule 58 (1).

[Subsidiary]

2. ADDRESS FOR SERVICE

Except in the case of testamentary instruments every document presented for filing in any registry must bear at foot the name and an address for service within Kenya of the advocate or other person by whom it is so presented together with the name and address of the person on whose behalf it is presented.

FORM 2

(r.65)

AFFIDAVITS

Formal Parts

(Heading as in Form 1)

Opening paragraph -

I, CD, of (description, true place of abode and postal address) aged over 18 years (or if deponent is a minor, his age) make oath and say as follows -

.....
.....
.....

Concluding paragraph -

The facts herein deposed to are known to me of my personal knowledge save that (set out any matters falling within the proviso to O. XVIII r. 3 (1) of the Civil Procedure Rules).

.....
.....

Jurat and address for service -

Sworn by the said CD at (place of swearing) on this.....
....., 19, before me.

.....
Commissioner for Oaths
(or other swearing officer)

Filed by (name and address for service within Kenya of the advocate or other person by whom it is presented for filing together with the name and address of the person on whose behalf it is presented)

.....
.....
.....

[Subsidiary]

Note. - As to affidavits generally see the Civil Procedure Rules (Cap. 21. Sub. Leg.) Order XVIII.

FORM 3

(r. 7)

AFFIDAVIT IN SUPPORT OF PETITION FOR PROBATE OR FOR LETTERS OF ADMINISTRATION WITH WRITTEN WILL ANNEXED

(Heading as in Form 1)

I, CD, of *(as in Form 2)* make oath and say as follows: -

1. The full name of the deceased to whose estate the proceedings herein relate is AB (also known as ABC) and I am the petitioner named in the petition herein dated the, 19 upon which I have endorsed my name at the time of swearing this affidavit.
2. The deceased died on the, 19....., at *(name of place)* as appears from the attached certificate *(or photocopy of the certificate)* of death *(or other document)* marked "CD 1" upon which I have written my name at the time of swearing hereof.
3. The deceased was at the date of his death domiciled in *(name of country)* and his last known place of residence was at *(name of place)*.
4. The deceased died leaving a valid written will dated the, 19..... (and a codicil thereto dated the, 19.....).
5. I am seeking a grant of representation to the deceased on the grounds that *(state)*
6. The following is a full inventory of all the assets and liabilities of the deceased at the date of his death (including such assets (if any) as have arisen or become known since that date).

Assets -

(Complete as necessary)

[Subsidiary]

Total estimated value Sh.

Liabilities -

(Complete as necessary)

Total estimated value Sh.

7. If deceased died partially intestate give details of persons related to the deceased as in Form 8 paragraph 3.

8. The facts herein deposed (continue as in Form 2).

Sworn, etc. (as in Form 2).

FORM 4

(rr. 7,13)

AFFIDAVIT IN SUPPORT OF PETITION FOR PROOF OF ORAL WILL

(Heading as in Form 1)

I, CD, of (as in Form 2) make oath say as follows: -

1.)

2.) (As in Form 3 paragraphs 1 to 3).

3.)

4. The deceased made a valid oral will on the, 19....., at before the following witnesses (give names and addresses of all alleged witnesses as required by section 51 (3) (b) of the Act)

5. I truly believe that the words used by the deceased in making his said will were as follows - (state the exact words used by the deceased so far as they were actually heard by the deponent personally)

6. Both at the time of making of his said will and the time of his death the deceased was a member of the armed forces (or merchant marine) (a) of Kenya within the same continuous period of active service (b).

[Subsidiary]

7. The said oral will is not contrary to any written will which was made by the deceased at any time either before or after the making of the said oral will and which had not been revoked at the time of his death save that (*set out exceptions, if any*)

8.)
 9.) (*As in Form 3 paragraphs 5 to 7*).
 10.)

11. The facts herein deposed (*continue as in Form 2*).

Sworn, etc. (*as in Form 2*).

Notes:

- (a) Strike out if not applicable.
- (b) See the proviso to section 9 (1) of the Act.

FORM 5

(r. 7)

**AFFIDAVIT IN SUPPORT OF PETITION FOR LETTERS
 OF
 ADMINISTRATION INTESTATE**

(*Heading as in Form 1*)

I, CD., of (*as in Form 2*) make oath and say as follows: -

1.)
 2.) (*As in Form 3*).
 3.)

4. The deceased died intestate and left the following persons surviving him -
(names, addresses, marital state and descriptions of all persons related to the deceased in the manner referred to in rule 7 (1) (e) (i) together with the information required by rule 7 (1) (e) (ii)

[Subsidiary]

5. I am related to the deceased by reason of being his (state)
.....
.....
.....
.....

6. (As in Form 3).

7. The facts herein deposed (continue as in Form 2).

Sworn, etc. (as in Form 2).

FORM 6

(rr. 7,13)

AFFIDAVIT IN SUPPORT OF PETITION FOR LETTERS
OF ADMINISTRATION WITH TERMS OF ORAL WILL
ANNEXED

(Heading as in Form 1)

I, CD, of (as in Form 2) make oath and say as follows:-

- 1.)
2.) (As in Form 3 paragraphs 1 to 3).
3.)
4.)
5.) (As in Form 4 paragraphs 4 to 6).
*6.)

7. By his said will the deceased did not appoint any executor (or
The executor appointed by the said will, namely, GH died on the
..... day of, 19, before the deceased).

8. (As in Form 4 paragraph 7).

- 9.)
10.) (As in Form 3 paragraphs 5 to 7).
11.)

12. The facts herein deposed (continue as in Form 2).

Sworn, etc. (as in Form 2).

* Omit if inapplicable.

[Subsidiary]

FORM 7

(r. 42(2))

AFFIDAVIT IN SUPPORT OF PETITION BY PERSONAL REPRESENTATIVE FOR SEALING OF GRANT ISSUED IN ANOTHER COUNTRY

(Heading as in Form 1)

I, CD, of *(as in Form 2)* make oath and say as follows: -

1. The full names of the deceased to whose estate the proceedings herein relate are AB also known as ABZ.

2. The deceased died on the,19....., at

3. The deceased was at the date of his death domiciled in

4. A grant of probate of the last will dated the, 19..... (and codicil thereto dated the, 19) (or of letters of administration with the will (and codicil) annexed or of letters of administration intestate to the estate) of the deceased was issued to me by (name of issuing court or authority) on(date).

5. The following is a full inventory of all the assets and liabilities of the deceased in Kenya at the date of his death so far as known to the petitioner -

Assets -

(Complete as necessary)

Total estimated value

Liabilities -

(Complete as necessary)

Total estimated value

6. No estate duty is payable (or remains unpaid) in Kenya in respect of the said estate.

[Subsidiary]

7. The facts herein deposed (*continue as In Form 2*).

Sworn, etc. (*as in Form 2*).

FORM 8

(r. 40(1))

AFFIDAVIT IN SUPPORT OF SUMMONS FOR CONFIRMATION OF GRANT OF PROBATE OR LETTERS OF ADMINISTRATION WITH WILL ANNEXED

(*Heading as in Form 1*)

I, CD, of (*as in Form 2*) the executor of the will of (*or the administrator with the will (and codicil) annexed of the estate of*) the above-named AB who died on the, 19....., make oath and say as follows: -

- 1. A grant of probate of the last will dated the, 19..... (and of the codicil thereto dated the ,19.....) (*or letters of administration with the will (and codicil) annexed*) of the deceased was made to me in this matter on the, 19
- 2. The deceased was survived by the following children (*set out names, addresses and ages*)
- 3. The deceased was survived by the following other dependants (*set out the name, address and age of each of the persons (other than his children) falling within the provisions of Rule 40 (3) (a) and (b), stating the extent to which each was being maintained by the deceased immediately prior to his death*)
- 4. No application for provision for dependants is pending (*or as the case may be*).
- 5. No estate duty is payable (*or remains unpaid*) in respect of the estate of the deceased and I refer to an estate duty compliance certificate annexed hereto and marked "CD 1"
- 6. *Set out any further necessary facts.*
- 7. The facts herein deposed (*continue as in Form 2*).

Sworn, etc. (*as in Form 2*).

FORM 9

(r. 40(1))

**AFFIDAVIT IN SUPPORT OF SUMMONS FOR
CONFIRMATION OF GRANT OF ADMINISTRATION
INTESTATE**

(Heading as in Form 1)

I, CD, of *(as in Form 2)* the administrator of the estate of AB who died on the, 19..... intestate make oath and say as follows: -

1. A grant of letters of administration of the said estate was made to me in this matter on the, 19.....

2.)

3.) *(As in Form 8 paragraphs 2, 3 and 4).*

4.)

5. The identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows *(set out the names of the persons and their respective entitlements)*
.....

6.)

7.) *(As in Form 8 paragraphs 5, 6 and 7).*

8.)

Sworn, etc. *(as in Form 2).*

FORM 10

(r. 40(6))

**AFFIDAVIT OF PROTEST AGAINST CONFIRMATION
OF GRANT***

(Heading as in Form 1)

I, CD, of *(as in Form 2)*, in protest against the proposed confirmation of the grant of probate *(or letters of administration)* made to E.F. in this

[Subsidiary] matter on the, 19....., make oath and say as follows: -

1. (Set out grounds of protest in full)

2. The facts herein deposed (continue as in Form 2).

Sworn, etc. (as in Form 2).

* This affidavit must be filed in the principal registry.

FORM 11

(r. 29 (8)(e))

AFFIDAVIT OF JUSTIFICATION OF PROPOSED SURETIES

(Heading as in Form 1)

We, GH of and JK of jointly and severally make oath and say as follows:

1. We are the proposed sureties on behalf of CD the intended administrator (with will (and codicil) annexed) of the estate of the above-named AB in the sum of Kenya Shillings (K.Sh.).

2. I, GH, for myself say that I am, after payment of all my just debts and having taken into account all my liabilities, well and truly worth net of such debts and liabilities in immovable and movable assets in Kenya at least the sum of Kenya Shillings(K.Sh.).

3. I, JK, for myself say that I am, after payment of all my just debts and having taken into account all my liabilities, well and truly worth net of such debts and liabilities in immovable and movable assets in Kenya at least the sum of Kenya Shillings (K.Sh.).

4. The facts herein deposed (continue as in Form 2).

Sworn, etc. (as in Form 2).

AFFIDAVIT OF JUSTIFICATION OF PROPOSED ADMINISTRATOR

(Heading as in Form 1)

I, CD, of *(as in Form 2)* having petitioned this Honourable Court for a grant of letters of administration intestate *(or with the will (and codicil) annexed)* of the estate of the above-named AB who died on the, 19....., make oath and say as follows: -

- 1. I am after payment of all my just debts and having taken into account all my liabilities well and truly worth net of such debts and liabilities in immovable and movable assets in Kenya at least the sum of Kenya Shillings (K.Sh.).
- 2. The facts herein deposed *(continue as in Form 2)*.

Sworn, etc. *(as in Form 2)*.

AFFIDAVIT IN SUPPORT OF SUMMONS FOR RECTIFICATION OF GRANT

(Heading as in Form 1)

I, CD, of *(as in Form 2)* the executor of the last will dated the, 19..... *(and the codicil thereto dated the, 19.....)* *(or the administrator of the estate)* of the above-named AB make oath and say as follows: -

- 1. A grant of probate of the said will *(and codicil)* *(or of letters of administration (with the will (and codicil) annexed)* was made to me by this Honourable Court on the, 19.....
- 2. The said grant contains errors as to *(set out the errors capable of rectification under rule 43 (1))*
.....
.....
- 3. The said grant has not been confirmed *(or was confirmed on the, 19.....)*.

[Subsidiary]

4. It is desirable that the above errors be rectified by the Court.

5. The facts herein deposed (*continue as in Form 2*).Sworn, etc. (*as in Form 2*).

FORM 14

(r.44 (2))

**AFFIDAVIT IN SUPPORT OF SUMMONS FOR THE
REVOCATION OR ANNULMENT OF GRANT**

(Heading as in Form 1)

I, CD, of (*as in Form 2*), the applicant herein, make oath and say as follows:-

1. The above-named AB died on the, 19, and a grant of probate (*or letters of administration intestate or with the will (and codicil) of the said A.B. annexed*) was made to (*name and address*)
by this Honourable Court on the, 19.....

2. The said grant was (*set out in detail the facts relied upon as bringing the matter within section 76 of the Act*)

3. (*State whether the grant was confirmed and the extent to which and by whom the estate has been administered, the relationship of the applicant to the deceased, the applicant's degree of priority in seeking a fresh grant, and any other material facts*)

4. The facts herein deposed (*continue as in Form 2*).

Sworn, etc. (*as in Form 2*).

FORM 14A

(r. 48(3))

**AFFIDAVIT IN SUPPORT OF PETITION FOR
REVOCATION OF PROBATE OF A WILL AND ISSUE OF
NEW PROBATE OF THE SAME WILL AND A CODICIL
THERE TO DISCOVERED SINCE THE GRANT***

(Heading as in Form 1 but in the cause in which probate was issued)

[Subsidiary]

I, CD, (as in Form 2) make oath and say as follows:-

1. The above-named AB died on the, 19..... and a grant of probate of his will (or of his will and codicil(s)) was made in this cause to (name and address) by this Honourable Court on the, 19.....
2. (State whether the grant was confirmed and the extent to which and by whom the estate has been administered).
3. Subsequently to the date of the said grant a codicil to the will of the deceased was discovered by (name) at (place) (state the circumstances which rendered it impossible for the codicil to be included with the will in the original application for probate and any other material facts rendering inclusion of the codicil in the existing probate impossible).
4. For the reasons set out in the preceding paragraph it was not possible to submit the said codicil for proof together with the will.
5. I identify the codicil attached to the petition to be filed herewith as the original codicil referred to in paragraphs 3 and 4 hereof.
6. The facts herein deposed (continue as in Form 2).

Sworn, etc. (as in Form 2).

*This form should be used only when the applicant is not a proving executor of the will: section 61 (2) of the Act.

FORM 15

(r. 45 (2))

**AFFIDAVIT IN SUPPORT OF PETITION BY
DEPENDANT UNDER SECTION 26 OF THE ACT**

(Heading as in Form 1)

I, CD, of (as in Form 2) make oath and say as follows: -

- 1.)
- 2.) (As in Form 3 paragraphs 1 to 3).
- 3.)
4. The deceased died intestate (or leaving a valid will) (continue as

[Subsidiary]

in Form 3 paragraph 4).

5. No grant of representation to the estate of the deceased has been applied for.

6. My relationship to the deceased is as follows (*state in full*):
.....
.....

7. The grounds upon which, having regard to the provisions of section 29 of the Law of Succession Act, I claim to have been a dependant of the said AB at the time of his death are as follows (*state in full*) (a):
.....
.....

8. The only other persons who were dependent upon the said AB at the time of his death are (*set out names and addresses in full including persons who have died subsequently to the death of the deceased*) (a):
.....
.....

9. The said AB made the following gifts in contemplation of his death (*set out names and addresses of donees together with the nature, amount and value of each gift*) (b):
.....
.....

10. The property of the deceased at date of death was (*set out in full, stating the nature and amount thereof*) (c):
.....
.....

11. I believe that the value of the deceased's net estate after payment of reasonable funeral expenses, debts and liabilities, the expenses of raising representation to his estate, other reasonable expenses of administration and estate duty (If any) will be approximately Sh.....(*state estimated figure*).

12. My present capital assets consist of the following (*set out in full*):
.....
.....

13. In addition to my said capital assets I have from time to time received the following items of capital which are no longer in

existence or available to me (*set out in full*):
.....
.....

[Subsidiary]

14. I anticipate that I may in the future receive the following capital assets (*set out in full with a statement of the source and anticipated date of receipt and of expected gross and net income therefrom*):
.....
.....
.....

15. My present annual income is (*state*) consisting of (*state*) and my probable future income and means are (*set out*):
.....
.....
.....

16. My present needs are (*set out in full*), and my anticipated future needs are (*set out in full*):
.....
.....

17. The deceased during his lifetime made the following and no other gifts to me (*set out in full*):
.....
.....

18. My conduct in relation to the deceased during his lifetime consisted principally of (*set out in general terms*):
.....
.....

19. The situation and circumstances of the deceased's other dependants, so far as (known to me, are as follows (*set out*):
.....
.....
.....

20. The situation and circumstances, so far as known to me, of each of the persons named as beneficiaries in the will (and codicil) of the deceased referred to in paragraph 4 above are as follows (*set out*):
.....

[Subsidiary]
.....

21. I do not know why the deceased made no (or no sufficient) provision for me (or The reason why the deceased did not make the provision for me which I now seek is) (state fully if known):
.....
.....
.....

22. The facts herein deposed (continue as in Form 2).

Sworn, etc. (as in Form 2).

Notes: –

- (a) For the meaning of “dependant” see section 29 of the Act.
- (b) For the meaning of a “gift in contemplation of death” see section 31 of the Act. Such gifts fall within section 26 of the Act.
- (c) The information indicated in paragraphs 10 to 21 (inclusive) is required by section 28 of the Act.

FORM 16

(r. 45(2))

AFFIDAVIT IN SUPPORT OF SUMMONS UNDER SECTION 26 OF THE ACT

(Heading as in Form 1)

I, CD (continue as in Form 2) make oath and say as follows: -

- 1.)
- 2.) (As in Form 3 paragraphs 1 to 3).
- 3.)

4. (As In Form 15 paragraph 4).

5. A grant of representation to the estate of the deceased was applied for by (name and address) to this Court on the19....., but such grant had not yet been made or confirmed*.

- 6.)
- to) (As in Form 15 paragraphs 6 to 21).
- 21.)

22. The facts herein deposed (continue as in Form 2).

[Subsidiary]

Sworn, etc. (as in Form 2).

* If grant made but not confirmed delete the words "made or"

FORM 17

(r. 46(1))

AFFIDAVIT IN SUPPORT OF SUMMONS BY A CHILD OF THE DECEASED (OR, IF A MINOR, HIS REPRESENTATIVE) UNDER SECTION 35 (3) OF THE ACT

(Heading as in Form 1)

I, CD, of (as in Form 2) (or EF of (as in Form 2) acting for and on behalf of GH a minor) (hereinafter called "the applicant") make oath and say as follows: -

- 1.)
- 2.) (As in Form 3 paragraphs 1 to 3.)
- 3.)

4. The deceased died intestate and letters of administration were granted to (name and address) on
..... (date)

*5. The deceased left surviving him one spouse only (name) (herein called "the surviving spouse") and the following child (children) only (names):
.....
.....

*5A. The deceased having married more than once under a system of law permitting polygamy left surviving him several spouses one of which includes the applicant's mother (herein called "the surviving spouse") and the following child (children) only (names):
.....
.....

6. The power of appointment conferred by section 35 (2) of the Law of Succession Act upon the surviving spouse has not been exercised (or has been exercised by the appointment of) (state manner and in whose favour):
.....

[Subsidiary]

.....
.....

7. I consider that the action of the surviving spouse in not making an appointment constituted an improper and unreasonable withholding (or in so exercising the power of appointment constituted an improper and unreasonable exercise) of the statutory power in that behalf and I seek (on behalf of the minor applicant) an order to the following effect, namely (set out):

.....
.....
.....

8. The property of the deceased at date of death was (set out in full stating the nature and amount thereof):

.....
.....
.....

9. The present capital assets of the surviving spouse and of the applicant respectively are (set out in full):

.....
.....
.....

10. In addition to the said capital assets the surviving spouse and I (or the minor applicant) respectively received the following items of capital which are no longer in existence or available (set out in full):

.....
.....
.....

11. I anticipate that the surviving spouse and I (or the minor applicant) respectively may in the future receive the following capital assets (set out in full with a statement of the source and the anticipated date of receipt and of the expected gross and net income therefrom):

.....
.....
.....

12. The present and anticipated future annual incomes of the surviving spouse and of myself (or the minor applicant) respectively are (state):

.....
consisting of (state):

[Subsidiary]

13. The present and anticipated future needs of the surviving spouse and of myself (or the minor applicant) respectively are (set out in full):

14. The deceased made no advancement or other gift to me (or the minor applicant) in his lifetime or by will (or the only gifts made to me (or the minor applicant) by the deceased by way of advancement during his lifetime or by will are as follows (state)):

15. My (or the minor applicant's) conduct in relation to the surviving spouse and to the deceased respectively consisted principally of (set out in general terms so far as relevant):

16. The situation and circumstances of each other person who has a vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under any will of his so far as known to me are (state):

17. The surviving spouse's reasons for so withholding (or exercising) the said power of appointment are not known to me (or the minor applicant) (or so far as known to me (or the minor applicant) (state)):

18. The facts herein deposed (continue as in Form 2).

Sworn, etc. (as in Form 2).

* Delete either para.5 or para.5A as appropriate.

**AFFIDAVIT IN SUPPORT OF SUMMONS UNDER
SECTION 71 (3) OF THE ACT FOR CONFIRMATION OF
A GRANT WITHIN SIX MONTHS OF THE DATE OF
MAKING (a)**

(Heading as in Form 1)

I, CD, (*as in Form 2*) the applicant herein make oath and say as follows: -

1. The above-named deceased died on (*date*)
and a grant of probate of his last will (*or* of letters of administration
with his will annexed (*or* intestate)) was made to me in this
cause by this Honourable Court on
(*date*).
2. There is no dependant of the deceased within the meaning of
section 29 of the Law of Succession Act living (other than myself
(*b*)) and no application under Part III of the Act is pending.
3. No estate duty is (*or* remains) payable in respect of the estate of
the deceased (*or* There is attached hereto a certificate from the
Estate Duty Commissioner that he is satisfied that all estate duty
payable in respect of the estate of the deceased has been or will
be paid, *or* that no estate duty is payable in respect of the estate
of the deceased).
4. It would be expedient in all the circumstances of the case that
the said grant be now confirmed notwithstanding that six months
have not expired since the date thereof.
5. The facts herein deposed (*continue as in Form 2*).

Sworn, etc. (*as in Form 2*).

Notes: -

(*a*) For form of Summons see Form 109.

(*b*) Delete if the applicant is not a dependant.

**AFFIDAVIT IN SUPPORT OF PETITION FOR LIMITED
GRANT UNDER THE FIFTH SCHEDULE TO THE ACT
(GENERAL FORM)**

(Heading as in Form 1)

I, CD, of *(as in Form 2)* make oath and say as follows: -

1. The full name of the deceased to whose estate the proceedings herein relate is AB (also known as ABC) and I am the petitioner named in the petition dated the, 19....., upon which I have endorsed my name at the time of swearing this affidavit.

2 to 7. The deceased *(continue as in Form 3 paragraphs 2 to 7)*.

8. In addition I state as follows: -

(a)

(b) *Here set out any particular matters which*

(c) *require to be specified.*

(d)

9. The facts herein deposed *(continue as in Form 2)*.

Sworn, etc. *(as in Form 2)*.

Note. – This form, appropriately adapted, may be used in support of the petitions at Forms 83, 86-91 and 93-95.

[Subsidiary]

FORM 20

(r. 21(2))

AFFIDAVIT IN VERIFICATION OF PROPOSED CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION INTESTATE

(Heading as in Form 1)

I, CD, of *(as in Form 2)* make oath and say as follows: -

- 1. AB, the above-named deceased, died on
(date and place) intestate leaving EF of *(address, description and relationship to the deceased)*
.....
surviving him but no person entitled by virtue of any enactment in priority to the said EF to share with him his estate.
- 2. The said EF has not taken out letters of administration of the estate of the deceased.
- 3. I am *(state relationship to deceased)* and am desirous of obtaining letters of administration of the deceased.
- 4. The facts herein deposed *(continue as in Form 2)*.

Sworn, etc. *(as in Form 2)*.

FORM 21

(r. 21(2))

AFFIDAVIT IN VERIFICATION OF PROPOSED CITATION TO ACCEPT OR REFUSE PROBATE

(Heading as in Form 1)

I, CD, of *(as in Form 2)* make oath and say as follows: -

- 1. AB the above-named deceased, died on *(date and place)*
having on *(date)* made and duly executed his last will and testament (and a codicil thereto dated the,19.....) and thereof appointed *(names and addresses)* to be the sole executor *(or executors)*.
- 2. Neither probate of the said will nor a grant of letters of administration with the said will annexed has been taken out by

any person.

[Subsidiary]

3. I am the residuary legatee named in the said will (or The deceased did not in his said will appoint any residuary legatee and did not leave any spouse, issue or parent (or as the case may be) or any other person entitled in priority to me to share in his estate by virtue of any enactment and I am (state relationship to the deceased) and entitled to share in his estate) and I desire to obtain letters of administration with the said will annexed to the estate of the deceased.

4. The facts herein deposed (continue as in Form 2).

Sworn, etc. (as in Form 2).

FORM 22

(r. 21(2))

AFFIDAVIT IN VERIFICATION OF PROPOSED CITATION TO AN INTERMEDDLING EXECUTOR TO ACCEPT PROBATE

(Heading as in Form 1)

I, CD, of (as in Form 2) make oath and say as follows: -

1. AB the above-named deceased, died on (date and place) having made and duly executed his last will and testament bearing the date the, 19....., whereof he appointed EF sole executor and this deponent residuary legatee (or as the case may be).

2. More than six calendar months have elapsed since the date of the death of the deceased and no proceedings concerning the validity of his said will are pending.

3. The said EF has neglected to prove the said will but has intermeddled in the estate of the deceased by collecting rents owing to the deceased (or as the case may be, specific instances being set out):

4. I am desirous of compelling the said EF to take probate of the said will.

5. The facts herein deposed (continue as in Form 2).

[Subsidiary]

Sworn, etc. (*as in Form 2*)

FORM 23

(rr. 21 (2), 23 (1))

**AFFIDAVIT IN VERIFICATION OF PROPOSED
CITATION TO PROPOUND A DOCUMENT AS A WILL**

(Heading as in Form 1)

I, CD, of (*as in Form 2*) make oath and say as follows: -

1. AB the above named deceased, died on (*date and place*)
..... having left a certain document dated the, 19....., purporting to be a will wherein he appointed EF ofsole executor (*or as the case may be*).
2. I am desirous of issuing a citation against the said EF to propound the said will or document should he think it in his interest so to do and that in default letters of administration of the estate of the deceased as having died intestate be granted to me (*or that in default letters of administration with the said will annexed be granted to me*).
3. The facts herein deposed (*continue as in Form 2*).

Sworn, etc. (*as in Form 2*).

FORM 24

(r. 21(2))

**AFFIDAVIT OF CREDITOR IN VERIFICATION OF
PROPOSED CITATION WHERE NO KNOWN KIN OF
INTESTATE**

(Heading as in Form 1)

I, CD, of (*as in Form 2*) make oath and say as follows:-

1. AB the above-named deceased, died on (*date and place*)
..... intestate without any known spouse, issue, parent, grandparent, brother, sister, uncle or aunt of the whole or half blood or their issue or any other person entitled in priority to share in his estate by virtue of any enactment.

- 2. (Set out in detail the nature of the inquiries which have been made to trace the next of kin of the deceased): [Subsidiary]

- 3. The deceased was at the time of his death justly and truly indebted to me in the sum of Sh. for (*state nature of debt*) and no part of the said sum has been since received by me or any person on my behalf but the whole thereof still remains justly due and owing to me, and I hold no security whatever for the said sum or any part thereof (*or as the case may be*):

- 4. I believe that the gross value of the estate of the deceased is not less than Sh.
- 5. The facts herein deposed (*continue as in Form 2*).

Sworn, etc. (*as in Form 2*).

FORM 25

(r. 17(5))

ANSWER TO PETITION FOR A GRANT

(*Heading as in Form 1*)

I, (*name, address and description*)

 by way of answer to the petition for a grant of representation to the estate of the above-named AB made by on the, 19, state as follows: -

- 1. Notice of the application for the said grant was published on the, 19, and I duly lodged in the registry at.....on the, 19, an objection to the application.
- 2. Having been required to file this answer to the said application I say that such application should be dismissed for the reason that the will (and codicil(s)) referred to therein was (*or were*) not duly executed (*or was (or were)*) subsequently revoked by the marriage of the deceased *or* by a later will (*or codicil*) executed on the, 19.....) (*or as the case may be, stating full details as necessary*):

[Subsidiary] (a)

3. I intend to file contemporaneously with the filing of this answer a petition in this Court by way of cross-application for a grant of representation to the estate of the deceased to be made to me, a copy of which is annexed hereto (b).

4. The facts herein stated (*continue as in Form 2*).

Notes:

(a) If the objector wishes to restrict the grounds of his objection as in rule 17 (15) this paragraph should be adapted accordingly.

(b) The answer and petition may be filed simultaneously.

FORM 26

(r. 60)

ENTRY OF APPEARANCE (GENERAL FORM)

(Heading as in Form 1)

To (*name and address of registry*):

.....
.....
.....

Please enter an appearance in these proceedings for (*name, address and description*)

whose address for service herein is (*state*):

.....

Dated the, 19.....

Signed

Note. - This form may be signed and filed by either the person entering appearance or his advocate.

FORM 27

(r. 21(5))

ENTRY OF APPEARANCE TO CITATION

(Heading as in Form 1)

WHEREAS a citation dated the,19

was served personally (*or* by post) on EF of [Subsidiary]
in this matter on the, 19

Now an appearance to such citation is hereby entered for the
said EF whose address for service is (*state*):
.....
.....
.....

Dated the, 19.....

.....
EF (*or advocate*)

Filed by (*as in Form 2*).

FORM 28

(r. 15(2))

CAVEAT

(*Heading as in Form 1*)

To (*Name and address of registry*)

.....
.....
.....
.....

LET nothing be done in the estate of the above-named AB who
died on the, 19....., without notice to KL of
(*postal address*) and whose
address for service is (*state*)
.....
.....

Dated the, 19.....

.....

Caveator/ Advocate for Caveator

Filed by (*as in Form 2*).

[Subsidiary]

Note. - This form if not completed and signed in the registry must be sent to the registry in duplicate and be accompanied by the prescribed fee.

FORM 29

(r. 2)

CERTIFICATE FOR USE ON AN AUTHENTICATED OR CERTIFIED COPY OF A DOCUMENT

I, *(name and address)*
.....
hereby certify that I am *(state appropriate qualification falling within the definition of “authenticated copy” or “certified copy” in rule 2)*
..... and that the above document has been compared with and is a true copy of *(description and date of original document)* as produced to me.

Dated the, 19.....

(Signature)

Note. - An “authenticated copy” bears a certificate signed and dated by a judge, magistrate, the registrar or deputy registrar of the High Court, the Registrar-General or a deputy or assistant registrar-general; a “certified copy” bears a certificate signed and dated by one of the foregoing or by an advocate.

FORM 30

(r. 4 (1))

CERTIFICATE OF PRINCIPAL REGISTRAR THAT NO GRANT HAS BEEN MADE OR APPLIED FOR

(Heading as in Form 1)

To: The District Registrar,
.....
.....
.....
.....

IT IS HEREBY CERTIFIED that no grant of representation in respect of the estate of AB (also known as ABC) deceased who died on the

....., 19....., as mentioned in your notice [Subsidiary] dated the, 19....., sent to this registry has been made, nor has any application for such a grant (other than that referred to in your communication dated the, 19.....), been notified to this registry as pending.

Dated the, 19.....

.....

Principal Registrar

FORM 31

(r.21)

CITATION TO ACCEPT OR REFUSE PROBATE

(Heading as in Form 1)

To: EF of *(address and description)*

.....
.....
.....
.....
.....

WHEREAS it appears by the affidavit of CD of *(address and description)* sworn the, 19..... that the above-named AB of *(address)* died on the, 19....., having made and duly executed his last will dated the, 19....., (and a codicil thereto dated the, 19.....), wherein he appointed you the said EF to be sole executor thereof but did not name therein any residuary legatee *(or as the case may be)*:

.....
.....
.....

AND WHEREAS it further appears by the said affidavit that the said deceased died without leaving him surviving any spouse, issue or parent and that the said CD is the lawful brother of the deceased and one of the persons entitled to share in his undisposed of estate:

Now this is to direct that you the said EF within fifteen days after service hereof on you (inclusive of the day of such service) do cause an appearance to be entered for you either in the principal registry or in the Mombasa registry and accept or refuse probate of the said will (and codicil) or show cause why letters of administration with the said will (and codicil) annexed of all the estate which by law devolves to and vests

[Subsidiary]

in the personal representative of the deceased should not be granted to the said CD.

AND TAKE NOTICE that in default of your so appearing and accepting and extracting probate of the said will (and codicil) this court may proceed to grant letters of administration with the said will (and codicil) annexed of the said estate to said CD, your absence notwithstanding.

Dated the, 19.....

.....

District Registrar

Extracted by-

CD (or his advocate) (address).

FORM 32

(r.21)

CITATION TO ACCEPT OR REFUSE LETTERS OF ADMINISTRATION INTESTATE

(Heading as in Form 1)

To: EF of (address and description) .

.....
.....
.....

WHEREAS it appears by the affidavit of CD sworn the, 19, that the above-named AB of (address) died on the, 19....., intestate leaving you the said EF his (state relationship to deceased) and one of the persons entitled to share in his estate:

AND WHEREAS it further appears by the said affidavit that the said CD is (set out relationship to the deceased) and also one of the persons entitled to share in his estate:

Now this is to direct that you the said EF do within fifteen days after service hereof on you (inclusive of the date of such service) cause an appearance to be entered for you either in the principal registry or in the Mombasa registry and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the deceased or show cause why the same should not be granted to the said CD.

AND TAKE NOTICE that in default of your so appearing and accepting and extracting letters of administration this Court may proceed

to grant letters of administration of the said estate to the said CD, your [Subsidiary] absence notwithstanding.

Dated the, 19.....

.....
District Registrar

Extracted by –
CD (or his advocate) (address).

FORM 33

(r. 21)

CITATION TO PROPOUND A DOCUMENT AS A WILL

(Heading as in Form 1)

To: EF of (address and description)

.....
.....
.....

WHEREAS it appears by the affidavit of CD sworn the, 19....., that the above-named AB of (address) died on the, 19....., leaving him surviving (*set out names of persons entitled to his estate*)

AND WHEREAS it further appears by the said affidavit that the said deceased left a certain document purporting to be a will whereby he appointed you the said EF sole executor and residuary legatee:

Now this is to direct you the said EF that within fifteen days after service hereof (inclusive of the date of such service) you do cause an appearance to be entered for you either in the principal registry or in the Mombasa registry and propound the said document as a will should you think it is in your interest to do so, or show cause why letters of administration of all the estate which by law devolves to and vests in the personal representative of the deceased should not be granted to the said CD.

AND TAKE NOTICE that in default of your so doing this court may proceed to grant letters of administration of the said estate to the said CD your absence notwithstanding.

[Subsidiary]

Dated the, 19.....

.....
District Registrar

Extracted by -

CD (or his advocate) (address)

FORM 34

(r.21)

**CITATION TO EXECUTOR TO WHOM POWER
RESERVED**

(Heading as in Form 1)

To: EF of (address and description)

.....
.....
.....

WHEREAS it appears by the affidavit of GH sworn the day of, 19....., that probate of the will (and codicil) of the above-named AB of (address) deceased was on the, 19....., granted by this court to CD one of the executors thereof, power being reserved to make a like grant to you the other executor thereof:

AND WHEREAS it further appears by the said affidavit that the said CD died on the, 19....., leaving part of the estate of the deceased unadministered (or as the case may be):

AND WHEREAS it further appears by the said affidavit that the said GH is one of the residuary beneficiaries appointed by the said will (and codicil):

Now this is to direct that you the said EF within fifteen days after service hereof on you (inclusive of the date of such service) do cause an appearance to be entered for you either in the principal registry or in the Mombasa registry and accept or refuse probate of the said will (and codicil).

AND TAKE NOTICE that in default of your so appearing and accepting and extracting probate of the said will (and codicil) your rights

as executor will wholly cease and the representation to the said AB will [Subsidiary] devolve as if you had not been appointed executor.

Dated the, 19.....

.....
District Registrar

Extracted by -
CD (or his advocate) (address).

FORM 35

(rr. 21, 22 (3))

CITATION AGAINST EXECUTOR WHO HAS INTERMEDDLED

(Heading as in Form 1)

To: EF of (address and description)

.....
.....
.....

WHEREAS it appears by the affidavit of CD sworn the, 19, that the above-named AB of (address) died on the, 19....., having made and duly executed his last will on the, 19....., (and codicil dated the,19.....), wherein he appointed you the said EF to be sole executor and that the said CD is interested in the estate of the said deceased under the said will (and codicil):

AND WHEREAS it is alleged in the said affidavit that you the said EF have intermeddled in the estate of the said deceased:

Now this is to direct that you the said EF within fifteen days after service hereof on you (inclusive of the date of such service) do cause an appearance to be entered for you either in the principal registry or in the Mombasa registry and show cause why you should not be ordered to take probate of the said will (and codicil) under pain of the law and contempt thereof.

Dated the, 19.....

.....
District Registrar

Extracted by -

[Subsidiary]

CD (*or his advocate*) (*address*).

FORM 36

(r. 21)

**CITATION BY CREDITOR WHERE DECEASED HAD NO
KNOWN RELATIVES**

(*Heading as in Form 1*)

To: The relatives (if any) who are entitled to share and all other persons having or claiming any interest in the above estate:

WHEREAS it appears by the affidavit of CD sworn the 19....., that the above-named AB died on the 19....., intestate leaving him surviving no spouse, issue, parent, brother or sister of the whole or half blood or any known relative of remoter consanguinity and that the said CD is a creditor of the said deceased (*or as the case may be*):

Now this is to direct that within* days after service hereof on you by publication (*inclusive of the day of such service*) you do cause an appearance to be entered for you either in the principal registry or in the Mombasa registry and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the said deceased or show cause why the same should not be granted to the said CD.

AND TAKE NOTICE that in default of your so appearing and accepting and extracting letters of administration as aforesaid this Court may proceed to grant letters of administration of the said estate to the said CD your absence notwithstanding.

Dated the 19.....

.....
District Registrar

Extracted by -

CD (*or his advocate*) (*address*)

* Where the deceased had no known relatives the period fixed is normally not less than 42 days.

FORM 37

(r. 40(8))

**CONSENT TO CONFIRMATION OF GRANT
(GENERAL FORM)**

(Heading as in Form 1)

I, EF, of
.....
a dependant within the meaning of section 29 of the Law of Succession Act of the above-named AB (or a person who might be beneficially entitled to participate in the estate of the above-named AB) who died on the, 19....., do hereby consent to confirmation of the grant of probate (or letters of administration) made to CD by this Honourable Court on the....., 19.....

Dated the, 19

Signed by the
said EF in
the presence of }

FORM 38

(r. 26(2))

CONSENT TO THE MAKING OF A GRANT OF ADMINISTRATION INTESTATE TO PERSON OF EQUAL OR LESSER PRIORITY

(Heading as in Form 1)

WHEREAS the above-named AB of
died on the, 19....., intestate and representation has not been raised to his estate:

AND WHEREAS I, CD, am entitled to apply for letters of administration to the estate of the said AB in equality with or priority to EF of (*address and description*) but nevertheless am agreeable to the said EF so applying:

Now I, the said CD, of (*address and description*)
do hereby consent to letters of administration to the estate of the said deceased being granted to the said EF.

Dated the, 19.....

[Subsidiary]

Signed by the }
said CD in }
the presence of }

FORM 39
(2))

(r. 26

**CONSENT BY EXECUTOR TO THE MAKING OF A
GRANT OF ADMINISTRATION WITH WILL ANNEXED**

(Heading as in Form 1)

WHEREAS the above-named AB of
..... died on the
....., 19....., having made and duly executed his last will
dated the, 19....., (and codicil dated the,
19...), wherein he named me, CD, the sole executor thereof:

Now I, the said CD, of *(address and description)*
..... do
hereby consent to letters of administration with the said will (and codicil)
annexed of the estate of the said deceased being granted to EF of *(address
and description)*

Dated the, 19.....

Signed by the }
said CD in }
the presence of }

FORM 40

(r. 6 (5))

DEPOSIT DOCKET ON LODGING WILL

I, of hereby deposit in
the Principal Registry of the High Court of Kenya at Nairobi the following
document, that is to say-

.....
.....
.....
.....
.....

[Subsidiary]

Dated the, 19.....

Signed
Full name
Address
Description

Note. - This docket should be deposited, duly completed, in duplicate whereupon it must be stamped by the registry and the duplicate copy returned to the depositor for his retention as a receipt. A separate docket should be obtained in respect of each document lodged.

FORM 41

(r. 25)

GRANT OF LETTERS OF ADMINISTRATION
INTESTATE

(Heading as in Form 1)

BE IT KNOWN that on the, 19, letters of administration intestate of all the estate of..... (also known as deceased late of who died domiciled in (state where) on the, 19....., at which by law devolves to and vests in his (her) personal representative were granted by this Court to of (and of he (they) having undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required by law so to do.

Issued by the High Court/Resident Magistrate's Court/through the registry at this , 19.....

(Signature).....
Judge of the High Court/Resident Magistrate.

Note. - This grant when confirmed must specify all the persons beneficially entitled to the estate together with their respective shares: section 71 (2) (proviso) of the Act. This will take the form of a Schedule at foot or appended and will include any beneficiaries dying prior to confirmation of the grant.

**GRANT OF LETTERS OF ADMINISTRATION WITH
THE TERMS OF ORAL WILL ANNEXED**

(Heading as in Form 1)

BE IT KNOWN THAT on the,19....., letters of administration with the terms of the oral will of the deceased which were recorded in writing and are annexed hereto of all estate of AB (also known as ABC) deceased late of who died domiciled in (*state where*) on the, 19....., at which by law devolves to and vests in his (her) personal representative were granted by this Court to of (and of) he (they) having undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required by law so to do.

Issued (*as in Form 41*).

FORM 43

(r.25)

**GRANT OF LETTERS OF ADMINISTRATION WITH
WRITTEN WILL ANNEXED**

(Heading as in Form 1)

BE IT KNOWN that on the, 19..... letters of administration with will (and codicil(s)) annexed of all the estate of AB (also known as ABC) deceased late of who died domiciled in (*state where*) on the, 19....., at..... which by law devolves to and vests in his (her) personal representative, a copy of which will (and codicil(s)) is hereto annexed, were granted by this Court to of..... he (she) having undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required by law so to do.

Issued (*as in Form 41*).

FORM 44

(r.25)

GRANT OF PROBATE OF ORAL WILL

(Heading as in Form 1)

BE IT KNOWN that on the, 19, the last

oral will of AB (also known as ABC) late of who died [Subsidiary]
 domiciled in on the, 19.....,
 the terms of which will were recorded in writing and are hereto annexed,
 was proved in this Court and that administration of all the estate of the
 deceased which by law devolves to and vests in his personal representative
 was granted to (*name*) the executor(s) named in the said will, he (they)
 having undertaken faithfully to administer such estate according to law
 and to render a just and true account thereof whenever required by him
 so to do.

Issued (*as in Form 41*).

FORM 45

(r. 25)

GRANT OF PROBATE OF WRITTEN WILL

(Heading as in Form 1)

BE IT KNOWN that on the, 19, the
 last written will (with codicil(s)) of AB (also known as ABC) deceased late
 of who died domiciled in (*state where*) on the
, 19, at a copy of which will (and codicil(s)) is
 hereto annexed, was proved in this Court and that administration of all the
 estate of the deceased which by law devolves to and vests in his personal
 representative was granted to of (and
 of) the executor(s) named in the said
 will (and codicil(s)) he (they) having undertaken faithfully to administer
 such estate according to law and to render a just and true account thereof
 whenever required by law so to do.

Issued (*as in Form 41*).

FORM 46

(5th Sch., para. 20andr.25)

**GRANT OF LETTERS OF ADMINISTRATION WITH
WILL ANNEXED LIMITED TO ASSETS LEFT UNAD-
MINISTERED BY THE EXECUTOR**

(Heading as in Form 1)

BE IT KNOWN that on the, 19, letters of
 administration *de bonis non* with will (and codicil(s)) annexed of all the
 estate of the above-named AB late of who died
 domiciled in (*state where*) on the, 19
, which by law devolves to and vests in his personal representative
 a copy of which will (and codicil(s)) is hereto annexed limited to that part
 of the said estate remaining unadministered were granted by this Court

[Subsidiary] to CD of
 he having undertaken faithfully to
 administer such unadministered estate according to law and render a just
 and true account thereof whenever required by law so to do.
 Issued (*as in Form 41*).

FORM 47

(r. 36(2))

**LIMITED GRANT OF LETTERS OF ADMINISTRATION
 AD COLLIGENDA BONA UNDER SECTION 67 (1) OF
 THE ACT**

BE IT KNOWN that letters of administration *ad colligenda bona*
 of all the estate of the above-named AB, late of
 who died domiciled in (*state where*) on the
, 19....., which by law devolves to and vests in his
 personal representative but limited to the purpose only of collecting
 and getting in and receiving the estate and doing such things as may be
 necessary for the preservation of the same and until further representation
 be granted were granted by this Court to CD of

 he having undertaken faithfully to administer such estate according to
 law (limited as aforesaid) and until further representation be granted and
 render a true and just account thereof whenever required by law so to do.

Issued (*as in Form 41*).

FORM 48

(5th Sch., para. 7 and r.25)

**LIMITED GRANT OF LETTERS OF ADMINISTRATION
 WITH WILL ANNEXED FOR SOLE USE OF INFANT
 BEING SOLE EXECUTOR OR SOLE RESIDUARY
 LEGATEE OF DECEASED**

(*Heading as in Form 1*)

BE IT KNOWN that on the, 19....., letters of
 administration with will (and codicil(s)) annexed of all the estate of the
 above-named AB late of
 who died domiciled in (*state where*) on the
, 19....., which by law devolves to and vests in
 his personal representative (a copy of which will (and codicil(s)) is hereto
 annexed) (limited as hereinafter appears) were granted by this Court to
 CD of for the use and benefit of EF who, having been
 born on the, 19....., is an infant under the age of eighteen
 years, the said CD having undertaken faithfully to administer such estate

according to law and to render a just and true account thereof whenever [Subsidiary] required by law so to do.

AND BE IT ALSO KNOWN that this grant is limited until the said EF shall have attained the age of eighteen years.

Issued (as in Form 41).

FORM 49

(5th Sch., para. 6 and r.25)

**LIMITED GRANT OF LETTERS OF ADMINISTRATION
INTESTATE TO ATTORNEY OF THE PERSON
ENTITLED WHO IS ABSENT FROM KENYA**

(Heading as in Form 1)

BE IT KNOWN that on the19....., letters of administration (intestate) of the estate of the above-named AB late of who died domiciled in (state where) on the, 19....., which by law devolves to and vests in the personal representative of the deceased (limited as hereinafter appears) were granted by this Court to EF, the lawful attorney of CD, the person entitled to administration on the intestacy of the deceased, the said EF having undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required by law so to do.

AND BE IT ALSO KNOWN that this grant is limited until the said CD shall obtain letters of administration granted to himself.

Issued (as in Form 41).

FORM 50

(5th Sch., para. 4 and r.25)

**LIMITED GRANT OF LETTERS OF ADMINISTRATION
WITH WILL ANNEXED TO ATTORNEY OF EXECUTOR
ABSENT FROM KENYA**

(Heading as in Form 1)

BE IT KNOWN that on the, 19, letters of administration with the will (and codicil) annexed of the estate of the above-named AB late of who died domiciled in (state where) on the, 19....., which by law devolves to and vests in his personal representative (a copy of which will

[Subsidiary] (and codicil) is hereto annexed) (limited as hereinafter appears) were granted by this Court to EF of the attorney lawfully appointed of CD the executor named in the said will (and codicil) for the use and benefit of the said CD, the said EF having undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required by law so to do.

AND BE IT ALSO KNOWN that this grant is limited until the said CD shall obtain probate granted to himself.

Issued (*as in Form 41*).

FORM 51

(5th Sch., para. 5 and r.25)

**LIMITED GRANT OF LETTERS OF ADMINISTRATION
WITH WILL ANNEXED TO ATTORNEY OF PERSON TO
WHOM ADMINISTRATION MIGHT BE GRANTED BUT
WHO IS ABSENT FROM KENYA**

(*Heading as in Form 1*)

BE IT KNOWN that on the, 19....., letters of administration with will (and codicil) annexed of the estate of the above-named AB late of who died domiciled in (*state where*) on the, 19....., at which by law devolves to and vests in his personal representative (a copy of which will (and codicil) is hereto annexed) (limited as hereinafter appears) were granted by this Court to CD of the lawful attorney of EF of for the use and benefit of the said EF, the said CD having undertaken faithfully to administer such estate according to law and render a just and true account thereof whenever required by law so to do.

AND BE IT ALSO KNOWN that this grant is limited until the said EF shall obtain letters of administration granted to himself.

Issued (*as in Form 41*).

FORM 52

(5th Sch., para. 1 and r.25)

**LIMITED GRANT OF PROBATE OF A WILL WHICH
HAS BEEN LOST OR MISLAID SINCE TESTATOR'S
DEATH OR DESTROYED BY WRONG OR ACCIDENT
BUT NOT BY ANY ACT OF HIS**

(*Heading as in Form 1*)

[Subsidiary]

BE IT KNOWN that on the, 19....., a copy (or the draft) of the last written will (and codicil) of the above-named AB late of who died domiciled in (*state where*) on the, 19....., which copy (or draft) is hereto annexed, was proved in this Court and that administration (limited as hereinafter appears) of all the estate of the deceased which by law devolves to and vests in his personal representative was granted by this Court to of..... the executor named in the said copy (*or* draft), he having undertaken faithfully to administer such estate according to law and to render a just and true account thereof whenever required so to do.

AND BE IT ALSO KNOWN that this grant is limited until the original or a properly authenticated copy of the said will (and codicil) is produced.

Issued (*as in Form 41*).

FORM 53

(r. 37(2))

TEMPORARY GRANT OF LETTERS OF ADMINISTRATION BY A RESIDENT MAGISTRATE PURSUANT TO SECTION 49 OF THE ACT WHERE ASSETS OF ESTATE DO NOT EXCEED SH. 100,000

(Heading as in Form 1)

BE IT KNOWN that a temporary grant of letters of administration of all the estate of the above-named AB late of who died domiciled in (*state where*) on the, 19....., which by law devolves to and vests in the personal representative of the deceased but limited to the collection of assets situated within the area of this Registry and to payment of the debts of the deceased was made by this Court, pursuant to the provisions of section 49 of the Law of Succession Act, to CD of the said CD having undertaken faithfully to administer such estate according to law (limited as aforesaid) and render a true and just account thereof whenever required by law so to do.

AND BE IT FURTHER KNOWN that this grant will expire on the, 19

Issued by the Resident Magistrate’s Court through the resident magistrate’s registry at on the, 19.....

[Subsidiary]

.....
Resident Magistrate

FORM 54

(r. 41(5))

**CERTIFICATE OF CONFIRMATION OF GRANT TO
 ORIGINAL GRANTEE**

I hereby certify that the above-written grant of representation to the estate of the late issued to
 therein named has this day been confirmed by this Court pursuant to the provisions of section 71 of the Law of Succession Act.

Dated the, 19.....

.....
*Judge of the High Court/
 Resident Magistrate*

FORM 55

(r. 41(6))

**CONFIRMED GRANT OF LETTERS OF
 ADMINISTRATION ISSUED PURSUANT TO SECTION
 71 (2) (B) OF THE ACT TO A PERSON OTHER THAN
 THE ORIGINAL GRANTEE**

(Heading as in Form 1)

BE IT KNOWN that on the, 19....., letters of administration (*continue as in the grant issued to the original grantee*).

AND BE IT FURTHER KNOWN THAT upon the said grant of representation coming before this Court for confirmation this day and the court not being satisfied that the said grant should be confirmed the court did direct that a confirmed grant (with the will dated the.....
, 19....., of the same deceased annexed) in respect of the estate of the said deceased (or so much of the estate of the said deceased as remains unadministered) do issue to (*name and address*) he (they) having undertaken faithfully to administer the same according to law and render a just and true account thereof whenever required by law so to do.

Issued (*as in Form 41*).

[Subsidiary]

Note. - In the case of intestacy this confirmed grant must contain a schedule at foot or appended specifying all the persons beneficially entitled to the estate (including any beneficiaries dying prior to the issue of this grant) together with their respective shares: section 71 (2) (proviso) of the Act.

FORM 56

(r. 29(5))

GUARANTEE BY A CORPORATION AS SURETY

(Heading as in Form 1)

WHEREAS the above-named AB of died on the, 19....., and CD (hereinafter called “the administrator”) is the intended administrator of his estate:

NOW THEREFORE –

1. XYZ Ltd. of a company having its registered office atand carrying on business at (hereinafter called “the company”) hereby guarantees that it will when lawfully required to do so make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator of his duty –
 - (a) to collect and get in the estate of the deceased and administer it according to law;
 - (b) when required to do so by the court to exhibit on oath in court a full inventory of the said estate and when so required to render an account of the estate; and
 - (c) when so required by the court to deliver up the grant to the court.
2. The giving of time to the administrator or any other forbearance or indulgence shall not in any way affect the company’s liability under this guarantee.
3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above save that the total liability of the company shall not in any event exceed the sum of Kenya Shillings (K.Sh.).

Dated the, 19.....

[Subsidiary]

The Common Seal of the company
was hereunto affixed in the presence of
Filed by - (as in Form 2). }

FORM 57

(r. 29(5))

GUARANTEE BY PERSONAL SURETIES (GENERAL FORM)

(Heading as in Form 1)

WHEREAS the above-named AB of died on the, 19, and CD (hereinafter called “the administrator”) is the intended administrator of his estate:

NOW WE, GH of and IJ of hereby jointly and severally guarantee and agree as follows -

1. We will when lawfully required to do so make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the administrator of his duty -
 - (a) to collect and get in the estate of the deceased and administer it according to law;
 - (b) when required to do so by the court to exhibit on oath in court a full inventory of the said estate and when so required to render an account of the estate; and
 - (c) when so required by the court to deliver up the grant to the court.
2. The giving of time to the administrator or any other forbearance or indulgence shall not in any way affect our liability under this guarantee.
3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above save that our aggregate total liability shall not in any event exceed the sum of Kenya Shillings..... (K.Sh.).

Dated the, 19.....

Signed, sealed and delivered }
by the above-named GH and IJ }
in the presence of

[Subsidiary]

.....
Commissioner for Oaths / Magistrate.

Filed by - (as in Form 2)

FORM 58

(rr. 29 (5), 42 (5))

GUARANTEE BY SURETIES FOR PERSONAL REPRESENTATIVE ON SEALING OF GRANT OF PROBATE OR LETTERS OF ADMINISTRATION ISSUED IN ANOTHER COUNTRY

(Heading as in Form 1)

WHEREAS the above-named AB of died on the (date) and probate of his will was (letters of administration of his estate (with his will (and codicil) annexed) were) on the, 19....., granted by (name of court) to CD and is (are) about to be sealed in Kenya under the provisions of the Law of Succession Act:

AND WHEREAS by order dated the, 19....., the High Court has directed that adequate security be given for the payment of debts due from the estate of the deceased to creditors residing in Kenya:

NOW THEREFORE: -

1. We GH of (address and description)
..... and IJ of (address and description)
..... hereby jointly and severally guarantee that we will when lawfully required to do so make good any loss which any creditor of the deceased residing in Kenya may suffer in consequence of the breach by CD the said executor (administrator) of his duty to pay and discharge the debts due from the estate to creditors residing in Kenya.
2. The giving of time to the said CD or any other forbearance or indulgence shall not in any way affect our liability under this guarantee.

[Subsidiary]

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above but our aggregate total liability shall not in any event exceed the sum of Kenya Shillings (K.Sh.).

Dated the, 19.....
Signed, sealed and delivered (as in Form 57).
Filed by - (as in Form 2)

FORM 59

(r. 4 (2))

INDEX CARD

PARTICULARS OF APPLICATION FOR GRANT

- (1) Name of deceased:
- (2) Title of proceedings:
- (3) Address of deceased:
- (4) Date of death:
- (5) Place of death:
- (6) Domicile at date of death:

Dated the, 19.....

.....
District Registrar

To be filed in -
The Principal Registry,
High Court of Kenya,
Law Courts,
Nairobi.

FORM 60

(r. 7 (4))

PUBLIC NOTICE BY REGISTRY OF APPLICATION FOR GRANT (a)

(Heading as in Form 1)

LET ALL PERSONS CONCERNED TAKE NOTICE that a petition for a grant of probate of the will (and codicil) of (or letters of administration intestate or with the will (and codicil(s)) annexed to the estate of) the above-named deceased who died at on the....., 19....., has been filed in this registry by.....

..... (name and address of applicant) in his capacity as [Subsidiary] (state) of the deceased (or as the case may be).

AND FURTHER TAKE NOTICE that objections in the prescribed form to the making of the proposed grant are hereby invited and must be lodged in this registry within (b) days of the publication of this notice.

AND FURTHER TAKE NOTICE that if no objection has been lodged in this registry in the prescribed form within (b) days of the date of publication of this notice the court may proceed to make the grant as prayed or to make such other order as it thinks fit.

Dated the, 19.....

..... District Registrar

Note. - The will or a copy thereof may be inspected at this Registry (c).

CERTIFICATE (d)

I certify that this notice was exhibited on the notice board at the courthouse of the Court from the....., 19....., until the, 19, inclusive.

Dated the, 19.....

Signed District Registrar

Notes -

- (a) This notice must be lodged in triplicate in the registry.
(b) The number of days, which must be not less than 30, will be filled in by the registry.
(c) Delete in the case of intestacy.
(d) This notice with the completed certificate should be placed on the court file after the due period of notice has expired as it will constitute evidence of publication.

NOTICE BY REGISTRY OF OBJECTION TO APPLICATION FOR GRANT

(Heading as in Form 1)

To: CD (Petitioner)

.....
.....
.....

TAKE NOTICE that an objection was lodged in this registry in the above cause on the, 19....., by KL, whose address for service is and that a copy of the said objection is forwarded herewith.

Dated the, 19.....

.....
District Registrar

FORM 62

(r. 14(1))

NOTICE OF AMENDMENT OF APPLICATION FOR GRANT

(Heading as in Form 1)

TAKE NOTICE that I, CD, of having applied to this Honourable Court for a grant of representation of the above-named AB who died on the....., 19, hereby amend such application in the following manner - (*Here set out in paragraphs to be numbered consecutively any matters requiring to be amended in the petition and supporting affidavits by way of deletion, substitution or addition*).

AND I HEREBY MAKE OATH AND SAY that what is stated in my original application as so amended is true to the best of my knowledge, information and belief.

Sworn, etc. (*as in Form 2*).

Note. - This notice does not require a supporting affidavit.

NOTICE OF APPOINTMENT OF ADVOCATE BY A PERSONAL APPLICANT FOR A GRANT

(Heading as in Form 1)

I - APPOINTMENT

WHEREAS I, CD, of *(address and description)* did on the, 19....., apply as a personal applicant pursuant to the provisions of rule 9 of the Probate and Administration Rules for a grant of representation to the estate of the above-named AB:

AND WHEREAS I now desire to cease to act as a personal applicant herein and instead to continue with such application through an advocate:

I HEREBY APPOINT EF of *(address)* advocate, to be my advocate in and to represent me in this matter.

Dated the, 19.....,

(Signed) CD

II - ACCEPTANCE OF APPOINTMENT

I, EF, of *(address)* an advocate of the High Court do hereby accept the above appointment.

(Signed) BF

Filed by *(as in Form 2)*.

NOTICE OF WITHDRAWAL OF ANSWER AND CROSS-APPLICATION

(Heading as in Form 1)

To: *(Name of registry)*

.....
.....
.....

[Subsidiary]

TAKE NOTICE that the answer and petition by way of cross-application filed in the above cause on the 19, by me, KL, of (address) are hereby withdrawn.

Dated the, 19.....

.....
Objector/Advocate for Objector

Filed by - (as in Form 2).

FORM 65

(r. 14(2))

NOTICE OF WITHDRAWAL OF APPLICATION FOR GRANT

(Heading as in Form 1).

TAKE NOTICE that I, CD of (address) hereby withdraw the application filed by me on (date) for a grant of representation to the above-named AB who died on the,19

Dated the, 19.....

Signed by the above named CD
in the presence of

.....
.....

(Name, address and description).

Filed by - (as in Form 2).

FORM 66

(r. 17(7))

NOTICE OF WITHDRAWAL OF OBJECTION

(Heading as in Form 1)

To: (Name of registry)

.....
.....
.....

TAKE NOTICE that the objection to the making of a grant of representation to the estate of the above-named AB which is dated the

....., 19....., and was filed by me EF (or on behalf of EF) is hereby withdrawn. [Subsidiary]

Dated the, 19.....

.....
Objector/Advocate for Objector

Filed by - (as in Form 2).

FORM 67

(r. 17(5))

NOTICE BY REGISTRY TO OBJECTOR TO APPLICATION FOR GRANT

(Heading as in Form 1)

To: KL of
whose address for service is

TAKE NOTICE that having lodged in this registry an objection to a grant of representation being made to the estate of the above-named AB you are required within days from the date hereof (inclusive of such date) to file an answer in the prescribed form to the application for such grant together with a petition and supporting affidavit by way of cross-application for a grant of representation to yourself.

AND FURTHER TAKE NOTICE that in default of your so doing within the time limited a grant may be so made in this cause notwithstanding your objection.

Dated the, 19.....

.....
District Registrar

FORM 68

(r. 44(3))

NOTICE OF APPLICATION TO HIGH COURT FOR REVOCATION OR ANNULMENT OF GRANT

(Heading as in Form 1)

To: *(Name, address and description (if known) of person being notified):*

[Subsidiary]
.....
.....

TAKE NOTICE that an application by summons praying for the revocation (*or* annulment) of the grant of representation issued to CD in this cause having been filed, and directions having been given by this Court for service of such summons and supporting affidavit, and such service upon you having been directed, I attach hereto a copy of the summons and affidavit and notify you that you are at liberty before the determination of the application to file an affidavit herein stating whether you support or oppose the application, giving your grounds.

AND TAKE NOTICE that you are invited to attend the Judge in Chambers on the, 19....., at o'clock in the noon for determination of the application or otherwise as this Court sees fit.

AND FURTHER TAKE NOTICE that in default of your so attending such application may be determined by the Court your absence notwithstanding.

Dated the, 19.....

.....
District Registrar

Filed by-(*as in Form 2*).

FORM 69

(r. 44(5))

NOTICE OF INTENTION OF HIGH COURT OF ITS OWN MOTION TO REVOKE OR ANNUL A GRANT

(Heading as in Form 1)

To: (*Name, address and description*)

.....
.....
.....

TAKE NOTICE that, pursuant to the powers conferred by section 76 of the Law of Succession Act, this Court proposes, subject to such representations as may be made to the contrary, to revoke (*or* annul) the grant of representation to the estate of the above-named AB made on the, 19....., to (*name of holder of grant*)

[Subsidiary]

THE GROUNDS for the proposed action are (*set out in full*):

.....
.....
.....

IF YOU WISH to oppose such proposed revocation (*or* annulment) you may do so by filing within days from this date an affidavit herein stating the grounds of your opposition.

Dated the, 19.....

.....

Registrar

Note. - The jurisdiction conferred by section 76 of the Act cannot be exercised by a resident magistrate: s. 48 of the Act.

FORM 70

(r.44 (3))

NOTICE TO APPLICANT SEEKING REVOCATION OR ANNULMENT OF GRANT*

(Heading as in Form 1)

To: *(Name and address of applicant)*

.....
.....
.....

TAKE NOTICE, that having filed a summons praying for revocation (*or* annulment) of the grant of representation issued to CD in this cause, (*or* in R.M.C.C. No. of 19..... *as the case may be*), you are required to attend on the 19, in Chambers at o'clock in the noon for the giving of directions as to what persons (if any) shall be served by you with a copy of the said summons and of the affidavit in support thereof and as to the manner of effecting service.

AND FURTHER TAKE NOTICE that in default of your so attending such direction may be given your absence notwithstanding.

Dated the, 19.....

.....

Registrar

[Subsidiary]

*These proceedings must be in the High Court: s.48 of the Act.

FORM 70A

(r. 48(5))

**SUMMONS FOR DIRECTIONS BY PETITIONER
SEEKING REVOCATION OF PROBATE AND ISSUE
OF NEW PROBATE OF SAME WILL AND CODICIL
THERETO DISCOVERED
SINCE THE GRANT**

(Heading as in the cause in which the probate was issued)

LET ALL PARTIES CONCERNED attend the Judge/Resident Magistrate in Chambers on, 19....., at o'clock in the noon for the giving of directions as to which persons (if any) should be served with a copy of the petition herein and of the affidavit(s) in support thereof; and further that the costs of the application be provided for; which application will be grounded upon the affidavit(s) of (name) filed herewith, the nature of the case and the reasons to be offered.

Dated the, 19.....

.....
Applicant/Advocate for Applicant.

Issued the, 19.....

.....
Registrar

Address for service (*as in Form 2*).

FORM 71

(r. 42(6))

**NOTICE BY HIGH COURT REGISTRY OF
APPLICATION FOR SEALING A GRANT ISSUED IN
ANOTHER COUNTRY**

(Heading as in Form 1)

LET ALL PERSONS CONCERNED TAKE NOTICE THAT a petition for the sealing of a grant of probate of the will (and codicil) of (*or*

letters of administration intestate *or* with the will (and codicil(s)) annexed [Subsidiary]
to the estate of) the above named deceased who died at (*place*)
..... on the, 19....., made to (*name
and address of grantee of the grant*) on the
(*date*) has been filed by (*name and address of applicant*)
.....
..... in his capacity as (*state*)..... of
the deceased.

AND FURTHER TAKE NOTICE that objection in Form 76 to
such sealing is hereby invited and must be lodged in this registry within
..... days (*a*) of the publication of this notice.

AND FURTHER TAKE NOTICE that if no such objection has been
lodged in this registry within the said time the Court may proceed to effect
the sealing as prayed or to make such other order as it thinks fit.

Dated the, 19.....

.....
Registrar

Note. - The will or grant or a copy thereof may be inspected at this
registry.

CERTIFICATE (*B*)

I certify that this notice was exhibited on the notice board at the
courthouse of the Court from the, 19.....,
until the, 19....., inclusive.

Dated the, 19.....

.....
District Registrar

Notes:

- (a) The number of days, which must be not less than 30, will be filled in by the registry.
- (b) This notice with the completed certificate should be placed on the High Court file after the due period of notice has expired as it will constitute evidence of publication.

NOTICE TO COURT OF ANOTHER COUNTRY OF SEALING OF GRANT

Probate Registry of the High Court of Kenya
P.O. Box.....

....., 19.....

To: The Proper Officer,

High Court of

.....
(*address*).

Sir,

I give you notice that the undermentioned grant, which was issued under the seal of your Court, was on the date stated sealed in the High Court of Kenya at

.....
Name of Deceased Name and Date of Grant Date of Sealing

.....
Registrar of the High Court of Kenya

FORM 73

(r. 4 (1))

NOTICE TO PRINCIPAL REGISTRY OF APPLICATION FOR A GRANT

(Heading as in Form 1)

To: The Principal Registrar,
High Court of Kenya,
NAIROBI.

TAKE NOTICE that an application for probate of the last will (*or* letters of administration of the estate) of the above-named AB deceased late of who died on the, 19....., has been made by (*name and address of applicant*)

.....

.....

[Subsidiary]

The relevant details of the deceased so far as known to this registry appear on the attached index card.

Dated the, 19.....

.....

Registrar

Note: This notice must be accompanied by an index card in Form 59: r. 4(2).

FORM 74

(r. 40(8))

NOTICE OF REGISTRAR’S INTENTION TO GIVE DIRECTIONS CONCERNING A PROTEST AGAINST CONFIRMATION OF GRANT

(Heading as in Form 1)

To: KL of
whose address for service is -
.....
.....

TAKE NOTICE that your protest against the proposed confirmation of the grant of probate of the will of (or letters of administration to the estate of) the above-named AB made to CD on the, 19....., has been placed before the Court for directions to be given at o’clock in the noon on the ,19.....

AND FURTHER TAKE NOTICE that if you do not attend this Court at that time and date such directions may be given notwithstanding your absence.

Dated the, 19.....

.....

Registrar

[Subsidiary]

FORM 75

(r. 61(2))

**NOTICE TO THIRD PARTIES OF APPLICATION
(GENERAL FORM)**

(Heading as in Form 1)

To: *(Name and address)*

.....
.....

TAKE NOTICE that the undersigned applicant has made application to this Court for *(state relief sought)* and that the said application has been set down for hearing at on the, 19, at the hour of o'clock in the noon

Dated the, 19.....

.....
Applicant / Advocate for Applicant

Address for service *(as in Form 2)*.

FORM 76

(r. 17(1))

**OBJECTION TO MAKING OF GRANT
(GENERAL FORM)**

(Heading as in Form 1)

To: *(Name of registry)*

.....
.....

TAKE NOTICE that EF of *(address and description)* hereby objects to the making of a grant of representation to the estate of the above-named AB who died on the, 19....., as sought in the petition of CD of *(address)* filed in *(name of registry)* on the, 19.....

The interest of the said EF in the estate is *(state)*

..... and the grounds of his objection are as follows - (*state shortly* [Subsidiary] *each of the grounds relied upon*):

.....

Dated the, 19.....

.....
Objector/Advocate for objector

Address for service (*as in Form 2*)

Note. - This objection must be lodged in the registry in triplicate: rule 17 (1).

FORM 77

(r. 17 (1))

**OBJECTION TO THE MAKING OF A GRANT SOLELY
ON THE GROUND OF WANT OF DUE EXECUTION OF
ALLEGED WILL**

(*Heading as in Form 1*)

To: (*Name of registry*)

.....
.....

TAKE NOTICE that EF of (*address and description*)
..... hereby objects to the making of a grant of representation to the estate of the above-named AB who died on the, 19....., pursuant to the petition of CD of (*address*) filed in the (*name of registry*) on the, 19....., solely on the ground that the alleged will (and codicil(s)) referred to in the said petition was (*or were*) not duly executed in accordance with the law in force at the material date.

The interest of the said EF in the estate is (*state*)
.....

Dated the, 19.....

.....
Objector/ Advocate for objector

Address for service (*as in Form 2*)

[Subsidiary]

Note. - This objection must be lodged in the registry in triplicate: rule 17 (1).

FORM 78

(rr. 7, 13 (1))

PETITION FOR PROBATE OF WRITTEN WILL OR FOR PROOF OF ORAL WILL (a)

(Heading as in Form 1)

I, CD, of (address and description), HEREBY PETITION this Honourable Court for a grant of probate of the last will (and codicil(s)) of the above-named AB:

AND SAY as follows (b): -

- 1. The said AB died on the, 19..... at (state where) and was domiciled in (state where).
2. The document hereto annexed contains the true and original last written will (and codicil(s)) (or a true and complete record of the last oral will) of the deceased.
3. I am the executor (or one of the executors) named in the said will (and codicil(s)) (and power should be reserved for the other executor(s) named therein to prove) (c).
4. I will faithfully administer according to law all the estate which by law devolves upon and vests in the personal representative of the deceased and I will render a just and true account of such estate whenever required by law so to do and I will when required by this Court deliver up thereto the said grant.

Signed by the above-named CD (Signature)

In the presence of (d) EF, (Signature)

advocate, of (address)

or In the presence of GH (Signature)

[Subsidiary]

of (*address and description*)

and IJ

(*Signature*)

of (*address and description*)

Address for service (*as in Form 2*)

Notes:

- (a) This form, appropriately adapted, may be used in the case either of a written or an oral will.
- (b) The supporting affidavit (Form 3 or 4) must verify in sufficient detail the contents of paragraphs 1 to 3 of this petition: rule 7 (1).
- (c) Delete if not required.
- (d) The petition must be signed by the petitioner in the presence of his advocate or of not less than two other adult witnesses who must also sign and append their full names, addresses and descriptions.

FORM 79

(r. 7)

PETITION FOR LETTERS OF ADMINISTRATION WITH WRITTEN WILL ANNEXED

(*Heading as in Form 1*)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration with will annexed of the estate of the above-named AB who died domiciled in (*state where*) on the, 19.....:

AND SAY as follows*:-

1. The document hereto annexed contains the true and original last will (and codicil(s)) of the deceased (*or* an authenticated copy, etc.)
2. The executor named in the said will is GH of
3. The said executor is dead (*or* has consented hereto *or* has renounced his executorship *or* has been issued with a citation to renounce his executorship *or* apply for a grant of probate and

[Subsidiary]

has not done so).

4. I present this petition in my capacity as (state)
.....

5. (As in Form 78 paragraph 4).

Execution (as in Form 78).

Address for service (as in Form 2).

* The supporting affidavit (Form 3) must verify in sufficient detail the contents of paragraphs 1 to 4 of this petition: rule 7 (1).

FORM 80

(r. 7)

**PETITION FOR LETTERS OF ADMINISTRATION
INTESTATE**

(Heading as in Form 1)

I, CD, of HEREBY
PETITION this Honourable Court for a grant of letters of administration
intestate of the estate of the above-named AB who died on the
....., 19.....

AND SAY as follows*: -

- 1. The deceased died intestate domiciled in (state where)
.....
- 2. I present this petition in my capacity as (state)
.....
- 3. Every person having an equal or prior right to a grant of representation herein has consented hereto (or has renounced such right or has been issued with a citation to renounce such right and apply for a grant of representation and has not done so).
- 4. (As in form 78 paragraph 4).

Execution (as in Form 78).

Address for service (as in Form 2).

*The supporting affidavit (Form 5) must verify to sufficient detail the contents of paragraphs 1 to 3 of this petition: rule 7 (1).

FORM 81

(r. 42(2))

PETITION TO HIGH COURT BY PERSONAL REPRESENTATIVE FOR THE SEALING OF A GRANT ISSUED IN ANOTHER COUNTRY

(Heading as in Form 1)

I, CD, of *(address and description)*
.....HEREBY PETITION this Honourable Court for the sealing of a grant of probate of the last will dated the, 19.....
(or letters of administration with the last will dated the, 19.....
(and codicil thereto dated the, 19) annexed of the estate or letters of administration intestate of the estate) of the above-named AB who died domiciled in *(state where)* on the....., 19.....

AND SAY as follows*: -

1. The said grant was issued to me by *(name of court or authority by which the grant was issued)* on the, 19.....
2. The document hereto annexed is the original grant (or a duplicate of the said grant sealed with the seal of the said court (or authority) (or a copy of the said grant certified as correct by (or duly on behalf of) the said Court (or authority)).
3. *(As In Form 78 paragraph 4).*
Execution *(as in Form 78)*.

Address for service *(as in Form 2)*.

*The supporting affidavit (Form 7) must verify in sufficient detail the contents of paragraphs 1 and 2 of this petition: rule 7 (1).

FORM 82

(r. 42(2))

PETITION TO HIGH COURT BY ATTORNEY OF THE PERSONAL REPRESENTATIVE FOR THE SEALING OF A GRANT ISSUED IN ANOTHER COUNTRY

(Heading as in Form 1)

I, CD, of *(address and description)*
the lawful attorney of EF the executor (or administrator) of the above-mentioned AB who died on the, 19....., domiciled in

[Subsidiary] (*state where*) hereby petition this Honourable Court for the sealing of a grant of probate of the last will dated the ,19....., (and codicil dated the , 19.....), (*or* letters of administration with the last will dated the ,19....., (and codicil thereto dated the , 19.....), annexed *or* letters of administration intestate of the estate) of the above-named AB limited until the said EF to whom the said grant was issued as hereinafter set out shall apply for and obtain such sealing:

AND SAY as follows*:-

1. The said grant was issued to the said EF of by (*name of court or authority by which the grant was issued*) on the , 19.....
2. The document hereto annexed is the original grant (*or* a duplicate of the said grant sealed with the seal of the said court (*or* authority) *or* a copy of the said grant certified as correct by (*or* duly on behalf of) the said Court (*or* authority)).
3. I will faithfully administer according to law all the estate of the deceased which by law devolves to and vests in his personal representative for the use and benefit of the said CD limited as aforesaid but no further or otherwise and will render a just and true account thereof whenever required by him so to do, and I will when required by the court to do so deliver up thereto the said grant.

Execution (*as in Form 78*).

Address for service (*as in Form 2*).

*The supporting affidavit (Form 7) must verify in sufficient detail the contents of paragraphs 1 and 2 of this petition and exhibit the original or an authenticated copy of the power of attorney: rule 42.

FORM 83

(5th Sch., para. 7; r.12)

**PETITION BY GUARDIAN OF INFANT APPOINTED
SOLE EXECUTOR OR SOLE RESIDUARY LEGATEE
FOR LETTERS OF ADMINISTRATION WITH WRITTEN
WILL ANNEXED DURING MINORITY (A)**

(Heading as in Form 1)

I, CD, of HEREBY PETITION this

Honourable Court for a grant of letters of administration with will (and [Subsidiary] codicil) annexed of the estate of the above-named AB who died domiciled in (state where) on the, 19....., limited until the hereinafter mentioned infant attains the age of eighteen years:

AND SAY as follows (b): -

- 1. The document hereto annexed contains an authenticated copy of the true and original last will (and codicil) of the deceased.
- 2. The sole executor (or sole residuary legatee) named in the said will (and codicil) is (name) who is an infant having been born on the, 19.....
- 3. I make this petition in my capacity as guardian of the said infant by virtue of (state)
.....
- 4. (As in Form 82 paragraph 3.)

Execution (as in Form 78.)

Address for service (as in Form 2).

Notes:

- (a) This is a petition for a grant under paragraph 7 of the Fifth Schedule to the Act.
- (b) The supporting affidavit (Form 19) must verify in sufficient detail the contents of paragraphs 1 to 3 of this petition: rules 7 (1), 12.

FORM 84

(r. 17(5))

PETITION BY WAY OF CROSS-APPLICATION FOR A GRANT

(Heading as in Form 1)

NOTICE of a petition for a grant of representation to the estate of the above named AB having been published on (date) and an objection to the petition having been lodged by me on (date) in the registry at

I, E.F. of contemporaneously with the filing of my answer to the said petition HEREBY PETITION this Honourable Court for a grant of probate of the will (or letters of

[Subsidiary] administration intestate (or with will annexed) of the estate) of the above-named AB who died domiciled in (state where) on (date) at (place)

AND SAY as follows: - (continue in appropriate numbered paragraphs as in Forms 78 to 95 so far as not covered by the Answer filed herewith, regard being had to rule 17 (15))*.

Execution (as in Form 78).

Address for service (as in Form 2).

*The supporting affidavit (Forms 3 to 6 or 19 as may be appropriate) must verify in sufficient detail the contents of such of these paragraphs as are included in the cross-application: rule 7 (1).

FORM 85

(r. 36(3))

PETITION FOR LETTERS OF ADMINISTRATION AD COLLIGENDA BONA UNDER SECTION 67 OF THE ACT

(Heading as in Form 1)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration ad colligenda bona of the estate of the estate of the above-named AB who died domiciled in (state where) on the, 19....., limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the same and until further representation be granted:

AND SAY as follows: -

1. I present this petition in my capacity as (state) and by reason of the fact that owing to the special circumstances of the case the urgency of the matter as appears from the affidavit filed herewith is so great that it would not be possible for the Court to make a full grant to the person who is by law entitled thereto in sufficient time to meet the necessities of the estate of the deceased.

2. (As in Form 82 paragraph 3).

Execution (as in Form 78).

Address for service (as in Form 2).

[Subsidiary]

*The supporting affidavit must verify in sufficient detail the contents of paragraph 1 of this petition: rule 7 (1).

L.N.39/2002

FORM 85A

(5th Sch. para. 18, r.2)

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. OF
IN THE MATTER OF THE ESTATE OF
(DECEASED)
PETITION FOR SPECIAL LIMITED GRANT

I, of
HEREBY PETITION this Honourable Court for a special Limited grant of letters of administration of the estate of the above-named who died domiciled in on the, limited for the purpose of

AND SAY as follows:

- 1.That I present this petition in my capacity as and by reason of the fact that owing to the special circumstances of the case and the urgency of the matter as appears from the affidavit filed herewith is so great that it would not be possible for the court to make a full grant in sufficient time to meet the necessities of the estate of the deceased.
- 2.That I have no powers to distribute the estate under the grant.

Signed by the above

.....

Signature

In the presence of

.....
Advocate Signature and Address

or

In the presence of

.....

Signature and Address

And

[Subsidiary]

.....

Signature and Address

Drawn and filed by:

.....

.....

.....

FORM 86

(5th Sch., para. 16, rr. 7, 12)

**PETITION FOR LETTERS OF ADMINISTRATION
INTESTATE OF ASSETS UNADMINISTERED (a)**

(Heading as in Form 1)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration *de bonis non* of the estate of the above-named AB who died on the, 19..... limited to that part of the said estate remaining unadministered

AND SAY as follows (b): -

1. The above-named deceased died domiciled in (*state where*) intestate and letters of administration to his estate were granted by this Honourable Court on the, 19....., to EB of who on the, 19....., died leaving part of the said estate unadministered.

2. I present this petition in my capacity as (*state*)
.....

3. (*As In Form 82 paragraph 3*).

Execution (*as in Form 78*).

Address for service (*as in Form 2*).

Notes:

(a) This is a petition for letters of administration *de bonis non* intestate and may be used in the case of an application under paragraph 16 of the Fifth Schedule of the Act.

(b) The supporting affidavit (Form 19) must verify in sufficient detail the contents of paragraphs 1 and 2 of this petition: rules 7 (1), 12.

FORM 87

(5th Sch. para. 20 and r.12)

**PETITION FOR LETTERS OF ADMINISTRATION
WITH WRITTEN WILL ANNEXED OF ASSETS
UNADMINISTERED (a)**

(Heading as in Form 1)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration *de bonis non* with the will (and codicil) annexed of the estate of the above-named AB who died on the,19, limited to that part of the said estate remaining unadministered:

AND SAY as follows (b): -

- 1. The document hereto annexed contains an authenticated copy of the said will wherein the deceased appointed GH to be his executor and IJ to be his residuary legatee (*or as the case may be*).
- 2. Probate of the said will was on the, 19....., granted by this Honourable Court to the said GH.
- 3. The said GH died on the, 19....., domiciled in (*state where*) leaving part of the said estate unadministered.
- 4. The said IJ has renounced the right to apply for letters of administration with will annexed of the said unadministered estate (c).
- 5. I present this petition in my capacity as (*state*)
.....
- 6. (*As in Form 82 paragraph 3*).

Execution (*as in Form 78*).

Address for service (*as in Form 2*).

Notes:

(a) This is a petition for letters of administration *de bonis non* with will annexed under paragraph 20 of the Fifth Schedule to the Act.

[Subsidiary]

(b) The supporting affidavit (Form 19) must verify in sufficient detail the contents of paragraphs 1 to 5 of this petition: rules 7 (1), 12.

(c) Omit if not applicable.

FORM 88

(5th Sch., para. 5, r. 12)

**PETITION FOR LETTERS OF ADMINISTRATION
WITH WILL ANNEXED BY ATTORNEY OF PERSON TO
WHOM IF NOT ABSENT FROM KENYA LETTERS OF
ADMINISTRATION WITH WRITTEN WILL ANNEXED
MIGHT BE GRANTED (a)**

(Heading as in Form 1)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration with will (and codicil) annexed of the estate of the above-named AB who died on the19....., limited until the person primarily entitled shall obtain such letters of administration granted to himself:

AND SAY as follows (b): -

1. The deceased who died domiciled in (*state where*) made and duly executed his last will dated the, 19, (with a codicil thereto dated the, 19.....), wherein he appointed EF to be the executor thereof and GH to be his sole residuary legatee (*or as the case may be*).
2. The said EF has renounced probate of the said will (and codicil) (*or as the case may be*).
3. The said GH is absent from Kenya and has appointed me to be his attorney for the purpose hereof.
4. The document hereto annexed contains the true (*or an authenticated copy of the true*) and original last will (and codicil) of the deceased.
5. (*As in Form 82 paragraph 3.*)

Execution (*as in Form 78*).

Address for service (*as in Form 2*).

Notes:

[Subsidiary]

- (a) This is a petition for a grant under paragraph 5 of the Fifth Schedule to the Act.
- (b) The supporting affidavit must verify in sufficient detail the contents of paragraphs 1 to 4 of this petition and exhibit the original or an authenticated copy of the power of attorney: rules 7 (1), 12.

FORM 89

(5th Sch., para. 9, r. 12)

**PETITION FOR LETTERS OF ADMINISTRATION
 INTESTATE OR WITH WILL ANNEXED FOR SOLE USE
 OF PERSON OF UNSOUND MIND (a)**

(Heading as in Form 1)

I, EF, of HEREBY PETITION this Honourable Court for a grant of letters of administration with the will annexed (*or* intestate) of the estate of the above-named AB limited for the sole use and benefit of CD until he shall become of sound mind:

AND SAY as follows (b): -

1. The said AB died domiciled in (*state where*) on having made a will dated (and codicil thereto dated) whereof he appointed CD of (*name, address and description*) to be his executor (*or* intestate and CD (*name, address and description*) is the person solely entitled to his estate).
2. The said CD is a person of unsound mind and the care of his estate has been committed to me by (*state name of authority and nature and date of court order*) (*or* I am a fit person to be entrusted with care and control of his estate and am prepared so to act if appointed).
3. (*As in Form 82 paragraph 3*).

Execution (*as in Form 78*).

Address for service (*as in Form 2*).

Notes:

- (a) This form, suitably adapted, may be used in the case of an

[Subsidiary]

application for administration either intestate or with the will annexed under paragraph 9 of the Fifth Schedule to the Act.

- (b) The supporting affidavit (Form 19) must verify in sufficient detail the contents of paragraphs 1 and 2 of this petition: rules 7 (1), 12.

FORM 90

(5th Sch., para. 10, r.12)

**PETITION FOR LETTERS OF ADMINISTRATION
PENDENTE LITE (a)**

(Heading as in Form 1)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration *pendente lite* of the estate of the above-named AB who died domiciled in (*state where*) on the, 19....., limited to my acting subject to the immediate control of the Court and under its direction and without power of distribution of the estate:

AND SAY as follows (b): -

1. There is now pending in this Honourable Court a suit touching and concerning the validity of the will (and codicil) of the deceased (*or* the obtaining of a grant of letters of administration to the estate of the deceased).
2. I present this petition in my capacity as (*state*)
.....
3. (*As in Form 82 paragraph 3*).

Execution (*as in Form 78*).

Address for service (*as in Form 2*).

Notes

- (a) This is a petition under paragraph 10 of the Fifth Schedule to the Act.
- (b) The supporting affidavit (Form 19) must verify in sufficient detail the contents of paragraphs 1 and 2 of this petition: rules 7(1), 12.

[Subsidiary]
L.N.39/2002
s.54,5thSch.

FORM (90) B

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. OF
IN THE MATTER OF THE ESTATE OF
(DECEASED)

PETITION FOR LETTERS OF ADMINISTRATION AD LITEM

I, of
HEREBY PETITION this Honourable Court for a grant of letters of
administration *ad litem* of the estate of the above-named
....., who died domiciled in
on the, limited to my filing suit (or to approving
..... as personal representative for the
purpose of filing
suit and without power of distribution of the estate and say as follows:

- 1. There is now pending in this Honourable court a suit against (the
deceased estate, for the deceased's estate) being suit No.
- 2. I present this petition in my capacity as
- 3. That a grant of administration *ad litem* do issue limited for the
purpose (of filing suit/defending a suit or representing suit).
- 4. That I have no powers to distribute an estate under this grant.

Signed by the above-named
In the presence of
Signed
Advocate of (address)
.....

Or in the presence of
Signature
Of address and description
.....
Signature

[Subsidiary]
L.N.39/2002

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
PROBATE AND ADMINISTRATION
CAUSE NO. OF
IN THE MATTER OF THE ESTATE OF
(DECEASED)

LIMITED GRANT OF LETTERS OF ADMINISTRATION
AD LITEM

Be it known that letters of administration *ad litem* of all the estate of the above-named who died domiciled in Kenya on the, which devolves to and vests in his Personal Representatives but limited to the purposes only for filing suit, and until further representation were granted by this Court to, he having undertaken to administer such estate according to law (limited as aforesaid) and until further representation be granted and render a true and just account thereof whenever required by law to do.

Issued by the High Court through the registry at Nairobi this day of, 2002

.....
JUDGE OF THE HIGH COURT

FORM 91

(5th Sch., para. 13, r. 12)

PETITION FOR LETTERS OF ADMINISTRATION RELATING TO TRUST PROPERTY (a)

(Heading as in Form 1)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration of the estate of the above-named AB deceased who died domiciled in (*state where*) on the, 19....., limited to property of which he was the sole (*or surviving*) trustee (*or in which he had no beneficial interest on his own account*):

AND SAY as follows (*b*): -

1. The deceased died (*state circumstances including the fact that*

there is no general representative of the deceased or person willing to act as such) [Subsidiary]

2. The deceased was at the date of his death (state shortly facts relevant to the deceased's trusteeship)

3. I am beneficially interested in the property in that (c)

4. (As in Form 82 paragraph 3).

Execution (as in Form 78).

Address for service (as in Form 2).

Notes:

- (a) This is a petition for a grant under paragraph 13 of the Fifth Schedule to the Act.
(b) The supporting affidavit (Form 19) must verify in sufficient detail the contents of paragraphs 1 and 2 of this petition: rules 7 (1), 12.
(c) The petitioner's interest must be stated or, if he is applying on behalf of some other person who is beneficially interested in the property, that fact must be stated with short details.

FORM 92

(r. 13(1))

PETITION FOR LETTERS OF ADMINISTRATION WITH TERMS OF ORAL WILL ANNEXED

(Heading as in Form 1)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration with the terms of the oral will of the above-named AB who died domiciled in (state where) on the, 19....., annexed:

AND SAY as follows*: -

1. The deceased made an oral will on the, 19.....

2. The deceased appointed no executor (or The executor appointed

by the deceased is dead *or* has consented hereto *or* has renounced his executorship *or* has been issued with a citation to renounce his executorship or apply for a grant of representation and has not done so).

3. I present this petition in my capacity as (*state*)

4. (*As in Form 78 paragraph 4.*)

Execution (*as in Form 78*).

Address for service (*as in Form 2*).

*The supporting affidavit (Form 6) must verify in sufficient detail the contents of paragraphs 1 to 3 of the petition: rule 7 (1).

FORM 93

(5th Sch., para. 4, r.12)

PETITION BY ATTORNEY OF EXECUTOR FOR LETTERS OF ADMINISTRATION WITH WRITTEN WILL ANNEXED, EXECUTOR BEING ABSENT FROM KENYA AND THERE BEING NO EXECUTOR WITHIN KENYA WILLING TO ACT (a)

(*Heading as in Form 1*)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration with the will (and codicil) annexed of the estate of the above-named AB who died on the, 19, limited until the executor shall obtain probate granted to himself:

AND SAY as follows (*b*): -

1. The deceased who died domiciled in (*state where*) made and duly executed his last will dated the, 19....., (and a codicil thereto dated, 19.....), wherein he appointed EF to be executor thereof.
2. The said EF is absent from Kenya and has appointed me to be his attorney for the purpose hereof. There is no other executor within Kenya willing to act.
3. The document hereto annexed contains the true and original (or an authenticated copy of the true and original) last will (and codicil) of the deceased.

4. (As in Form 82 paragraph 3).

Execution (as in Form 78).

Address for service (as in Form 2).

Notes:

(a) This is a petition for a grant under paragraph 4 of the Fifth Schedule to the Act.

(b) The supporting affidavit must verify in sufficient detail the contents of paragraphs 1 to 3 of this petition and exhibit the original or an authenticated copy of the power of attorney: rules 7 (1), 12.

FORM 94

(5th Sch., para. 1, r. 12)

PETITION FOR LIMITED GRANT OF PROBATE OF A WILL WHICH HAS BEEN LOST OR MISLAID SINCE TESTATOR’S DEATH OR INADVERTENTLY DESTROYED (a)

(Heading as in Form 1)

I, CD, of HEREBY PETITION this Honourable Court for a grant of probate of a copy (or the draft) of the last will (and codicil) of the above-named AB who died on the, 19....., domiciled in (state where) limited until the original or a properly authenticated copy of the same be produced:

AND SAY as follows (b): -

- 1. The document hereto annexed is a true copy (or the draft) of the original last will (and codicil) of the deceased, the original(s) of which has (or have) been lost or mislaid since his death (or destroyed by wrong or accident but not by any act of his).
- 2. I am the executor named in the said copy (or draft) will (and codicil).
- 3. (As in Form 82 paragraph 3).

Execution (as in Form 78).

[Subsidiary]

Address for service (*as in Form 2*).*Notes:*

- (a) This is a petition for a grant under paragraph 1 of the Fifth Schedule to the Act.
- (b) The supporting affidavit must verify in sufficient detail the contents of paragraphs 1, 2 and 3 of this petition: rules 7 (1), 12.

FORM 95

(5th Sch., para. 6, r.12)

**PETITION FOR LETTERS OF ADMINISTRATION
INTESTATE BY ATTORNEY OF PERSON PRIMARILY
ENTITLED TO APPLY, SUCH PERSON BEING ABSENT
FROM KENYA (a)**

(Heading as in Form 1)

I, CD, of HEREBY PETITION this Honourable Court for a grant of letters of administration intestate of the estate of the above-named AB who died on the, 19....., limited until EF of the person primarily entitled shall obtain letters of administration granted to himself:

AND SAY as follows (*b*): -

1. The said deceased died intestate domiciled in (*state where*) and survived by the said EF who is (*state relationship*) and who is the only person entitled to his estate (*or as the case may be*).
2. The said EF is absent from Kenya and has appointed me to be his attorney for the purpose hereof.
3. (*As in Form 82 paragraph 3*).

Execution (*as in Form 78*).

Address for service (*as in Form 2*).

Notes:

- (a) This is a petition under paragraph 6 of the Fifth Schedule to the Act.

(b) The supporting affidavit must verify in sufficient detail the contents of paragraphs 1 and 2 of this petition and exhibit the original or and authenticated copy of the power of attorney: rules 7 (1), 12. [Subsidiary]

FORM 96

(r. 45)

PETITION BY DEPENDANT UNDER SECTION 26 OF THE ACT

(Heading as in Form 1)

I, CD, *(name, address and description)*
 HEREBY PETITION this Honourable Court for an order that such reasonable provision be made for me as a dependant of the above-named AB out of his net estate as this Honourable Court thinks fit:

AND SAY as follows (a): -

1. The above-named AB died testate (intestate) on the, 19, at domiciled in *(state where)* but no grant or representation to his estate has been applied for (b).
2. At the date of the death of the deceased I was his wife *(or as the case may be)* *(or had been taken into his family as his own)* and I was being maintained by him.
3. As a result of the provisions of the last will of the deceased dated the, 19....., *(or the intestacy of the deceased or gifts made by the deceased in contemplation of his death)* I have not been adequately provided for and now seek an order for reasonable provision out of his net estate (c).

Execution *(as in Form 78)*.

Address for service *(as in Form 2)*.

Notes:

- (a) The supporting affidavit (Form 16) must verify in sufficient detail the contents of paragraphs 1 to 3 of this petition: rule 7 (1).
- (b) If a grant has been applied for but not issued the application must be brought by summons *(see Form 106)*.
- (c) If necessary the petitioner may in the same petition submit a claim on behalf of the children of the deceased.

[Subsidiary]

FORM 97

(r.48 (1))

**PETITION FOR REVOCATION OF PROBATE OF A
WILL AND ISSUE OF A NEW PROBATE OF THE SAME
WILL AND A CODICIL THERETO DISCOVERED SINCE
THE GRANT (a)**

(Heading as in the cause in which existing probate was issued)

To *(name and address of respondent) (b)*

I, PQ of *(name, address and description)*.....

.....
HEREBY PETITION this Honourable Court for the revocation of the probate of the will of the above-named AB granted to *(name)* in this cause and in lieu thereof for a grant to me of probate of the said will and of a codicil thereto dated the, 19.....

AND SAY as follows:-

1. (As in Form 78 paragraph 1).
2. The documents hereto annexed consist of the original probate above referred to and the original codicil made by the deceased but not discovered until after the said probate had been granted.
3. I am the executor *(or one of the executors)* named in the said codicil (and power should be reserved for the other executor(s) named therein to prove *(c)*).
4. I will faithfully administer according to law all the estate which by law devolves upon and vests in the personal representative of the deceased by virtue of the grant hereby sought and will render a just and true account of such estate whenever required by law so to do and I will when required by the court deliver up thereto the said grant.

Execution *(as in Form 78)*.

Address for service *(as in Form 2)*.

Notes:

- (a)* This form should be used only where the applicant is not a proving executor of the will: section 61 (2) of the Act.

(b) Every executor to whom probate of the will has already been granted shall be named as respondent and be served with a copy of the petition, the new codicil and the supporting affidavit: r. 48 (4).

(c) Delete if not required.

FORM 97A

(r. 37(1))

**PETITION TO RESIDENT MAGISTRATE
FOR TEMPORARY GRANT OF LETTERS OF
ADMINISTRATION IN CASE OF APPARENT URGENCY
UNDER SECTION 49 OF THE ACT (a)**

(Heading as in Form 1)

I, CD, of
HEREBY PETITION this Honourable Court for a temporary grant of letters of administration of the estate of the above-named AB who died domiciled in (*state where*) on the
....., 19....., limited to the collection of assets situated within the area of jurisdiction of this Honourable Court and to payment of the debts of the deceased:

AND SAY as follows: -

1. I present this petition in my capacity as (*state*)
.....
and by reason of the urgency of the matter as appears from the affidavit filed herewith (*b*).
 2. (*As in Form 82 paragraph 3*).
- Execution (*or in Form 78*).
- Address for service (*as in Form 2*).

Notes:

- (a) This petition is available only in applications to a resident magistrate and in cases falling within his jurisdiction. Urgent applications to the High Court or the resident magistrate may be made under rule 36 (*see Form 85*).
- (b) The supporting affidavit must verify in sufficient detail the contents of paragraph 1 of this petition: rule 7 (1). It must also specify all the assets of the deceased within the jurisdiction of the court so far as known to the petitioner. Such assets must not exceed the sum of Sh. 100,000 in value: s. 49 of the Act.

[Subsidiary]

FORM 98

(r. 18(1))

RENUNCIATION OF RIGHT TO APPLY FOR LETTERS OF ADMINISTRATION INTESTATE

(Heading as in Form 1)

WHEREAS the above-named AB of
.. died on the *(date)* at *(state where)*
..... intestate leaving him surviving myself CD *(full name, address and description)* together with other relatives, namely, *(set out)*:
.....

Now I, CD, hereby renounce all my right and title to letters of administration of the estate of the deceased.

Signed by the said CD the, 19.....,

in the presence of *(name, address and description of witness)**
.....
.....

.....
CD

.....
Witness

Filed by *(as in Form 2)*.

*The witness should be a person not interested in the estate of the deceased.

FORM 99

(r. 18(1))

RENUNCIATION OF RIGHT TO APPLY FOR LETTERS OF ADMINISTRATION WITH RECORD OF TERMS OF ORAL WILL ANNEXED

(Heading as in Form 1)

WHEREAS the above-named AB of died on the

....., 19....., having made a valid oral will on the [Subsidiary]
, 19....., wherein he did not name any executor but
 appointed me the undersigned CD his residuary legatee (*or as the case
 may be*)

Now I, CD, of hereby
 renounce all my right and title to letters of administration of the estate of
 the deceased with a record of the terms of the said oral will annexed.

Signed by (*as in Form 98*).

Filed by (*as in Form 2*).

FORM 100

(r.18 (1))

**RENUNCIATION OF RIGHT TO APPLY FOR LETTERS
 OF ADMINISTRATION WITH WRITTEN WILL
 ANNEXED**

(Heading as in Form 1)

WHEREAS the above-named AB of died on the
, 19, having made and duly executed his last
 written will dated the, 19 (and a codicil thereto
 dated the, 19) wherein he did not name any
 executor but appointed me the undersigned CD his residuary legatee (*or
 as the case may be*).

Now I, CD, of hereby renounce all my right
 and title to letters of administration with the said will (and codicil) annexed
 of the estate of the deceased.

Signed (*as in Form 98*).

Filed by (*as in Form 2*).

FORM 101

(r.18 (1))

**RENUNCIATION OF RIGHT TO PROBATE OF
 WRITTEN WILL (a)**

(Heading as in Form 1)

WHEREAS the above-named AB of
 died on the, 19....., having made and duly executed his
 last will dated the, 19..... (and codicil thereto the
, 19.....) wherein he appointed the undersigned CD to be

[Subsidiary] executor thereof (and residuary legatee thereunder) (b).

Now I, CD, of (*address*) hereby declare that I have not intermeddled in the estate of the deceased and will not hereafter intermeddle therein with intent to defraud creditors, and I hereby renounce all my right and title to probate and execution of the said will (and codicil) (and to letters of administration (with the said will (and codicil) annexed of the estate of the deceased (b)).

Signed (*as in Form 98*).

Filed by (*as in Form 2*).

Notes:

(a) Renunciation need not be in writing: s. 59 of the Act.

(b) As to the addition of these words see rule 18 (2).

FORM 102

(r. 18(1))

RENUNCIATION OF RIGHT TO PROVE ORAL WILL (a)

(Heading as in Form 1)

WHEREAS the above-named AB of died on the, 19....., having made a valid oral will on the 19....., wherein he appointed the undersigned CD to be executor thereof (and residuary legatee thereunder (b)).

Now I, CD, of (*address*) hereby declare that I have not intermeddled in the estate of the deceased and will not hereafter intermeddle therein with intent to defraud creditors, and I hereby renounce all my right and title to probate and execution of the said will (and to letters of administration with a record of the terms of the said will annexed (b)).

Signed (*as in Form 98*).

Filed by (*as in Form 2*).

Notes:

(a) Renunciation need not be in writing: s. 59 of the Act.

(b) As to the addition of these words see rule 18 (2).

FORM 103

(r. 4 (4))

RETURN OF GRANTS MADE OR CONFIRMED

From: *(name of registry)*

.....
.....

To: The Principal Registrar,
High Court of Kenya,
NAIROBI.

TAKE NOTICE that since the,19.....,
(being the date of my last return) the following grants have been made
through this Registry -

<i>Name of Deceased</i>	<i>Date of Grant</i>	<i>Succession Cause No.</i>
.....
.....

AND TAKE NOTICE that during the like period the following
grants have been confined through this Registry -

<i>Name of Deceased</i>	<i>Date of Grant</i>	<i>Date of Confirmation</i>	<i>Succession Cause No.</i>
.....
.....

COPIES of each of the above-mentioned grants and confirmations
are attached hereto and certified by me to be true and correct copies of
the originals thereof.

Dated the, 19.....

.....
District Registrar

FORM 104

(r. 59 (5))

SUMMONS (GENERAL FORM)

(Heading as in Form 1)

LET ALL PARTIES CONCERNED attend the
Judge/Resident Magistrate in Chambers on the, at

[Subsidiary]

o'clock in the noon on the hearing of an application on the part of AB (*name, address and description of applicant*) for an order that (set out the relief sought in numbered paragraphs including costs, if claimed, stating by whom or how they are to be paid or provided for which application will be grounded upon the affidavit(s) of (*name*) filed herewith, the nature of the case and the reasons to be offered.

Dated the 19.....

.....
Applicant (or Advocate)

Issued on the, 19

.....
District Registrar

Address for service (*as in Form 2*).

FORM 105

(r.46 (1))

**SUMMONS BY CHILD OF DECEASED WHO DIED
 INTESTATE FOR ORDER UNDER SECTION 35 (3) OF
 THE ACT (a)**

(Heading as in Form 1)

LET ALL PARTIES CONCERNED (*continue as in Form 104*) for an order that such share as the Court thinks fit of the capital of the net estate of the above-named AB who died intestate on the, 19....., be appointed by way of gift to the applicant without variation of any appointment already made (*or with the following variation in the appointment already made (set out)*) and that the costs of this application be provided for, which application (*continue as in Form 104 (b)*).

Dated) (*As in Form 104*).
 Issued)

Address for service (*as in Form 2*)

Notes:

(a) Although the applicant must be a child of the deceased within the meaning of section 3 of the Act he need not be below the age of majority. If he is a minor he must apply through a next friend or guardian appointed by the court.

(b) For supporting affidavit see Form 17.

FORM 106

(r. 45(1))

SUMMONS BY DEPENDANT UNDER SECTION 26 OF THE ACT BROUGHT AFTER GRANT HAS BEEN APPLIED FOR BUT NOT CONFIRMED*

(Heading as in Form 1)

LET ALL PARTIES CONCERNED (*continue as in Form 104*) for an order that, no grant of representation to the estate of the above-named AB who died on the, 19....., having been confirmed, such reasonable provision be now made for the applicant as a dependant of the deceased out of his net estate as the Court thinks fit and that the costs of this application be provided for, which application (*continue as in Form 104*).

Dated) (*As in Form 104*).

Issued)

Address for service (*as to Form 2*)

*If necessary, the applicant may in the same application submit a claim on behalf of the infant children of the deceased. If a grant has been obtained but not confirmed this form is appropriate but if a grant has been obtained and confirmed no application under section 26 can be brought. If a grant has not been applied for the application under section 26 should be by petition (*see Form 96*).

FORM 107

(r. 44 (1))

SUMMONS FOR REVOCATION OR ANNULMENT OF GRANT*

(Heading as in Form 1)

[Subsidiary]

LET ALL PARTIES CONCERNED attend the Judge in Chambers on the, 19..... at o'clock in the noon on the hearing of an application on the part of CD the executor of the last will (and codicil) (*or* the administrator of the estate) of the above-named AB who died on the, 19....., for an order that the grant of probate (*or* letters of administration) to CD made on the 19....., be revoked (*or* annulled) on the ground that (*set out as in section 76 of the Act*), which application (*continue as in Form 104*).

Dated) (As in Form 104).

Issued)

Address for service (*as in Form 2*)

*This summons must be issued in the High Court.

FORM 108

(r. 40(1))

SUMMONS FOR CONFIRMATION OF GRANT*
(GENERAL FORM)

(Heading as in Form 1)

LET ALL PARTIES CONCERNED attend the Judge/Resident Magistrate in Chambers on the, 19.....at o'clock in the noon on the hearing of an application on the part of CD the executor of the last will of (*or* administrator of the estate of) the above-named AB who died on the 19....., for orders:-

1. That the grant of probate (*or* letters of administration intestate (*or* with will annexed)) made to the said CD in this matter on, 19....., be confirmed.
2. That the costs of this application be costs in the cause.

Which application (*continue as in Form 104*).

Dated) (As in Form 104).

Issued)

Address for service (*as in Form 2*)

*For supporting affidavits see Forms 8 and 9.

FORM 109

(r. 40(2))

**SUMMONS FOR CONFIRMATION OF A GRANT
WITHIN SIX MONTHS UNDER SECTION 71 (3) OF THE
ACT**

(Heading as in Form 1)

LET ALL PERSONS CONCERNED (*continue as in Form 104*) for an order that the grant of probate (*or* letters of administration (intestate)) made to the applicant by this Honourable Court in this cause on the, 19....., be confirmed notwithstanding that six months from the date of the grant shall not have expired and that the costs of this application be paid out of the estate, which application (*continue as in Form 104*).*

Dated) (*As in Form 104*).

Issued)

Address for service (*as in Form 2*)

*For form of affidavit see Form 18.

FORM 110

(r.43 (1))

SUMMONS FOR RECTIFICATION OF GRANT

(Heading as in Form 1)

LET ALL PARTIES CONCERNED (*continue as in Form 104*) on the hearing of an application on the part of CD the executor of the last will (and codicil) (*or* the administrator of the estate) of the above-named AB who died on the, 19....., for orders:-

1. That the grant of probate (*or* letters of administration) issued to the said CD in this matter on the, 19....., be rectified in the following respects as provided for by Rule 43 (1) of the Probate and Administration Rules (*set out in full the desired rectification*).
2. That the costs of this application shall be provided for.

Which application (*continue as in Form 104*).

[Subsidiary]

Dated) (as in Form 104)
Issued)

Address for service (as in Form 2)

FORM 111

(r. 40(5))

**WARNING TO CAVEATOR OF APPLICATION FOR
CONFIRMATION OF GRANT**

(Heading as in Form 1)

To: (name) whose address for service is
(state) and who has entered a caveat in
the estate of the above-named AB who died on the.....,
19.....:

YOU ARE HEREBY WARNED that –

1. An application for the confirmation of the grant of probate (or letters of administration) made to CD of on the
....., 19..... was made by (name)
on the, 19.....
2. If you wish to challenge such proposed confirmation you must file an affidavit of protest in the prescribed form* in the Principal Registry of the High Court at Nairobi within fifteen days from the receipt hereof.

AND TAKE NOTICE that in default of your so doing the said grant may be confirmed notwithstanding your caveat.

Dated the, 19.....

.....
Principal Registrar

*See Form 10.

FORM 112

(r. 15(9))

**WARNING BY PRINCIPAL REGISTRAR TO CAVEATOR
OF APPLICATION FOR THE MAKING OF A GRANT**

(Heading as In Form 1)

[Subsidiary]

To: (Name) whose address for service is (state) and who has entered a caveat in the estate of the above-named AB.

YOU ARE HEREBY WARNED that --

- 1. An application for the making of a grant of representation to the estate of the above-named AB who is stated to have died on the, 19..... has been filed in the Registry by (name of applicant)
2. If you wish to object to the making of such grant you must lodge your objection in the Principal Registry of the High Court at Nairobi within days* from the date hereof inclusive of such date.

AND TAKE NOTICE that in default of your so doing the said grant may be made notwithstanding your caveat.

Dated the, 19.....

Registrar

*The period allowed by the registry must be not less than 30 days and may be longer for reasons to be recorded: ss. 67 (1) and 68 (1) of the Act; r.15(9).

ALPHABETICAL INDEX OF FORMS-(Contd.)

Table with 3 columns: Subject Matter, Relevant rule, Number of form. Rows include GENERAL HEADINGS and ADDRESS FOR SERVICE, AFFIDAVIT formal portions, in support of petition by dependant of deceased under section 26 of the Act, in support of petition for probate or for letters of administration with written will annexed, in support of petition for proof of oral will, in support of petition for letters of administration.

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[Subsidiary]

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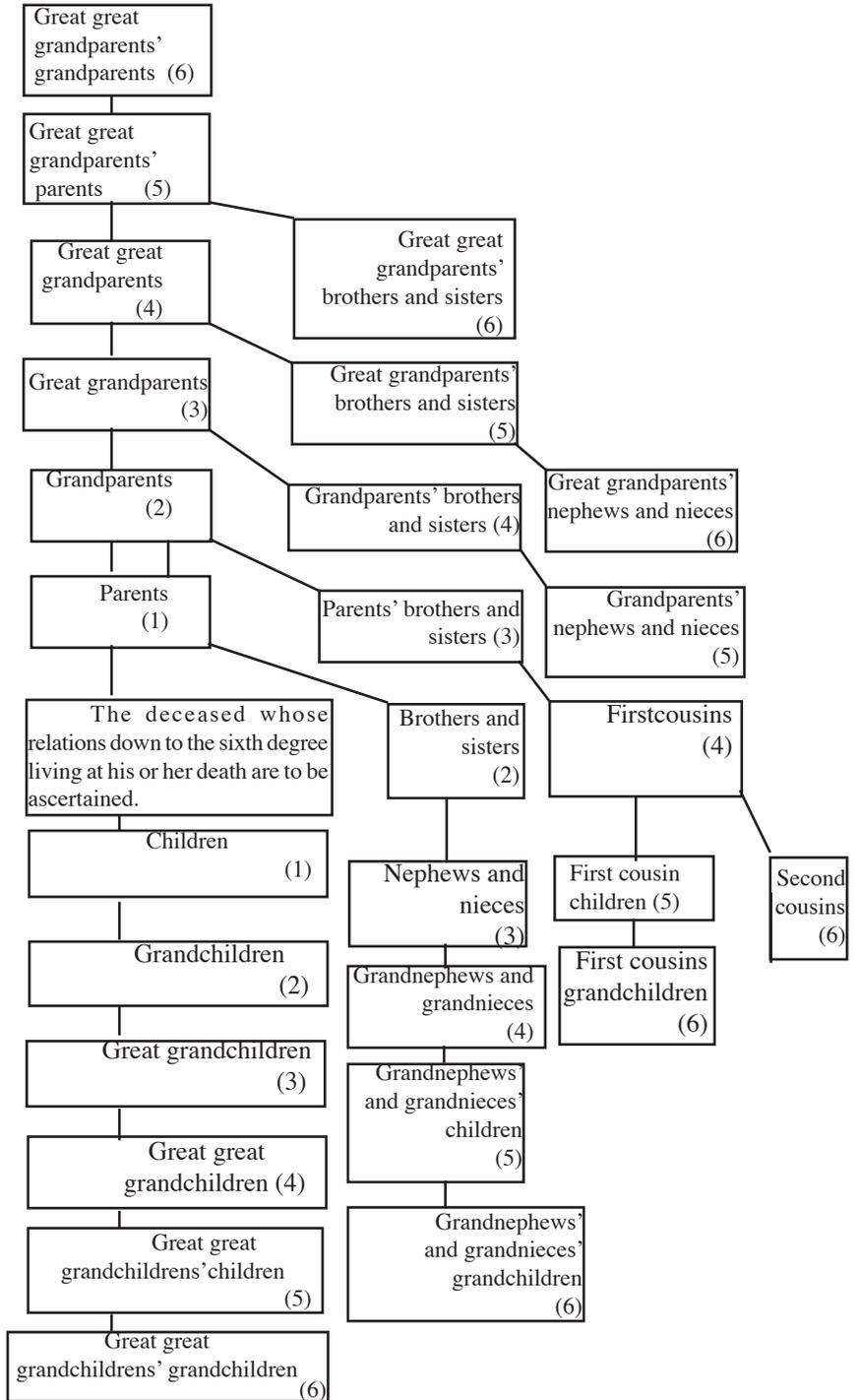
<i>Subject Matter</i>	<i>Relevant rule</i>	<i>Number of form</i>
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[Subsidiary]
(r.7(1)(e)(iii))



[Subsidiary]

1. The purpose of this Schedule, which applies only in a case of whole or partial intestacy, is to enable effect to be given to section 39 (1) (e) of the Act and rule (7)(1) (e) (i). In the table the word “children” and cognate terms must be accorded, in addition to their strict meaning, the extended meanings provided by section 3 (2) and (3) of the Act. The construction afforded by paragraph 20 of the First Schedule to the Act to the word “child” has application only to the construction of wills.

2. In addition the undermentioned terms have the meanings shown

–
 “first cousin” means the child of an aunt or uncle of the deceased;
 “nephew” and “niece” means a child of a brother or sister of the deceased;

“second cousin” means a grandchild of a grand aunt or grand uncle of the deceased,

and unless otherwise indicated references are to persons of either sex and of any age, e.g. the word “parent” includes both father and mother and “children” includes both sons and daughters.

3. The figures in brackets against each relative indicate the degree of consanguinity of that person from the deceased.

4. In determining the degree of consanguinity of a person from the deceased by tracing through an intermediate relative it is not necessary that such relative was living at the death of the deceased, e.g. a grandchild of the deceased living at the latter’s death would be included among the relatives notwithstanding that his parent (i.e. the deceased’s child) had died before the deceased.

L.N.295/1995.

THIRD SCHEDULE

TABLE OF COURT FEES

	<i>Sh.</i>	<i>cts</i>
1. Sale of forms: per form	5	00
2. On depositing a will of a living person otherwise than under rule 6(4)	500	00
3. On withdrawing from deposit or inspecting a will of a living person	300	00
4. On depositing a will or certified copy of a will of a deceased otherwise than under rule 6(4)	300	00
5. On a petition for a grant of any nature ..	500	00

In addition the petitioner shall pay the actual charge for advertisement [Subsidiary] of the petition in the *Kenya Gazette*.

6. On every declaration or oath (this fee to be chargeable in respect of each declarant or deponent even if all subscribe on the same document)	150	00
7. On filing every surety or security bond (to be stamped before presentation at the registry)	300	00
8. On filing any account	250	00
9. On passing any account for each hour or part thereof occupied in registry	400	00

Provided that the sums levied in respect of items 5 to 9 (inclusive) shall not in the aggregate exceed 15 per cent of the apparent net value of the estate.

10. On every notice of amendment or withdrawal of an application for a grant	300	00
11. On entering a caveat (r. 15(2))	500	00
12. On lodging of an objection (r. 17(1))	750	00
13. On filing an answer and petition (r. 17)	400	00
14. On filing an amended answer and petition (r. 17(8))	300	00
15. On filing a notice of withdrawal of an answer or objection (r. 17(7), (9))	400	00
16. On every citation	350	00
17. On every summons	250	00
18. On every order for the issue, confirmation, sealing, rectification or revocation of grant	200	00
19. On filing an affidavit	100	00
20. On depositing a grant in connection with an application for letters of administration <i>de bonis non</i> or otherwise	300	00
21. For every communication or series of communications in the same matter with a court in any other country sent by a registry at the request of any party	300	00
22. On filing an estate certificate or a certificate of value and other necessary documents	75	00

[Subsidiary]

- | | | | |
|------------|---|----|----|
| 23. | For preparing photocopies of documents per page | 10 | 00 |
| 24. | For certifying photocopies of documents (including sealing, if necessary): per page .. | 30 | 00 |
| 25. | For inspecting documents in a registry: per document | 25 | 00 |
| 26. | Fees not herein provided to be charged as in Section I of the Schedule to Part IX of the High Court (Practice and Procedure) Rules. | | |