

# SUCCESSION AND WILLS ACT

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## SUCCESSION AND WILLS ACT

### PART I – GENERAL

#### 1. Short title

This Act may be cited as the Succession and Wills Act.

#### 2. Interpretation

In this Act—

“clerk” means a clerk attached to a District Court;

“Court” means the Supreme Court;

“notary” means the notary appointed to make the inventory of a succession.

#### 3. – 18. —

#### 19. Partitions

Where the partition of a succession must be made judicially (*en justice*), in the cases provided for by articles 823 and 838 of the Code Civil Mauricien, the partition shall be effected in conformity with the procedure provided in this Act.

#### 20. Notary appointed on application

(1) On an application by or on behalf of an heir, a surviving spouse, testamentary executor, donee, universal legatee, legatee *à titre universel* or creditor, the Judge may appoint a notary to make the inventory of a succession.

(2) On an application under subsection (1), the Judge may appoint a notary if he is satisfied that all the heirs have had notice of the application and do not object to it, or he may issue a summons calling on them to appear and show cause against the application.

(3) Where there is an opposing creditor (*créancier opposant*), notice of the application shall be given to that creditor.

#### 21. Appointment of notary by Judge

(1) On the return day, the Judge may dismiss the summons or may appoint the notary selected by the parties or, where they do not agree, one selected by himself.

(2) (a) Where the summons is dismissed, costs may be awarded against the applicant.

(b) In no case shall any costs, except those incurred by the applicant to obtain the appointment of a notary, be made costs of succession.

(3) In the order of appointment, the Judge shall fix a day for beginning the inventory.

#### 22. Powers of notary

The notary appointed to make the inventory of a succession may, by virtue of his appointment, also sell the movable property.

### **23. Removal of seals and inventory**

On the day fixed for the inventory, the seals, if any, shall be removed by the clerk, in presence of the notary and such of the parties as attend, and the notary shall proceed to make the inventory of the goods and effects of the succession.

### **24. Rules concerning removal of seals**

(1) The production to the clerk of the Judge's order appointing a notary under section 20 shall be sufficient authority for the clerk to remove the seals without any further formality.

(2) Where any of the heirs is a minor, the seals shall not be removed until that heir has been provided with a guardian.

(3) Any of the parties mentioned in section 20 may appear at all stages of the removal of seals and inventory, either in person or at his own cost by an agent or attorney.

(4) The clerk shall draw up a memorandum of the removal of seals, in which shall be mentioned—

- (a) the date;
- (b) the names and residence of the party requiring the removal of seals;
- (c) the names and residences of parties appearing; and
- (d) whether the seals are intact or otherwise, and where they are not intact, a description of the condition in which they are found.

(5) (a) The seals shall be removed successively, and in proportion, as the inventory advances.

(b) They shall be affixed again whenever an adjournment of the inventory takes place.

(6) (a) Where papers and goods not belonging to the succession are found, and such papers or goods are claimed by a person, they may be delivered to that person, but that fact shall be mentioned in the memorandum of removal of seals.

(b) Where such papers and goods cannot be immediately delivered, and where it is necessary to give a description of them, the description shall be given in the memorandum of the removal of seals, and not in the inventory.

### **25. Rules concerning inventory**

(1) The inventory shall, in addition to other formalities required for the validity of notarial deeds, contain—

- (a) the names, professions, and residences of the heir, surviving spouse, testamentary executor (when the will is known), universal donee, universal legatee or donee, or any legatee *à titre universel*;
- (b) the names, profession and residence of the parties who have applied for the inventory, of those who appear, of those who leave default, and of those who are absent from Mauritius, if they are known;
- (c) an indication of the place where the inventory is made;
- (d) the description and valuation of the goods and effects, except that, in the case of jewels and works of art, it shall not be necessary to employ an auctioneer or appraiser for the purpose of making the valuation; and
- (e) mention of all debts declared to be due by or to the succession.

(1A) (a) The documents covered by the inventory shall be numbered and initialled by the notary.

(b) Where there are business books and registers, each page shall be numbered, and the books or registers initialled.

(c) Where a page partly written over or blank has been left, lines shall be drawn across the blank space.

(d) Where it is necessary to hand over the effects and papers to a person for safe custody, the fact shall be recorded.

(e) The custodian shall be selected by the parties and, where they cannot agree, by the notary.

(2) (a) Where, during the inventory, a difficulty arises between the parties which prevents the notary from proceeding, he shall draw up a memorandum of the fact, with the objections and statements of parties, and shall advise them to appear on a day to be fixed by him before the Judge.

(b) On the day fixed, the notary shall submit his memorandum to the Judge who shall proceed as provided in section 28.

## **26. Partition à l'amiable**

(1) A partition à l'amiable may be made in any case in the manner and under the conditions prescribed in section 116 of the Sale of Immovable Property Act.

(2) An heir, donee or legatee under benefit of inventory making such a partition shall not thereby lose his capacity of heir, donee or legatee under benefit of inventory.

## **27. Sale of movable property**

(1) (a) As soon as possible after the inventory has been closed, if the sale of the movable property is necessary under article 826 of the Code Civil Mauricien, the notary shall fix a place and time for the sale of the movable property, and he shall also publish, in 2 or more daily newspapers, notices of the time and place, with or without a description of the goods to be sold, as he thinks best in the interest of the succession.

(b) The notary may alter the time and place thus fixed, and issue fresh notices, where such a course appears to him necessary or advisable.

(2) On the day fixed, whether the heirs attend or not, the notary shall sell the movable property by public auction.

(3) (a) The notary may himself sell the movable property, or he may employ an auctioneer or a broker or both, as the nature of the articles to be sold render necessary.

(b) Where the sale is effected by the notary himself, no larger sum shall be allowed to him on taxation, for his expenses, disbursements and fees in connection with the sale, than would have been payable if an auctioneer or broker had been employed.

## **28. Objection to sale**

(1) Where on or before the day fixed for the sale, a majority of the parties object to the sale, the notary shall draw up a memorandum of the fact, and shall warn the parties to attend on a day to be fixed by him before the Judge.

(2) (a) On the day fixed, the notary shall submit his memorandum to the Judge who, after hearing the parties, if any appear, shall decide on the objection, and may give such order as may be necessary in the interest of the succession.

(b) In deciding on any such objection, the Judge may order the costs of the incident, and of any fresh notices of the sale and other expenses rendered necessary by the incident, to be borne by the unsuccessful parties.

(c) In no case shall the costs of the incident be made costs of the succession.

(d) Where it appears to the Judge that an heir interested in the question raised has not received notice, the Judge may order notice to be given to such party.

## **29. Notary for partition**

(1) (a) On the application of a party entitled to move for the partition of succession, the Judge may appoint a notary to effect the partition and liquidation of the succession.

(b) Sections 20 and 21 shall apply to an application under paragraph (a).

(2) Where the Judge appoints a notary to make the inventory under section 20, the Judge may, if all parties are represented, at the same time, appoint that notary to effect the partition and liquidation of the succession.

(3) In the order appointing the notary to make the partition, the Judge shall fix a day for the commencement of the partition.

## **30. Sales before Master**

Where it is necessary to sell the immovable property, the sale shall take place before the Master in the manner prescribed by the Sale of Immovable Property Act.

## **31. Distribution where notary appointed**

(1) (a) The sale price may be distributed by the Master in conformity with the Sale of Immovable Property Act where there are any creditors inscribed on the property.

(b) In the case of such a distribution, if, after collocation of the creditors, a balance is left in favour of the succession, the Master shall collocate the succession for that balance, without naming or describing the heirs or parties entitled to it, and such balance shall be divided by the notary as part of the assets.

(2) Where there are no inscribed creditors, no attribution of price or other mode of distribution shall take place before the Master, but the sale price shall be distributed by the notary as part of the assets of the succession, and for that purpose the Master shall forward to the notary the certificate received by him from the Conservator of Mortgages under section 170 of the Sale of Immovable Property Act.

## **32. Distribution where no notary appointed**

Where a notary has not been appointed to make the partition, the Master may proceed to divide the sale price in conformity with the Sale of Immovable Property Act.

## **33. Proceedings before notary**

(1) The notary will act alone, without the assistance of a second notary or witnesses.

(2) Where any objection is made, the notary shall draw up a memorandum of the objection, and shall advise the parties to appear on a day to be there and then fixed by him before the Judge.

## **34. Objection to partition**

(1) (a) On the day fixed by the notary for appearance before the Judge, the notary shall submit his memorandum and other documents produced before him to the Judge who, after hearing the parties or such of them as appear, shall decide on the objection, and may make such order as he thinks fit.

(b) The costs of the incident shall be borne by the unsuccessful party, and shall in no case be made costs of partition.

(2) (a) On the motion of an heir whose interest in the question or objection raised exceeds 1,000 rupees, the Judge shall refer the matter to the Court, and shall then fix a

day for the appearance of the parties.

(b) On the day fixed, the parties shall appear before the Court without any summons, and the Court shall then, or on any subsequent day that may be appointed, hear and decide on the objection, and shall deal with the costs in the manner prescribed in subsection (1).

### **35. Notice to heirs**

(1) Where the deed has been completed, the parties shall be summoned to appear before the notary, on a day to be fixed by him, for the purpose of taking cognisance of the deed, and signing it if they are able and willing to do so.

(2) (a) On such day, if any party objects to the deed, or if minors are concerned, the notary shall advise the parties or such of them as attend that, on a day to be then and there fixed by him, the deed of partition will be submitted to the Judge for homologation.

(b) The notary shall also draw up a memorandum of the appearance of the parties and of any objection made.

### **36. Homologation**

(1) (a) In the case provided for in section 35 (2), the notary shall lay before the Judge the deed of partition, together with any memorandum drawn up by him, and the Judge, after hearing any of the parties who attend on the day fixed by the notary, or any other day appointed by the Judge, and after reference to the Ministère Public where minors are concerned, may homologate the deed of partition.

(b) The costs occasioned by an objection raised before the Judge shall be dealt with as provided in section 34 (1).

(2) Section 34 (2) shall apply to proceedings before the Judge under subsection (1).

## **PART II – SMALL SUCCESSIONS**

### **37. Small successions**

(1) Where application is made for the appointment of a notary, the Judge shall require proof, by affidavit or otherwise, of the value of the assets of the succession, and where the Judge is satisfied that the assets are not likely to exceed 6,000 rupees, he shall order the succession to be liquidated as a small succession, and that succession shall then be deemed a small succession, even if the assets subsequently are found to exceed 6,000 rupees.

(2) (a) The notary appointed to make the inventory of a small succession may also sell the movable property and effect the liquidation and partition of the succession.

(b) In the order of appointment, the Judge shall fix a day for the commencement of the partition.

(3) In the case of a small succession, this Act shall apply subject to the modifications contained in sections 38 to 56.

### **38. Movable property may be divided in kind**

(1) (a) Where it is not necessary to sell the movable property for payment of the debts and the inventory has been completed, the parties may, by consent, divide such property among themselves without any further formality.

(b) (i) Where minors are concerned, the guardian must be authorised by the Ministère Public to consent to the division.

(ii) The authority shall be given in writing at the foot of the proceipe or other application in which the terms of the proposed division are set out.

(2) (a) Where the majority of the parties consent to the division, the notary may, where he considers that a division in kind of the movable property is practicable and expedient, divide the property in kind among the heirs.

(b) (i) Where minors are concerned, no such division shall be valid unless the Ministère Public approves it.

(ii) The approval shall be given in writing at the foot of the memorandum of division drawn up by the notary.

### **39. Immovable property may be divided in kind**

(1) Subject to this section, the immovable property may be divided in kind where all the heirs consent to the division.

(2) (a) A land surveyor selected by the heirs may proceed to make the division and to mark out the proposed lots.

(b) Where the parties agree to distribute among themselves the lots as marked out, the surveyor shall draw up a memorandum and plan with all the formalities prescribed by the Land Surveyors Act.

(c) Where minors or interdicted persons are concerned, the surveyor shall submit his memorandum to the Ministère Public for approval.

(d) The memorandum shall be drawn up in triplicate, and one minute shall be filed by the surveyor in the Master's office.

(3) (a) Where the parties do not agree as to the distribution of the several portions as marked out by the surveyor, the surveyor shall advise them to attend, on a day to be there and then fixed by him, before the Magistrate of the district where the property is situated, and he shall forward a minute of his memorandum of survey and plan to the Magistrate.

(b) Where the Magistrate is satisfied that the proposed division is a fair and proper one, he shall *ex officio* in his chambers cause the several portions to be drawn by lot in his presence, and in the presence of the parties or of such of them as attend.

(c) Where a party fails to attend, the Magistrate may cause that party to be summoned by the District Court usher, and there shall be paid to the District Court concerned the fees prescribed by the Legal Costs and Fees Regulations 2000 for such service.

(d) Where the drawing by lot has taken place, the Magistrate shall award to each heir the portion drawn by or for him, and he shall record such drawing and award at the foot of the memorandum of survey, which he shall forward to the Master's office to be filed there, after causing a copy of such memorandum and award, duly signed by him, to be filed as one of the records of his Court.

(4) The memorandum drawn up by the surveyor, and approved by the Ministère Public, where that approval is required under subsection (2), and the award of the Magistrate after a drawing by lot under subsection (3), shall be binding on all parties and shall have the effect of a valid partition, even where minors are concerned.

(5) A division of immovable property may be made under this section and shall be valid, whether or not a notary has been appointed, where the surveyor certifies in his memorandum that the value of the property divided does not exceed 6,000 rupees.

### **40. Partition à l'amiable**

(1) Subject to subsection (2), the heirs may make a partition *à l'amiable* of movable and immovable property, even where some or all of them are minors or absent if they are legally represented, without it being necessary to draw lots or to comply with article 832 of the Code Civil Mauricien.

(2) (a) Before the partition, an inventory shall be made by the notary under this Act,

and a valuation of the movable and immovable property shall be made, by a competent person appointed by the Judge, on the joint application of all the heirs.

(b) A memorandum of the proposed partition drawn up by the notary shall be accepted by the parties of age and the guardians of any minors.

(c) Where minors are concerned, the partition shall be subject to the approval of the Ministère Public.

#### **41. Sale price distributed by notary**

(1) Where immovable property forming part of a small succession is sold before the Master, no distribution of the sale price shall take place before the Master if a notary has been appointed, but the sale price, even where there are creditors inscribed on the property, shall be distributed by the notary as part of the assets of the succession, after notice to the inscribed creditors under section 52.

(2) Where the amount of the inscriptions exceeds the sale price, or conflicting claims have to be adjudicated upon, the notary shall certify to the fact, and it shall then be competent for an interested party to take proceedings for the distribution of the price before the Master, in conformity with the Sale of Immovable Property Act, and the price shall not be deemed part of the assets for the purpose of fixing the notary's fees.

#### **42. Close of partition**

(1) It shall not be necessary to summon the parties to appear before the notary for the purpose of taking cognisance of the deed of partition, but the notary shall, by letter delivered into the hands or at the residence of the parties, advise them to attend.

(2) Where a person who has not accepted the deed fails to attend on such notice by letter, the notary may require the more diligent party to summon the other party, and the costs of summoning the party shall be costs of partition.

#### **43. Homologation where not necessary**

(1) Where the partition is accepted by all the parties of age, but minors are concerned, the deed of partition shall be submitted by the notary to the Ministère Public, and, where it is approved by the Ministère Public, the partition shall be valid and binding on the minors without further formality.

(2) Where the Ministère Public refuses to approve the deed, the more diligent party may move the Judge for homologation of the deed of partition.

#### **44. No dues chargeable on sales before Master**

(1) Where immovable property forming part of a succession, whatever the amount of the total assets of the succession, is sold for not more than 6,000 rupees, none of the fees receivable by the Master, under the Legal Costs and Fees Regulations 2000 for the sale of immovable property and the distribution of money shall be chargeable.

(2) Where several properties of the same succession are sold for more than 6,000 rupees, the fees for distribution of money shall be chargeable if any distribution is made by the Master, but the fees for sale of immovable property shall not be chargeable in connection with any property which is sold for not more than 6,000 rupees.

#### **45. Notice in *Gazette***

In all proceedings concerning a small succession in which, but for this provision, a notice in the *Gazette* would have to be published, such notice shall not be necessary.

#### **46. Service by District Court Ushers**



Where service of process in connection with a small succession has to be made in a district other than Port Louis, the service may be made by the District Court Usher, and where it is made by an usher of the Supreme Court the usher shall not claim any further sum than would have been claimable for fee and travelling allowance by the District Court Usher.

#### **47. Succession under 3,000 rupees**

(1) (a) Where on application for the appointment of a notary under section 20, the Judge is satisfied, on affidavit or other proof, that the assets are not likely to exceed 3,000 rupees, he shall *ex officio* appoint a notary liquidator of the succession.

(b) After the appointment of a notary liquidator, it shall not be necessary to follow any of the formalities prescribed by this or any other enactment, but the notary may effect the partition and liquidation of the succession under sections 48 to 56.

(2) A similar order may be made on the *ex parte* application of an interested party.

(3) (a) After the issue of an order under subsection (1) or (2), all proceedings for the sale by licitation or the judicial sale of an immovable property forming part of the succession shall *ipso facto* lapse, and no costs shall be allowed for the proceedings as costs of succession, unless the Judge has otherwise decreed in the order appointing the liquidator.

(b) Where proceedings for a licitation or judicial sale are pending when application is made for the appointment of a liquidator, the applicant shall give notice of his application to the party at whose request the licitation or judicial sale is prosecuted, so as to enable that party to claim the costs already incurred by him.

(c) Where the order appointing a liquidator issues, after expiry of the time fixed by section 102 of the Sale of Immovable Property Act for filing objections to the memorandum of charges, the proceedings for licitation or judicial sale shall continue.

#### **48. Inventory to be made by liquidator**

(1) (a) In the order appointing a liquidator, the Judge shall fix a day for making the inventory.

(b) Where the order has been made *ex parte*, the notary shall give notice to the heirs of the day fixed for the inventory in the manner provided in section 52.

(2) Where the inventory shows that the assets exceed 3,000 rupees, the notary shall have no further power to act as liquidator, and sections 49 to 53 shall no longer apply.

#### **49. Powers of liquidator**

The liquidator appointed under section 47 may—

- (a) claim and sue for all sums due to the succession and give receipts for those sums;
- (b) consent to the removal of inscriptions and attachments with or without payment;
- (c) pay the debts of the succession;
- (d) represent the succession in all judicial or extrajudicial proceedings for or against the succession and compromise all claims, debts or actions;
- (e) without any judicial formality being necessary, even where minors are concerned, but subject only to the direction and control of the Ministère Public, divide in kind or sell the movable and immovable property; and
- (f) distribute the assets among the persons entitled.

## **50. Effect of appointment of liquidator**

(1) The liquidator, immediately after the inventory has been completed, shall publish in 2 daily newspapers a notice informing all heirs, creditors or other parties interested that he has been appointed liquidator, and calling upon them to give him notice of any claims they may have within a time to be fixed in the notice.

(2) Subject to subsection (3), after the publication of the notice, no heir or other party interested, nor a creditor of such heir or of such party or of the succession, shall sue for the sale of an immovable property forming part of the succession, or take any judicial proceedings with a view to the liquidation or partition of the succession, and no creditor of the succession shall enter any action against the succession, or attach or seize any movable or immovable property belonging to the succession, unless he has given notice of his claim to the liquidator, and the liquidator has refused to admit the claim.

(3) A creditor, holding a mortgage or privileged claim duly inscribed, may seize the property if, within 8 weeks from the publication of the notice, the sale of the property has not taken place.

## **51. Sale of immovable property by liquidator**

(1) Where a sale of the immovable property is necessary, the property shall be sold by public auction by the liquidator, after notice in 3 daily newspapers, and not less than 14 days after the publication of the last notice.

(2) (a) An adjudication by the liquidator shall have all the effects of a final adjudication by the Master under the Sale of Immovable Property Act.

(b) The purchaser shall be exonerated, and liberated, from all privileged and mortgage claims on the property, by paying his purchase price to the liquidator.

(c) The Conservator of Mortgages, on production to him of a certificate signed by the liquidator to the effect that the purchaser has paid the sale price and that the price has been distributed, shall forthwith erase all inscriptions burdening the property, and shall not charge any fee or due payable to Government for erasure of inscriptions.

(3) (a) A party may, within 8 days of the sale, make an outbidding of one sixth of the sale price.

(b) Such party shall deposit with the notary one sixth of that sale price.

(4) The price shall be distributed by the liquidator as part of the assets of the succession, after notice to any inscribed creditors under section 52.

## **52. Notice to inscribed creditors**

(1) Where it is necessary to give notice to an inscribed creditor, the notice may be given by the notary, by registered letter delivered at the domicile elected in the inscription, or at the actual domicile, where the elected or actual domicile is in Port Louis, or in a locality where the postal service undertakes to carry a registered letter to the address indicated.

(2) Where the domicile is in a locality where the postal service does not undertake to carry a registered letter to the address indicated, the notary shall forward the notice to the clerk of the Court of the district in which the creditor is domiciled, and the clerk shall cause the notice to be served by the District Court Usher, and there shall be paid to the District Court concerned the fees prescribed by the Legal Costs and Fees Regulations 2000 for such service.

## **53. Distribution by liquidator**

(1) The notary shall draw up a memorandum of the distribution of the assets of the succession, and the memorandum, when accepted by the parties, and approved by the

Ministère Public, shall be as valid, even where minors are concerned, as a deed of partition homologated by the Court.

(2) Where a party fails to attend before the notary to take cognisance of the memorandum of distribution, after being requested so to do by the notary, he may give notice to such party and summon him to appear as provided in section 52.

(3) Where a party objects to the distribution, section 33 (2) and section 34 (1) shall be followed.

#### **54. Assets under 3,000 rupees**

Where the assets of a succession do not exceed 3,000 rupees, no fees or due shall be payable to Government for—

- (a) appointment of a notary and any other proceedings before the Judge;
- (b) affixing or removal of seals;
- (c) erasure and inscription of mortgages and certificates of the Conservator of Mortgages.

#### **55. Appointment of attorney for liquidation**

In the cases provided for by sections 47 to 54, the Judge shall, on the *ex parte* application of an interested party, appoint the applicant's attorney, if the applicant is represented by an attorney, or may, if the applicant is not represented by an attorney, appoint *ex officio* an attorney to carry on all the proceedings which may be required in order to arrive at the appointment of a notary to effect the partition and liquidation of the succession.

#### **56. Fees payable to attorney**

(1) An attorney shall be entitled, for anything done by him under sections 20 to 62, to his fees and disbursements as allowed by the table of costs applicable to attorneys in Court, provided that the total amount of the fees to be paid to him shall not be more than 7 per cent, where the assets of the succession do not exceed 500 rupees, and not more than 5 per cent, where the assets exceed that amount.

(2) Where litigation arises out of the liquidation of the succession, the attorney shall be allowed his usual taxed costs in respect of that litigation.

### **PART III – MISCELLANEOUS**

#### **57. Fees not to exceed percentage of assets**

(1) A notary shall, for anything done by him under sections 20 to 61, be entitled to fees and disbursements in accordance with the tariff of notaries, but the total amount of fees payable to a notary for all proceedings connected with a partition under this Act shall in no case exceed 5 per cent of the assets of the succession, including any charge or fees paid to an auctioneer or broker employed to sell the movable property under section 27.

(2) The notary's bill shall be taxed by the Registrar, subject to revision by the Judge.

#### **58. Licitations of immovable property**

(1) Except as provided in sections 47 to 56, an heir or other party entitled so to do may sue for the licitation of an immovable property belonging to the succession, in conformity with the Sale of Immovable Property Act.

(2) Sections 31 and 41 shall apply to the distribution of the sale price.

**59. Power of clerk to affix seals**

(1) Where it is necessary to affix seals, the seals may be affixed by the clerk on an order of the Magistrate.

(2) Where the Magistrate is absent, the clerk may affix seals without order.

**60. Sums received by notary**

The provisions of the Notaries Act as to the receipt by a notary of sums belonging to a succession, and the deposit of such sums into the Treasury, shall apply to sums received by a notary under this Act.

**61. Partitions between spouses and partners**

This Act shall also apply to the partition of a community of goods having existed between husband and wife and to partitions between partners.

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