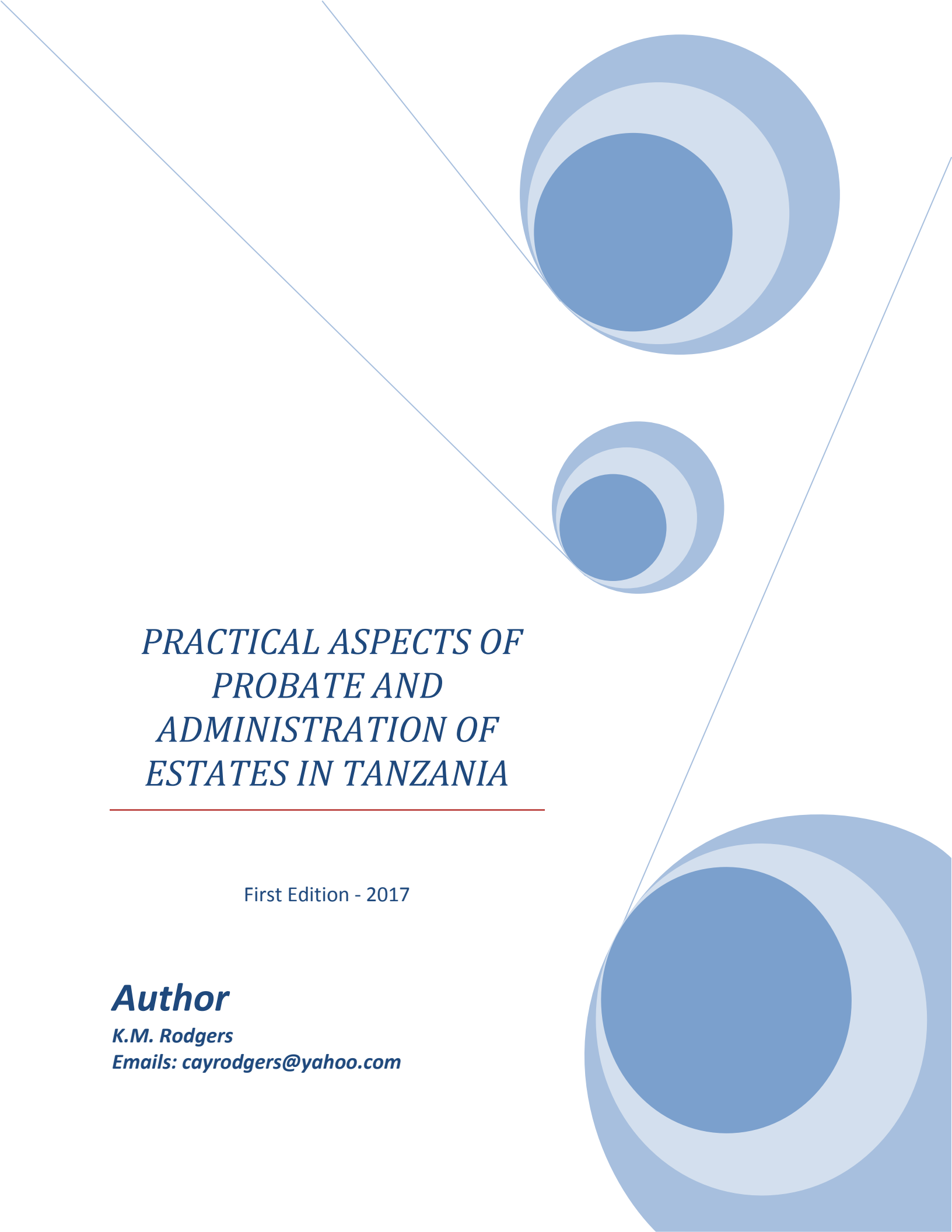


A decorative graphic on the right side of the cover features three concentric blue circles of varying sizes. Two thin blue lines intersect at a point on the left, extending towards the top right and bottom right corners of the page.

PRACTICAL ASPECTS OF PROBATE AND ADMINISTRATION OF ESTATES IN TANZANIA

First Edition - 2017

Author

K.M. Rodgers

Emails: cayrodgers@yahoo.com

Copyright

No part of this publication may be reproduced or transmitted in any form or by any means including photocopy without the permission of the publisher



Copyright 2017 Kelvin Rodgers All rights reserved

ACKNOWLEDGEMENT

In preparing of this Article, i would like to express my gratitude to almighty God for his blessings, mercy and his deep love toward me for giving me a gift of a life and ability to come up with this great work.

Much respect goes to my dearest parents Mr. & Mrs. Rodgers Mayners for their love and advice that inspired me to dig deep and come up with this article.

It would be unforgivable not to thanks all those who have assisted me but their names do not appear in this work, i appreciate their moral and other form of assistances.

ABSTRACT

In this Article, there will be a discussion on only practical aspects of probate and administration of estates in Tanzania excluding theory aspects, by covering the aspect of protection of estates pending grant, application for grant of probate, application for grant of letters of administration, renunciation of executors and administrators, procedure in revocation of grants, procedure for resealing of grants of probates and letters of administration and procedure in contentious proceedings.

Therefore to be in a better position to understand this article of practical aspects of probate and administration of estates in Tanzania, one must be acquainted enough with the theory aspects of probate and administration of estates in Tanzania together with the governing laws.

INTRODUCTION

Probate and administration of estates is one among the branches of law which deals with the inheritance of property(s) and creation of trust therein. In this context, inheritance means a transmission or devolution of property(s) upon death, in other words it can be said that, when a person dies it brings about the transmission of the deceased rights and obligation to the survivors. One must know that, for there to be a succession or inheritance, there are key important factors that must exist, which are;

- ❖ Death of the deceased person
- ❖ Heirs or beneficiaries
- ❖ Property(s) or estate left by the deceased person
- ❖ Devolution of property to the beneficiaries
- ❖ Probate or letters of administration duly granted by the competent court.

In the other jurisdictions, probate and administration of estates is known as the law of succession which is defined to mean a totality of legal rules which control the transfer of assets of deceased person that are subject to the distribution among the beneficiaries.

PROCEDURE IN PROTECTION OF ESTATES PENDING GRANTS

In some circumstances where it happens that, a person has just died and his estates are in danger of being wasted or damaged for example those property (s) are perishable goods such as dairy products, breads, tomatoes and such alike and yet there is no proper administrator(s) or executor(s) who has been appointed to administer such estates, the question remains what should be done to protect those perishable goods which are the estates left by the deceased person so that they will not be wasted or damaged in vain.

According to Section 10 and 11 of cap 352¹ and Rule 24 and 25², administrator general or any person who has an interest on the deceased estates, may make an application to

¹ Probate and administration of estates Act, cap 352

² Probate Rules.

competent court to be a receiver pending grant, by way of CHAMBER SUMMONS supported by an AFFIDAVIT.

In a chamber summons, may contain a two prayers which is a request to be appointed as a receiver pending grant and request of order of sale while in an affidavit will contain all reasons and grounds as to why you want the court to grant those orders. A sample of a chamber summons is found under *Form no. 4* and affidavit in *Form no. 6* found under the first schedule of the probate rules.

Once the court has appoint such applicant as a receiver pending grants that is to means, he will be as a temporary executor or administrator in awaiting for the real executor or administrator to make an application for the executorships or such alike in court so that he can administer all or a part of the estates of the deceased person, as we are going to see in the coming pages.

Example: A a deceased person who was doing a butcher business and selling tomatoes, all of a sudden he just die and in his Will he appointed B to be as his executor but B now is not available to make an application to the court to administer the estate and even if B was available the application would take sometimes before these goods of the deceased person can perish therefore C decide to make an application to the court to be a receiver pending grant in dealing only on these perishable goods by selling them await for B to make the application for executorships in court.

Note: in every Form under the schedule of probate rules must contain the heading which is the name of the competent court in which your cause will be referred to, its sample is in *Form no 1*. Therefore in drafting all the form you must adapt the heading set up in *Form no 1*.

PROCEDURE IN APPLICATION FOR GRANT OF PROBATE

Normally, this kind of application is done where the deceased person died and left a valid will, then accordance to Section 55 of Cap 352³ and rule 33⁴ the executor(s) will be the one to make an application to the court by using a PETITION FOR PROBATE which is **Form No. 18** which goes together with its verification **Form no 19**, these two forms are filled separately.

In Petition of probate, shall be accompanied by other documents such as the last will of the deceased and codicils if any, death certificate, affidavit as to the deceased domicile at the time of his death and the executor oath

Then according to rule 73, 75 and 76⁵ the procedure in court upon receive such application, the court will issue a general citation to public which is **Form no. 58** to see if there is any interesting party who will impose objection against the application within fourteen (14) days⁶, and if there is no objection after the expiration of those 14 days then, court will grant the probate.

Example: **A** died and left a Will behind stating that **B** to be his executor, then **B** will have to fill Form no 18 and 19 and accompany other documents so that to petition for probate and thereafter to start administer the estates of the deceased person if there will be no objection.

³ Probate and administration of estates Act, cap 352

⁴ Probate Rules.

⁵ Ibid

⁶ Rule 76, of Probate Rules

PROCEDURE IN APPLICATION FOR GRANT OF LETTERS OF ADMINISTRATION

Mostly, this kind of application is done where the deceased person died without leaving a will behind, but that is not only the case, there are other many circumstances where a person can apply for a letters of administration even if there is a will but such will happen to be a defective will or for the circumstances mentioned under Section 29 of cap 352⁷ which are;

- ❖ No executor is appointed by the will
- ❖ Executor has renounce their executorships
- ❖ Executor died before the deceased
- ❖ Executor died before obtaining probate. Etc

Before making an application for the letters of administration, there are some essential steps which are appropriate to be followed,

First, there must be a clan/family meeting, where in this meeting the agendas that will be discussed are the appointment of the administrator, identification of deceased properties, to identify the beneficiaries, to identify the mode of life of the deceased and his intention so that to know the laws applicable.

Second, identification of proper court, where the matter will be taken, and this is done where the mode of life test of the deceased is knowingly or his intention and as well the laws that applicable.

Third, preparations of a necessary documents and submit them to appropriate court, as accordance to Section 56 of cap 352⁸ and rule 39⁹ where the administrator who has been appointed in the clan/family meeting will make an application by way of PETITION OF LETTERS OF ADMINISTRATION which is **Form No. 27** (where there is no will at all) or by using **Form No. 26** which is petition for letters of administration with the will annexed (where there is a defective will), then such application will be accompanied by the documents mention under rule 39¹⁰.

Then according to rule 73, 75 and 76¹¹ the procedure in court upon receive such application, the court will issue a general citation to public which is **Form no. 58** to see if there is any interesting party who will impose objection against the application within fourteen (14)

⁷ Probate and administration of estates Act, cap 352

⁸ Ibid , cap 352

⁹ Probate Rules

¹⁰ Ibid

¹¹ Probate Rules

days¹², and if there is no objection after the expiration of those 14 days then, court will grant the letter of administration.

Example: A died and left no Will at all or he has left a Will which is defective for some reasons, then a clan/family meeting will have to appoint B as an administrator and thereafter B will have to make an application in court by petition for the letters of administration so that to administer the estates of the deceased person if there will be no objection.

PROCEDURE IN REVOCATION OF GRANTS

Once a probate or letters of administration have been granted, the only authority which has the power to revoke such grant is the court with a competent jurisdiction in which it has the power to annul or revoke such grants upon the application of any person who has an interest, and the court upon annul or revoke such grants, will look upon the circumstances that are mention under Section 49 (1) of cap 352¹³

Accordance to rule 29¹⁴ a person who has an interest may make an application to the court by way of CHAMBER SUMMONS supported by AFFIDAVIT, in which in the chamber summons will set out his prayers to request to the court to revoke such grant and in the affidavit will comprise of the all grounds and reasons as to why such person request the grants to be revoked from a person who was once entitled to such grant.

Upon hearing of the application by the court and being satisfied, the court will order for such revocation which is **Form no 15** set out in the first schedule of the probate rules, then the court will have to cause a notice to a person who was once entitles to such grant, require him or her to surrender the probate or letters of administration, such notice is **Form no 16** set out in the first schedule of the probate rules.

¹² Rule 76, of Probate Rules

¹³ Probate and administration of estates Act, cap 352

¹⁴ Ibid

Example: B after being granted the probate or letters of administration by the court, it come to be known that **B** grant was obtained by fraudulently or it was obtained by untrue allegation of facts or his grant is inoperative or for other reasons, then **C** can make an application to the court to revoke such grant and upon revocation by the court, **B** will have to surrender the probate or letters of administration which was once granted to him.

PROCEDURE IN RENUNCIATION OF EXECUTORS OR ADMINISTRATORS

Renunciation of executor(s) or administrator(s) occurs where such executor or administrator has been appointed by the deceased person and clan meeting respectively and for his or her own reasons doesn't want to go to court to petition so that the court can grant to him probate or letters of administration official, then such executor or administrator can renounce his executorships and such alike.

Under the Probate and administration of estates Act there are two types of renunciation which are express renunciation under section 18¹⁵ and rule 26¹⁶ while constructive renunciation is under section 19¹⁷ and rule 27¹⁸.

Express renunciation happens when an executor or administrator appear before the court and renounce or surrender his or rights and title to the probate or letters of administration by showing cause that he doesn't want to discharge his functions and duties, and he does so by using **Form no 9** founder under the schedule of probate rules in support of an affidavit set out the reasons for such renunciation.

Constructive renunciation happens where there is a person claiming to have an interest in the estates of the deceased person and has a feeling or knowledge that the executor or administrator who has been appointed has failed to apply to the court to be granted probate or letters of administration then what a such interested person do is to make an application by using the same form which is **Form no 9** and support of affidavit which is **Form no 10** to

¹⁵ Probate and administration of estates Act, cap 352

¹⁶ Probate Rules

¹⁷ Ibid, cap 352

¹⁸ Ibid

the competent court so that it can be moved to summons such executor or administrator to appear before the court and show cause as to why he should not be removed as to such title, then the court will issue “A CITATION TO ACCEPT OR RENOUNCE EXECUTORSHIPS” by using *Form no 11*.

If such executor or administrator has been served a summons and failed to appear then the court will renounce his executorships and that is constructive renunciation but if he appear and show cause, which will turn to be an express renunciation.

Example: **B** was appointed as an executor in the Will or as an administrator in the family meeting but for his own reasons, **B** doesn't want to apply to court to get probate or letters of administration, then if **B** decide appear before the court and show cause as to why he doesn't want to discharge his functions and duties, that will be an express renunciation but if another person **C** make an application to the court to summon **B** to appear before the court to show cause as to why he doesn't want to discharge his functions and duties, thereafter **B** fail to appear and then the court automatically renounce it, that will be constructive renunciation.

NB. In the probate rule, there is no prescribed form of renunciation of letters of administration but in practice the same form that is used in renunciation of probate is also used in renunciation of letters of administration which is *Form no 9* and supported by an affidavit set out the reasons for renunciation if its express renunciation for the constructive renunciation the same *Form no 9* is applied plus its affidavit which is *Form no 10*.

PROCEDURE FOR RESEALING OF GRANTS OF PROBATES AND LETTERS OF ADMINISTRATION

Where it happens that, there is a probate or letters of administration which was issued in another common wealth country then such probate or letters of administration will not have powers herein Tanzania until it is resealed by the Tanzania court which is only High Court and upon the reseal then such executor or administrator will have the power to administer the estates of the deceased person which are located in Tanzania because there is no way

such executor or administrator can administer the properties located in Tanzania by basing on the seal of the courts outside Tanzania.

The procedure for resealing is governed under Part X (section 94 – section 98)¹⁹ of the Probate and Administration of Estate Act, together with Part IX (rule 97 - 104)²⁰ of the Probate rules, where the appointed executor or administrator will have to make an application to the High Court by using CHAMBER SUMMONS supported by AFFIDAVIT which will be accompanied by the probate or letters of administration which was sealed in other common wealth country.

The question arise, what will be the procedure of resealing if an executor or administrator obtains a probate or letters of administration from a foreign country which does not fall under a common wealth. Here what should be done is that, an executor or administrator will have to re apply afresh here in Tanzania by using a PETITION in which all the procedure that we discussed in page no 7 & 8 will be adhered then such petition will be accompany with all documents that executor or administrator has been given in such particular country which is non- common wealth country.

Example: **B** being an executor or administrator who received a grant of probate or letters of administration from the court of common wealth country to administer the estates of the deceased person which are in Tanzania, **B** will have to make an application to the High court for resealing such probate or letters of administration so that he can administer those estates in Tanzania but in case **B** received a grant of probate or letters of administration from non common wealth country, then here **B** will not have to reseal such grant but he will apply afresh by petition in Tanzania.

¹⁹ Probate and administration of estates Act, cap 352

²⁰ Probate Rules

PROCEDURE IN CONTENTIOUS PROCEEDINGS

Contentious is simply means a something which is contested or disputed, thus is to say a contentious proceeding is the proceedings which occurs where two parties are contested or disputed over a something in which each part claims to be entitled to something

In a probate and letters of administration matters, the common issues that are giving rise to a contentious proceedings are like;

- ❖ Disputes between executors and beneficiaries
- ❖ Disputes among beneficiaries
- ❖ Objections over forgery wills
- ❖ Wills that are made under duress or undue influence
- ❖ Disputes as to the mind-set of some beneficiaries to be entitled more than what has been stated in the Will
- ❖ Disputes as to the capacity of the executor or administrator. Etc

If a person want to disputes under the circumstances above or such alike then such person will have to impose an objection which is common known as A CAVEAT. A caveat can simply be defined to mean a warning that particular things should be considered before something can be done, and normal this caveat is lodged by a person who is known as a caveator against the petitioner who petition for probate or letters of administration, in other word this petitioner is common known as a executor or administrator (refer page no 7 & 8)

The procedure for lodging a caveat is governed under section 58 and 59²¹ together with rule 82 and 83²² where the procedure is as follows.

1. After a petitioner to make an application for probate or letters of administration then a court will issue a general citation which is **Form no 58** to inform the public that someone has made an application that will enable him to be granted a probate or letters of administration. (refer page no. 6 & 8) also read rule 75 and 76²³
2. Then after an interested party (a caveator) to see the general citation and if he wants to object the application then he will have to lodge a caveat which is **Form no 62** within fourteen days (14) from the date of the last publication of such citation.
3. After a caveator to lodge a caveat, a petitioner is required to make an APPLICATION FOR CITATION TO CAVEATOR **Form no 63** within thirty days and in serving this application to caveator a Form no 63 will be accompanied by a copy a petition together with all other documents which was used to petition.

If the petitioner will fail to make such application in those thirty days, a registrar will cause a notice to petitioner which is **Form no 63A** remind or require him to lodge such application within further period of twenty one days from the date of the service of such notice, and again if petitioner will fail again to make an application with such other period of twenty one days which is grace period, then his petition shall be deemed to have been withdrawn automatically, that is to mean he will not be granted probate or letters of administration unless he will make an application for restoration by using CHAMBER SUMMONS and AFFIDAVIT.

4. Then after petitioner to make an application of citation to caveator and upon such application to be received by the court, the registrar will issue a CITATION TO CAVEATOR which is **Form no 64** calling upon a caveator to state within a period of thirty days from the date of service of citation, whether he supports the grant of probate or letters of administration to the petitioner and if he does not support then he will be required to enter an appearance to dispute.

²¹ Probate and administration of estates Act, cap 352

²² Probate Rules

²³ Ibid

5. If the caveator does not support the grant, then he will have to enter the appearance by using *Form no 65* accompanied by an affidavit which will state the rights and interests of the caveator together with the grounds of objection to the petitioner's application, in which the copy of appearance will be served to petitioner. In practice sometimes chamber summons is used instead of form no 65.

NB; where the caveator enter an appearance, the proceeding will take a form of a normal civil suit (see rule 82 (6)²⁴ and section 52²⁵) that is to means, for the purpose of determine a caveat, there will not be a probate cause but it will be a civil case pending determination of the probate cause. And if the caveat will be successful and the court being satisfied that the property of caveat is not subject to distribution, then such property will be excluded from such distribution, but if the caveator fails to proof then caveat will be dismissed and the matter will be taken back as a probate cause.

CONCLUSION

That is to say, the procedures that are discussed hereinabove are mandatory and important procedures that one must be conversant with in dealing with the probate and letters of administration causes, but one must be good enough to know the laws governs and appropriate court to take the matter.

THANK YOU

²⁴ Probate Rules

²⁵ Probate and administration of estates Act, cap 352