PROBATE AND ADMINISTRATION OF ESTATES
FOR LAW SCHOOL OF TANZANIA
BY SOLICITOR KATURA.

PROBATE AND ADMINISTRATION OF ESTATES

MEANING OF SUCCESSION

This is concerned with the way property is passed to others after his or her death OR who is eligible to succeed the property of the deceased, as provided under Indian Succession Act. Therefore when talking about succession there must be death of a person, heirs and estate.

PROBATE AND ADMINISTRATION OF ESTATES

Here we talk about how to administer the property of the deceased under The Probate and Administration of Estates Act Cap 352 and The Probate Rules.

1) CONFLICT LAWS

Conflict of Laws may arise where one is to decide which law is applicable especially where there is dispute of application of one of the existing laws.
e.g;- between Statute law, Customary law, and Islamic law OR between foreign laws and domestic laws.
The application of these laws depends on the life style and cultural values of the deceased during his life time.

Relevant case;-

***Innocent Mbilinyi* '*s case* [1969] HCD 283**

It was held that;- Georges C.J ***"I am satisfied that the deceased had abandoned the Customary way of life in favour of what is called a Christian and non-traditional way. Accordingly I would direct that the law to be applied in administration of estate of the deceased should be Indian Succession Act".***

2) JURISDICTION IN PROBATE MATTER

In Probate and administration of estate cases, the issue of jurisdiction is of great importance as failure to observe it will render proceedings nullity.

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Relevant case;

***Masoud Mbita & 2others V. Daria Rutihinda* (1998) HC**

It was held that "*The issue of jurisdiction is the fundamental and the lack of jurisdiction renders proceeding nullity".*

HOW TO DETERMINE THE JURISDICTION OF THE COURT

1. The mode of life of the deceased.
2. The domicile (place of abode) of the deceased.
3. Place where deceased was buried.
4. The wishes of the testator (A Will).

A) HIGH COURT JURISDICTION – The High Court has powers under the Probate And Administration of Estates Act in all matters relating to probate and administration of deceased's estate including ;-

1. Powers to grant probate of Wills
2. Powers to grant letters of administration
3. Powers to revoke or alter the grants
4. Powers to reseal probate and letters of administration made by a Court in any part of Commonwealth Countries.

   As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352

   Section 3. *The High Court shall have jurisdiction in all matters relating to probate and the administration of deceased's estates, with power to grant probates of wills and letters of administration to the estates of deceased persons and to alter or revoke such grants.*

   As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352

   Section 4. *The High Court shall have jurisdiction to re-seal grants of probate and letters of administration made by a court of probate in any part of the Commonwealth in accordance with the provisions of Part X of*

this Act.

B) DISTRICT DELEGATES JURISDICTION – District delegates are chosen among the Resident Magistrates by the Chief Justice.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 5.(1) *The Chief Justice may, from time to time, appoint such resident magistrates as he thinks fit to be District Delegates.*

But according to recent Chief Justice's Circular, any Resident Magistrate who has practised for a year is qualified to act as a District Delegate. A District Delegate should exercise his powers of granting probate and letters of administration of estates where the deceased at a time of his death had his fixed place of abode within his Jurisdiction. Powers of the District Delegate under the Probate and Administration Of Estates Act in matters relating to probate and administration of deceased's estate including;-

1. Powers over all non-contentious matters.
2. Powers in contentious matters which do not exceed fifteen thousand shillings or where it exceeds such amount, the District delegate has to get direction of the High Court whether or not it should proceed with the case.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 5.(2) *A District Delegate shall have jurisdiction in all matters relating to probate and administration of estates with power to grant probate and letters of administration of estates if the deceased, at the time of his death, had his fixed place of abode within the area for which the Delegate is appointed–*

(a) *in non-contentious cases;*

(b) *in contentious cases, if the Delegate is satisfied that the gross value of the estate does not exceed fifteen thousand shillings, or the High*

Court authorizes the Delegate to exercise jurisdiction in such circumstances as are specified in subsection (3).

The powers of the District Delegate in contentious matters (in monetary terms) should be one which does not exceed 15,000/= Shillings or where it exceeds such amount the District Delegate has to get directions of the High Court whether or not should proceed with the case. The High Court will only direct the District delegates to deal with the matter depending on the circumstances of the case.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 5.(3) *No act of a District Delegate exercising jurisdiction in probate or administration of estates shall be invalid by reason only that it is afterwards discovered that the gross value of the estate exceeded fifteen thousand shillings, but where the District Delegate becomes aware of such circumstances in any contentious case, he shall report the matter to the High Court which shall either direct the transfer of the proceedings to itself or authorise the Delegate to exercise jurisdiction therein.*

Relevant case

***Shomary Abdallah V. Abdallah Hussein And Hassan Ramadhani* (1991) TLR 135 (HC)**

It was Held that: *As the learned magistrate lacked jurisdiction the proceedings are nullity***.**

C) DISTRICT COURT JURISDICTION

The District Court presided by District Magistrate have powers to deal with the matters of administration of small estates. Small estates means those estates whose value doesn't exceed 100,000,000/= Tanzania shillings.

As provided under THE PROBATE AND ADMINISTRATION OF

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ESTATES ACT CAP 352. as amended by THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO.2) ACT, 2016

Section 2. *"small estate" means an estate the gross value of which a court, district court or other authority having jurisdiction in probate or administration is satisfied, does not exceed one hundred million shillings;"*

The District Court can only exercise its powers if the deceased at the time of his death was within its jurisdiction.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 6.(1) *A district court presided over by a district magistrate shall have jurisdiction in the administration of small estates, with power to appoint administrators of small estates using the form specified in the Fourth Schedule to this Act, where the deceased died within the jurisdiction of the court.*

THE POWERS OF THE DISTRICT COURT;-

1. Power to grant of probate and letters of administration
2. Power to revoke the grant where there is a good cause.
3. Powers to regard or account various rules of Customary Law and Islamic Law prevailing in the area where it is established.
4. Appointing an administrator through the wishes of the deceased.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 74. *A district court may appoint as administrator one or more persons interested in the estate or in the due administration thereof and, in selecting an administrator, shall, unless for any reason it considers inexpedient so to do, have regard to any wishes which may have been expressed by the deceased.*

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D) THE PRIMARY COURT JURISDICTION

The Primary Court enjoys the Jurisdiction over administration of deceased's estate where the law applicable to the administration and distribution of estate is **Customary law** or **Islamic law.**

> **As provided under THE MAGISTRATES' COURTS ACT CAP 11**
>
> **Section 18.(1)** *A primary court shall have and exercise jurisdiction–*
>
> ***(a)*** *in all proceedings of a civil nature–*
>
> ***(i)*** *where the law applicable is* ***customary law*** *or* ***Islamic law:***
>
> **(2)** *The Chief Justice may, by order published in the Gazette, confer upon a primary court jurisdiction in the administration of deceased's estates where the law applicable to the administration or distribution of, or the succession to, the estate is customary law or, save as provided in subsection (1) of this section, Islamic law.*

TRANSFER

Proceedings in Probate and Administration matters can be transferred from one Court to another through giving out grounds which may necessitate the transfer of the case.

There are conditions which may show that the Primary Court has jurisdiction in the administration of case;-

1. The matter is of Civil nature
2. The Law applicable to it is either Customary or Islamic
3. The deceased at the time of his death had fixed place of abode within the local limit.

The District Court has no original Jurisdiction over matters of Customary or Islamic nature, therefore it can neither transfer that nature to itself.

Relevant case

***Kijakazi Mbegu and five others v. Ramadhani Mbegu* [1999] TLR 174**

It was held that;- ***"****It was wrong for District Court to transfer to itself a matter*

that involved Islamic Law, since jurisdiction in Civil proceeding involved ***Customary Law*** *or* ***Islamic Law*** *is vested in Primary Court. As provided under MCA CAP 11 section 18(1)(a)(ii).*

WHAT SHOULD BE DONE FOR PERSONS WHO WANT TO ENGAGE LAWYERS FOR PRIMARY COURT MATTERS?

That person should go and ***application for a Leave*** in the High Court to direct the one who filed the case in the Primary Court to bring it to the High Court for the purpose of engaging a lawyer. Where there is conflict of laws, it is safe to go to the High Court if the case isn't yet lodged in the Primary Court.

On alternative, he can also make an application in the District Court for directions or forward of the case to the High Court for engagement of a Lawyer. But if it is lodged in the Primary Court, the procedure is to make an application to the District Court for direction or forward the case to the High Court.

3) PROTECTION OF ESTATE PENDING GRANT

Where the Estate of the deceased is in danger of being wasted and proper executor or administrator has not yet appointed. Any person who is interested in the property may make an application for grant of letter of administration but for the purposes of maintaining properties which are in danger (e.g; perishable goods) pending the appointment of proper administrator.

> **As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.**
>
> **Section 10.** *Where any person dies leaving property within Tanzania, the court may, if it appears on the application of the Administrator-General or of any person claiming to be interested in such property, or having the custody or control thereof at the time of the death of the deceased, or being at such time an attorney of the deceased, that there is danger that such property may be wasted, appoint the Administrator-*

*General or such other person as the court thinks fit, to be **a receiver** of such property pending a grant of probate or letters of administration.*

If one is appointed as **a receiver** it doesn't mean that he has been given a power to sell, therefore he/she should make an application to be given powers to sell, or my put a prayer on the same application to be granted powers to sell.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 11. *The court may, on application by a receiver appointed under section 10, or any person interested in the estate, order the sale of the whole or any part of such property, if it appears that such sale will be beneficial to the estate.*

Application for appointment of being **a Receive**r and for the powers to sell is through the following documents;-

1. **FORM 4** [CHAMBER SUMMONS] (Rule 14)
2. **FORM 6** [AFFIDAVIT IN SUPPORT OF APPLICATION FOR APPOINTMENT OF RECEIVER PENDING GRANT] (Rule 24)

   As provided under THE PROBATE RULES

   Rule 24.-(2) *An affidavit made under this rule shall be in the form prescribed in **Form 6** set out in the First Schedule.*

   (3) *An order appointing a receiver shall be in the form prescribed in **Form 7** set out in the First Schedule.*

After the property has been vested to ***a receiver,*** no person is entitled to remove any property which is under receivership. The Receiver shall have lien upon the property entrusted to him for all costs and expenses incurred by him in the cause of exercise his duties.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 15. Receiver's lien

A receiver appointed under section 10 shall have a lien upon the property entrusted to him for all costs and expenses properly incurred by him in the exercise of his duties as such receiver.

Any attempt by any person to interfere with property under receivership commits an offence and upon conviction.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 13. Penalty for contempt

Any person who, without lawful authority, removes or attempts to remove from Tanzania any portion of the property of which a receiver has been appointed under section 10, or destroys, conceals, or refuses to yield up the same to the receiver, commits an offence and on conviction is liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

The Receiver through an application to the Court, may sell any part of the estate of the deceased if it appears that it will be beneficial to the estate. But any person aggrieved or not satisfied with the conduct of a Receiver for anything so done, or intended to be done, may apply to the court for directions.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 14. No suit against receiver

No suit shall be brought against a receiver appointed under section 10 in relation to anything done or intended to be done by him in respect of the property of the deceased in exercise or intended exercise of the powers vested in him; but any person aggrieved by anything so done, or intended to be done, may apply to the court for directions in the matter, and the court may make such order as is just.

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4) WILLS

A Will – Is a legal document containing instructions as to what should be done with one's money and property (estate) after one's death.

> **As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.**
>
> **Section 2."*will*"** *means the legal declaration of the intentions of a testator with respect to his property, which he desires to be carried into effect after his death.*

A person can die in two ways;-

1. **Testate -** An individual who dies with a valid will is said to have died **testate**, which means the Will is legally enforceable and clearly establishes the intentions of the deceased.
2. **Intestate –** This is used to refer to a person who dies without a Will (an **intestate**) and the estate belonging to a person who dies without a will, is known as "**intestate estate".**

THE REQUIREMENTS OF A VALID WILL

It is possible to draw up a Will yourself or you can hire a Solicitor OR a Lawyer to help you. For a will to be legally valid, the following rules apply:-

1. The Will must be in writing
2. You must be over 18 (if you are or have been married you can be under 18)
3. You must be of sound mind
4. You must sign or mark the Will or acknowledge the signature or mark in the presence of two witnesses.
5. Your two witnesses must sign the Will in your presence
6. Your two witnesses should not be people who will gain from your Will and they must be present with you at the same time for their attestation to be valid. The witnesses' spouses/civil partners also cannot gain from your

Will.

7. Your witnesses must see you signing a Will but they do not have to see what is written in it.
8. The signature or mark must be at the end of the Will.

SPECIAL CIRCUMSTANCES OF A WILL

1. ORAL WILL OR NUNCUPATIVE WILL

This is a will that has been delivered orally (that is in speech) to witnesses, as opposed to the usual form of wills, which is written and according to a proper format.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 25.-(3) *Probate may be granted of the contents of an oral will, if they can be established by evidence.*

THE REQUIREMENTS ON ORAL WILL

1. **FORM 20** [PETITION FOR PROBATE OF ORAL WILL] (Section 25 and Rule 35)
2. **Affidavit** of a person who has personal knowledge of the terms of the Will.

As provided under THE PROBATE RULES

Rule 35.Oral wills

(1) *Where a petitioner applies under section 25(3) of the Act for grant of probate of an oral will he shall file with his petition the following documents in addition to the documents required to be filed under these Rules–*

(a) *an affidavit by a person having personal knowledge of the terms of the will setting*

out such terms and the circumstances under which he became aware of the same; and

(b) *subject to the provisions of rule 71, consents in writing to the application for grant from the persons who, if the testator had died intestate, would have been entitled to a share in the estate.*

(2) *The petition for grant shall give all the facts and describe all the circumstances which may raise a presumption that the testator was a person entitled in law to make an oral will.*

(3) *The court may require the petitioner to produce further evidence by affidavit or otherwise for the purpose of satisfying itself of the existence of the will, its terms or the circumstances under which it was made.*

2. LOST WILL

This is a Will which was known to be in the deceased person's possession has been lost, damaged or destroyed or cannot be found upon his/her death.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 25.-(1) *Where a written will has been lost or misplaced after the death of the testator, or has been destroyed by wrong or accident and not by any act of the testator–***(a)** *if a copy or draft of the will has been preserved, probate may be granted of such copy of draft, until the original or a wills properly authenticated copy of it is admitted to probate;* **(b)** *if no such copy or draft has been preserved, probate may be granted of the contents of the will, if they can be established by evidence, limited as aforesaid.*

THE REQUIREMENTS ON LOST WILL

1. **Form 21** [Petition for Probate of Lost Will] (Section 25, Rule 36)
2. **An affidavit as to person who was present** when the Will was made or who can testify as to the facts which may raise a presumption in favour of due execution.
3. **An Affidavit of the contents of the will** from any person having personal knowledge of such contents;

4. **An Affidavit proving the existence of the Will** after the death of the testator or, where the Will has been destroyed, the circumstances of such destruction;

   As provided under THE PROBATE RULES

   Rule 36. Wills lost or destroyed

   (1) *Where a petitioner applies under section 25 of the Act for grant of probate of a will which has been lost, misplaced or destroyed and of which no copy or draft is available he shall file with his petition the following documents in addition to the documents required to be filed under these Rules–*

   (a) *an affidavit as to the due execution of the original will by one of the witnesses who attested the original will or, if no such witness is conveniently available, from any other person who was present when the will was made or who can testify as to the facts which may raise a presumption in favour of due execution;*

   (b) *an affidavit of the contents of the will from any person having personal knowledge of such contents;*

   (c) *an affidavit proving the existence of the will after the death of the testator or, where the will has been destroyed, the circumstances of such destruction; and*

   (d) *subject to the provisions of rule 71, consents in writing to the application for grant from the persons who, if the testator had died intestate, would have been entitled to a share in the estate.*

   (2) *The court may require the petitioner to produce further evidence by affidavit or otherwise for the purposes of satisfying itself as to the existence of the will, its contents or the circumstances in which it was lost, misplaced or destroyed.*

3. COPY OR DRAFT WILL

A preliminary sketch or rough form of a Will, from which the final or fair copy is made.

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As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 25(2) *Where a written will is in the possession of a person outside Tanzania, 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 as aforesaid.*

THE REQUIREMENTS ON COPY OR DRAFT WILL

1. **FORM 22** [PETITION FOR PROBATE OF COPY OR DRAFT WILL] (Section 25, Rule 37)
2. **Affidavit** showing that the copy produced is an accurate copy of the original Will.
3. **Affidavit** proving the existence of the will after the death of the testator where the will has been destroyed, the circumstances of such destruction or where the original is in possession of a person outside Tanzania, that such person has refused or neglected to deliver it up.

As provided under THE PROBATE RULES

Rule 37. Probate of copy or draft of will

(1) *Where a petitioner applies under section 25 for grant of probate of a copy or draft of a will he shall file with his petition in addition to the documents required to be filed under these Rules an affidavit or affidavits–*

(a) *showing that the copy produced is an accurate copy of the original will; and*

(b) *proving the existence of the will after the death of the testator or, where the will has been destroyed, the circumstances of such destruction or where the original is in possession of a person outside Tanzania, that such person has refused or neglected to deliver it up.*

(2) *The court may require the petitioner to produce further evidence on*

affidavit or otherwise for the purpose of satisfying itself as to the existence of the original will, the accuracy of the copy or the draft or the circumstances of loss or destruction.

A CODICIL

This is a document which explains or alters, add or supplement that modifies, or revokes a Will or part of one the Will.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 2. "*codicil*" *means an instrument made in relation to a will, and explaining, altering or adding to its dispositions;*

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 26. *Where, after probate has been granted, a codicil of the will is propounded (put forward), probate may be granted of the codicil:*

Provided that where the codicil expressly or impliedly revokes the appointment of any executors to whom probate has been granted, such probate shall be revoked, and a new probate granted of the will and codicil together.

As provided under THE PROBATE RULES

Probate Rule 38.(1) *Where a codicil is propounded after grant of probate and such codicil does not revoke or alter the appointment of the executors who proved the will, such executors may obtain probate of the codicil upon filing a petition for grant supported by the codicil and such petition shall be in the form prescribed in* ***Form 23*** *set out in the First Schedule.*

(2) *Where a codicil is propounded after grant of probate and such codicil revokes or alters the appointment of the executors who proved the will, any person named as an executor in the codicil, or, if there be no such*

person and the codicil has revoked the appointment of the executors under the original will, any person entitled to letters of administration with the will annexed, may apply for grant of probate of the original will and the codicil or letters of administration with the will and the codicil annexed, as the case may be.

(3) *An application for grant of probate or letters of administration under paragraph (2) of this rule shall be by way of petition in the form prescribed in* ***Form 24 or 25*** *set out in the First Schedule, whichever is appropriate, setting out the date of the grant of the probate of the original will or of letters of administration with the will annexed and the circumstances under which discovery of the codicil was made and such application shall be supported by the consents of the executors who proved the will and by the documents required by those Rules to be filed with an application for grant of probate or letters of administration with a* will *annexed with the exception, of the testator's death certificate and the affidavit as to his domicile.*

Documents required;-

1. **Form no.23 [**Petition for Probate of Codicil Where Petition Made By Same Executor] (Section 26, Rule 38).
2. **Form no.24** (Petition for Probate of Codicil appointing New Executor] (Section 26, Rule 38) **or**
3. **Form no.25 [**Petition for Letters of Administration with the Will and Codicil annexed where Codicil revokes appointment of Executor under the Will without appointing new Executor) (Section 26, Rule 38).

5) ADMINISTRATION OF SMALL ESTATES

Small Estate Administration - This is a simplified court procedure that is an alternative to the longer probate process. It is available when the person who dies did not own that much in assets. There is often a limit to the value of the

property, such as below 100,000,000/= Tanzanian Shillings.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352. As amended by THE WRITTEN LAWS (MISCELLANEOUS AMENDMENTS) (NO.2) ACT, 2016

Section 2. *"small estate" means an estate the gross value of which a court, district court or other authority having jurisdiction in probate or administration is satisfied, does not exceed one hundred million shillings;"*

The District Court appoints someone who is impartial to administer with consideration to the wishes of the deceased.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 74. Selection of administrator

A district court may appoint as administrator one or more persons interested in the estate or in the due administration thereof and, in selecting an administrator, shall, unless for any reason it considers inexpedient so to do, have regard to any wishes which may have been expressed by the deceased.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 75. Administrator-General's administration and appointment of officer of the court or impartial person

(1) *Where a district court is of the opinion that, having regard to the safety of the estate and the proper administration thereof, it is desirable that the estate should be administered by the Administrator-General or an officer of the district court or some reputable or impartial person able and willing to administer the estate it may adjourn an application for an appointment in order that it may be ascertained whether the Administrator-General will undertake the administration of the estate*

*under section 52 of the Administrator-General (Powers and Functions) Act ix * or may appoint an officer of the district court or some such person aforesaid as administrator.*

(2) *An appointment of an administrator under this Part shall not be made if there has been a previous grant of probate of the will of the deceased or letters of administration of his estate, or if the Administrator-General has himself lawfully undertaken the Administration of the estate.*

Documents required;-

1. **FORM No.76 [**Application for appointment of Administrator of Small Estate] (Rule 85).
2. Wishes which may have been expressed by the deceased. (e.g;- Wills, Codicils)

   As provided under THE PROBATE RULES

   Rule 85. Application

   An application for appointment of an administrator under Part VII of the Act shall be by petition in Form 76 set out in the First Schedule.

6) GRANT OF PROBATE AND LETTERS OF ADMINISTRATION

DIFFERENCE BETWEEN GRANT OF PROBATE AND GRANT OF LETTER OF ADMINISTRATION.

A grant of probate - Is a legal document that authorizes an executor (or executors) to manage the estate of a deceased person in accordance with the provisions of the deceased's Will. A testate person will apply for grant of Probate.

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Letters of Administration – Is the application your family will need to make to the Court if you don't leave a Will. For intestate person will apply for grant of letters of administration.

CIRCUMSTANCES WHERE ONE DIED TESTATE BUT STILL CAN APPLY FOR GRANT OF LETTERS OF ADMINISTRATION;-

1. Where deceased left a Will but didn't mention a name of Executor.
2. Where Executor doesn't want to act as an Executor.
3. Where Executor is of unsound mind or minor.
4. Where no Executor survived deceased.
5. Where Executor is no where to be found.

WHAT SHOULD BE DONE IMMEDIATELY AFTER DEATH?

A family or clan meeting should be convened - This meeting is very important whether we are dealing with intestate or testate person. The purposes of family meeting are;-

1. To decide the mode of life of the deceased.
2. To decide the domicile (place of abode) of the deceased.
3. To identify the wishes of the testator (A Will)
4. Identify beneficiaries
5. To discuss funeral expenses
6. To identify and discuss properties on debts, bank accounts, shares, houses, cars, cash, jewelries, furnitures etc.

WHAT SHOULD BE DONE BEFORE GOING TO COURT?

1. Determination of Forum (Court or Jurisdiction)
2. The law applicable
3. The domicile of the deceased and place of abode
4. The life style of the deceased
5. Check if there is a Will
6. Determination of the value of the property (if necessary)

7. Preparation of necessary documents.

A) GRANT OF PROBATE

Probate can not only be granted to a natural person, it can also be granted to a trust or corporation.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 21 Trust corporations

(1) *A trust corporation–*

(a) *may be granted probate of the will of any person, if it is named as executor therein;or*

(b) *may be granted letters of administration.*

(2) *A trust corporation may be granted probate or letters of administration either solely or jointly with another person.*

(3) *Probate or letters of administration shall not be granted to a syndicate or*
nominee on behalf of a trust corporation.

Grant of probate to a natural person

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 24 Grant of probate

(1) *Probate may be granted only to an executor appointed by the will.*

(2) *The appointment may be express or by necessary implication.*

(3) *Where several executors are appointed, probate may be granted to them all simultaneously or at different time*s.

(4) *If an executor is appointed by the will for a limited purpose only, probate shall*
not be granted to him except limited to that purpose.

Application for Probate shall be in the following way;-

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1. PETITION FOR PROBATE

This is where by the executor requests the probate court to grant letters which are official court documents giving the executor the power to act on behalf of the estate by filing **FORM No.18.**

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 55(1) *Application for probate or for letters of administration shall be made by a petition with the will.*

Also provided under THE PROBATE RULES

Rule 33. (1) *A petition for grant of probate shall be in the appropriate form prescribed in Forms 18, 20, 21 and 22 set out in the First Schedule and shall be accompanied by the following documents;-*

(a) *the* ***last will*** *of the deceased and all codicils thereto and, when necessary, a translation thereof;*

(b) *subject to the provisions of rule 63,* ***a certificate of death*** *of the deceased signed by a competent authority;*

(c) ***an affidavit*** *as to the deceased's domicile at the time of his death; and*

(d) *the* ***executor's oath.***

2. VERIFICATION

The Petition requires verification of one of the Witnesses by filing **FORM No.19.**

As provided under THE PROBATE RULES

Rule 34. (1) *Verification of a petition by an attesting witness shall be in the form prescribed in Form 19 set out in the First Schedule.*

The petitioner may file Chamber Summons and Affidavit to get away with the requirements of verification in case no attesting witnesses.

As provided under THE PROBATE RULES

Rule 34. (4) *Where the court makes an order dispensing with verification of a petition for a grant of probate by one of the attesting witnesses it may require the petitioner to produce such other evidence on affidavit as it may consider necessary for the purpose of being satisfied that the will was duly executed by the testator.*

(5) *An application under this rule shall be filed together with the petition and all other documents required to be lodged therewith:*

Documents required;-

1. **FORM 1**[HEADING OF DOCUMENTS FILED UNDER THE RULES] (Rule 5)
2. **FORM No.18** [Petition for Probate] (Section 55)
3. **FORM N0.19** [Verification Of Petition For Probate]
4. A last will of the deceased and all codicils thereto
5. **FORM 45** [AFFIDAVIT AS TO DOMICILE] (Rule 64)
6. **FORM 47** [EXECUTOR'S OATH] (Section 66, Rule 65)
7. Certificate of Death

B) GRANT OF LETTERS OF ADMINISTRATION

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT

CAP 352.

Section 53. Application to High Court or District Delegate

(1) *Application for probate or letters of administration may be made to the High Court or to the District Delegate appointed for the area in which the deceased at the time of his death had his fixed place of abode.*

(2) *An application for probate or letters of administration to a District Delegate, if made and verified in the manner hereinafter provided, shall be conclusive for the purpose of authorising the grant of probate or letters of administration, and no such grant shall be impeached by reason that the deceased had no fixed place of abode within the area for which the Delegate is appointed unless by a*

proceeding to revoke the grant if obtained by a fraud upon the court.

As provided under THE PROBATE RULES

Rule 39. *A petition for letters of administration shall be in the form prescribed in Forms 26 or 27 set out in the First Schedule, whichever is appropriate, and shall be accompanied by the following documents–*

(a) *subject to the provisions of rule 63 a* ***certificate of death*** *of the deceased signed by a competent authority;*

(b) *an* ***affidavit*** *as to the deceased's domicile;*

(c) *an* ***administrator's oath****;*

(d) *subject to the provisions of rule 66, an administration bond;*

(e) *a certificate as to the financial position of the sureties;*

(f) *subject to the provisions of rules 71 and 72,* ***consent of the heirs****; and*

(g) *in the case of an application for a grant to a sole administrator, an affidavit as required by rule 32.*

Documents required;-

1. **FORM 1**[HEADING OF DOCUMENTS FILED UNDER THE RULES] (Rule 5)
2. **FORM No.27** [Petition for Letters of Administration when The Deceased Died Intestate].
3. **FORM 45** [AFFIDAVIT AS TO DOMICILE] (Rule 64)
4. **FORM 46** [ADMINISTRATOR'S OATH] (Section 66, Rule 65)
5. Certificate of death
6. Consent of the heirs
7. A Will should be annexed with either of the petitions.

    As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

    Section 55(1) *Application for probate or for letters of administration shall be made by a petition with the Will.*

Then the Court will issue a general citation using **FORM No.58** and published

in the Gazette and such other newspaper as the judge may direct.

As provided under THE PROBATE RULES

Rule 75. *A general citation shall be in the form prescribed in* ***Form 58*** *set out in the First Schedule and shall be exhibited in some conspicuous part of the court house and published in the Gazette and such other newspaper or periodical (if any) as the Judg*e may direct.

If there is any objection or Caveat to be lodged within three months, if not the Court will proceed to grant a letter of administration.

APPEALS - Appeal from Primary Court for matters involving Islamic or Customary law go to District Court as the District Court has no original jurisdiction for those matters. Time limitation for delay in application is three years.

As provided under THE PROBATE RULES

Rule 31. Delay in application

(1) *In any case where probate or administration is for the first time applied for after expiration of three years from the death of the deceased, the petition shall contain a statement explaining the delay.*

(2) *Should the explanation in the petition be unsatisfactory the Court may require such further proof of the alleged cause of delay as it may think fit.*

RE-SEALING OF PROBATE AND LETTERS OF ADMINISTRATION
(UNDER PART X OF PAEA) AND
(PART IX OF PROBATE RULES)

Resealing – This is when the deceased person owns assets requiring probate in more than one jurisdiction, it is necessary for the executor to obtain a grant

of probate in one area where the deceased owned assets, and then have the same grant resealed in each other jurisdiction where the deceased owned assets.

The Probate and Administration Act provides the way foreign order of grant of probate or letter of administration can be enforced in Tanzania. Re-sealing is the power given to the High Court only and its procedures are enforceable within commonwealth countries only.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 94. "*probate*" *and* "*letters of administration*" *include confirmation and any instrument having in any other part of the* ***Commonwealth*** *the same effect which under this Act is given to probate and letters of administration respectively.*

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 95. Sealing of probates and letters of administration granted outside Tanzania

Where a court of probate in any part of the Commonwealth, has, either before or after the passing of this Act, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted 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 like force and effect, and have the same operation in Tanzania as if granted by that court.

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 96. Conditions to be fulfilled before sealing

The High Court shall, before sealing a probate or letters of administration

under this Part, be satisfied in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in Tanzania to which the letters of administration relate, and may, in any case, require such evidence as it thinks fit, as to the domicile of the deceased person.

Required documents;-

1. **FORM 1**[HEADING OF DOCUMENTS FILED UNDER THE RULES] (Rule 5)
2. Chamber summons & Affidavit
3. Accompanied by documents you are granted for probates or letters of administration from foreign country (Commonwealth).

Interested person when sees the Notice of the Court to appeared before the Court may lodge ***Caveat*** to object. And if you are granted a probate or letter of administration form outside commonwealth countries, your grant isn't recognized in Tanzania, thus it needs that person to start afresh applications as if nothing has happen.

7) RENUNCIATION

RENUNCIATION – This means to discharge yourself or withdraw yourself. In the Probate and Administration of Estate Act, the term Renunciation is associated by the executor and not by the Administrator, as administrator is appointed by the Family or Clan meeting and approved by the Court.

TYPES OF RENUNCIATION

A) EXPRESS RENUNCIATION

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 18. Express renunciation of right to probate

A person who is entitled to probate may expressly renounce his right to

such grant orally on the hearing of any application or in writing signed by the person so renouncing and attested by any person before whom an affidavit may be sworn.

CIRCUMSTANCES UNDER EXPRESS RENUNCIATION

1. **Through application –** A person who has been named in the Will to act as an executor and is not willing to proceed, he or she may make an application in writing to the Court in order to remove himself from the position he has been named.
2. **Through appearance -** A person who has been named in the Will to act as an executor and find himself busy, he or she may appear before the Judge and explain his willing to not proceed.
3. **Through an interested person –** This is when an interested person apply to the Court in order to move the Court to summon a person who has been in the Will as Executor and state his reasons why he doesn't want to proceed as an executor.

B) CONSTRUCTIVE RENUNCIATION

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

Section 19. Citation and constructive renunciation

(1) *Any person having or claiming any interest in the estate of a deceased person or any creditor of a deceased person may cause to be issued a citation directed to the executor or executors appointed by the deceased's will calling upon him or them to accept or renounce his or their executorship.*

(2) *Any person so cited may enter an appearance to the citation, but if he makes a default in appearance thereto, he shall be deemed to have renounced his executorship; and if, having appeared, he does not proceed to apply for probate, the person so citing may apply for an order that the person cited, unless he applies for and obtains probate within a time limited by the order, shall be deemed to have renounced his right thereto, and an order may be*

made accordingly.

RULE 27

CIRCUMSTANCES UNDER CONSTRUCTIVE RENUNCIATION

1. **Non-appearance -** When executor doesn't appear to Court after being summoned two, three times. An interested person may apply for the declaration of removal of the executor.
2. **Failed to file a petition -** When executor appears to Court and was given time for petition but still he did not write a petition. Here the Court may decide to remove that named executor and appoint another or give room for another application.

Documents required in application for Renunciation;-

1. **FORM 1 [**HEADING OF DOCUMENTS FILED UNDER THE RULES] (Rule 5)
2. **FORM N0.9** [Renunciation Of Probate]
3. Chamber summons
4. **FORM N0.10** [Affidavit In Support Of Application For Citation To Accept Or Renounce Executorship]

EFFECTS OF RENUNCIATION

As provided under THE PROBATE AND ADMINISTRATION OF ESTATES ACT CAP 352.

20. Effect of renunciation

The renunciation, whether made expressly or constructively, shall preclude the person so renouncing from applying thereafter for probate: Provided that the court may at any time allow the person so renouncing to withdraw his renunciation for the purpose of taking a grant, if it is shown that such withdrawal is for the benefit of the estate or persons interested therein.

1. Prohibition of a person who is renounced from application for probate
2. Withdrawal of renunciation. The Court may allow at a reasonable time for a person renounced to withdraw the renunciation against him for the

benefit of the family.

CONTENTIOUS PROCEEDINGS

1. **FORM 27 [Petition For Letters Of Administration When The Deceased Died Intestate] (Section 56)** This is lodged by the petitioner.
2. **FORM 58 [General Citation] (Rule 75).** A general citation shall be exhibited in some conspicuous part of the court house and published in the Gazette and such other newspaper as the Judge may direct.
3. **FORM 62 [Caveat] (Section 58, Rule 82).** A caveat shall be entered and shall be attested by a person before whom an affidavit may be sworn.
4. **FORM 63 [Application For Citation To Caveator] (Section 59(2), Rule 82(2)).** The petitioner shall apply for the issue of a citation to the caveator calling upon him to state, whether he does not or he supports the grant of probate or letters of administration to the petitioner.
5. **FORM 64 [Citation To Caveator](Section 59, Rule 82(3)).** The Registrar shall issue a citation to the caveator calling upon him to state, within a period of thirty days from the date of the service of the citation upon him, whether he supports the grant of probate or letters of administration to the petitioner, and, if he does not, requiring him to enter an appearance.
6. **FORM 65 [Appearance By Caveator] (Section 59, Rule 82(4))**. Appearance by a caveator shall be accompanied by an affidavit stating the right and interest of the caveator and the grounds of the objection to the petitioner's application for grant.
7. **As provided under THE PROBATE RULES**

   Rule 82(6) *Where a caveator enters an appearance the proceedings shall be numbered as a suit and the Registrar shall appoint a date upon which the suit shall be listed before a Judge in Court for such orders as to pleadings and date of the hearing as the Judge may make.*

PROBATE AND ADMINISTRATION OF ESTATES
FOR LAW SCHOOL OF TANZANIA
BY SOLICITOR KATURA.

Ordinarily Caveat is entered in the High Court but it can be filed under the District Delegate

As provided under THE PROBATE RULES

Rule 83. Contentious proceedings before a District Delegate

Where an application for grant of probate or letters of administration has been made to a District Delegate in respect of an estate the gross value of which exceeds fifteen thousand shillings and a person who has filed a caveat against such application has entered an appearance, the District Delegate shall upon receipt of the appearance and the affidavit in support thereof forward the record of the proceedings to the Registrar who shall proceed as required by paragraph (6) of rule 82.

ASANTE SANA.

By SOLICITOR KATURA.

ALLAH IS EVER ALL KNOWER, ALL WISE.