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LAWS OF KENYA

 **COPY**

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**The Public Trustee Act**

**CHAPTER 168**

**Revised Edition 1982 (1968)**

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## CHAPTER 168

## THE PUBLIC TRUSTEE ACT

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11 of 1995

CHAPTER 168

THE PUBLIC TRUSTEE ACT

Commencement: 29th May 1925

An Act of Parliament to make provision for the appointment of a Public Trustee and to define his powers and duties

PART I—PRELIMINARY

1. This Act may be cited as the Public Trustee Act.

2. In this Act, except where the context otherwise requires—

“agent” means an agent of the Public Trustee appointed under section 25 (2);

“court” means any court having jurisdiction in the matter in question under the Law of Succession Act;

“estate” means all immovable property and all movable property;

“letters of administration” includes any letters of administration, whether general or with a copy of the will annexed or limited in time or otherwise;

“taxing officer” means the registrar of the court or an officer duly appointed to act for him.

3. Nothing in this Act shall confer on the Public Trustee or his agents any powers in respect of the estate of an African, living among the members of any African tribe or community in accordance with their customary mode of life, who has no property purporting to belong to him as an individual.

4. Where there is a conflict between any of the provisions of this Act and those of the Law of Succession Act, the provisions of this Act shall prevail, unless it is expressly provided to the contrary in the Law of Succession Act.

5. The Minister may appoint a fit and proper person to be Public Trustee (hereinafter referred to as the Public Trustee), and may also appoint a ~~Deputy Public Trustee~~ and one or more Assistant Public Trustees to assist the Public Trustee; and any Deputy or Assistant so appointed shall, subject to any general or special orders of the Public

Cap. 37 (1948),  
15 of 1951,  
33 of 1955,  
15 of 1961,  
21 of 1961,  
28 of 1961,  
35 of 1962,  
21 of 1966,  
L.N. 462/1963,  
L.N. 168/1964,  
10 of 1969,  
4 of 1973,  
10 of 1976,  
L.N. 120/1981.  
Short title.

Interpretation.  
33 of 1955, s. 2,  
35 of 1962, s. 2,  
10 of 1976, s. 2.

Cap. 160.

Application  
of Act.  
35 of 1962, s. 3,  
21 of 1966,  
1st Sch.,  
10 of 1976, s. 3.

Provisions of  
this Act to  
prevail.  
10 of 1976, s. 4.  
Cap. 160.

Appointment  
of Public  
Trustee.  
28 of 1961, Sch.,  
L.N. 168/1964.

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Trustee, be competent to discharge any of the duties and to exercise any of the powers of the Public Trustee, and when discharging those duties or exercising those powers shall have the same privileges and be subject to the same liabilities as the Public Trustee.

PART II—ADMINISTRATION OF ESTATES OF DECEASED PERSONS

6. (1) Where a report of action taken under section 46 of the Law of Succession Act has been made to the Public Trustee, or where the Public Trustee has been informed of the death of any person in Kenya and has been requested to take action in respect of the deceased's estate by any person appearing to have a legitimate interest in the succession to, or administration of, the estate, the Public Trustee shall cause further inquiries to be made as to the estate of the deceased.

Grant to Public Trustee. 10 of 1976, s. 5. Cap. 160.

(2) If it appears to the Public Trustee as a result of inquiries made under subsection (1) as to the estate of a deceased person that—

(a) the person died intestate;

The Public Trustee Act (Cap. 168).	s. 5	Delete the words "a Deputy Public Trustee" and insert "one or more Deputy Public Trustees".
	s. 8	In subsection (1) delete the words "twenty thousand" and insert "one hundred thousand".
		In subsection (2) delete the words "five thousand" and insert "twenty thousand".
	s. 11	In paragraph (ii) of the proviso delete the words "eight thousand" and insert "seventy-five thousand".
	s. 12(1)	In the proviso delete the words "twenty thousand" and insert "one hundred thousand".
	s. 16(2)	In the proviso delete the words "ten thousand" and insert "twenty thousand".

Act-11/93

to complete the administration of the estate, he may apply under the Law of Succession Act to the court for a grant of representation and the court shall, except for good cause shown, make a grant of representation to the Public Trustee.

(3) Where the Public Trustee has been requested in writing by the executor or administrator (as the case may be) to obtain a sealing in Kenya of any probate, letters of administration or any equivalent thereof in respect of the estate of a deceased person under the provisions of section 77 of the Law of Succession Act, the Public Trustee may without any further formality apply to the court to seal and the court may seal the probate, letters of administration or any equivalent thereof.

(4) Nothing in this section shall prevent—

(a) the Public Trustee from renouncing the executorship of any will; or

(b) the court, in exercise of its discretion under section 66 of the Law of Succession Act, from granting letters of administration to the Public Trustee.

Grant to Public Trustee in certain circumstances.  
10 of 1976, s. 6.

Cap. 160.

7. Where the particular circumstances of any case appear to the court so to require, the court may, if it thinks fit for reasons recorded in its proceedings, of its own motion or otherwise, after having heard the Public Trustee, grant under the Law of Succession Act letters of administration to the Public Trustee notwithstanding that there are persons who, under that Act or any other written law, would in the ordinary course be legally entitled to administer the estate of the deceased person concerned in preference to the Public Trustee.

Administration of deceased's estate without grant.  
10 of 1976, s. 7.

Act. 11 of 1993

Cap. 160.

8. (1) Where the estate of a deceased person consists of property of an estimated gross value not exceeding ~~twenty~~ <sup>one hundred</sup> thousand shillings and the deceased has died intestate or left a will in such circumstances that the Public Trustee may apply for a grant of probate or letters of administration pursuant to section 6, the Public Trustee may take possession of, and administer the estate of, the deceased person without making an application under the Law of Succession Act, to the court for probate or letters of administration, as the case may be, and no court fees shall be chargeable in respect of any such estate.

(2) Where the estate of a deceased person consists of property of an estimated gross value not exceeding ~~five~~ <sup>twenty</sup> thousand shillings, the Public Trustee, on the application of any person to whom probate or letters of administration, as the case may be, might be granted under the Law of Succession Act, may at any time after the expiration of fourteen days after the death of the deceased, grant to that person a certificate

entitling him to administer the estate of the deceased person and to pay out of the estate any debts or charges, and to pay, remit or deliver any surplus to the person or persons entitled thereto according to law, or as he may be directed by the Public Trustee.

(3) The Public Trustee shall not be bound to grant a certificate under subsection (2) unless he is satisfied as to the title of the applicant and of the value of the property left by the deceased, either by oath of the applicant, or by such other evidence as he may require.

(4) The grant of a certificate under subsection (2) shall be a full and final discharge of the Public Trustee as against all persons from any further liability in respect of the estate concerned.

(5) Where a certificate is granted under subsection (2)—

(a) a fee shall be payable calculated at the rate of five per centum of the gross value of the estate;

(b) the holder of the certificate shall have, in respect of the assets specified in the certificate, the same powers and duties and be subject to the same liabilities, as he would have had or been subject to if letters of administration had been granted and confirmed to him, but shall not be required—

(i) to file accounts or inventories of the assets of the deceased before any court or other authority; or

(ii) to give any bond for the due administration of the estate;

(c) the Public Trustee may revoke the certificate on either of the following grounds—

(i) that the certificate was obtained by fraud or misrepresentation made to him; or

(ii) that the certificate was obtained by means of an untrue allegation of a fact essential in law to justify the grant though the allegation was made in ignorance or inadvertently,

and, on revocation of the certificate, the holder thereof shall, on the requisition of the Public Trustee, deliver it up to the Public Trustee, but shall not be entitled to the refund of any fee paid thereon, and if that person wilfully and without reasonable cause omits to deliver up the certificate, he shall be guilty of an offence and liable to a fine not exceeding two



thousand shillings, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

Grant to Public Trustee may be revoked and made to other person.

9. (1) At any time after a grant of letters of administration to the Public Trustee under this Act, any person to whom the court might have committed administration if no such grant had been made may apply to the court for revocation of the grant and for a grant to himself of probate of the will or letters of administration; but no such application shall be made until seven days after notice in writing of intention to make it has been given to the Public Trustee.

(2) Upon such application the court, after hearing the Public Trustee if he appears, may revoke the grant to the Public Trustee and grant probate or letters of administration to the applicant subject to such limitations and conditions as the court thinks fit:

Provided that letters of administration granted to the Public Trustee shall not be so revoked unless the application is made within six months after the grant to the Public Trustee and the court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

(3) Upon a revocation and new grant, all the interest, powers, rights and duties of the Public Trustee in regard to the estate affected by the grant, and all liabilities of the Public Trustee under any contract or agreement entered into by him in relation to the estate or any part thereof, shall cease; and such portion of the estate as is left unadministered by the Public Trustee shall vest in the person obtaining the new grant, subject nevertheless to all lawful contracts theretofore made relating to the estate and to the allowance and payment of all outlays, disbursements, costs, fees, charges and expenses reasonably incurred in the administration thereof.

(4) This section shall apply in the case of an estate of which the Public Trustee has taken possession under section 8 (1) as if there had been a grant of letters of administration to the Public Trustee on the date upon which he took possession.

Public Trustee to take charge of property on death of agent.

10. If at any time the agent or agents in charge of any estate belonging to any person not residing in Kenya die leaving the property without any responsible person in charge thereof, the Public Trustee shall, when that fact comes to his

notice, apply to the court for an order to take charge of the property, and the court shall make such order in the case as it thinks fit.

11. Where probate of the will or letters of administration has been granted to the Public Trustee under this Act or where the Public Trustee, in accordance with the provisions of section 8 (1), is administering the estate of a deceased person without having made application for any such grant, then, except as hereinafter provided, the court, on the petition of the Public Trustee or any person interested in the estate, shall decide all disputes, matters, claims and demands in respect thereof, and shall make such orders as it thinks fit concerning the collection, sale, investment, disposal or administration of the estate:

Disputes to be decided on petition by the court.  
33 of 1962, s. 6.  
21 of 1966,  
1st Sch.,  
10 of 1969, Sch.,  
10 of 1976, s. 8.

Provided that—

- (i) in any case in which it appears to be not desirable that the matter in question should be so decided, the court may direct such proceedings to be instituted as appear proper for the due decision thereof;
- (ii) in the case of an estate consisting solely of property which does not exceed in gross value ~~eight~~ thousand shillings, no petition referred to in this section shall be presented to the court, but the Public Trustee shall decide all disputes, matters, claims and demands arising out of or in respect of or in connexion with the estate, and shall make such orders as he thinks fit concerning the collection, sale, investment, disposal or administration of the estate, and the decision and order of the Public Trustee in respect of any of those matters shall be final and without appeal.

*del/ Subst.*  
*Feb.*  
*11/8/1993*

12. (1) The Public Trustee may convert into money all movable property of an estate which he administers under this Act, and may with the consent of the court convert into money all or any part of the immovable property of the estate:

Movable property to be realized.  
21 of 1966,  
1st Sch.,  
L.N. 299/1956,  
L.N. 172/1960,  
10 of 1976, s. 10.

Provided that if all parties interested in the immovable property consent in writing to its conversion into money by the Public Trustee, or if the value of that property does not exceed ~~twenty~~ thousand shillings and the Public Trustee is satisfied that the conversion of that property into money would be to the advantage of the estate, the consent of the court shall not be necessary.

*11/8/1993*

(2) The Public Trustee shall cause advertisements to be published in the Gazette and in such other manner as he deems

expedient calling upon the creditors of the person whose estate he is administering under this Act to come in and prove their debts before him within the space of two months from the date of publication :

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Provided that where the value of an estate is within the jurisdiction of a resident magistrate or a district magistrate under the Law of Succession Act, it shall not be necessary for publication to be made in the Gazette but the Public Trustee shall cause the advertisements to be published in accordance with rules made under section 97 of that Act or, if the magistrate directs otherwise, in accordance with that direction.

(3) The Public Trustee shall, after the expiration of the period referred to in subsection (2), pay the debts proved, and if the whole thereof cannot be paid he shall pay a dividend thereon; and if he collects any further assets after making those payments, he shall, in case any part of the debts proved remains unpaid, pay that part and any debts subsequently proved before him, or a dividend thereon; but such debts as are subsequently proved shall first be paid a dividend in proportion to their amount equal to the dividend paid to creditors having previously proved their debts.

(4) After payment of all debts, fees and expenses incident to the collection, management and administration of the estate, the Public Trustee shall pay over the residue to the persons beneficially entitled thereto; and where those persons are resident outside Kenya payment may be made to an agent or representative duly authorized to receive it; and remittances made by registered letter shall be deemed equivalent to payment:

Provided that—

- (i) in the event of the Public Trustee being unable to trace the parties beneficially entitled to the residue of the estate or any of them, he shall transfer the residue or proportionate part thereof as the case may be to the unclaimed property account;
- (ii) where the Public Trustee has been granted letters of administration to the estate in Kenya of a person who at the time of his death was not domiciled, or who appears to the Public Trustee to have then not been domiciled, in Kenya, and a grant of probate of the deceased person's will or letters of administration to his estate has been made in the country of the deceased person's domicile, the Public Trustee

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may pay over or transfer to the person holding the grant the residue of the estate in Kenya without seeing to the application thereof and without incurring any liability in regard to that payment or transfer;

(iii) where the deceased person was domiciled in a foreign State, the payment or transfer may be made to a consular officer of that State, whose receipt shall be a full and complete discharge to the Public Trustee in respect thereof.

(5) Estates shall be distributable by the Public Trustee according to the ordinary rules of law within a period not exceeding twelve years computed from the date of the final completion of the account; and on the expiry of that period all estates or portions thereof in respect of which no claim has been lodged with the Public Trustee shall lapse or be escheat to the Government:

Provided that the Minister may dispose of and distribute the estate or any part thereof to or among any kindred of the deceased or other person having a legal claim thereto or to or among any kindred of the deceased or other person who, although not having any legal claim thereto, can show a reasonable claim in equity thereto, in such shares or manner as he thinks fit.

13. Notwithstanding any rule of law to the contrary, the fees payable to the Public Trustee under this Act and any rules made thereunder and any court fees and realization expenses and other charges incurred by the Public Trustee in collecting and realizing the assets of the estate of a deceased person shall rank for payment after any funeral expenses and death-bed charges of the deceased but in priority to all other expenses and to the debts for which the deceased was liable.

Priority of  
Public Trustee's  
fees and  
expenses.  
15 of 1951, s. 2.  
L.N. 168/1964,  
10 of 1976, s. 11.

14. (1) Any person beneficially interested in any immovable property vested in the Public Trustee may apply by petition to the court for a partition thereof, and the court, if satisfied that partition would be beneficial to all persons interested, may appoint one or more arbitrators to effect it.

Court may order  
partition of  
immovable  
property.

(2) The report and final award of the arbitrators, setting out the particulars of the immovable property allotted to each of the parties interested, shall, when signed by them and confirmed by order of the court, be effectual, without any further conveyance, to vest in each allottee the immovable property so allotted; and, if the allotment be made subject to the charge of any money payable to any other interested

party for equalizing the partition, the charge shall take effect according to the terms and conditions in regard to time and mode of payment and otherwise which shall be expressed in the award.

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Ca Power to collect, realize and hand over assets to Administrator-General. 35 of 1962, s. 8, 21 of 1966, 1st Sch., 10 of 1976, s. 12.

15. (1) Where a person dies leaving estate in Kenya consisting of movable property only and also estate in Uganda, Tanzania or Malawi, administration whereof is committed to the Administrator-General or Public Trustee of any such territory, the Public Trustee may, if requested so to do by the Administrator-General or Public Trustee of the territory, and if satisfied that reciprocal legislation exists in that territory and that the interests of creditors in Kenya will not thereby be prejudiced, apply to the court for an order, which order the court is hereby empowered to make, authorizing him to collect the assets of the estate in Kenya and hand them over to the Administrator-General or Public Trustee of that territory; and, upon the making of the order, the Public Trustee shall have the same rights and duties as regards the collection and realization of the assets of the estate as if administration had been committed to him, and shall not be liable therefor to any creditor or claimant, but shall be discharged from all liabilities upon handing over the assets or the proceeds of the realization thereof to the Administrator-General or Public Trustee of that territory.

(2) There shall be chargeable in respect of proceedings under this section the following—

Cap. 483.

- (a) one half of the scale of fees payable to the Public Trustee under this Act and the rules thereunder;
- (b) estate duty in accordance with the Estate Duty Act;
- (c) fees of court; and
- (d) any out-of-pocket realization expenses and other charges or taxes incurred by the Public Trustee in collecting, realizing and disposing of or transmitting the assets, or the proceeds of realization thereof, of the estate in Kenya.

Treatment of assets received from outside Kenya. 4 of 1973, Sch.

16. (1) Where the administration of an estate has been committed to the Public Trustee and he receives assets which at the time of the death of the deceased were situated outside Kenya, those assets shall for all purposes be treated in the same manner as assets within Kenya at the time of death:

Provided that the fees chargeable by the Public Trustee on any assets or moneys received from outside Kenya only for the purpose of distribution among the heirs or bene-

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ficiaries shall be restricted to one per centum of the gross value of those assets or the net amount of money received.

(2) Where any person entitled to a share under the will, or otherwise in the distribution of the estate, of a deceased person whose estate is being administered by the Public Trustee is a minor, the court may, upon the application of the Public Trustee, appoint the father or mother of the minor or some other suitable person to receive the share of the minor on his behalf, and when the appointment is made the Public Trustee may pay the share of the minor to that person on behalf of the minor, and the receipt of that person shall be a full and complete discharge to the Public Trustee so far as regards that share:

Provided that, where the share of the minor does not exceed ~~ten~~ thousand shillings in value, the Public Trustee may pay or transfer it to the father or mother of the minor or some other suitable person on behalf of the minor, and the receipt of the father or mother or other person referred to herein shall be a full and complete discharge to the Public Trustee in respect of that share.

*del. / Subst  
Act. 11/1993*

### PART III—TRUSTS

17. (1) Subject to and in accordance with the provisions of this Act, and the rules made thereunder, the Public Trustee may—

- (a) act as an ordinary trustee;
- (b) be appointed trustee by a court of competent jurisdiction;
- (c) act as a custodian trustee;
- (d) be appointed sole trustee in all cases where any written law provides that there shall be two trustees.

(2) Subject to the provisions of this Act and to any rules made thereunder, the Public Trustee may act either alone or jointly with any person or body of persons in any capacity to which he may be appointed in pursuance of this Act, and shall have all the same powers, duties and liabilities, and be entitled to the same rights and immunities, and be subject to the control and orders of the court, as a private trustee acting in the same capacity.

(3) The Public Trustee may decline either absolutely, or except on such conditions as he may impose, to accept any trust.

(4) The Public Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors.

Duties of  
Public Trustee.  
15 of 1951, s. 3,  
L.N. 462/1963,  
L.N. 168/1964.

(5) The Public Trustee shall not, save as provided by any rules made under this Act, accept any trust which involves the management or carrying on of any business.

Appointment of  
Public Trustee  
as trustee by  
person creating  
trust.

**18. (1)** Any person intending to create a trust other than a trust which the Public Trustee is prohibited from accepting under this Act may, by the instrument creating the trust, and with the consent of the Public Trustee, appoint him by that or any other sufficient description to be either sole or joint trustee of the property subject to the trust:

Provided that the consent of the Public Trustee shall be recited in the instrument, and the instrument shall be duly executed by the Public Trustee.

(2) Upon any such appointment, the property subject to the trust shall vest in the trustee or trustees either solely or jointly, and shall be held by him or them upon the trusts declared in the instrument.

Appointment of  
Public Trustee  
as trustee by  
court.

**19.** If the property is subject to a trust other than a trust which the Public Trustee is prohibited from accepting under this Act, and there is no trustee within Kenya willing or capable to act in the trust, the court may on application make an order for the appointment of the Public Trustee by that name with his consent to be the trustee of that property.

Custodian  
trustee.

**20. (1)** Subject to any rules made under this Act, the Public Trustee may, if he consents to act as such, and whether or not the number of trustees has been reduced below the original number, be appointed to be custodian trustee of any trust—

- (a) by order of the court made on the application of any person on whose application the court may order the appointment of a new trustee; or
- (b) by the testator, settlor, or other creator of any trust; or
- (c) by the person having power to appoint new trustees.

(2) Where the Public Trustee is appointed to be custodian trustee of any trust—

- (a) the trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose vesting orders may, where necessary, be made under the Trustee Act;
- (b) the management of the trust property and the exercise of any power or discretion exercisable by the

Cap. 167.

trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the managing trustees);

- (c) as between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have free access thereto, and be entitled to take copies thereof or extracts therefrom;
- (d) the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise, but, unless he so concurs, the custodian trustee shall not be liable for any act or default on the part of the managing trustees or any of them;
- (e) all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee:

Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they direct, or into such bank to the credit of such person as they may direct, and in that case shall be exonerated from seeing to the application thereof and shall not be answerable for any loss or misapplication thereof;

- (f) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power of applying to the court for the appointment of a new trustee as any other trustee;
- (g) in determining the number of trustees for the purposes of the Trustee Act, the custodian trustee shall not be reckoned as a trustee;



(h) the custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact, upon which the title to the trust property or any part thereof may depend, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee;

(i) the court may, on the application of either the custodian trustee, or any of the managing trustees, or of any beneficiary, and on proof to its satisfaction that it is the general wish of the beneficiaries, or that on other grounds it is expedient to terminate the custodian trusteeship, make an order for that purpose, and the court may thereupon make such vesting orders and give such directions as under the circumstances seems to the court to be necessary or expedient.

Transfer of legacy, etc., of infant or lunatic to Public Trustee.  
35 of 1962, s. 9.  
Cap. 248.

**21.** If any person of unsound mind, within the definition of that term contained in section 2 of the Mental Treatment Act, of whose estate the Public Trustee has been appointed manager under section 38 of that Act, or any minor is entitled to any gift, legacy or share of the assets of a deceased person, the person by whom the gift is made, or the executor or administrator by whom the legacy or share is payable or transferable, or any trustee of any gift, legacy or share, may transfer it by an instrument in writing to the Public Trustee by that name or any other sufficient description with his consent:

Provided that the consent of the Public Trustee shall be recited in the instrument and the instrument shall be duly executed by the Public Trustee.

#### PART IV—GENERAL

Security not required.

**22.** The Public Trustee shall not be required by any court to enter into any bond or security on his appointment in any capacity under this Act.

Court orders.

**23.** The court may make such orders as it thinks fit respecting any trust property vested in the Public Trustee or the interest or produce thereof.

Power to incur expenditure.

**24.** The Public Trustee may, in addition to any other powers of expenditure lawfully exercisable by him, incur

expenditure on such acts as may be necessary for the proper care and management of any property belonging to any trust or estate administered by him.

**25.** (1) The Public Trustee shall be a corporation sole by the name of the Public Trustee, and shall have perpetual succession and an official seal.

Other provisions  
regarding Public  
Trustee.  
L.N. 300/1956.  
L.N. 173/1960.

(2) The Public Trustee shall appoint such person or persons as he shall think fit to act as his agents in the managing, collecting and getting in of property belonging to deceased persons whose estates are in course of administration by him or of any estate of which he is the trustee; and the agents shall—

(a) in all respects act in the management, collection and getting in of property under the direction of the Public Trustee, who shall not be answerable for any act or omission of an agent not in conformity with his direction or which has not happened by the Public Trustee's own fault or neglect;

(b) find security to the satisfaction of the Public Trustee for the performance of his duty;

(c) be remunerated either by salary or by such fees or portion thereof chargeable under this Act as the Minister shall fix.

(3) In all proceedings under this Act and in all proceedings at law, the Public Trustee shall sue and be sued by the name of the Public Trustee, and it shall be necessary to state and prove his authority and title in the specific estate to which the proceedings may relate, but not his general authority or appointment.

(4) The Public Trustee shall be at liberty without the previous leave of the court to instruct and employ an advocate in any case he thinks fit and the advocate shall be remunerated out of the funds of the particular estate involved.

(5) Whenever the office of Public Trustee becomes vacant by the death or removal or absence from Kenya of the Public Trustee for the time being, and another officer is appointed to that office during the pendency of any petition, action, suit or other proceeding that petition, action, suit or other proceeding shall not abate or become defective, but shall be continued by or against the officer newly appointed.

(6) Neither the Public Trustee nor any agent shall be personally liable to any person in respect of goods or chattels in the possession at the time of his death of any person whose estate is administered by the Public Trustee, which shall be

sold by the Public Trustee or agent, unless the Public Trustee or agent knew or had actual notice before the sale that the goods or chattels were not in fact the property of the person whose estate is being administered by him; and generally neither the Public Trustee nor an agent shall be liable for any act done by him bona fide in the supposed and intended performance of their duties, unless it is shown that the act was done not only illegally, but wilfully or with gross negligence:

Provided that, in case of a sale by the Public Trustee or agent of goods or chattels belonging in fact to any third person, the amount realized by the sale thereof shall be paid over to the owner upon proof by him of ownership, unless it has already been applied in payment of the debts of the deceased or has been distributed according to a will of the deceased in the ordinary course of administration whilst the Public Trustee or agent was in ignorance and without actual notice of the claim of that person to the goods or chattels sold.

(7) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, the Crown Agents for Oversea Governments and Administrations may act as nominees of the Public Trustee and as such may hold in their name, as nominees, the scrip, certificates and other documents relating to any authorized investment made by the Public Trustee in pursuance of this or any other Act.

(8) The Public Trustee may, whenever he deems it expedient so to do, for the purposes of this Act, in order to satisfy himself regarding any question of fact, examine upon oath, which he is hereby authorized to administer, any person who is willing to be so examined by him regarding any such question of fact.

Government  
liability for  
acts of  
Public Trustee.  
21 of 1961, Sch.

**26. (1)** The Government shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private executor, administrator or trustee, would be personally liable to discharge, except when the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in that case, the Public Trustee shall not, nor shall the Government, be subject to any liability.

(2) Every sum required to meet a liability of the Government under this section shall be charged upon and paid out of the Consolidated Fund.

**27. The Minister may make rules for—**

- (a) defining the duties of the Public Trustee;
- (b) defining the powers and liabilities of agents, appointing such persons as may be thought advisable to be *ex officio* agents, fixing the amount of security to be given by agents and generally regulating their duties;
- (c) prescribing forms and scales of fees;
- (d) the safe custody, deposit and investment of funds which come into the hands of the Public Trustee; and
- (e) generally making provision for the better carrying out of the purposes of this Act.

Rules.

L.N. 300/1956,

L.N. 173/1960.

C.O. 43/1998



**SUBSIDIARY LEGISLATION****Rules under section 27****THE PUBLIC TRUSTEE RULES****ARRANGEMENT OF RULES****PART I—PRELIMINARY***Rule*

- 1—Citation.
- 2—Interpretation.

**PART II—ADMINISTRATION OF THE ESTATES OF  
DECEASED PERSONS**

- 3—Accounts and records to be kept.
- 4—Accounts to be passed in court.
- 5—Interim accounts.
- 6—Investment of moneys.

**PART III—TRUSTS**

- 7—Accounts and records to be kept.
- 8—Investment of moneys.
- 9—Authorized Investments.
- 10—Public Trustee as trustee under will.
- 11—When beneficiaries not to be found.
- 12—Trusts for religious purposes.
- 13—Trusts involving management of business not to be accepted.

**PART IV—GENERAL**

- 14—Professional assistance.
- 15—Taking of oaths.
- 16—Powers and duties of agents.
- 17—Authentication of deeds.
- 18—Fees and expenses.
- 19—Banking of cash and bank accounts.
- 20—Investment ledger.
- 21—Closing of cash books and final accounts.
- 22—Payment to beneficiaries.
- 23—Payment of advances.
- 24—Identification of payees.
- 25—*Ex officio* agents.

**SCHEDULE.**

## [Subsidiary]

L.N. 594/1963,  
L.N. 368/1964,  
L.N. 28/1970,  
L.N. 167/1981.

L.N. 409/1988  
L.N. 489/1991

## THE PUBLIC TRUSTEE RULES

## PART I—PRELIMINARY

Citation.

1. These Rules may be cited as the Public Trustee Rules.

Interpretation.

2. In these Rules—

“gross value” means the value of property after deduction of the total value of any debt secured on the property only;

“Post Office Savings Bank” means the savings bank established under the Kenya Post Office Savings Bank Act;

Cap. 493B.

## PART II—ADMINISTRATION OF THE ESTATES OF DECEASED PERSONS

Accounts and records to be kept.

3. (1) The Public Trustee shall—

(a) cause to be made a complete inventory of every estate of which he is an executor or administrator;

(b) cause to be kept an estates' cash book and a ledger account for each estate of which he is an executor or administrator, in which shall be shown in detail all monetary transactions relating thereto; and

(c) cause to be kept a file for all correspondence relating to an estate, and cause to be kept in safe custody all deeds and documents relating thereto.

(2) Any creditor, heir or beneficiary of an estate may inspect, and take copies of, any deeds or documents relating to the estate (but not the correspondence kept by the Public Trustee in accordance with paragraph (1) (c)), on payment of the fees specified in the Schedule.

Accounts to be passed in court.

4. (1) The Public Trustee shall—

(a) on the completion of the administration of an estate, file his account (hereinafter referred to as the account) in the High Court and produce vouchers relating to the account with an affidavit in verification thereof to the taxing officer; and

(b) give fourteen days' notice in the Gazette and post notices at the High Court and in a conspicuous place at the office of the Public Trustee, specifying the day and hour appointed by the High Court for the passing of the account.

(2) The account shall be taxed by the taxing officer after hearing any person interested in any property in the hands or under the control of the Public Trustee out of which property the Public Trustee is liable to pay the account, and any such interested person may attend as a result of a notice given under paragraph (1) (b).

(3) The Public Trustee or any interested person who attends the taxation may within fourteen days of the decision of the taxing officer apply to the court by summons in chambers to review that decision.

(4) A certificate shall not be issued until after the expiry of fourteen days from the date of the decision of the taxing officer, or where an application for review has been made to the court until after the determination of the application.

## [Subsidiary]

(5) A certificate issued by the taxing officer, or by a judge where an application for review has been made to the court, to the effect that the accounts have been examined and found correct shall be a valid and effectual discharge in favour of the Public Trustee.

5. (1) The Public Trustee may, after giving notice under rule 4 (1) (b), pass interim accounts before the completion of the administration.

Interim  
accounts.

(2) Where, after completion of the administration of an estate by the Public Trustee and the issue of a certificate by the taxing officer, it is discovered that there is additional property belonging to the estate which remains unadministered, the Public Trustee may administer the estate and file a supplementary account in respect of that property and have it passed in accordance with rule 4, and that rule shall apply *mutatis mutandis* to any supplementary account.

6. (1) When the administration of an estate of which the Public Trustee is an executor or the administrator cannot be completed at once, the Public Trustee may retain any investment of the estate in its then present state.

Investment  
of moneys.

(2) The Public Trustee may invest moneys belonging to an estate which he is administering, where they are not immediately required for the purposes of the administration, in any investment authorized by rule 9.

(3) The Public Trustee may pool all the moneys belonging to the estates which he is administering and may place such proportion of the pooled moneys as is reasonable in a Public Trustee Investment Fund and the moneys in that fund may be invested in medium-term or long-term investments authorized by rule 9; except that the Public Trustee shall not pool the moneys if the total sum of the pooled moneys is likely, over a given period of time, to fluctuate in such a manner as to make the pooling and investment unreasonable in the circumstances.

(4) Income earned from investments made under paragraph (3) shall be placed in a Public Trustee Investment Income Account and shall, after due deductions as authorized by these Rules and any other written law have been made, be divided amongst all the estates whose moneys have been pooled and all the trusts whose moneys have been placed in such a fund under rule 8 (2), in such manner as is equitable.

## PART III—TRUSTS

7. The Public Trustee shall cause the following accounts, statements and other accounts to be kept—

Accounts and  
records to  
be kept.

(a) cash books;

(b) a ledger account of trusts, which shall contain separate accounts for each trust and shall show in detail every debit and credit item and every transaction relating to each trust; and

(c) a register of trusts, in which shall be registered full particulars of the property comprised in each trust, showing the nature and value of the trust property, rents and interests payable and collected, and all dealings with the trust property.

**[Subsidiary]****Investment  
of moneys**

8. (1) The Public Trustee may—

- (a) retain investments belonging to any trust which he is administering;
- (b) invest moneys belonging to any such trust in investments; and
- (c) realize investments belonging to any such trust and reinvest the proceeds thereof in investments,

where those investments are authorized by the trust instrument or by rule 9.

(2) The Public Trustee may invest a proportion of the total sum of moneys belonging to all trusts of which he is the custodian trustee or the sole trustee, provided he is legally empowered so to do, in the manner provided for in rule 6 (3) including placing that proportion in the Public Trustee Investment Fund mentioned in that rule in the circumstances and under the conditions therein described, and any income earned from such investments shall also be placed in the Public Trustee Investment Income Account maintained in accordance with rule 6 (4) and distributed in the manner described in that rule.

**Authorized  
investments**

9. The Public Trustee may invest trust moneys in his possession in any of the following securities—

- (a) any investment authorized by law for the investment of trust funds;
- (b) subject to sub-paragraph (a), any investment in the purchase of or a first mortgage or a first charge secured on immovable property in Kenya up to one-half of the value thereof, as estimated after due inquiry, which mortgage or charge shall be registered with the Registrar of Documents or the Registrar of Titles:

Provided that when the immovable property is leasehold a period of not less than fifty years of the term of the lease shall be unexpired;

- (c) deposits in any bank or financial institution licensed under the Banking Act, or in any building society which the Minister may approve for the purposes of this rule; and
- (d) deposits in the Post Office Savings Bank.

Cap. 488.

**Public Trustee  
as trustee  
under will.**

10. (1) When the Public Trustee has been appointed a trustee under a will, the executor of the will or the administrator of the estate concerned, after obtaining probate or letters of administration with the will annexed, shall notify the appointment to the Public Trustee in writing, and if so required by the Public Trustee, shall supply him with a copy of the will and of any trust instrument or documents affecting the trust, and such particulars as to the nature and value of the trust property, and the liabilities, if any, attaching to the trust property or the holder thereof, and the names and addresses of any beneficiaries under the trust, and any such information as the Public Trustee may require in any particular case.



[Subsidiary]

(2) The Public Trustee shall, after obtaining the information required under paragraph (1), decide whether the trust shall be accepted or refused, and shall give the executor or administrator notice of acceptance or refusal, and in case of acceptance shall notify in writing his consent to act in the trust and the terms upon which his consent is given.

11. When a person appearing to be beneficially entitled under a trust to any money in possession of the Public Trustee, or to be interested in the trust property, cannot be found, or it is not known whether he is living or dead, the Public Trustee may apply to the court for directions as to the course to be taken with reference to that person, and, until an order of the court is made, shall retain any sum payable to that person, and may invest it in a trustee investment and accumulate the interest thereof.

When beneficiaries not to be found.

12. The Public Trustee shall not accept any trust for religious purposes which involves the exercise by him as trustee of any religious observance or ceremony or the decision of any question as to the religious merit or character of any individual or institution.

Trusts for religious purposes.

13. (1) The Public Trustee shall not accept any trust which involves the management or carrying on of any business, except for the purpose of winding up the business forthwith in order to realize the trust funds.

Trusts involving management of business not to be accepted.

LEGAL NOTICE NO. 489/1991

THE PUBLIC TRUSTEE ACT

(Cap. 168)

IN EXERCISE of the powers conferred by section 27 of the Public Trustee Act, the Attorney-General makes the following Rules:—

THE PUBLIC TRUSTEE (AMENDMENT) RULES, 1991

1. These Rules may be cited as the Public Trustee (Amendment) Rules, 1991.

Sub. Leg.

2. The Public Trustee Rules are amended—

(a) in rule 16, by deleting the words "and of the agents for the Lamu and Kilifi Districts";  
in writing in that behalf may take an oath, make any declaration, verify any account and give personal attendance at any court or place.

oaths.

16. The powers and duties of an *ex officio* agent appointed under the Act and of all *ex officio* agents hereafter appointed and of the agents for the Lamu and Kilifi Districts shall be as follows—

Powers and duties of agents.

delete LW 489/91

(a) to administer estates of deceased persons of the gross value of one hundred ~~twenty thousand~~ shillings or under, in the name of the Public Trustee;

subst. LW. 409/88

(b) to pay all claims owing by those estates on satisfactory proof that they are due;

2. Rule 16 of the Public Trustee Rules is amended by deleting paragraph (a) and inserting the following—

Sub. Leg.

(a) to administer estates of deceased persons of the gross value of one hundred thousand shillings or under, in the name of the Public Trustee.

**[Subsidiary]**

- (c) to receive all debts due to such estates and in the name of the Public Trustee to give valid receipts for them;
- (d) to dispose of all movable and, if necessary, immovable property belonging to those estates:

Cap. 281.

Provided that a certificate signed by an agent that the property conveyed forms part of the estate of the deceased vested in him by virtue of the Act shall be registered under sections 52 and 53 of the Registration of Titles Act in lieu of the grant of probate or letters of administration, as the case may be;

- (e) to take all necessary legal proceedings in connexion with debts due to estates in course of administration;
- (f) at the end of each quarter, to submit to the Public Trustee the files of all completed cases for his approval and sanction; and
- (g) to furnish to the Public Trustee at the end of each quarter a concise statement showing the number and value of cases administered during the period and the fees collected thereon.

Authentication  
of deeds.

17. Where any deed or other instrument requires to be executed by the Public Trustee under his official seal, the affixing of the seal may be authenticated by the signature of the Public Trustee, and any deed or instrument purporting to be a deed or instrument executed by the Public Trustee and to be sealed with his seal, authenticated in the manner provided by this rule, shall be received in evidence and be deemed to be a deed or instrument so executed without further proof unless the contrary is shown.

Fees and  
expenses.

L.N. 42/1996

18. (1) All work performed by the Public Trustee or by his agents in the administration of a trust or an estate shall be charged according to the scale of fees prescribed in the Schedule:

Provided that—

- (i) if in any case it appears to the Minister that the circumstances of an estate being administered by the Public Trustee are such as to render the Public Trustee's duties in relation thereto exceptionally simple or otherwise of an exceptional character justifying such a course, the Minister may remit any part, not exceeding one-half, of the prescribed fees;
- (ii) in any case in which it appears to the Public Trustee that the circumstances of a trust or estate are such as to render the duties in relation thereto exceptionally onerous or responsible, he may, with the approval of the Minister, charge a special fee in respect of the performance of such duties in addition to the prescribed fee.

(2) Where it appears to the Public Trustee upon accepting a trust or an estate that the property thereof consists wholly or partially of reversionary interests or other property not in possession or not readily realizable (all which interests and property are hereinafter referred to as reversionary property), then—

- (a) upon the acceptance of the trust or estate the reversionary property shall be excluded from the trust or estate property for the purpose of ascertaining the amount of the prescribed

[Subsidiary]

fee, and the prescribed fee shall be calculated and paid as if the trust or estate property other than the reversionary property were alone comprised in the trust or estate; and

- (b) there shall be paid in respect of the gross value of the reversionary property or any part thereof at the date on which it falls into possession or is realized a fee of such an amount as would have been payable in respect of that value if that value had formed part of the value of the trust or estate property upon acceptance.

(3) The Public Trustee may reimburse himself for any payment made by him or his agents in respect of an estate in his or their charge which a private administrator of that estate might have lawfully made:

Provided that, where the Public Trustee accepts an estate for administration but subsequently withdraws in favour of another administrator before he has obtained a grant of administration to the estate, he shall be entitled to such fees as may be a reasonable remuneration for work actually performed by him, not exceeding in any case one-half of the fees prescribed in the Schedule based on the gross value of the estate at the date of death.

(4) All fees and charges received by the Public Trustee shall be paid into the Consolidated Fund.

(5) The Public Trustee shall be entitled each year to charge out of each estate or trust under his administration a sum not exceeding *one hundred* ~~twenty-five~~ shillings to cover local postage and stationery, which expenditure shall not be required to be taxed before a taxing officer.

19. (1) The Public Trustee shall cause all the cash received in the course of administration by him of an estate or trust to be banked immediately on receipt thereof.

*del./Subst.  
L.N. 43/1998*  
Banking of  
cash and bank  
accounts.

(2) The Public Trustee shall open the following bank accounts—

(a) a Public Trustee Administration Account into which shall be paid all moneys received by him in respect of estates which he is administering and from which shall be paid—

- (i) all expenditure including the day-to-day cash requirements in the administration of the estates; and  
(ii) all distributions in respect of the estates;

(b) a Public Trustee Sundry Expenses Account into which shall be transferred such accumulated balances as are held or may at any time be held by the Public Trustee for the purpose of meeting sundry expenditure incurred or to be incurred by him in the administration of the estates; and

(c) a Public Trustee Trust Estates Account into which shall be paid all moneys received in respect of trusts of which the Public Trustee is a trustee and from which shall be met all expenditure and all disbursements in respect of those trusts including the day-to-day cash requirements in the administration of those trusts.

**[Subsidiary]**Investment  
ledger.

20. The Public Trustee shall open and maintain an investment ledger in which shall be recorded all the investments of the moneys in the Public Trustee Investment Fund, the income received therefrom and all withdrawals of all or part of such investments.

Closing of  
cash books  
and final  
accounts.

21. (1) The cash books relating to administration of estates and trusts respectively shall be balanced at the end of every month and shall be submitted to the Public Trustee or a person appointed by him for the purposes of inspection; and an abstract of the cash book shall be prepared and submitted to the Public Trustee at the end of every month.

(2) Ledger accounts maintained by the Public Trustee in respect of estates and trusts under administration by him shall be closed on the 30th June in every year and final accounts shall be prepared for audit.

(3) Except by order of the court, no person other than the Controller and Auditor-General, an internal auditor or a beneficiary shall be entitled to inspect a trust account maintained by the Public Trustee.

Payment to  
beneficiaries

22. All moneys payable by the Public Trustee to the beneficiaries shall be payable at the office of the Public Trustee, and in the case of payment by remittance through the post the cost of remittance, including postal charges, shall be borne by the person at whose request or for whose benefit the remittance is made.

Payment of  
advances.

23. The Public Trustee may make advances for the purposes of any estate or trust under his administration out of any cash balance standing to the credit of the Public Trustee Administration Account or the Public Trustee Trust Estates Account, as the case may be.

Identification  
of payees.

24. The Public Trustee may at any time require such evidence as he may think sufficient that a person is alive and is the person to whom any money or property is payable or transferable, and may refuse payment or transfer until the evidence is produced.

Ex officio  
agents.del/ Subst.  
L.N. 489/1991

25. ~~Except in the Lamu and Kilifi Districts, the District Commissioner~~ of every district shall, with the consent of the Provincial Commissioner, be the *ex officio* agent of the Public Trustee in his district.

## SCHEDULE

(r. 18)

## SCALE OF FEES

1. ~~Administration of Estates.~~—A fee assessed on the gross value of the estate at the date of death or such other date as the Public Trustee may decide, as follows—

Estates not exceeding £10 in value	Nil.
Estates exceeding £10 but not exceeding £200	10 per cent.
Estates exceeding £200 but not exceeding £1,000	10 per cent on the first £200 5 per cent on the balance.

(b) in rule 25 by deleting the words "Except in the Lamu and Kilifi Districts, the District Commissioner" and inserting "The District Commissioner".

Made on the 27th September, 1991.

del/ Subst.  
L.N. 43/1998

L.N. 489/91

LEGAL NOTICE NO. 43/1998

THE PUBLIC TRUSTEE ACT  
(Cap. 168)

IN EXERCISE of the powers conferred by section 27 (c) of the Public Trustee Act, the Attorney-General makes the following Rules:—

THE PUBLIC TRUSTEE (AMENDMENT) RULES, 1998

1. These Rules may be cited as the Public Trustee (Amendment) Rules, 1998.

2. The Public Trustee Rules are amended—

Sub. Leg.

(a) in rule 18 (5) by deleting the words "twenty-five" and inserting the words "one hundred";

(b) by deleting the Schedule thereto and inserting the following new Schedule:

SCHEDULE

SCALE OF FEES (r. 18)

I. ADMINISTRATION OF ESTATES

A fee assessed on the gross value of the estate at the date of death or such other date as the Public Trustee may decide, as follows—

<i>Value of Estate</i>	<i>Fee</i>
Not exceeding £10 .. .. .	Nil.
Exceeding £10 but not exceeding £200	12 per cent.
Exceeding £200 but not exceeding £1,000 .. .. .	12 per cent on the first £200; 7 per cent on the balance.

change or investment or re-investment of capital moneys or trust funds (not including money deposited with any savings bank or placed on fixed deposit with any bank)—a fee of 2 per cent on the amount realized on such sale or on the amount of the value of the property changed or re-invested;

(c) on any capital moneys or trust funds deposited in a saving bank or placed on fixed deposit with any bank— a fee of 1 per cent on the amount so deposited or placed;

(d) on the renewal of any fixed deposit—a fee of ½ per cent on the amount so renewed:

Provided that no fee shall be charged under sub-paragraph (c) or (d) in respect of any money placed or left on fixed deposit for a period of less than one year.

[Subsidiary]

SCHEDULE—(Contd.)

*del./Subst.  
No. 43/1998*

(3) *Income Fees.*—A fee of 5 per cent (with a minimum fee of five shillings) on the annual income accruing for the benefit of any trust either from money invested or from properties held in trust up to £1,000, and 2½ per cent on any excess over £1,000.

(4) *Distribution Fees.*—Upon distribution amongst the beneficiaries of any capital from the trust property, a fee at the rate specified in subparagraphs (2) (a) and (b):

Provided that the minimum fee chargeable in respect of any distribution shall be twenty shillings.

(5) The fees specified in this paragraph shall not be charged or deemed to become payable until such time as the Public Trustee prepares an account of distribution or disposal of capital or income.

3. *Custodian Trusts.*—For acting as custodian trustee—1 per cent of the gross income, but where the income is paid direct to managing trustees under section 20 (2) (e) of the Act no income fee shall be payable except a capital fee of ¼ per cent only on acceptance of the trust.

4. *Public Trustee Investment Income Account.*—A fee of ¼ per cent per annum on the income earned and placed in this account during the year for managing the Public Trustee Investment Fund.

5. *Miscellaneous Fees*—

- (1) Inspection, per hour or part thereof .. . . . Sh. 10
- (2) Uncertified copies, per folio of 100 words or part thereof .. . . . Sh. 1, but not less than Sh. 5 in respect of any one document.
- (3) For certifying any copy .. . . . Sh. 10.

