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WILLS AND INHERITANCE

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CHAPTER 10:02

WILLS AND INHERITANCE

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CHAPTER 10:02

WILLS AND INHERITANCE

An Act to provide for the making of wills, and for inheritance to the estates of deceased persons, the administration of estates, the function of courts in relation to such matters and for matters incidental thereto

25 of 1967
37 of 1967
25 of 1968
5 of 1979
16 of 1984
11 of 1989

[6TH NOVEMBER, 1967]

1.—(1) This Act may be cited as the Wills and Inheritance Act.

Short title
and
application

(2) This Act shall apply to the administration of the estates of

L.R.O. 1/1990

all persons dying domiciled, or leaving property in Malawi, on or after the date upon which it comes into operation.

(3) Nothing in this Act shall apply to customary land or to growing crops thereon.

PART I

PRELIMINARY

Interpreta-
tion and
prescribed
trusts
11 of 1989

2.—(1) In this Act, unless the context otherwise requires—

“administration grant” means a grant made under section 65;

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

“child” includes an illegitimate child, an adopted child, and a child *en ventre sa mere*; and “grandchild” has a corresponding meaning;

“dependant” in relation to a deceased person means a person who was maintained by that deceased person immediately prior to his death and who was—

(a) a child, issue, wife, parent or *Mtsibweni* of that deceased person; or

(b) any other person living with that deceased person; or

(c) a minor whose education was being provided for by that deceased person, and who is incapable, wholly or in part, of maintaining himself;

“executor” means a person to whom the administration of the estate of a testator or a part of such estate is entrusted by express or implied appointment under a will;

“household belongings” means furniture, bedding, crockery, cooking utensils, garden and farming implements and other articles used in and for the purpose of maintaining and enjoying a dwelling house;

“inheritable property” includes all causes of action which survive the deceased but does not include any property which passes to another person by right of survivorship;

“intestate property” means property in respect of which there is an intestacy under section 15;

“issue” in relation to any person means the children, grandchildren and more remote descendants of that person;

“minor” means a person who has not yet attained the age of 21 years;

"near relative" means a relative who would be entitled to a share in the estate of a deceased person if such person had died intestate;

"personal representative" includes an executor and administrator;

"prescribed trusts" means the trusts prescribed in subsection (3);

"probate" means the certificate of the Court that a will, of which a certified copy is attached, has been proved a valid will;

"Registrar" means the Registrar of the High Court;

"small estate" means the estate of a deceased person consisting of property which does not exceed K10,000 in value at the date of the death of the deceased without making any deduction for debts; 11 of 1989

"testator" means a person who has made a will;

"trust corporation" means a trust corporation within the meaning of the Trustee Act; Cap. 5:02

"will" means the legal declaration by a person of his wishes or intentions regarding the disposition of his property after his death;

(2) A person is said to die intestate if he dies without leaving a valid will.

(3) Where it is provided in this Act that any class of relatives is entitled to the estate of an intestate, or any part thereof, in accordance with the prescribed trusts, the same shall be held upon the following trusts—

(a) in trust, in equal shares if more than one for—

(i) all the members of the class, living at the death of the intestate, who attain the age of 21 years or who die before attaining the age of 21 years leaving issue;

(ii) all or any of the issue, living at the death of the intestate, who attain the age of 21 years or who die before attaining the age of 21 years leaving issue, of any member of the class who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;

(b) the personal representative of the estate of the intestate may exercise the powers of maintenance and advancement contained in the Trustee Act in relation to any minor whose Cap. 5:02

interest under paragraph (a) is contingent on his attaining the age of 21 years;

(c) where any minor who would be absolutely entitled to a share if he attained the age of 21 years dies without issue under that age, then so much of his contingent share and the accumulated income thereof as has not been applied in accordance with paragraph (b) shall devolve upon such person as would have been entitled thereto had such minor not been born.

Example 1. If A dies intestate leaving no widow but a son B aged 40 and two grandsons D aged 25 and E aged 15 and the children of a deceased child C, then the property to which section 17 or 18 applies is to be divided so that (in the absence of special circumstances under section 17) B takes a half share and D a quarter share and a quarter share is held on trust for E until he reaches the age of 21 years when he becomes absolutely entitled. If E dies before reaching the age of 21 years without leaving issue, so much of his share as has not been applied for his benefit goes to D the other child of C. But if E dies before reaching the age of 21 years leaving issue, such of E's issue as attain the age of 21 years will, subject to paragraph (b), share between them the quarter share to which E would have been entitled if he had attained 21 years.

Example 2. If L dies intestate, if section 18 applies to his estate and if there were living at the date of his death the following relatives only—

(a) M, a brother, of full age, who has four children;

(b) N and O, both of full age, the children of a deceased sister Z;

(c) P, of full age, the child of a deceased brother Y, and Q and R both minors, the children of a deceased child of Y;

then the principal stocks of the family are three—M, Z and Y and subsidiary stocks in Y's family are two—P and the deceased child, thus—

(a) M takes one third of the estate but his children are not entitled;

(b) N and O each take one half of one third of the estate;

(c) P takes one half of one third and the remaining half of that third is held on trust until Q and R or either of them attains 21 years of age.

Subject to the effect of paragraph (b)—

(d) if Q and R both attain 21 years they will be entitled to one-twelfth each;

(e) if either Q or R dies before attaining 21 years without leaving issue but the survivor does attain 21 years, the survivor is entitled to the whole one sixth share;

(f) but if both Q and R die without issue before attaining 21 years, P becomes entitled to that share in addition to the share already taken.

3. Except as provided in this Act, no person shall be entitled, under customary law, to take by inheritance any of the property to which a deceased person was entitled at the date of his death.

Variation of customary law relating to inheritance

PART II

WILLS

4.—(1) A person who is of a sound mind and is not a minor may, subject to this Act, dispose of all or any of his property after his death by will.

Powers which may be exercised by will

(2) A will may appoint persons to administer the estate of the testator or any property which is disposed of by the will.

(3) Subject to section 6 disposal by will may be made to any person and subject to any condition or other special provision.

(4) A parent may by his will appoint a guardian of his minor child. Subject to Part XIII a guardian so appointed shall, to the exclusion of any customary guardian, have such powers as are conferred by law upon a guardian.

(5) A will may nominate a Traditional Court to which applications relating to the administration of the testator's estate may be made. A Court so nominated shall, subject to section 22 and to any rules made by the Minister, have jurisdiction accordingly.

5.—(1) Every will shall be in writing and shall be signed by the testator in the presence of at least two competent witnesses who shall also sign the will in the presence of the testator and in the presence of each other as witnesses to the signature of the testator.

Making of wills

(2) Any person who is of sound mind and is not a minor shall be a competent witness for the purpose of this section.

(3) A will may be made outside Malawi in respect of any property in Malawi. A will so made shall be valid if made in accordance with the prior provisions of this section or of the law of the place where it was made, or the law of the place where the testator had his domicile when the will was made.

(4) Notwithstanding the other provisions of this section and of section 4 (1) a member of the armed forces of Malawi, on actual

service as such, may make a will which shall be valid notwithstanding that he is a minor or that any of the formalities required by subsection (1) have not been complied with.

Witnesses
may not take
benefit
under will

6. A person who witnesses the testator's signature of a will and a spouse of such witness shall not be entitled to take any benefit under the will but shall be entitled to act as executor thereof:

Provided that a legatee under a will shall not be dis-entitled to a benefit under the will by reason that he or his spouse has attested a codicil confirming it.

Safe custody
of wills

7. A living person may deposit his will for safe custody with the Registrar of the High Court or at the office of a District Commissioner, subject to such conditions relating to the deposit and withdrawal thereof as may be prescribed in probate rules.

Revocation
and
alteration of
wills

8.—(1) The testator may at any time revoke his will—

(a) by destroying the will with the intention to revoke it;

(b) by making in a subsequent will or some document executed like a will a statement of his intention to that effect.

(2) Where a testator dies having made more than one will the latest in time of the said wills shall prevail over the earlier wills to the extent of any revocation, variation or inconsistency.

(3) No obliteration, interlineation or other alteration made in a will after its execution has any effect unless such alteration is signed and attested as a will is required to be signed and attested under section 5, or is referred to in a memorandum written at the end or some other part of the will and so signed and attested.

Effect of
subsequent
marriage
Cap. 25:01

9.—(1) Subject to subsection (2) a will shall be revoked by the marriage, after the making of the will, of the testator if such marriage is registered in accordance with the Marriage Act or, in the case of a person who is not domiciled in Malaŵi, if such marriage is solemnized or contracted outside Malaŵi.

(2) A will expressed to be made in contemplation of marriage with a specified person shall not be revoked by the contemplated marriage.

PART III

CONSTRUCTION OF WILLS

Intention
of the
testator to
prevail
5 of 1979

10.—(1) Subject to the provisions of this Part and Part IV, it shall be the duty of a Court, in construing a will, to give effect to the intention of the testator so far as such intention can be ascertained from the wording of the will, and, in so doing, the Court shall not be bound to follow any statutory provision, rule of common law or doctrine of equity.

(2) The intention of a testator, as disclosed by his will, shall not be set aside because it cannot take effect to the full extent, but effect shall be given to it as far as possible.

11. Where any clause of a will is susceptible of two meanings, ~~one~~ of which has some effect and one of which can have none, the former shall be preferred.

Where two constructions possible

12.—(1) Every will shall be construed with reference to the estate comprised therein, so as to take effect as if made immediately before the death of the testator.

Will to speak as from death

(2) A gift to a person who predeceases the testator shall, subject as hereinafter in this subsection provided, lapse and be of no effect. A gift to a person being a child or other issue of the testator who predeceases the testator leaving issue living at the time of the death of the testator shall take effect as if the death of such person had happened immediately after the death of the testator.

Example. A has a son B. B dies before A leaving issue and a will. A dies leaving a will in which he makes a gift to B. The executors of B's will are entitled to the gift, which will form part of B's estate as though he had survived his father. If B did not, in his will, make adequate provision for all his issue any of them who were dependants of B could apply under section 14.

13. It shall not be necessary for technical words or terms of art to be used in a will, but only that the wording be such that the intention of the testator can be ascertained therefrom.

Technical words and terms not necessary
5 of 1979

PART IV

PROVISION FOR DEPENDANTS

14.—(1) On the application in the prescribed manner of a person claiming to be, or to be acting on behalf of, a dependant of a testator, a Court may, if it is satisfied that—

Provision for dependants not adequately provided for by will
5 of 1979

(a) the applicant is a dependant or person acting on behalf of a dependant; and

(b) the testator has inadvertently omitted to make any provision in his will for such dependant, order that reasonable provision shall be made for the dependant in accordance with this section.

(2) Where an application is made under subsection (1), it shall be competent for the Court to order that such part of the testator's estate as amounts to not more than two-thirds of the value thereof, after payment of the testator's debts and the

funeral and administration expenses of the estate, be applied for the maintenance of the dependant, and the manner in which it is to be so applied.

(3) In considering whether any such order should be made and, if so, what order is proper, the Court shall have regard to—

- (a) the nature of the testator's property;
- (b) any past, present or future capital or income from any source of the dependant;
- (c) the conduct of the dependant in relation to the testator and otherwise;
- (d) the circumstances of the other dependants, wives, children and relatives of the testator and the beneficiaries under the will; and
- (e) the general circumstances of the case.

PART V

INTESTACY

Property in respect of which there is intestacy

15. If a person dies without having left a will valid under section 5, there shall be an intestacy in respect of the property to which he was entitled at the date of his death:

Provided that if the deceased person left a will which does not dispose of all his property there shall be an intestacy in respect of the property which is not disposed of by will.

Inheritance of intestate property in certain cases

16.—(1) This section shall apply to the intestate property of the estate of a person to whose estate customary law would, but for this Act, apply.

(2) In the case of a man who dies leaving a wife, issue or dependant surviving him, then—

(a) if the marriage of the deceased was arranged in an area described in the Schedule, the persons entitled to such intestate property shall be—

(i) as to a half share thereof, the persons entitled upon a fair distribution thereof in accordance with section 17;

(ii) as to the other half share thereof, the heirs in accordance with customary law;

(b) if the marriage of the deceased was arranged in any other area of Malawi the persons entitled to such intestate property shall be—

(i) as to a $\frac{3}{8}$ ths share thereof the heirs in accordance with customary law;

(ii) as to the remaining $\frac{5}{8}$ ths share thereof, the persons entitled upon a fair distribution thereof in accordance with section 17.

(3) Notwithstanding subsection (2) the customary heirs of a deceased man shall not be entitled to any share in the household belongings used by a widow of the deceased during his lifetime, or in the doors, windows or other fittings of any house provided for a widow of the deceased in which she wishes to continue to reside.

(4) In the case of a deceased man who left no wife, issue or dependant surviving him and in the case of a deceased woman the persons entitled to the property to which this section applies shall be ascertained in accordance with customary law:

Provided that—

(a) where the woman dies leaving children, such children shall be solely entitled and section 17 (2) (a) relating to the meaning of the word "child" shall apply to this proviso;

(b) where a deceased person left no spouse, issue, dependant, parent or grandparent or issue of any grandparent surviving him, the Government shall be entitled to such property.

(5) A widow shall hold her share of her deceased husband's estate upon the condition that, if she re-marries, any portion thereof which still subsists at the date of such re-marriage shall become divisible between her children by the deceased upon a fair distribution in accordance with section 17.

(6) The Minister may from time to time, by order under his hand, which may have retrospective effect, amend the First Schedule by adding thereto or removing therefrom any area of Malawi.

17.—(1) The persons entitled upon a fair distribution shall be the wife, issue and dependants of the intestate whose shares shall be ascertained upon the following principles—

Fair
distribution

(a) protection shall be provided for the dependants of the intestate from hardship so far as the property available for distribution can provide such protection;

(b) every wife of the intestate shall be entitled to retain the household belongings used by her during the lifetime of the intestate;

(c) if any property shall remain after paragraphs (a) and (b) have been complied with, the remaining property shall be divided between the widows and children of the intestate;

(d) as between the widows and children of the intestate, their shares shall be decided in accordance with all the special circumstances including—

(i) any wishes expressed by the intestate in the presence of reliable witnesses;

(ii) such assistance by way of education or property or otherwise as any of the widows or children may have received from the intestate during his lifetime;

(iii) any contribution made by a widow or child to the value of any business or other property forming part of the estate of the intestate; and

(iv) whether any daughter of the intestate is married or unmarried,

but in the absence of special circumstances the widows and children shall, subject to subsection (3) be entitled to equal shares;

(e) in the absence of any wife or child the property described in paragraph (c) shall be distributed between the dependants of the intestate, if more than one, in equal shares;

(2) In this section the word—

(a) “child” shall, where a child has predeceased the intestate, include the issue of the deceased child who shall be entitled in accordance with the prescribed trusts to the share to which their parent would have been entitled if such parent had survived the intestate;

(b) “hardship” in relation to any person means deprivation of the ordinary necessities of life according to the way of living enjoyed by that person during the lifetime of the intestate, and in the case of a minor includes deprivation of the opportunities for education which he could reasonably have expected had the intestate continued to live;

(c) “intestate” means a person who dies leaving intestate property.

(3) If the intestate left more than one wife surviving him each living in a different locality, each widow and her children by the intestate shall be entitled to share under this section in the intestate's property in the locality where they live but shall have no claim to any share of the intestate's property in the locality in which another wife lives:

Provided that this subsection shall not apply to institutional money within the meaning of section 63 or to private land.

18.—(1) This section shall apply to the intestate property of the estate of a person domiciled in Malawi to whose estate customary law would not have applied even if this Act had not come into operation, and to the immoveable property in respect of which a person not domiciled in Malawi dies intestate. Inheritance of intestate property in other cases

(2) The persons entitled, on the death of a person described in subsection (1), to the property to which this section applies shall be ascertained as follows—

(a) the surviving spouse of the deceased shall be entitled to the first K10,000;

(b) the remainder of such property where there is a surviving spouse, or the whole of such property where there is no surviving spouse, shall be held in trust for the issue of the intestate in accordance with the prescribed trusts; 25 of 1968

Provided that—

(i) for the purposes of this paragraph the expression “member of the class” referred to in section 2 (3) (a) shall be deemed to mean “child of the intestate”; and

(ii) if the intestate leaves no issue the surviving spouse, if any, shall be entitled to such remainder unless the intestate is survived by any of the relatives specified in paragraph (c) in which case the surviving spouse, if any, shall be entitled to one half of such remainder and the relatives specified in paragraph (c) shall be entitled to the other half in accordance with that paragraph;

(c) if no spouse or issue has survived the intestate, the parents of the intestate shall, if they have survived the intestate, be entitled in equal shares and failing any surviving parent the brothers and sisters of the whole blood of the intestate shall be entitled in accordance with the prescribed trusts and failing them and their issue the brothers and sisters of the half blood shall be entitled in accordance with the prescribed trusts;

(d) if none of the persons mentioned in paragraphs (a), (b) and (c) survive the intestate, the grandparents of the intestate shall, if they survive the deceased, be entitled in equal shares;

(e) if none of the persons before-mentioned survive the intestate, the uncles and aunts of the intestate shall be entitled in accordance with the prescribed trusts;

(f) failing such survival by any of the persons before-mentioned, or their issue, the Government shall be entitled.

(3) Notwithstanding subsection (2), if the Court is satisfied that the deceased was a member of a minority community among whom an established custom existed prior to the coming into operation of this Act, governing the rights of inheritance to

property to which this section applies, the Court shall direct the distribution of such property according to that custom.

Inheritance
of intestate
movable
property of
non-
domiciled
persons

19.—(1) The persons entitled on the death of a non-domiciled person to such part of his intestate property as consists of moveable property shall be ascertained in accordance with the law of the deceased person's country of domicile:

Provided that in the case of a non-domiciled person leaving children by a mother who is a citizen of Malawi reasonable provision shall be made for such mother and children out of his estate.

(2) In this section non-domiciled person means a person whose place of domicile is outside Malawi.

(3) In considering what is reasonable provision regard shall be had to the matters referred to in section 14 (3) with such modifications as are appropriate in the case of intestacy.

PART VI

SURVIVORSHIP

Uncertainty
regarding
survivorship

20. Where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of court), for all purposes affecting rights in, to or over property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder:

Provided that in the case of spouses who died in such circumstances neither spouse shall take any benefit as surviving spouse.

PART VII

JURISDICTION OF COURTS AND POWERS OF CONSULAR OFFICERS

Jurisdiction
of High
Court and
magistrates

21.—(1) The High Court shall have jurisdiction in all matters relating to probate and the administration of the estates of deceased persons, with power to grant probates of wills and letters of administration to the estates of deceased persons and to alter or revoke such grants.

(2) The High Court shall have jurisdiction to reseal grants of probate and letters of administration made by a court of probate in any other part of the Commonwealth, in the Republic of South Africa or in any other country which the Minister may designate by notice published in the *Gazette*.

(3) The Minister may, by order under his hand, confer on any magistrate such jurisdiction as may be specified in the order relating to the estate of a deceased person which the magistrate is satisfied does not exceed K10,000 in gross value and to grant probate or letters of administration in relation thereto.

(4) No act of a magistrate exercising jurisdiction under subsection (3) shall be invalid because it is afterwards discovered that the gross value of the estate exceeds K10,000, but a magistrate shall report to the High Court any such discovery of which he becomes aware.

(5) The High Court may direct that any proceedings under this Act in a Traditional Court or in a Magistrate's Court are to be removed to and continued in the High Court:

Provided that the High Court shall not give any direction under this subsection unless it considers that it is necessary in the interests of justice or for the protection of a beneficiary or creditor that the estate should be administered under the supervision of the High Court.

(6) The High Court may authorize the payment to a personal representative of remuneration for his services as such, to such extent as, in all the circumstances, appears reasonable:

Provided that nothing in this subsection shall be construed so as to deprive an executor of remuneration to which he is entitled under the provisions of a will.

22.—(1) A Traditional Court shall have jurisdiction in relation to small estates, which shall be exercised in accordance with Part XIII and section 14 and may, notwithstanding section 8 of the Traditional Courts Act, be exercised whether or not any of the property forming part of the small estate is outside the territorial limits of jurisdiction of the Court in which proceedings are instituted, and whether or not the defendants or any of them were resident within the area of jurisdiction of the Court at the time when the cause of action arose.

Jurisdiction
of
Traditional
Courts
Cap. 3:03

(2) All Traditional Courts shall take such steps as may be necessary to assist in carrying out any order issued by another Traditional Court under the jurisdiction conferred by subsection (1).

(3) A Traditional Court may, if satisfied that it is proper and desirable to do so, appoint a guardian of a minor who is entitled to a share in a small estate.

(4) Subject as aforesaid, the Traditional Courts Act shall apply to all proceedings in a Traditional Court in the exercise of the jurisdiction under this Act.

23.—(1) Where any national of a State to which this section applies—

Grants to
Consular
Officers
16 of 1984

(a) dies within Malawi; or

(b) dies outside Malawi leaving property within Malawi, and no person is present in Malawi at the time of his death who is rightfully entitled to administer the estate of such deceased person, a consular officer of such State within Malawi may

take possession of the property of such deceased person, and shall be entitled to obtain from the High Court letters of administration of the property of such deceased person limited in such manner as the Court may deem fit.

(2) Where any person who is a national of a State to which this section applies is a person to whom a grant of representation to the estate in Malawi of a deceased person may be made, then, if the Court is satisfied that such national is not resident in Malawi, the High Court may, on the application of a consular officer of the said State make to that officer such grant of representation to the estate of the deceased as would be made to him if he were duly authorized by power of attorney to act for the person entitled to the grant.

(3) Letters of administration granted to a consular officer shall be granted to him in his official style and title and not in his personal name, and the estate of the deceased shall vest in each successive holder of the office during his continuance in office without any order of court or instrument whatsoever.

(4) Where a person who is a national of a State to which this section applies—

(a) is entitled to any money or other property in Malawi forming part of the estate of a deceased person, or to receive payment in Malawi of any money becoming due on the death of a deceased person; or

(b) is among the persons to whom any money or other property of a deceased person may under any written law be paid or delivered without any grant of probate or other proof of title,

then, if the said national is not resident in Malawi, a consular officer of that State shall have the right and power to receive and give a valid discharge for any such money or property as if he were duly authorized by power of attorney to act for him in that behalf:

Provided that no person shall be authorized or required by this subsection to pay or deliver any money or property to a consular officer if it is within his own knowledge that any other person in Malawi has been expressly authorized to receive that money or property on behalf of such national.

(5) Notwithstanding any rule of law conferring immunity or privilege in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any immunity or privilege in respect of any act done by virtue of the powers conferred on him by or under this section or in respect of any document for the time being in his possession relating thereto.

24.—(1) The Chief Justice may make probate rules—Probate
rules and
administra-
tion bonds

(a) regulating proceedings for the grant of probate and letters of administration and other proceedings under this Act;

(b) the procedure to be observed in relation to wills deposited under section 7 and for the preservation, copying and inspection of wills and grants of probate and administration;

(c) prescribing fees and forms; and

(d) generally for the better carrying out of this Act.

(2) Without prejudice to the generality of subsection (1) the probate rules may require a person, not being a trust corporation, to whom a grant of letters of administration is made to give security for the due administration of the estate by a bond with one or more sureties and for the furnishing of accounts to the Court.

(3) A bond for the due administration of an estate shall engage the parties thereto to make payment to the Registrar. Upon the application of any person beneficially interested in the estate and upon being satisfied that the engagement of any such bond has not been kept the Court may direct the Registrar to assign the bond to some proper person and thereupon such person shall be entitled to sue on the bond in his own name as if it had originally been given to him and not to the Registrar and to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

PART VIII**PROTECTION OF ESTATES PENDING GRANT**

25. Where any person dies leaving property in Malawi, the Court may appoint such person as the Court thinks fit to be a receiver of such property pending a grant of probate or letters of administration, if it appears on the application of any person—

Receiver
pending
grant

(a) claiming to be interested in such property;

(b) having the custody or control thereof at the time of the death of the deceased; or

(c) being at such time an attorney of the deceased,
that there is danger that such property may be wasted.

26. The Court may, on application by a receiver of property appointed under section 25, 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.

Sale by
order of
Court

L.R.O. 1/1968

No suit
against
receiver

27. No suit shall be brought against a receiver appointed under section 25 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 a person aggrieved by anything so done or intended to be done may apply to the Court in the proceedings in which the receiver was appointed for directions in the matter, and the Court may make such order as is just.

PART IX

RENUNCIATION BY EXECUTORS

Express
renunciation
of right to
probate

28. A person who is entitled to probate may expressly renounce such right orally on the hearing of any application to the Court or in writing signed by the person so renouncing and attested by a person before whom an affidavit may be sworn.

Citation and
presumed
renunciation

29.—(1) A person claiming an interest in the estate of a deceased person or a creditor of a deceased person may cause to be issued by the Court a citation directed to the executors appointed by the will of the deceased calling upon them to accept or renounce their executorship.

(2) A person served with such a citation may enter an appearance thereto, but if he makes 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 Court may limit a time within which such application is to be made and if the application for probate is not made within the time so limited the executor in default shall be deemed to have renounced his right to probate.

Effect of
renunciation

30. Renunciation under section 28 or 29 shall preclude the right of the person so renouncing to probate but the Court may at any time grant probate to such person if it is shown that the grant is likely to benefit the estate or the persons interested therein.

PART X

GRANT OF PROBATE AND LETTERS OF ADMINISTRATION BY THE COURT

Corpora-
tions

31.—(1) A corporation or company which is not a trust corporation may be granted probate but may not 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 syndic or nominee on behalf of a corporation or company.

32.—(1) Probate or letters of administration shall not be granted to more than four persons in respect of the same property, and letters of administration shall, if there is a minority or life interest under the will or on intestacy, be granted either to a trust corporation, solely or jointly with an individual, or to not less than two individuals. Number of executors and administrators

(2) If there is only one personal representative (not being a trust corporation) then during the minority of a beneficiary or the subsistence of a life interest, the Court may appoint one or more personal representatives in addition to the existing personal representative.

33.—(1) Probate may be granted only to an executor appointed by the will, and shall not be granted to a minor or person of unsound mind. Grant of probate

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

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

(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.

34.—(1) Where a will has been lost or mislaid or has been destroyed by wrong or accident and not by any act of the testator— Probate of copy, draft or contents of wills

(a) if a copy or draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is admitted to probate;

(b) if no such copy or draft has been preserved, probate, limited as aforesaid, may be granted to the contents of the will if they can be established by evidence.

(2) Where a will is in the possession of a person outside Malawi who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, probate may, if the interests of the estate so require, be granted of the copy so transmitted, limited as aforesaid.

35. Where, after probate has been granted, a codicil of the will is propounded, probate may be granted of the codicil: Codicil propounded after probate

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

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Wills and Inheritance

Authenti-
cated copy
of will
proved
abroad

36. Where a will has been proved and deposited in a Court of competent jurisdiction outside Malawi, and a properly authenticated copy of the will is produced, probate may be granted of such copy or letters of administration granted with a copy of such copy attached.

Effect of
probate

37.—(1) Probate of a will when granted establishes the will and evidences the title of the executor from the death of the testator.

(2) Probate of a will shall also have the effects described in section 49.

Failure of
executors

38. Where—

- (a) no executor is appointed by a will;
- (b) the executor or all the executors appointed by a will have renounced, or are persons to whom probate may not be granted;
- (c) no executor survives the testator;
- (d) all the executors die before obtaining probate or before having administered all the estate of the deceased; or
- (e) the executors appointed by any will do not appear and take out probate,

letters of administration with the will annexed may be granted of the whole estate or so much thereof as may be unadministered to such person or persons as the court deems the fittest to administer the estate:

Provided that a prior right to such grant shall belong to the following persons in the following order—

- (i) a universal or residuary legatee;
- (ii) a personal representative of a deceased universal or residuary legatee;
- (iii) such person or persons, being beneficiaries under the will, as would have been entitled to a grant of letters of administration if the deceased had died intestate;
- (iv) a legatee having a beneficial interest;
- (v) a creditor of the deceased:

And provided further, that a court shall not grant letters of administration with the will annexed in respect of a will by which an executor is appointed, if the executor—

- (i) is living and his whereabouts are known; and
- (ii) is a person to whom probate may be granted; and
- (iii) has not renounced his office,

unless and until a citation has been issued calling upon the executor to accept or renounce his office and the executor has renounced or has been deemed to have renounced his office in accordance with sections 28 and 29.

39. Where any executor is absent from Malawi, and there is no other executor within Malawi willing to act, letters of administration with the will annexed may be granted to a lawfully constituted attorney, ordinarily resident within Malawi, of the absent executor, limited until the absent executor obtains probate for himself, and in the meantime to any purpose to which the attorney's authority is limited.

Attorney of
absent
executor

40. Where any person, to whom letters of administration might be granted under section 38, is absent from Malawi, letters of administration with the will annexed may be granted to his lawfully constituted attorney ordinarily resident in Malawi, limited in the manner provided in section 39.

Attorney of
person
entitled to
letters of
administra-
tion

41. Section 35 shall apply in the case of a grant of letters of administration with the will annexed in like manner as they apply in the case of a grant of probate.

Codicil
propounded
after letters
of
administra-
tion granted

42.—(1) Where the deceased has died intestate, letters of administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

Letters of
administra-
tion on
intestacy

(2) Where more than one person applies for letters of administration, it shall be in the discretion of the court to make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests.

(3) Where no such person applies, letters of administration may be granted to a creditor of the deceased.

(4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator; and in every such case letters of administration may be limited or not as the court thinks fit.

Attorney of
person
entitled to
administra-
tion

43. Where a person entitled to letters of administration in the case of an intestacy is absent from Malawi, and no person equally entitled is willing to act, letters of administration may be granted to a lawfully constituted attorney, ordinarily resident in Malawi, of such person, limited until such person obtains letters of administration himself and in the meantime to any purpose to which the attorney's authority is limited.

Until will
produced

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

Pending
litigation

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

Trust
property

46. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Grants with
exception

47. Whenever the nature of the case requires that an exception be made, probate or letters of administration with or without the will annexed shall be granted subject to such exception.

Grants of
excepted
part

48. Whenever a grant with exception of probate or letters of administration with or without the will annexed has been made, further grant may be made of the part of the estate so excepted.

Effect of
grant of
letters of
administra-
tion or
probate

49.—(1) Subject to all such limitations and exceptions contained therein and, where the grant is made for a special purpose, for that purpose only, letters of administration entitle the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death:

Provided that letters of administration shall not render valid any intermediate acts of the administrator tending to the diminution or damage of an intestate's estate.

(2) Probate and, subject to subsection (1), letters of administration have effect over all the inheritable property of the deceased throughout Malawi and—

(a) shall be conclusive against all debtors of the deceased and all persons holding inheritable property of the deceased;

(b) afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

50. Where probate or letters of administration have been granted to more than one executor or administrator and one of them dies, the representation of the estate to be administered shall, in the absence of any direction in the will or grant, accrue to the surviving executor, or administrator.

Death of one of several personal representatives

51. On the death of a sole or sole surviving executor who has proved the will or of a sole or sole surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in granting such letters of administration the court shall apply the same provisions as apply to original grants:

Death of sole or surviving personal representative

Provided that where one or more executors have proved the will or letters of administration with the will annexed have been issued, the court may grant letters of administration under this section without citing an executor who has not proved the will.

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

Expiry of limited grant when estate not fully administered

PART XI

REVOCATION AND ALTERATION OF GRANTS AND REMOVAL OF EXECUTORS AND ADMINISTRATORS

53. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly.

Rectification of errors

54.—(1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons—

Revocation of grants and removal of executors, etc.

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

(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

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

(d) that the grant has become useless and inoperative;

(e) that the person to whom the grant was made has without reasonable cause omitted to furnish an account of his administration after having been lawfully called upon to do so or has prepared an account which is untrue in a material respect.

(2) Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the court may suspend or remove an executor or administrator and provide for the succession of another person to the office of such executor or administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate.

Payments by
or to
representa-
tives whose
grants are
revoked

55.—(1) Where any probate is, or letters of administration are, revoked, all payments made in good faith to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same.

(2) The executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Surrender of
revoked
grants

56.—(1) When a grant of probate or letters of administration is revoked under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the court which made the grant.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be liable to a fine of K200 and to imprisonment for three months.

PART XII

RE-SEALING

Interpreta-
tion

57. In this Part and in section 21—

“court of probate” means a court or authority by whatever name designated, having jurisdiction in matters of probate.

“probate” and “letters of administration” include confirmation in Scotland and any instrument having in its place of origin an effect similar to that which is given by this Act to probate and letters of administration, respectively.

58.—(1) Where a court of probate in any place referred to in section 21 has, before or after this Act, granted probate or letters of administration to the estate of a deceased person, the High Court—

Sealing of certain grants made outside Malawi

(a) upon production of—

- (i) the grant so made;
- (ii) a duplicate sealed with the seal of the Court granting the same; or
- (iii) a copy certified by or under the authority of the Court of probate which made the grant; and

(b) upon the deposit of a copy thereof,

may seal with the seal of the High Court the document so produced and deposited and thereupon the grant so made outside Malawi shall be of the like force and effect and have the same operation in Malawi as if granted by the High Court.

(2) Probate Rules may prescribe the security to be given and evidence of domicile to be furnished in relation to any application for sealing under subsection (1).

PART XIII

SMALL ESTATES

59. This Part shall apply only to small estates except as may be otherwise expressly provided.

Application

60.—(1) Parts VIII, IX, X and XII shall not apply to the exercise by a Traditional Court of jurisdiction under this Act, but this Part shall apply instead.

How Traditional Court to exercise jurisdiction

(2) Part XI shall apply to Traditional Courts as though an administration grant made by a Traditional Court was a grant of probate or of letters of administration.

61. Where all the near relatives of a deceased person who are not minors agree on the manner of distribution and administration of a small estate they may proceed in accordance with such agreement:

Relatives may agree between themselves

Provided that—

(a) this section shall not apply to the distribution or administration of private land or institutional money;

(b) no such agreement shall prevent a Court from exercising its jurisdiction under this Act;

(c) upon an application to a Court relating to such estate the rights of the persons entitled to any share or interest in the estate shall be the rights and interests provided for in this Act notwithstanding any agreement to the contrary.

Private land 62. Where a small estate includes private land, no dealing with such land shall, subject to Part VIII, be lawful until an administration grant has been made in respect of the estate under section 65.

Institutional
money
11 of 1989

Cap. 44:01

63.—(1) In this Act “institutional money” means money—

- (a) in the Post Office Savings Bank;
- (b) owing by a person carrying on banking business within the meaning of the Banking Act;
- (c) on deposit with a Building Society;
- (d) due under any policy of insurance or assurance;
- (e) due under the provisions of any provident fund or similar provision for employees; or
- (f) by way of gratuity, terminal benefit, leave pay or otherwise under the terms of employment of the deceased;
- (g) received by any public officer other than the Administrator General as representing the property of a citizen of Malawi who has died outside Malawi;

Cap. 55:03

but does not include money due under the Workmen's Compensation Act.

11 of 1989

(2) Notwithstanding any of the other provisions of this Act where, on the death of any person, institutional money not exceeding ten thousand Kwacha (K10,000) becomes payable to the personal representatives or heirs of that person, such institutional money may be dealt with in accordance with this section.

(3) Where subsection (2) applies—

(a) the relatives or heirs of the deceased or any person in possession of the passbook or other evidence that institutional money is payable may report the death to the District Commissioner of the District in which the death occurred or where the deceased ordinarily resided prior to his death, and on making such report, shall deposit with the District Commissioner the passbook or other evidence that institutional money is payable together with a death certificate or other suitable evidence of the death;

(b) the District Commissioner shall thereupon verify the amount of the institutional money and shall cause enquiries to be made whether or not such money is disposed of by any will made by the deceased;

(c) if it appears to the District Commissioner that the institutional money may have been disposed of by a valid will he shall take no further action except to advise the persons concerned to apply for an administration grant under section 65;

(d) if it appears to the District Commissioner that the institutional money is not disposed of by a valid will he shall refer the matter to such Traditional Court as, subject to rules made by the Minister, appears to him appropriate and request that court to certify who is entitled to the money and in what shares;

(e) in his reference under paragraph (d) the District Commissioner shall set out the facts of the case, so far as they are known to him;

(f) on receipt of a reference under paragraph (d) the Traditional Court shall certify who are the persons entitled as creditors or otherwise to the institutional money and what is the share of each and shall forward the certificate to the District Commissioner who made the reference;

(g) on receipt of a certificate issued under paragraph (f) and a request for payment by a District Commissioner, the holder of or person liable to pay the money shall send to the District Commissioner a separate cheque payable to each of the persons shown in the certificate for the amount shown therein to be payable to him:

Provided that in the case of any person shown to be a minor the cheque shall be made payable to the Government of Malawi and the District Commissioner shall open a separate deposit account in the Post Office Savings Bank as a trust account for every such minor and shall deposit therein the amount due to the minor.

(4) The receipt of a District Commissioner for a sum paid to him under subsection (3) by the holder of or person liable to pay institutional money shall be a good discharge to the person paying the money for the sum so paid.

(5) Money held by a District Commissioner in a Post Office Savings Account in trust for a minor under subsection (3) may be applied for the benefit of such minor by the District Commissioner in his discretion.

(6) Where subsection (2) applies and institutional money is disposed of by will, payment may be made to the personal representatives of the deceased.

(7) If at any time a District Commissioner to whom application is made under this section discovers that the estate of the deceased person exceeds K10,000 in gross value he shall report his discovery to—

- (a) the applicant;
 - (b) any Traditional Court to which he has referred the matter;
 - (c) the Secretary to the Commissioners of Estate Duty;
- and

L.R.O. 1/1990

(d) the High Court,

and shall take no further action in relation to the matter except upon the direction of the High Court, but no receipt given or other thing previously done by such District Commissioner shall be invalid by reason of the estate of the deceased person not being a small estate.

Production
to Court of
a will or
certified
copy and
Court to
which appli-
cation may
be made for
a grant

64.—(1) Where a person dies having left a will—

(a) if such will has been deposited with the Registrar of the High Court or a District Commissioner under section 7 and a Court to which an application is made under subsection (4) so requests, or if a Court to which an original will is produced sends the will to him, the Registrar of the High Court shall send to the Court making the request or sending the original will, two certified copies of the will;

(b) in any other case the person in possession of the will shall produce the original will to a Court to which an application may be made under subsection (4) and may apply to such court for an administration grant.

(2) A District Commissioner with whom a will is deposited under section 7 shall, on the request of the Registrar of the High Court, forward the will to the Registrar.

(3) Where an original will is produced to a Court under subsection (1) (b), the Court shall make a copy thereof and—

(a) inform the Traditional Courts Officer responsible for the Court, who shall take charge of the will and cause it to be conveyed to the Registrar of the High Court with a request for two certified copies;

(b) issue written notices under section 65.

(4) A person who has verified the fact that a deceased person left a will which is deposited for safety under section 7 may apply to:

(a) the Court nominated by the will;

(b) the Court having jurisdiction in the area in which the deceased ordinarily resided prior to his death;

(c) the Court having jurisdiction in the area in which private land belonging to the estate is situated;

(d) such other Court as may be prescribed,

for a certified copy of the will to be produced to the Court, and for an administration grant.

Making of
administra-
tion grant

65.—(1) Any person interested in a small estate as executor of a will, beneficiary or, under a will or intestacy, creditor of an estate, may apply to a Court for an administration grant in such

manner as may be prescribed. The hearing of such application may be adjourned from time to time and with the approval of the Chief Traditional Courts Commissioner, be transferred or adjourned from one Court to another.

(2) Before hearing any application under subsection (1) the Court shall, by notice, require the near relatives and the persons, if any, named in the will, if any, as executors to attend before the Court on a date and at a time specified in the notice, which date shall not be less than three nor more than six weeks from the date when the notice is sent, and shall be the date when the application is to be heard.

(3) A Court hearing an application under subsection (1) may make an administration grant, with or without a certified copy of the will annexed, in accordance with subsections (4), (5) and (6). Section 33 of the Estate Duty Act shall not apply to any such grant. Cap. 43:02

(4) An administration grant with a certified copy of the will annexed shall be made if the Court is satisfied that the deceased left a valid will:

Provided that if the Court is satisfied that the deceased left more than one will and that the wills are both or all of them operative, certified copies of all such wills shall be annexed to the grant.

(5) An administration grant made under subsection (4) shall specify not more than four persons who are entitled to administer the estate of the deceased. Priority in respect of the right to administer the estate shall be given to such of the executors appointed by the will as are willing to act, but if no such executor is willing to act the court shall appoint such other persons willing to act as appear to the Court most likely to administer the estate properly for the benefit of the persons beneficially entitled.

(6) If the Court is not satisfied that the deceased left a valid will it shall make the administration grant without any will annexed to the persons whom the court considers fittest to administer the estate properly for the benefit of the persons entitled thereto upon an intestacy.

66. Subject to section 63, an administration grant entitles the administrator to all the inheritable property of the deceased with effect from the date of his death. Effect of administration grant

67. If a person to whom an administration grant has been made dies or becomes unable by reason of illness (whether physical or mental) or any other cause to carry out his duties before the estate has been fully administered the other persons to whom the grant was made, if more than one, shall be entitled to continue and complete the administration: Death or disability of personal representative

Provided that on the application of any interested person the Court may and, if there is only one remaining administrator, shall appoint another administrator.

Guardians

68.—(1) Where it is known to a Court that a guardian of a minor has been appointed by a will, the Court shall not appoint any other person to be guardian of that minor except in exercise of its powers under section 73.

(2) A Court may direct the transfer to or vesting in the guardian of a minor of any property of the minor and may authorize or direct the sale of the property of a minor or any part thereof.

(3) A guardian appointed by a will or under this Act shall be entitled to represent the interests of the minor in any proceedings in Court relating to the administration of the estate in which the minor has a share.

Duties and powers of administrators

69.—(1) The duties of every administrator shall be—

(a) to pay the debts and funeral expenses of the deceased and to pay estate duty if estate duty is payable;

(b) if the deceased left a valid will, to distribute the property disposed of by the will in accordance with the provisions thereof or of an order of court under section 14;

(c) in respect of intestate property, to effect a distribution thereof in accordance with the rights of the persons interested therein under this Act.

(2) Where a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out the duties above-mentioned, the administrators shall have power to sell such property in such manner as appears likely to secure receipt of the best price available for such property.

11 of 1989

(3) Where the value of the property to which a person was entitled at the date of his death is less than ten thousand Kwacha (K10,000) an administrator of his estate shall not be deemed to be an executor within the meaning of the Estate Duty Act.

Cap. 43:02

Expenditure of care and management

70. An administrator or guardian may incur expenditure on such acts as may be necessary for the proper care and management of any property belonging to the estate of a deceased person or to a minor.

Administrator or guardian not to derive benefit

71.—(1) Unless there is express provision to that effect in the will no administrator or guardian shall derive any pecuniary benefit from his office.

(2) If an administrator or guardian purchases, either directly or indirectly, any part of the property of the deceased or of a minor for whom he is responsible, the sale may be set aside by

the Court on the application made within a reasonable time of any other person interested in the property sold or in the proceeds of sale.

72.—(1) Save as provided in subsection (2), when there are several administrators, the powers of all may, in the absence of any direction to the contrary in the will or administration grant, be exercised by the majority of them. How powers of several administrators exercised

(2) Subsection (1) shall not apply to any dealing with private land.

73. On the application in the prescribed manner of an interested person a Court shall have jurisdiction in relation to a deceased person's estate— Disputes

(a) to decide whether a document purporting to be a will is a valid will and whether the deceased person died testate or intestate;

(b) to decide what is the property to which a deceased person was entitled at the date of his death;

(c) to decide how the distribution of the property forming part of a deceased person's estate should be carried out;

(d) to order the sale or other disposition of property belonging to a deceased person's estate for the purpose of paying the debts of the deceased or for the purposes of distribution;

(e) to decide whether an administrator or a person administering the property of a deceased person by agreement under section 61 has failed to carry out any of his duties and to order payment of compensation by such administrator or other person to any person who has suffered injury as a result of such failure:

Provided that—

(i) no such order for compensation shall be made if the injury had come to the knowledge of the injured person (not being a minor) more than two years before the application relating thereto was made to the court;

(ii) in case the injured person was a minor an application for compensation for the injury suffered may be made within two years after—

(A) he ceased to be a minor; or

(B) the date when the injury came to his knowledge, whichever is the later;

(f) to appoint a guardian in place of a guardian who has acted improperly.

Offences by
administrators
and
guardians

74.—(1) An administrator or guardian who wrongfully deprives a minor of property or a share in property to which the minor is entitled intending thereby to benefit such administrator or guardian or any other person shall be liable to a fine of K100 and to imprisonment for one year.

(2) A Court shall have jurisdiction to try an offence under this section although it has previously dealt with an application relating to the property in question.

Application
of
Traditional
Act Courts
Cap. 3:03

75. For the purposes of the exercise by the Chief Traditional Courts Commissioner of his powers under section 32 of the Traditional Courts Act, proceedings under this Act shall be deemed to involve an issue of customary law.

Subsequent
discovery
that estate
dealt with as
small estate
exceeds
K10,000 in
value
6 of 1990

76.—(1) No act of a Court exercising jurisdiction under this part or of an administrator to whom an administration grant has been made shall be invalid because it is afterwards discovered that the gross value of the estate in relation to which the act was done exceeds K10,000.

(2) Every administrator of an estate appointed under this part who discovers that the estate exceeds in gross value K10,000 shall immediately report his discovery to the Court by which he was appointed and to the Secretary to the Commissioners of Estate Duty, stating what he now considers the gross value of the estate to have been at the death of the deceased and the reason for the lateness of the discovery.

(3) The Chairman of a Court who discovers that an estate, which has been the subject of proceedings in the Court, is believed to exceed K10,000 in gross value or who receives a report under subsection (2) shall, after such further inquiry, if any, as he deems appropriate, report the matter to the High Court and to the Secretary to the Commissioners of Estate Duty. Such report shall set out briefly the circumstances of the estate and shall contain a recommendation whether further proceedings in Court relating to the estate should be continued in the High Court or the Traditional Court. After making such report the Chairman shall not exercise jurisdiction under this part without the written approval of the High Court.

(4) Reports under subsection (3) shall be forwarded through the Chief Traditional Courts Commissioner who may add such comments as he considers appropriate.

77. The Minister may make rules prescribing the procedure to be observed in respect of applications relating to small estates, the forms to be used and the fees to be paid and all other matters arising under this Part. Small estate procedure rules

PART XIV

GENERAL

78.—(1) The original of every will of which probate is granted or in respect of which a grant of letters of administration with certified copy of the will annexed or an administration grant with certified copy of the will annexed is made under this Act shall be deposited and preserved in the Registry of the High Court. Registrar to preserve certain wills and maintain register

(2) The Registrar shall maintain a register of all wills so deposited, and may at any time furnish a certified copy thereof to any person.

(3) Subject to the control of the High Court and the Probate Rules, the will so deposited shall be open to inspection.

79. A Court shall not be bound to grant any application under this Act but may exercise its discretion in relation thereto. If such an application is refused the Court shall, on request, state the reasons for refusal. Discretion of Court

80.—(1) Notwithstanding any of the other provisions of this Act, where a person was employed at the date of his death, his employer may immediately pay to his widow or to the senior member of his family living with him, the amount due to his estate in respect of salary, wages or allowance for the pay period interrupted by his death and, if still unpaid, the immediately prior pay period. The receipt of such widow or other member of his family shall be a good discharge to the employer for the amount so paid. The recipient of the amount shall, if required, account to the personal representative of the deceased for the expenditure thereof. Salary or wages

(2) The person to whom money is paid under subsection (1) may apply the money for the purpose of paying normal household expenses of the family of the deceased or family expenses in relation to his funeral.

81.—(1) Notwithstanding any of the other provisions of this Act, a person who, while sane, murders another person shall not be entitled directly or indirectly to any share in the estate of the murdered person. The persons beneficially entitled to shares in Sane murderer not to share in victim's estate

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Cap. 10:02

Wills and Inheritance

the estate of the murdered person shall be ascertained as though such murderer had never been born.

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

Trustee Act
to apply
Cap. 5:02

82.—(1) The Trustee Act shall apply to personal representatives of small estates as it applies to personal representatives appointed by the High Court.

(2) A personal representative shall have all the powers of investment of trustees and Part II of the Trustee Act shall apply in relation to investments made or retained by a personal representative.

(3) Nothing in this section shall be construed so as to derogate from the generality of the provisions of the Trustee Act.

Proof of
claims may
be required

83. When a personal representative has received notice in respect of an estate or property which he wishes to distribute he may by a written notice served personally or by post require the claimant prior to a date to be named in such notice, which shall be not less than two months from the service of such notice, either to institute proceedings to establish the claim or to satisfy the personal representative of the validity of the claim by affidavit or otherwise, and at the expiration of the time mentioned in such notice the personal representative shall be at liberty to distribute the estate or property to which the notice relates amongst the parties entitled thereto without having regard to the claims of persons who shall have been served with such notice but shall have failed to comply with the requirements thereof and he shall not be liable to any such person for the estate or property so distributed; but nothing herein contained shall prejudice the right of any such person to follow the property or any property representing the same into the hands of any person other than a purchaser who may have received it.

Payments to
representa-
tives in
country of
domicile

84. Where a personal representative in Malawi has been granted letters of administration to the estate in Malawi of any person who was at the time of his death domiciled outside Malawi and probate of whose will or letters of administration of whose estate or equivalent grant in the place of such domicile has been granted to some other person, the personal representative may pay over to such other person the balance of the estate in Malawi after payment of proved debts and funeral and administration expenses without seeing to the application of such balance and without incurring any liability in regard to such payment.

PART XV

TRANSITIONAL AND SAVING

85. An application to the High Court for probate, letters of administration or re-sealing made before the coming into operation of this Act may be continued as though the application had been made under this Act. Transitional

86. Except as expressly provided hereunder nothing in this Act shall be deemed to affect the rights and duties of personal representatives or the law relating to the administration of estates. Saving

SCHEDULE

s. 16

THE DISTRICTS OF CHITIPA, KARONGA, RUMPHI, NKHATA BAY, MZIMBA AND NSANJE 16 of 1984

[Subsidiary]

*Wills and Inheritance (Resealing of Grants) Notice/Probate
(Deposit of Wills) Rules***SUBSIDIARY LEGISLATION****G.N. 138/1970
7/1984
65/1987** **WILLS AND INHERITANCE (RESEALING OF GRANTS)
NOTICE***under s. 21*

Citation 1. This notice may be cited as the Wills and Inheritance (Resealing of Grants) Notice.

Designation of country 2. The countries named in the Schedule hereto are hereby designated for the purpose of section 21 (2) and Part XII of the Act.

SCHEDULE

Denmark
Republic of Ireland

G.N.
65/1987

G.N. 157/1967 **PROBATE (DEPOSIT OF WILLS) RULES***under s. 24*

Citation 1. These Rules may be cited as the Probate (Deposit of Wills) Rules.

Deposit of wills for safe custody 2.—(1) A testator who wishes to deposit his will for custody under section 7 of the Act with the Registrar or a District Commissioner, shall deliver it to the Registrar or District Commissioner in a sealed envelope bearing on the outside all the known names of the testator, together with the prescribed fee. The Registrar or District Commissioner shall assign to each will and mark on the envelope a serial number and shall give the depositor a receipt, bearing the serial number assigned to the will, in Form I in the Schedule.

(2) The Registrar and every District Commissioner shall maintain an index of all known names of the testators whose wills are deposited with him and the date on which each will was so deposited and the serial number of the will. The index shall be in Form I in the Schedule and the serial numbers used by a District Commissioner shall be such as are assigned by the Registrar.

(3) All wills so deposited shall be kept by the Registrar or District Commissioner in a safe place until the death of the maker thereof, unless re-delivery is demanded and the receipt issued under subrule (1) produced by the testator in person in his lifetime, or if he should be unable to attend in person, by his agent specifically authorized for that purpose.

(4) When any such will is re-delivered in the manner aforesaid, the testator or his agent, as the case may be, shall sign a receipt for the same.

(5) The Registrar or District Commissioner may require such proof of the authority of any person claiming to be the agent of a testator as he shall deem appropriate, and may dispense with the production of his receipt for the will if he is satisfied that there is good reason for its non-production and that the application is genuine.

3.—(1) The Registrar and every District Commissioner shall, within fourteen days after any month during which a will was deposited with him or withdrawn from him, prepare a circular in Form II in the Schedule indicating the wills deposited and withdrawn during that month. The circular will indicate the serial number of the will, whether the will was deposited or withdrawn, the name of the testator, his village, his chief and his

Monthly
circular

L.R.O. 1/1971

home District. The circular shall be sent to the Registrar and each District Commissioner. Upon receipt of each circular, each District Commissioner shall note in his index the deposit or withdrawal of a will by a resident of his District, and, in the case of a deposit, the place where it is deposited.

(2) The information contained in such monthly circulars may not be disclosed to any person except for the purposes of these Rules.

4.—(1) Where an application for probate or letters of administration with will annexed is made to the Registrar, and he is informed that the original of the testator's will is deposited with a District Commissioner, the Registrar shall, on being satisfied of the death of the deceased, request the District Commissioner with whom the will is deposited to forward the original will to him.

Action to be taken on notification of testator's death

(2) If a District Commissioner with whom a testator's will is deposited is informed by a Traditional Court that the Court is satisfied of the death of the testator, the District Commissioner shall forward the original of the testator's will in its sealed envelope to the Registrar of the High Court.

(3) On receipt of the original will, the Registrar shall break the seal on the envelope and if the estate appears to be a small estate, shall cause two photostat copies of the will to be made and shall send such copies to the District Commissioner, who shall forward them to the Traditional Court concerned, with a note of the amount of the fees due in respect of the making of such copies.

5.—(1) No information concerning a will deposited for custody may be given to any person except to the Registrar, another District Commissioner or a Traditional Court in accordance with these Rules or the Traditional Courts (Small Estates) Rules. The envelope containing the original will may not, so long as the will is in custody, be opened by any person except by the Registrar when informed of the death of the testator.

Secrecy

sub. leg. p. 61

(2) Any person who discloses any information relating to the will otherwise than in accordance with these Rules or the Traditional Courts (Small Estates) Rules shall be liable to imprisonment for three months.

6.—(1) The fee payable on the deposit of a will under rule 2 shall be ten shillings. Such fee shall not, under any circumstances, be refunded.

Fee

(2) When any will is withdrawn pursuant to rule 2 (3) and the same or another will is re-deposited by the same testator, a fresh fee of ten shillings shall be paid.

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Wills and Inheritance

[Subsidiary]

Probate (Deposit of Wills) Rules

rr. 2 and 3

SCHEDULE

FORM I

WILLS DEPOSITED FOR CUSTODY

Index	Receipt				
<table style="width: 100%;"> <tr> <td style="width: 50%;">Name of Maker and Serial Number</td> <td style="width: 50%;">Address</td> </tr> </table>	Name of Maker and Serial Number	Address	<table style="width: 100%;"> <tr> <td style="width: 50%;">000001</td> <td style="width: 50%;">000001</td> </tr> </table>	000001	000001
Name of Maker and Serial Number	Address				
000001	000001				
000001..... Village*	A packet said to contain the will of				
Names in full..... Chief*				
..... District				
Other names Other address	received for safe				
(if any) (business etc.)	custody				
.....	the day of				
Date:....., 19...				
Fee:	Fee:.....				
.....				
.....	District Commissioner				

*The name of the Depositor's Village and Chief need not be given if these are not applicable, in which case the Depositor's home address should be given.

FORM II

To: The Registrar of the High Court;
All District Commissioners.

CUSTODY OF WILLS

The following wills were deposited for safe custody or withdrawn at by the under-named during the month of, 19.....

DEPOSITS

Register No.	Date	Depositor	Village	Chief	District
.....
.....
.....
.....

WITHDRAWALS

Register No.	Date	Depositor	Village	Chief	District
.....
.....
.....
.....

.....
District Commissioner

..... District

..... Date

PROBATE (NON-CONTENTIOUS) RULES**ARRANGEMENT OF RULES****RULE**

1. Citation
2. Interpretation
3. How applications to be made
4. Contents of oath
5. Jurisdiction exercised by single Judge
6. Proof of death
7. Administration bonds
8. Estate Duty affidavit
9. Additional name
10. Marking of wills
11. Engrossments for purposes of record
12. Evidence as to due execution of will
13. Execution of will of blind or illiterate testator
14. Alteration of wills
15. Attempted revocation of will
16. Additional affidavit or other evidence may be required
17. Soldiers' wills
18. Making and issue of grant
19. Sealing of foreign grants
20. Citations
21. Caveats
22. Citation to accept or refuse grant
23. Citation to propound a will
24. Address for service
25. Limited grants
26. Inspection of deceaseds' wills
27. Application by dependants
28. Fees

FIRST SCHEDULE**FORM**

- I Oath accompanying application for grant of probate
- I A Oath accompanying application for grant of letters of administration (will)
- I B Oath accompanying application for grant of letters of administration (intestacy)
- II Administration bond
- II A Administration bond on application for sealing a foreign grant
- III Form of re-sealing a foreign grant
- IV Caveat
- V Warning to caveator
- VI Appearance to warning or citation
- VII Petition by dependants under section 14 of the Act
- VIII Grant of probate
- VIII A Grant of probate (limited)
- IX Grant of letters of administration
- IX A Grant of letters of administration to unadministered estate

[Subsidiary]

Probate (Non-Contentious) Rules

- X Renunciation of probate
- X A Renunciation of administration
- XI Affidavit of due execution of a will

SECOND SCHEDULE

Fees

G.N. 1/1968

PROBATE (NON-CONTENTIOUS) RULES

under s. 24

Citation

1. These Rules may be cited as the Probate (Non-Contentious) Rules.

Interpretation

2. In these Rules unless the context otherwise requires—

“grant” means a grant made by the High Court of probate of a will or of letters of administration with or without a will annexed, and the sealing by that Court in Malawi of probate or letters of administration issued outside Malawi;

“gross value” in relation to an estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;

“Registrar” includes a Deputy Registrar authorized by the Chief Justice to exercise the functions of the Registrar under these Rules in any branch of the High Court outside Blantyre.

How applications to be made

3.—(1) An application for a grant may be made in person or in writing and shall be addressed to the Registrar. The application may be made by the applicant or, if in writing, by his legal practitioner.

(2) Every application, except an application for probate or by a trust corporation, shall state the names, addresses and descriptions of the proposed sureties.

(3) Every applicant shall furnish an address for service in Malawi.

(4) A personal applicant shall supply all information necessary to enable the papers leading to the grant to be prepared by the court or may himself prepare such papers and lodge them unsworn.

(5) No legal advice shall be given to a personal applicant by any court official and every such official shall be responsible only for embodying in proper form the applicant's instructions for the grant.

Contents of oath

4.—(1) Every application for a grant shall be supported by an oath in the form applicable to the circumstances of the case

Probate (Non-Contentious) Rules

[Subsidiary]

which shall be contained in an affidavit sworn by the applicant and by such other papers as these Rules or the Judge may require.

(2) On an application for a grant of administration with will annexed, the oath shall state whether any executors have been appointed by the will and if there have been any such appointed, whether the executors so appointed have renounced or are persons to whom probate may not be granted or have pre-deceased the testator or have died before obtaining probate or have died before having administered all the estate of the deceased or having been appointed by the will do not appear and take out probate and what the applicant's right to a grant is and whether any minority or life interest arises under the will or intestacy.

(3) On an application for a grant of administration in case of intestacy, the oath shall state what is the entitlement of the applicant according to the rules for the distribution of the estate of the intestate, and who are the other persons entitled to shares in the estate.

(4) The oath shall state the deceased's domicile at his death, and the place and date of his death.

(5) An affidavit for the purposes of this rule may be in one of the forms in Form I in the First Schedule with such variations as, subject to the provisions of these Rules, the circumstances may require.

5.—(1) All matters relating to grants may be disposed of by a single Judge sitting in Chambers: Jurisdiction exercised by single Judge

Provided that the Judge may adjourn any matter for determination in open court and give such directions regarding the attendance of any person in court in relation to the matter as he may deem appropriate.

(2) A Judge may refuse to make an order for any grant to be issued until all inquiries which he sees fit to make have been answered to his satisfaction and may require proof of the identity of the deceased or of the applicant beyond that contained in the oath.

6. Every application for a grant other than an application for re-sealing shall be accompanied by the affidavit of a person who knew the deceased in his lifetime certifying of his personal knowledge the fact of the death of the deceased or by such other evidence of the death of the deceased as the Judge may approve. Proof of death

7.—(1) A trust corporation shall not be required to furnish an administration bond. Administration bonds

(2) Subject to subrule (1), every applicant for a grant of letters of administration shall furnish to the Registrar an administration

[Subsidiary]

Probate (Non-Contentious) Rules

bond in Form II in the First Schedule with sureties to the satisfaction of the Judge. The amount of the bond shall be the gross value of the estate.

(3) Except where the sole surety is a bank or an insurance company or the value of the estate does not exceed £100, there shall be two sureties to every administration bond. A reasonable premium paid to a bank or an insurance company in respect of the issue of such a bond shall be a proper expense of administration.

(4) The Judge shall so far as is reasonably possible satisfy himself that every surety is a responsible person.

Estate
Duty
affidavit

Cap. 43:02

8. Every application for a grant shall be accompanied by a copy of the Estate Duty affidavit and by a certificate of the Secretary to the Estate Duty Commissioners under section 33 of the Estate Duty Act.

Additional
name

9. Where it is necessary to describe the deceased in a grant by some name in addition to his true name, the applicant shall state in the oath the true name of the deceased and shall depose that some part of the estate, specifying it, was held in the other name, or as to any other reason that there may be for the inclusion of the other name in the grant.

Marking of
wills

10. Every will in respect of which an application for a grant is made shall be marked by the signature of the applicant and the person before whom the oath is sworn, and shall be exhibited to the affidavit required under these Rules:

Provided that where the Judge is satisfied that compliance with this rule might result in the loss of the will, he may allow a photographic copy thereof to be marked or exhibited in place of the original document.

Engross-
ments for
purposes of
record

11.—(1) Where the Judge considers that in any particular case a photographic copy of the original will would not be satisfactory for purposes of record, he may require an engrossment suitable for photographic purposes to be lodged.

(2) Where a will contains alterations which are not admissible to proof, there shall be lodged an engrossment of the will in the form in which it is to be proved.

(3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and, if it is one to which subrule (2) applies, it shall be made bookwise on durable paper following continuously from page to page on both sides of the paper.

Probate (Non-Contentious) Rules

[Subsidiary]

(4) Where any pencil writing appears on a will, there shall be lodged a facsimile copy of the will or of the pages or sheets containing the pencil writing, in which there shall be reproduced in red ink those portions which appear in pencil in the original.

(5) Where, following a probate action, a will has been pronounced for, any engrossment of the will lodged on the subsequent application for a grant shall reproduce the notation.

12.—(1) Where a will contains no attestation clause or the attestation clause is insufficient or where it appears to the Judge that there is some doubt about the due execution of the will, he shall, before admitting it to proof, require an affidavit as to due execution in Form XI in the First Schedule from one or more of the attesting witnesses, or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.

Evidence as to due execution of will

(2) If no affidavit can be obtained in accordance with subrule (1) the Judge may, if he thinks fit, having regard to the desirability of protecting the interests of any person who may be prejudiced by the will, accept evidence on affidavit from any person he may think fit to show that the signature on the will is in the handwriting of the deceased or of any other matter which may raise a presumption in favour of the due execution of the will.

(3) If the Judge is not satisfied that the will was duly executed, he shall refer the matter into open court.

13. Before admitting to proof a will which appears to have been made by a blind or illiterate testator or by another person by direction of the testator, or which for any other reason gives rise to doubt as to the testator having had knowledge of the contents of the will at the time of its execution, the Judge shall satisfy himself that the testator had such knowledge.

Execution of will of blind or illiterate testator

14.—(1) Where there appears in a will any obliteration, interlineation or other alteration which is not authenticated by the signature of the attesting witnesses or by the re-execution of the will or by the execution of a codicil, the Judge may require evidence to show whether the alteration was present at the time when the will was executed and shall give directions as to the form in which the will shall be proved.

Alteration of wills

(2) If from any mark on the will it appears to the Judge that some other document has been attached to the will, or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the Judge may require the document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as he may think fit.

[Subsidiary]

Probate (Non-Contentious) Rules

(3) Where there is doubt as to the date on which a will was executed, the Judge may require such evidence as he thinks necessary to establish the date.

Attempted
revocation
of will

15. Any appearance of attempted revocation of a will by burning, tearing or otherwise and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Judge's satisfaction.

Additional
affidavit
or other
evidence
may be
required

16. The Judge may require an affidavit from or the personal attendance of any person he may think fit for the purpose of satisfying himself as to any of the matters referred to in rule 12, 13, 14 or 15.

Soldiers'
wills

17. If it appears to the Judge that there is *prima facie* evidence that a will is one to which section 5 (4) of the Act applies, the will may be admitted to proof if the Judge is satisfied that it was made in compliance with the provisions of that subsection.

Making and
issue of
grant

18.—(1) When a Judge has directed that a grant shall be made, and, in cases where an administration bond is required, has approved the sureties, the Registrar shall prepare a grant in the appropriate form.

(2) One of the forms in Forms VIII and IX in the First Schedule shall be made with such variations, limitations and exceptions as the Judge may direct.

(3) Every grant shall be signed by the Registrar and be sealed with the seal of the Court.

(4) Where an administration bond is required, the grant shall not issue until such a bond has been executed by the approved sureties.

Sealing of
foreign
grants

19.—(1) An application under section 58 of the Act for the sealing in Malawi of a grant made outside Malawi shall be made by the person to whom the grant was made or by any person authorized in writing to apply on his behalf.

(2) The application shall be accompanied by a copy of the Estate Duty affidavit and the certificate of the Secretary to the Estate Duty Commissioners under section 33 of the Estate Duty Act.

Cap. 43:02

(3) The application shall be supported by an affidavit verifying the domicile of the deceased unless a notification of domicile appears on the grant.

(4) The Registrar shall send notice of the sealing to the court which made the grant outside Malawi.

Probate (Non-Contentious) Rules

[Subsidiary]

(5) Where notice is received in the High Court of the re-sealing of a Malawi grant, notice of any amendment or revocation of the grant shall be sent to the court by which it was re-sealed.

(6) Rule 7 shall apply to an application for sealing a foreign grant, except that the administration bond, if required, shall be in Form IIA.

20.—(1) Every citation shall issue from the registry and shall be settled by the Registrar before being issued. Citations

(2) Every averment in a citation, and such other information as the Registrar may require shall be verified by an affidavit sworn by the person issuing the citation (in these Rules called "the citor") or, if there are two or more citors, by one of them:

Provided that the Registrar may in special circumstances accept an affidavit sworn by the citor's legal practitioner.

(3) The citor shall enter a caveat in Form IV before issuing a citation.

(4) Every citation shall be served personally on the person cited unless the Judge, on cause shown by affidavit, directs some other mode of service, which may include notice by advertisement.

(5) Every will referred to in a citation shall be lodged in the registry before the citation is issued, except where the will is not in the citor's possession and the Registrar is satisfied that it is impracticable to require it to be lodged.

(6) A person who has been cited to appear may, within eight days of service of the citation upon him, inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under rule 22 (5) or 23 (2), enter an appearance in the registry by filing a duly completed document in Form VI and shall forthwith thereafter serve on the citor a copy of Form VI sealed with the seal of the Court.

21.—(1) Any person who wishes to ensure that no grant is sealed without notice to himself may enter a caveat at the Court. Caveats

(2) Any person who wishes to enter a caveat (called the caveator) may do so by completing Form IV and filing the same with the Registrar.

(3) Where the caveat is filed by a legal practitioner the name of the caveator shall be stated in Form IV.

(4) Except as otherwise provided by this rule, a caveat shall remain in force for six months from the date on which it is entered and shall then cease to have effect, without prejudice to the entry of a further caveat or caveats.

Subsidiary]

Probate (Non-Contentious) Rules

(5) The Registrar shall maintain an index of caveats and on receiving an application for a grant he shall cause the index to be searched; he shall not submit the application for a grant to a Judge if he has knowledge of a caveat in respect thereof.

(6) A caveat may be warned by the issue from the registry of a warning in Form V at the instance of a person interested (called the person warning) which shall state his interest, and, if he claims under a will, the date of the will and shall require the caveator to give particulars of any contrary interest which he may have in the estate of the deceased; and every warning shall be served on the caveator.

(7) A caveator who has not been warned may at any time during which the caveat is in force withdraw his caveat by giving notice of such intention in writing to the Registrar; if the caveat has been warned and the caveator has not entered an appearance thereto, he may withdraw his caveat by giving notice of withdrawal in writing to the person warning and to the Registrar.

(8) A caveator having an interest contrary to that of the person warning may, within eight days of the service of the warning on him, inclusive of the day of service, or at any time thereafter if no affidavit has been filed under subrule (10), enter an appearance at the registry by filing Form VI and shall forthwith thereafter serve on the person warning a copy of Form VI sealed with the seal of the High Court.

(9) A caveator having no interest contrary to that of the person warning but wishing to shew cause against the issue of a grant to that person may, within eight days of service of the warning on him, inclusive of the day of service, or at any time thereafter if no affidavit has been filed under subrule (10), issue and serve a summons for directions.

(10) If the time limited for appearance has expired and the caveator has not entered an appearance, the person warning may file in the registry an affidavit showing that the warning was duly served and that he has not received a summons for directions under the last foregoing paragraph, and thereupon the caveat shall cease to have effect.

(11) Unless a Judge by order made on summons otherwise directs—

(a) a caveat in respect of which an appearance to a warning has been entered shall remain in force until the commencement of a probate action, or until it has been disposed of under the rules relating to probate actions;

(b) any caveat in force at the beginning of a probate action or of proceedings by way of citation or motion shall (subject to

subrule 7) remain in force until an application for a grant is made by the person shewn to be entitled thereto by the decision of the Court in such action or proceedings, and upon such application any caveat entered by a party who had notice of the action or proceedings shall cease to have effect;

(c) if no caveat is in force at the commencement of a probate action, the commencement of the action shall operate to prevent the issue of a grant as if a caveat had been entered immediately before such commencement.

22.—(1) A citation may be issued under section 29 of the Act or under subrule (2) or (3). Citation to accept or refuse grant

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

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

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

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

(5) If the time limited for appearance has expired and the person cited has not entered an appearance, the citor may—

(a) in the case of a citation under section 29 of the Act, apply to the court for an order for a grant to himself;

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

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

and the summons shall be served on the person cited.

[Subsidiary]

*Probate (Non-Contentious) Rules*Citation to
propound a
will

23.—(1) A citation to propound a will shall be directed to the executors named in the will and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

(2) If the time limited for appearance has expired and no person cited has entered an appearance, or if no person who has appeared proceeds with reasonable diligence to propound the will, the citor may apply by summons for an order for a grant as if the will were invalid.

Address for
service

24. All caveats, citations, warnings and appearances shall contain an address for service within the jurisdiction.

Limited
grants

25. An application for an order for a grant limited to part of an estate shall be made by summons and shall be supported by an affidavit stating—

(a) whether the application is made in respect of the real estate only or any part thereof, or real estate together with personal estate, or in respect of a trust estate only;

(b) whether the estate of the deceased is known to be insolvent;

(c) that the persons entitled to a grant in respect of the whole estate in priority to the applicant have renounced either explicitly or by failing to appear to a citation or have consented to the present application.

Inspection
of deceaseds'
wills

26.—(1) Every will preserved in the High Court under section 78 of the Act shall be open to inspection on payment of the prescribed fee.

(2) A certified copy of any will so preserved may be obtained by any person on payment of the prescribed fee:

Provided that in the case of a will relating to a small estate of which a Traditional Court shall request certified copies under section 64 or 65 of the Act, the Registrar shall provide the Traditional Court with two such copies without prior payment of such fees but the Traditional Court may recover the prescribed fees from any party to the proceedings before the Traditional Court which gave rise to the request.

Application
by depend-
ants

27.—(1) An application by a dependant under section 14 of the Act shall be by petition to which the executors of the will shall be the sole respondents.

(2) Such application shall be in accordance with Form VII in the First Schedule, shall be made within six months of the death of the testator and shall be verified by the affidavit of the applicant. The respondents to the application shall file affidavits in reply.

Probate (Non-Contentious) Rules

[Subsidiary]

(3) A petition under subrule (1) shall be heard in open court and the Court may require the attendance in court of any of the persons interested in the matter.

28. The fees set out in the Second Schedule shall be payable in respect of the proceedings and matters therein mentioned:

Provided that if the Registrar is satisfied that any applicant is unable to pay any of the said fees, he may waive or postpone payment thereof.

FIRST SCHEDULE

FORM I

r. 4

OATH FOR EXECUTORS

In the High Court of Malawi

In the Estate of (deceased).

WE, A.B. and D.C., make oath and say (or solemnly, sincerely and truly declare and affirm) that we believe the paper writing hereto annexed, and marked by us, to contain the true and original last will and testament (with a codicil thereto) of, deceased,

who died on the day of, 19....., at

..... aforesaid, domiciled in,

that we are respectively of the said deceased, and two of the executors named in the said will and will administer according to law all the estate which by law devolves to and vests in the personal representatives of the said deceased and will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £..... and no more, to the best of our knowledge, information and belief.

{ Signatures }
of
{ Deponents }

Sworn/Affirmed by both the above-named

deponents at

this day of, 19.....

Before me,

A Commissioner for Oaths

L.R.O. 1/1969

[Subsidiary]

Probate (Non-Contentious) Rules

r. 4

FORM IA

OATH—ADMINISTRATION WITH WILL ANNEXED

In the High Court of Malawi

In the Estate of (deceased).

WE, A.B. and D.C., of make oath and say (or solemnly, sincerely and truly declare and affirm) that we believe the paper writing hereto annexed and marked by us, to contain the true and original last will and testament (with codicil(s) thereto) of, of, formerly of, deceased, who died on the day of 19....., at, domiciled in; that and the executors named in the said will (or codicil) died in the lifetime of the said deceased; that no life interest arises in his estate and that no beneficiary is a minor; that we are respectively the of the said deceased and the residuary legatees and devisees named in the said will (or codicil) of the said deceased, *and will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased and will exhibit a true and perfect inventory of the said estate and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £..... and no more, to the best of our knowledge, information and belief.

{ Signatures }
 of
 { Deponents }

Sworn/Affirmed by both the above-named
 deponents at,

this day of, 19.....

Before me,

A Commissioner for Oaths

*If not applicable, set out the entitlement of the applicants for grant and state who has a prior right and how they are cleared off.

r. 4

FORM IB

OATH FOR ADMINISTRATOR (INTESTACY)

In the High Court of Malawi

In the Estate of (deceased)

I, A.B., of, make oath and say (or solemnly, sincerely and truly declare and affirm) that of, died on the day of, 19....., at, domiciled in Malawi, and intestate; that I am

Probate (Non-Contentious) Rules

[Subsidiary]

the** of the said deceased and entitled to a part of the estate of the said deceased and am not aware of any person who has a greater or more immediate interest in such estate except that no minority or life interest arises out of the intestacy; and that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased, and will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £..... and no more, to the best of my knowledge, information and belief.

{ Signature
of
Deponent }

Sworn/Affirmed by the above-named

deponent at

this day of, 19...

Before me,

; A Commissioner for Oaths

**Set out the relationship of the deponent to the deceased.

FORM II

r. 7

ADMINISTRATION BOND

In the High Court of Malawi

In the Estate of, (deceased)

KNOW all Men by these Presents that We, (1) are jointly and severally bound unto the Registrar of the High Court in the sum of (2) pounds, for the payment of which to the said Registrar we bind ourselves and each of us and our (3)

Sealed with our Seal(s)

Dated the day of, 19....

The condition of this obligation is such that if the above-named (4), the (5) of (6),

deceased, who died on the day of, and the intended administrator (with the will (7) annexed) (8) of all the estate which by law devolves to and vests in the personal representative of the said (9) deceased do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of the said estate which has or shall come to the hands, possession or knowledge of the said intended administrator, and do exhibit the said inventory or cause it to be exhibited in the High Court whenever

[Subsidiary]

Probate (Non-Contentious) Rules

required by law so to do; and do well and truly administer the said estate according to law (10); and further do make or cause to be made a true and just account of the administration of the said estate whenever required by law so to do; and further do, if so required, render and deliver up the letters of administration in the High Court if it shall hereafter appear that any will was made by the said deceased which is exhibited in the said Court with a request that it be allowed and approved accordingly (11); then this obligation shall be void and of no effect, but shall otherwise remain in full force and effect.

Signed, sealed and delivered by the within-named in the presence of A Commissioner for Oaths (or other person authorized by law to administer an oath). (12)

The Common Seal of was hereunto affixed in the presence of

-
- (1) Insert full names, addresses and descriptions of principals and sureties.
 - (2) Unless otherwise directed, the sum to be inserted should be the gross value of the estate.
 - (3) Individuals bind themselves, their executors and administrators. Trust and other Corporations bind themselves and their successors.
 - (4) Insert full name of principals.
 - (5) Set out the capacity in which application for the grant is made (which must agree with that stated in the oath).
 - (6) Full name and address of the deceased.
 - (7) "and codicils" if any.
 - (8) Delete if deceased died intestate.
 - (9) Insert any limitation on the estate to be administered, or any extension to include settled land. On an application for a second or subsequent grant, insert "left unadministered by" (previous grantee). If the grant is to be a limited one, give particulars.
 - (10) On a creditor's application insert here: "paying all and singular the debts owed by the said deceased at his death in due course of administration, rateably and proportionately and according to the priority required by law, not, however, preferring his own debt by reason of his being administrator nor the debt of any other person".
 - (11) If the deceased died testate, this paragraph should be deleted.
 - (12) In the case of the intended administrator, the bond must, unless attested by an authorized officer of the registry, be attested by the person before whom the oath was sworn. Attestation is not required in the case of a corporation.
-

FORM IIA

r. 19

In the High Court of Malawi

ADMINISTRATION BOND ON APPLICATION FOR
SEALING A FOREIGN GRANT

under s. 58

In the Estate of deceased.

KNOW all Men by these Presents that We, (1)
are jointly and severally bound unto the Registrar in the sum of (2)
..... pounds, for the payment of which to the said
Registrar we bind ourselves and each of us and our (3).
Sealed with our Seal(s)

Dated the day of, 19....

The condition of this obligation is such that if (4).....
of, the administrator(s) (with the will) (5)
annexed (6) acting by the authority of (7), under
Letters of Administration (with the will (5) annexed) (6) issued at
..... on the day of,
19..., and now about to be sealed in Malawi under section 58 of the
Act, of the estate of (8) deceased, who died on the
..... day of, 19..., do, when lawfully called
on in that behalf, make or cause to be made a true and perfect inventory
of the estate of the said deceased in Malawi which has or shall come
into the hands, possession or knowledge of the said administrator,
and do well and truly administer the said estate according to law; and
further do make or cause to be made a true and just account of the
administration of the said estate in Malawi; then this obligation shall be
void and of no effect, but shall otherwise remain in full force and effect.
Signed, sealed and delivered by the within-named in the presence of
..... A Commissioner for Oaths (or other person
authorized by law to administer an oath. (9)) The Common Seal of
..... was hereunto affixed in the presence
of

- (1) Insert full names, addresses and descriptions of principals and sureties.
- (2) Unless otherwise directed, the sum to be inserted should be the gross value of the estate.
- (3) Individuals bind themselves, their executors and administrators. Trust and other Corporations bind themselves and their successors.
- (4) Insert full name(s), address(es) and description(s) of person(s) to whom the grant was made.
- (5) "and codicils", if any.
- (6) Delete if deceased died intestate.
- (7) Description of Court by which grant was issued.
- (8) Name and address of the deceased.

[Subsidiary]

Probate (Non-Contentious) Rules

- (9) Where the application required to be supported by an oath sworn by the applicant, his signature must, unless attested by an authorized officer of a registry, be attested by the person before whom the oath was sworn. Attestation is not required in the case of a corporation.

r. 19

FORM III

FORM OF RESEAL IN MALAWI OF A FOREIGN GRANT

In the High Court of Malawi

CIVIL CAUSE NO: 19.....

RESEALED by this High Court of Malawi under section 58 of the Wills and Inheritance Act.

This day of, 19.....

SEAL

of the

HIGH COURT

.....
Registrar of the High Court

NOTE: The above form should be endorsed on the foreign grant which is being resealed.

rr. 20, 21

FORM IV

In the High Court of Malawi

CAVEAT

In the Estate of, deceased.

LET no grant be sealed in the estate of,
late of, deceased, who died on
the day of, 19....., at
....., without notice to (1)

Dated this day of, 19....

Signed (2)

Legal Practitioners for the said (3)

- (1) Name and address within the jurisdiction for service of party by whom the caveat is entered.
- (2) To be signed by the caveator's legal practitioner or by the caveator if acting in person.
- (3) If the caveator is acting in person, substitute "in person".

Probate (Non-Contentious) Rules

[Subsidiary]

FORM V

r. 21

In the High Court of Malawi

WARNING TO CAVEATOR

To of
 a party who has entered a caveat in the estate of
 deceased.

You are hereby warned within eight days after service hereof upon you, inclusive of the day of such service:

- (1) to enter an appearance either in person or by your legal practitioner, at the Registry, setting forth what interest you have in the estate of the above-named deceased, contrary to that of the party at whose instance this warning is issued;
 or
- (2) if you have no contrary interest but wish to show cause against the sealing of a grant to such party, to issue and serve a summons for directions by the Registrar.

. And take notice that in default of your so doing, the Court may proceed to issue a grant of probate or administration in the said estate notwithstanding your caveat.

Dated the day of 19....

.....
 Registrar

Issued at the instance of (here set out the name and interest (including the date of the will, if any, under which the interest arises) of the party warning, the name of his legal practitioner and the address for service. If the party warning is acting in person, this must be stated).

FORM VI

r. 21

In the High Court of Malawi

APPEARANCE TO WARNING OR CITATION

Caveat No.: dated the day of, 19..., (1)

Citation dated the day of 19..., (1)

Full name and address of the Deceased:

.....

Full name and address of person warning (or citor):—

(2)

L.R.O. 1/1969

[Subsidiary]

Probate (Non-Contentious) Rules

Full name and address of caveator (or person cited):—

(3)
.....
.....

Enter an appearance for the above-named caveator (or person cited) in this matter.

Dated the day of, 19.....

(Signed)

whose address for service is:—

Legal Practitioner (or "In Person")

.....

- (1) Delete whichever is inapplicable.
- (2) Here set out the interest of the person warning, or citor, as shown in warning or citation.
- (3) Here set out the interest of the caveator or person cited, stating date of the will, if any, under which such interest arises.

r. 27

FORM VII

In the High Court of Malawi

PETITION

No.: of 19.....

In the matter of section 14 of the Wills and Inheritance Act, and

In the matter of the estate of deceased.

1.....

2..... Applicants

vs

1.....

2..... Respondents

To: The High Court of Malawi,
Blantyre/Lilongwe.

The Humble Petition of sheweth:

- (1) Probate of the will of the above-named deceased was granted to the Respondents by the High Court of Malawi at on the day of 19.....
- (2) The first applicant, resides at and is related to the said deceased (hereinafter referred to as "the Testator") as his
- (3) Immediately prior to the death of the Testator the first applicant was dependent on the Testator as follows:
(set out nature and degree of dependancy)

Probate (Non-Contentious) Rules

[Subsidiary]

- (4) Under the Testator's said will, the first applicant is entitled to no benefit (or as the case may be)
- (5) } Set out similar information regarding the second applicant (if
- (6) } there is one).
- (7) }
- (8) The nature and extent of the Testator's estate is set out in the Estate Duty affidavit filed by the Respondents is as follows:
(set out the particulars of the estate)
- (9) The first applicant has or had the following capital and income:
(set out past, present and future capital and income)
and no other past, present or future capital from any source.
- (10) Set out similar information relating to the second applicant, if there is one.
- (11) The circumstances of the other dependants, wives, children and relatives of the Testator and the beneficiaries under the Testator's will, so far as such circumstances are known to the applicants, are as follows:
(set out full details)
- (12) Reasonable provision for the applicants would be:
(set out amount claimed by each applicant)
And your Petitioner(s) will
Affidavit:
We, and

FORM VIII

r. 18

In the High Court of Malawi

GRANT OF PROBATE

In the Estate of, deceased.

PROBATE

This grant certifies that
..... have been duly appointed Executors of
the Will of the late, who died at
..... on the day of, 19.....
and are hereby authorized as such to administer the estate of the said
deceased in accordance with the terms of his will, a copy of which is
attached to this grant.

SEAL

Registrar

BLANTYRE/LILONGWE, this day of, 19.....

FORM VIII A

r. 18

GRANT OF PROBATE (LIMITED)

In the High Court of Malawi

In the Estate of, deceased.

L.R.O. 1/1969

Subsidiary]

Probate (Non-Contentious) Rules

PROBATE (LIMITED)

This grant certifies that
 and were duly appointed Executors
 of the will of the late
 who died at on the day of
, 19...; that the said is hereby
 duly authorized as Executor to administer the estate of the said deceased
 in accordance with the terms of his will, a copy of which is attached to
 this grant, and that the rights of the
 other executor named in the said will are hereby reserved.

SEAL

.....
Registrar

BLANTYRE/LILONGWE, this day of, 19....

r. 18

FORM IX

In the High Court of Malawi

In the Estate of, deceased.

LETTERS OF ADMINISTRATION

These are to certify that
 and have been duly appointed
 administrators of the estate of the late
 who died at on the day of
, 19..., and are hereby authorized as such to administer
 his estate (according to law)* (in accordance with the terms of his will,
 a copy of which is attached hereto) (1).

SEAL

.....
Registrar

BLANTYRE/LILONGWE, this day of, 19....

* (1) Delete whichever is not applicable.

r. 18

FORM IX A

In the High Court of Malawi

In the Estate of, deceased.

LETTERS OF ADMINISTRATION TO UNADMINISTERED
ESTATE

These are to certify that and
 have been duly appointed administrators to
 such part of the estate of the late, who died at
 on the day of, 19..., as still remains
 unadministered, and are hereby authorized as such to administer such
 part of his estate as remains unadministered (according to law)* (in
 accordance with the terms of his will, a copy of which is attached
 hereto)*.

SEAL

.....
Registrar

BLANTYRE/LILONGWE, this day of, 19....

* Delete whichever is not applicable

FORM X

In the High Court of Malawi

RENUNCIATION OF PROBATE

In the Estate of, deceased.

Whereas, of, deceased, died on the day of, 19..., at having made and duly executed his last will and testament bearing date the day of, 19..., and thereof appointed his sole executor; now I, the said do hereby declare that I have not inter-meddled in the estate of the said deceased and will not hereafter inter-meddle therein with intent to defraud creditors, and I hereby renounce all my right and title to the probate and execution of the said will.

(Signature)

Sworn by the said
this day of, 19...,
in the presence of

Signature of Witness:

Address:

FORM XA

In the High Court of Malawi

RENUNCIATION OF ADMINISTRATION

In the Estate of, deceased.

Whereas, of, deceased, died on the day of, 19..., intestate, a spinster,* leaving, widow, her lawful mother* and the only person entitled to the estate of the said deceased.

Now I,, the said, do hereby renounce all my right and title to letters of administration of the estate of the said deceased (and I further consent to the same being granted to, my lawful).

(Signature)

Sworn by the said
this day of, 19...,
in the presence of

Signature of Witness:

Address:

*Amend as necessary

[Subsidiary]

Probate (Non-Contentious) Rules

r. 12

FORM XI

In the High Court of Malawi

AFFIDAVIT BY ATTESTING WITNESS OF DUE EXECUTION
OF A WILL

In the Estate of, deceased.
 I,, of (description)
 make oath and say (or solemnly, sincerely and truly declare and affirm)
 that I am one of the subscribing witnesses to the last will and testament
 of the said, deceased, of, the said will
 now being hereunto annexed bearing date, and that
 the said testator executed the said will on the day of the date thereof
 by signing his name at the foot or end thereof as the same now appears
 thereon, in the presence of me and of the other
 subscribed witness thereto, both of us being present at the same time,
 and we thereupon attested and subscribed the said will in the presence
 of the said testator.

.....
(Signature of Deponent)

Sworn by the above-named deponent

at, this

..... day of, 19.....

Before me,

A Commissioner for Oaths

r. 28

SECOND SCHEDULE

FEES

	£	s.	d.
On application for a grant—			
1. (a) where the gross value of the estate excluding any claim for personal injuries does not exceed £500 ..	2	0	0
(b) all other cases	4	0	0
2. On deposit of a will under section 7 ..	10	0	
3. On search for a will deposited under section 78 ..	2	6	
4. (a) Photostat copy of a will relating to an estate other than a small estate under section 78—per sheet ..	10	0	
(b) Photostat copy of a will relating to a small estate— per sheet of will supplied to Traditional Court ..	2	6	
5. Typed copy of a will deposited under section 78—per 100 words or part thereof	2	6	
6. Inspection of any will, in addition to the search fee—per hour or part thereof	2	6	

Traditional Courts (Small Estates) Rules

[Subsidiary]

TRADITIONAL COURTS (SMALL ESTATES) RULES*under s. 77*G.N.
256/1967
47/1989

1. These Rules may be cited as the Traditional Courts (Small Estates) Rules. Citation

2. In these Rules, unless a different meaning is clear from the words used— Interpretation

“gross value” in relation to any estate means the value of the estate without deduction for debts, encumbrances, funeral expenses or estate duty;

“near relative” has the meaning set out in the Act;

“Registrar” means the Registrar of the High Court.

3.—(1) An application under section 65 of the Act may be made by the persons appointed by a will to administer the estate or by not less than two nor more than four other persons and shall be made in the manner prescribed in rule 6 of the Traditional Courts (Procedure) Rules. How application for administration grant is to be made
Cap. 3:03
p. 47
47/1989

(2) After recording the complaint in the civil complaints book the clerk shall inquire whether or not the deceased left a will, whether or not the gross value of the estate amounts to K10,000 and where the deceased ordinarily resided prior to his death.

(3) If the applicants state that the deceased left no will and if the clerk is satisfied—

(a) by evidence on oath of the alleged death;

(b) that the court appears to have jurisdiction in case of intestacy,

he shall notify the District Commissioner of the District in which the court is situate of the death and shall inquire whether the deposit of a will of the deceased person is recorded. If the District Commissioner informs the clerk that no such will is recorded, the clerk shall immediately prepare a notice in Form 25A in the First Schedule in accordance with rule 5.

(4) In cases where the applicants state the deceased left no will, the application under section 65 shall be made to the Court having jurisdiction over the area in which the deceased ordinarily resided prior to his death, unless on reference to him the Chief Traditional Courts Commissioner directs that the application be made to some other court.

4.—(1) If, on an application under section 65 of the Act, the applicants state that the deceased left a will, the clerk shall require the will to be produced to him or information to be given regarding Procedure in case of will

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[Subsidiary]*Traditional Courts (Small Estates) Rules*

the office where the will has been deposited under section 7 of the Act. If the applicants are unable either to produce the will or to state where the will is deposited, the clerk shall advise the applicants to apply to the High Court for a grant in respect of a lost will or to proceed as though the will had been revoked and the deceased had died intestate.

(2) If the applicants, by evidence on oath, satisfy the clerk of the death of the deceased and state that the will of the deceased is deposited for safe custody with a District Commissioner or the Registrar, and if it appears to the clerk that the Court may have jurisdiction under section 64 of the Act, the clerk shall write to that District Commissioner or the Registrar informing him of the death and in the case of a District Commissioner, requesting him to forward the original will to the Registrar of the High Court, with a request to the Registrar that two certified photostat copies of the will be forwarded to the Traditional Court. The deposit receipt for the will of the District Commissioner or the Registrar, if in the possession of the applicants, shall be forwarded with the letter.

(3) If the applicants produce to the clerk a document which they claim to be the will of the deceased, the clerk shall forthwith make a copy thereof and act in accordance with section 64 (3) of the Act.

(4) In cases where subrule (2) or subrule (3) applies, the clerk shall obtain from the applicants all information required for the purpose of preparing a notice in Form 25B in the First Schedule. On receipt from the Registrar of two certified photostat copies of the will of the deceased, the clerk shall, unless it appears that some other court has been nominated in the will, proceed in accordance with rule 5 (4). If the District Commissioner to whom a request has been made under subrule (2) states that he has not and cannot trace the original will, the clerk shall inform the applicants accordingly and advise them in accordance with subrule (1).

(5) If, on receipt of the certified photostat copies of the will, it appears that some other court has been nominated, the clerk shall apply for the transfer of the application to the nominated court in the same way as for the transfer of a normal court case.

Notice to
near
relatives and
others

5.—(1) For the purpose of preparing a notice under rule 3 or rule 4, the clerk shall inquire of the applicants the names of the near relatives of the deceased and where they live, and the applicants shall truthfully and fully inform the clerk accordingly.

(2) When the clerk is satisfied that he has been fully informed about the near relatives of the deceased and their addresses, he shall include the names and addresses of all near relatives in the notice and shall make sufficient copies for service on each of them.

(3) If the applicants state, or the clerk is satisfied by inspection of the will or certified copy thereof that there is a person named in the will as executor who is not among the applicants, the clerk shall cause all such persons to be included in the persons to be served with a notice, even if they are not near relatives of the deceased.

(4) The clerk shall thereupon request the Chairman to fix the date of hearing of the application in accordance with rule 12 (2) of the Traditional Courts (Procedure) Rules and section 65 (2) of the Act. Cap. 3:03
p. 47

(5) The clerk shall inform the applicants of the date and time fixed for hearing and shall cause the notices to be served on the persons therein named.

(6) Where any near relative of the deceased is a minor, the notice to him may be served on his guardian (if any) or on the person with whom he resides, if there is no guardian.

6.—(1) If, on the hearing, the applicants or any of them fail to appear, the Court may adjourn the hearing or, at the request of any two applicants or near relatives who are willing to undertake the administration of the estate, may proceed in the absence of any applicant and may direct that an Administration Grant be issued in accordance with section 65 (5) or (6) of the Act. Hearing

(2) If, on the hearing, any person on whom a notice should have been served fails to appear, the Court may, if it is not satisfied that all such notices have been served in due time, adjourn the hearing, but if it is satisfied that all such notices have been served in due time, the Court shall proceed with the hearing in the absence of any person duly served with a notice.

(3) Where any of the near relatives is a minor the Court may, if no lawful guardian appears to represent the minor, proceed with the hearing or adjourn the hearing until such guardian is appointed.

7.—(1) An Administration Grant shall be in accordance with Form 26 in the First Schedule. Form of
adminis-
tration
grant and
its issue

(2) Where a Court has directed that an Administration Grant be issued, the Grant shall not be issued until the fees prescribed in the Second Schedule have been paid.

(3) A copy of the Administration Grant shall be sent to the Registrar and a further copy shall be retained in the records of the Court. If a copy of the will was annexed to the Grant, a copy shall be annexed to the copy of the Grant retained by the Court.

Disputes

8.—(1) A dispute over which a Court has jurisdiction under section 73 (a) (b) (c) or (d) of the Act, may be decided on the hearing of an application made under section 65 of the Act. If no application under section 65 has been made or if such an application has been concluded, an application relating to such a dispute shall be made to the Court which made a Grant under section 65 of the Act, or, if no such Grant has been made by any court, to a court having jurisdiction in the area in which the deceased ordinarily resided prior to his death, or jurisdiction in the area in which the property in dispute is situated.

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sub. leg.
p. 47

(2) An application relating to a dispute referred to in subrule (1) shall be made in the manner prescribed in the Traditional Courts (Procedure) Rules, and a civil summons shall be issued to every person interested in the dispute. The Court shall refuse to proceed with the hearing of the application unless it is satisfied that all persons interested in the question are before the Court or, if not before the Court, have been served in due time with a summons to attend the Court.

(3) An application relating to a question over which a Court has jurisdiction—

(a) under section 73 (e), may be made by any person having an interest in the property referred to in that paragraph;

(b) under section 73 (f) by any relative of the minor, or other person having a legitimate interest in the minor.

(4) An application to which subrule (3) applies shall be made in the manner prescribed in the Traditional Courts (Procedure) Rules, and the hearing of the application may proceed after the person alleged to have failed to carry out his duties or to have acted improperly as guardian has been duly served with a civil summons, and without any other person interested being before the Court.

(5) No order may be made against any person who has not been summoned to appear before the Court and given an opportunity to make representations to the Court.

(6) The Court may, at any time during proceedings under section 73 of the Act, direct that any person be summoned to appear before the Court and may adjourn the hearing of the application to enable service to be effected and the person summoned to appear.

9.—(1) An application by a dependant under section 14 of the Act shall be made to the Court by which an Administration Grant with will annexed has been made, in the manner prescribed in the Traditional Courts (Procedure) Rules, and shall be entered in the civil complaints book.

Application under section 14 of the Act Cap. 3:03 sub. leg. p. 47

(2) A civil summons shall be issued to all the persons entitled to administer the estate under the Administration Grant.

(3) On the hearing of the application, the Court shall cause the clerk to produce to the Court a copy of the Administration Grant and copy will annexed, and shall record—

(a) the residence of the applicant at the time of the hearing and, if the application is made on behalf of a dependant, the residence of the dependant and the reason why the dependant did not apply personally;

(b) the nature of the property of the testator and its value for the purposes of section 14 (2) of the Act;

(c) the provision, if any, made for the dependant by the will, and the past, present and future capital or income from any source of the dependant;

(d) the circumstances of the other dependants, wives, children and relatives of the testator and the beneficiaries under the will;

(e) the amount claimed by the applicant to be reasonable provision and the amount, if any, awarded by the Court;

(f) the reasons of the Court for granting or refusing the application, including the conduct of the dependant in relation to the testator or otherwise and the general circumstances, if any, taken into account in arriving at the decision of the Court.

FIRST SCHEDULE

FORM 25A

rr. 3, 4 and 7

In the Traditional Court.
Court Case No. of

Estate of, deceased.

APPLICATION FOR ADMINISTRATION GRANT ON INTESTACY

by
.....
..... Applicants

NOTICE

UNDER SECTION 65 OF THE WILLS AND INHERITANCE ACT
to
.....
and the persons whose names appear on the back hereof.

L.R.O. 1/1970

[Subsidiary]

Traditional Courts (Small Estates) Rules

Take notice that you are to come to the court house at
on day, the day of, 19...,
at the hour of, to state whether you have any objection
to the making of an Administration Grant in respect of the estate of
....., deceased, to the applicants
above-named.

2. The applicants state that
formerly of (here state the last ordinary residence
of the deceased) died on the day of, 19...,
without having made a will.

3. The applicants state that they wish to distribute the estate of the
said deceased according to the Wills and Inheritance Act.

4. If you do not come to the court house on the day and at the time
above-mentioned, an Administration Grant may be made in your
absence which will entitle the applicants so to distribute the estate.

SEAL OF COURT

.....
Clerk of Court

Date

;

FORM 25B

In the Traditional Court.

Court Case No. of 19...

Estate of, deceased.

APPLICATION FOR ADMINISTRATION GRANT, WITH
WILL

by
.....
.....
..... Applicants.

NOTICE

UNDER SECTION 65 OF THE WILLS AND INHERITANCE ACT

to
.....
..... and the persons whose names
appear on the back hereof.

Take notice that you are to come to the court house at
on day, the day of, 19...,
at the hour of to state whether or not you have any
objection to the making of an Administration Grant in respect of the
estate of deceased, to the applicants
above-named.

2. The applicants state that formerly of (here state last ordinary residence of deceased) died on the day of, 19....., having made a last will dated, by which he
 *(a) appointed the applicants to administer his estate;
 *(b) nominated this Court as the Court to deal with applications relating to his estate.

*Delete if not appropriate

3. The applicants state that you are a near relative of the said, deceased.

4. If you do not come to the court house on the day and at the time above-mentioned, an Administration Grant with the said will annexed may be made in your absence, and if such Administration Grant is made, the estate will be distributed in accordance with the said will.

5. A copy of the said will may be inspected at the court house during business hours on any working day three weeks after the date of this notice or as soon thereafter as such copy is received.

SEAL OF COURT

Date

.....
 Clerk of Court

FORM 26

In the Traditional Court.

Court Case No. of 19.....

In the Estate of, deceased.

ADMINISTRATION GRANT

This Grant certifies that—

.....

and
 have been appointed administrators of the estate of
 deceased, lately of who died at
 on the day of, 19....., and are
 hereby authorized as such to administer the estate—

- * according to the law of intestate inheritance;
- * in accordance with the terms of the will, a copy of which is attached hereto.

SEAL OF COURT

Date of Grant.

.....
 Chairman

* Delete whichever is not applicable.

[Subsidiary]*Traditional Courts (Small Estates) Rules*

r. 7

SECOND SCHEDULE

The following fees shall be payable in addition to any fee payable on an application—

1. On the issue of an Administration Grant without copy will annexed £1 0s. 0d
2. On the issue of an Administration Grant with certified copy of will annexed—
 - for the Grant £1 0s. 0d.
 - and in addition, for the certified copy of the will, per page 2s. 6d.

WILLS AND INHERITANCE (INSTITUTIONAL MONEY) RULESG.N.
94/1969
126/1970*under s. 77*

1. These Rules may be cited as the Wills and Inheritance (Institutional Money) Rules. Citation

2. If, after receiving a report of a death under section 63 (3) (a) of the Act and verifying the amount of institutional money and causing the enquiries required by section 63 (3) (b) to be made, it appears to a District Commissioner that the institutional money is not disposed of by a valid will, he shall make the reference required by section 63 (3) (d) to the Traditional Court having jurisdiction in the area in which the deceased had his principal place of residence immediately prior to his death. Such reference shall be made by completing a request for certificate in Part A of Form 30 in the First Schedule. Reference by District Commissioner

3.—(1) Upon receiving a request under rule 2 the Chairman of the Traditional Court shall cause particulars thereof to be entered in the civil complaints book as a complaint by the District Commissioner. Such Court shall then summon as a witness the Village Headman of the place where the deceased had his principal place of residence, or, if such place has no Village Headman, a relative of the deceased person or such other person as the Court considers, on reasonable grounds, may be able to give evidence as to the names and whereabouts of the persons interested in any part of the institutional money. Traditional Court to summon Village Headman etc.

(2) When the person summoned appears before it the Traditional Court shall examine him to obtain the evidence referred to in subrule (1).

4.—(1) After completing the examination referred to in rule 3, the Traditional Court shall serve a summons in Form 31 in the First Schedule on all such persons as appear to it to be interested in the institutional money in question. Examination of persons interested

(2) Such persons shall be required to appear before the Court at the same time which shall be not less than 3 weeks and not more than 6 weeks from the date when the summons is issued. At the time so notified the Court shall examine such of the persons so summoned as appear before it. Such examination shall take place in the presence of all the other persons so summoned who have appeared before the Court.

(3) The Court shall require each of the persons so examined to answer upon oath such questions as the Court may put to them relating to the affairs of the deceased and may permit any person so

L.R.O. 1/1971

[Subsidiary]

Wills and Inheritance (Institutional Money) Rules

examined to be cross-examined by, or on behalf of, any other person claiming to be interested in the property of the deceased person.

(4) Any person not so summoned who claims to be interested in the property of the deceased person as a creditor, beneficiary or person interested under a will of the deceased may appear before the Court at the appropriate time, and if he does so, shall be treated as though he had been summoned and the provisions of subrules (2) and (3) shall apply to him.

(5) After hearing such evidence and making any further enquiries which it deems necessary for its proper decision, the Court shall decide—

(a) whether any claims made by creditors are valid and if so what is the amount due to each creditor;

(b) who are the persons entitled under section 16 and the amount due to each;

(c) who are the persons entitled under section 17 and the amount due to each.

(6) If during the inquiry under this rule it appears that any person genuinely claims that the deceased left a will, the court shall advise that person to cause an application to be made under section 65 and shall either adjourn the inquiry pending the result of any such application or if the will is then produced to the Court may proceed as though an application had been made under rule 4 of the Traditional Courts (Small Estates) Rules.

(7) If the Court decides to treat the proceedings before it as an application for a grant of administration under section 65 the summonses issued under rule 4 shall be deemed to be written notices under section 65 for the purposes of section 64 (3) (b).

(8) If, at the conclusion of proceedings under subrule (7), the Court decides that the document produced to it is not a valid will of the deceased person, it shall continue and conclude the inquiry under subrule (5). If the Court considers that the deceased person left a valid will, it may issue a grant under section 65 (4) after complying with section 64 (3) (a).

(9) If during the course of the inquiry it becomes apparent to the Court that the estate of the deceased person exceeds £2,000 in gross value the chairman shall report the case to the Registrar of the High Court and to the Secretary to the Commissioners for Estate Duties under section 76 (3) and await the instructions of the High Court before making its certificate.

5.—(1) The decision of the Court shall be announced in open court and if it is not announced immediately after the inquiry referred to in rule 4 it shall be announced on a date of which notice has been given to the persons claiming to be interested in the property of the deceased. Immediately after announcing the decision of the Court the Chairman shall inform the persons present of the right of appeal conferred by this rule.

Announce-
ment of
decision and
appeals

(2) Any person claiming an interest in the institutional money in question who is aggrieved by a decision of a Traditional Court under these Rules may appeal to the Traditional Appeal Court having jurisdiction to entertain civil appeals from such Court. The provisions of the Traditional Courts Act relating to civil appeals shall apply to appeals under this rule with such alteration as may be necessary. The persons other than the appellant held by the Traditional Court to be entitled to any part of the institutional money shall be the respondents in such appeal.

Cap. 3:03

6. A Court which has announced its decision under these Rules shall immediately thereafter complete in accordance with its decision three copies of a certificate in Part C of Form 30 in the First Schedule, and shall forward the original and one copy thereof to the District Commissioner who made the reference:

Court to
certify
decision

Provided that if the Court has decided that the deceased left a valid will it shall return Form 30 to the District Commissioner endorsed accordingly.

7.—(1) On receipt of a certificate under rule 6 the District Commissioner shall complete a request for cheques in Part B of the said Form 30 and shall forward the request to the holder of or person liable to pay the institutional money.

Further
duties of
District
Com-
missioner

(2) When the period during which appeals from the decision of the Traditional Court has expired, or, if any appeals have been lodged, such appeals have been thoroughly disposed of, the District Commissioner shall distribute the institutional money in question in accordance with a certificate of a Traditional Court as amended by any decision given on appeal.

8. Where any person who may be entitled to any share in any money appears to the Traditional Court to be a minor the Court may waive his attendance in person and may appoint such responsible person to represent him as the Court thinks fit.

Minors

9. The fees set out in the Second Schedule shall be a first charge on any institutional money adjudicated upon under these Rules and shall be paid into the Consolidated Fund by the District Commissioner at or before the distribution of such money.

Fees
Second
Schedule

[Subsidiary]

Wills and Inheritance (Institutional Money) Rules

rr. 2, 6 and 7

FIRST SCHEDULE

FORM 30

WILLS AND INHERITANCE ACT

(CAP. 10:02)

WILLS AND INHERITANCE (INSTITUTIONAL MONEY)
RULES

In the matter of deceased

PART "A"

To: The Chairman,

..... Traditional Court,

.....

REQUEST FOR CERTIFICATE

I am satisfied that late of
 village, Chief,
 District, died on the day of, 19.....
 and that there forms part of his estate as at,
 19..... the following institutional money—

*Holder of Money or person liable to pay: Amount:
 £.....

The death was reported to me by of
 who claims to be related to the deceased as his

After enquiry it appears to me that the abovementioned institutional
 money was not disposed of by Will.

So far as they are known to me the other facts of the case are—†

Wife/Wives: of
 of

Children: Sex: Age:

Relatives: of

Creditors: of
 of

Property other than institutional money

I request you to CERTIFY to me in Part "C" of this Form who is
 entitled to the institutional money and what portion of it is payable to
 each.

Signed:

District Commissioner

Date: District

NOTES: *If money is in an account quote account number as well as
 name of the holder: For example "P.O.S.B. account Lilongwe
 868/1234".

†If there is insufficient room on this Form for all the names a
 separate list should be attached which should contain sufficient
 information to identify it with the original Form and should be
 signed by the District Commissioner.

PART "B"—REQUEST FOR PAYMENT

To:

In accordance with section 63 (3) (g) of the Wills and Inheritance Act, I hereby request you to send to me a separate cheque payable to each of the adult persons shown in the certificate at Part "C" for the amount shown to be payable plus a proportionate share, as nearly as is practicable, of any interest which may have accrued.

In the case of any person who is shown to be a minor the cheque is to be made payable to the Government of Malawi.

I return herewith the relevant passbook or other evidence that the money is payable as under:—

*(a) Passbook No.

*(b)

Signed:
 District Commissioner

Date Stamp: District

NOTES: (1)*Enter description of the passbook or other documents to be sent and despatch the completed form with covering letter drawing attention to Part "B".

(2) Registered post should be used where passbook or other valuable documents are enclosed.

(3) Before sending this Form check that the totals of the amounts shown in Part "C" for the shares under Items A, B, C and D add up to the total amount of institutional money available.

(4) If there are any queries on the certified distribution District Commissioners should refer the matter to the appropriate Traditional Courts Commissioner with details.

PART "C"—CERTIFICATE OF ENTITLEMENT

To: The District Commissioner,

Traditional Court Case No. 19..... District

Certificate issued by the..... Traditional Court.

This is to certify that the Court has investigated the question of who is entitled to the money referred to in Part "A" of this Form and on the day of, 19..... decided as follows—

Total amount of institutional money £.....

[Subsidiary]

Wills and Inheritance (Institutional Money) Rules

Amount payable to—

A. The Government of Malawi as fee under rule 9 £.....

B. Creditors as follows—

(I) of £.....
 (II) of £.....
 (III) of £.....

TOTAL CREDITORS £..... £.....

Balance available £.....

The balance is payable—

C. As to $3/5\text{ths}/\frac{1}{2}$ * under section 16 of the Act to the heirs as follows—

	<i>Name</i>	<i>Address</i>	<i>Relationship and Age†</i>	<i>Amount</i>
(I)	£.....
(II)	£.....
(III)	£.....
(IV)	£.....
(V)	£.....
	TOTAL FOR HEIRS			£.....

D. As to $2/5\text{ths}/\frac{1}{2}$ * under section 17 of the Act to dependants as follows—

(I)	£.....
(II)	£.....
(III)	£.....
(IV)	£.....
(V)	£.....
	TOTAL UNDER SECTION 17	£.....

Court Seal:

Signed:

Chairman

..... Traditional Court

NOTES: (1)*Delete as applicable under First Schedule to the Act.

(2)†Always show age where beneficiary is under 21 years of age, otherwise write "adult".

(3) When Part "C" has been completed in triplicate the original and 1 copy should be returned to the District Commissioner from whom the Form was received. 1 copy remains at the court.

(4) Only the Chairman or acting Chairman may sign Part "C" of this Form.

(5) If there are more creditors or beneficiaries than can be shown in the space available on this Form a separate list may be attached, signed by the Chairman, but the total amount for the item must be shown on the Form.

FORM 31

REPUBLIC OF MALAWI

WILLS AND INHERITANCE (INSTITUTIONAL MONEY)
RULES

In the Traditional Court

Civil Case No. of 19.....

In the matter of the Estate of deceased.

CIVIL SUMMONS

r. 4

To:
.....You are ordered to come to the Court House at
on the day of, 19..... at
a.m. to inform the Court—(a) whether you claim to be interested in any part of the
institutional money or other property of the above-named deceased;

(b) regarding the affairs of the said deceased.

If you fail to come to Court a decision regarding the distribution of
such institutional money may be given in your absence.

Seal of Court

Date
Clerk of Court

SECOND SCHEDULE

r. 9

For adjudicating entitlement
to institutional money ..6d. for each £1 of the institutional
money in question:

Provided that—

(a) no fee shall be payable if such
money is less than £2; and(b) no fee under this item shall
exceed £5.

L.R.O. 1/1971

