

**CHAPTER 168**

**THE PUBLIC TRUSTEE ACT**

SUBSIDIARY LEGISLATION

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**THE PUBLIC TRUSTEE RULES**

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## THE PUBLIC TRUSTEE RULES

[Legal Notice 594 of 1963, Legal Notice 368 of 1964, Legal Notice 28 of 1970, Legal Notice 167 of 1981, Legal Notice 409 of 1988, Legal Notice 489 of 1991, Legal Notice 43 of 1998]

### PART I – PRELIMINARY

#### 1. Citation

These Rules may be cited as the Public Trustee Rules.

#### 2. Interpretation

In these Rules—

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

"Post Office Savings Bank" means the savings bank established under the Kenya Post Office Savings Bank Act (Cap. 493A).

[L. N. 368/1964, r. 2, L. N. 167/1981, r. 2.]

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

#### 3. Accounts and records to be kept

(1) The Public Trustee shall—

- (a) cause to be made a complete inventory of every estate of which he is an executor or administrator;
- (b) cause to be kept an estates' cash book and a ledger account for each estate of which he is an executor or administrator, in which shall be shown in detail all monetary transactions relating thereto; and
- (c) cause to be kept a file for all correspondence relating to an estate, and cause to be kept in safe custody all deeds and documents relating thereto.

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

#### 4. Accounts to be passed in court

(1) The Public Trustee shall—

- (a) on the completion of the administration of an estate file his account (hereinafter referred to as the account) in the High Court and produce vouchers relating to the account with an affidavit in verification thereof to the taxing officer; and
- (b) may give fourteen days' notice in the *Gazette* and post notices at the High Court and in a conspicuous place at the office of the Public Trustee, specifying the day and hour appointed by the High Court for the passing of the account.

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

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

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

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

### 5. Interim accounts

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

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

[L.N. 368/1964, r. 3.]

### 6. Investment of moneys

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

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

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

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

[L.N. 368/1964, r. 4, L.N. 167/1981, r. 3.]

## PART III – TRUSTS

### 7. Accounts and records to be kept

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

- (a) cash books;
- (b) a ledger account of trusts, which shall contain separate accounts for each trust and shall show in detail every debit and credit item and every transaction relating to each trust; and
- (c) a register of trusts, in which shall be registered full particulars of the property comprised in each trust, showing the nature and value of the trust property, rents and interests payable and collected, and all dealings with the trust property.

### 8. Investment of moneys

(1) The Public Trustee may—

- (a) retain investments belonging to any trust which he is administering;
- (b) invest moneys belonging to any such trust in investments; and

- (c) realize investments belonging to any such trust and reinvest the proceeds thereof in investments,

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

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

[L.N. 167/1981, r. 4.]

## **9. Authorized investments**

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

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

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

- (c) deposits in any bank or financial institutions licenced under the Banking Act (Cap. 488), or in any building society which the Cabinet Secretary may approve for the purposes of this rule; and
- (d) deposits in the Post Office Savings Bank.

[L.N. 28/1970, r. 2, L.N. 167/1981, r. 5.]

## **10. Public Trustee as trustee under will**

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

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

## **11. When beneficiaries not to be found**

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

## **12. Trusts for religious purposes**

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

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[Subsidiary]

### 13. Trusts involving management of business not to be accepted

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

(2) In any case in which it is necessary to wind up a business, the Public Trustee shall be entitled to employ, at the expense of the trust, such person as may, in his opinion, be necessary for the purpose of winding up the business, and shall not be liable for any loss which may occur in the management of the business.

#### PART IV – GENERAL

### 14. Professional assistance

Subject to the provisions of the Act and of these Rules, and to Professional the terms of any particular trust, the Public Trustee may, in the administration of any trust or estate, take and use professional advice and assistance in regard to legal, investment and other matters, and may act on credible information (though less than legal evidence) as to matters of fact.

### 15. Taking of oaths

Any officer or agent of the Public Trustee authorized by him in writing in that behalf may take an oath, make any declaration, verify any account and give personal attendance at any court or place.

### 16. Powers and duties of agents

The powers and duties of an *ex officio* agent appointed under the Act and of all *ex officio* agents hereafter appointed shall be as follows—

- (a) to administer estates of deceased persons of the gross value of one hundred thousand shillings or under, in the name of the Public Trustee;
- (b) to pay all claims owing by those estates on satisfactory proof that they are due;
- (c) to receive all debts due to such estates and in the name of the Public Trustee to give valid receipts for them;
- (d) to dispose of all movable and, if necessary, immovable property belonging to those estates:

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

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

[L.N. 368/1964, r. 5, L.N. 167/1981, r. 6, L.N. 409/1988, r. 2, L.N. 489/1991, r. 2.]

### 17. Authentication of deeds

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



## 18. Fees and expenses

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

Provided that—

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

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

- (a) upon the acceptance of the trust or estate the reversionary property shall be excluded from the trust or estate property for the purpose of ascertaining the amount of the prescribed fee, and the prescribed fee shall be calculated and paid as if the trust or estate property other than the reversionary property were alone comprised in the trust or estate; and
- (b) there shall be paid in respect of the gross value of the reversionary property or any part thereof at the date on which it falls into possession or is realized a fee of such an amount as would have been payable in respect of that value if that value had formed part of the value of the trust or estate property upon acceptance.

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

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

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

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

[L.N. 368/1964, r. 6, L.N. 167/1981, r. 7, L.N. 43/1998, r. 2.]

## 19. Banking of cash and bank accounts

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

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

- (a) a Public Trustee Administration Account into which shall be paid all moneys received by him in respect of estates which he is administering and from which shall be paid—
  - (i) all expenditure including the day-to-day cash requirements in the administration of the estates; and
  - (ii) all distributions in respect of the estates;

*Public Trustee*

[Subsidiary]

- (b) a Public Trustee Sundry Expenses Account into which shall be transferred such accumulated balances as are held or may at any time be held by the Public Trustee for the purpose of meeting sundry expenditure incurred or to be incurred by him in the administration of the estates; and
- (c) a Public Trustee Trust Estates Account into which shall be paid all moneys received in respect of trusts of which the Public Trustee is a trustee and from which shall be met all expenditure and all disbursements in respect of those trusts including the day-to-day cash requirements in the administration of those trusts.

[L.N. 167/1981, r. 8.]

**19A. Investment ledger**

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

[L.N. 167/1981, r. 9.]

**20. Investment ledger**

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

**21. Closing of cash books and final accounts**

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

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

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

**22. Payment to beneficiaries**

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

[L.N. 167/1981, r. 10.]

**23. Payment of advances**

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

**24. Identification of payees**

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

[L.N. 368/1964, r. 7, L.N. 167/1981, r. 11.]

**25. Ex officio agents**

The District Commissioner of every district shall, with the consent of the Provincial Commissioner, be the *ex officio* agent of the Public Trustee in his district.

[L.N. 489/1991, r. 2.]

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SCHEDULE

[r. 18]

SCALE OF FEES

[L.N. 368/1964, r. 8, L.N. 43/1998, r. 2, L.N. 167/1981, r. 12.]

**1. Administration of Estates**

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

<b>Value of Estate</b>	<b>Fee</b>
Fee Not exceeding £10 .....	Nil.
Exceeding £10 but not exceeding £200 .....	12 per cent.
Exceeding £200 but not exceeding £1,000 .....	12 per cent on the first £200; 7 per cent on the balance.
Exceeding £1,000 but not exceeding £5,000 .....	12 per cent on the first £200; 7 per cent on the next £800; 5 per cent on the balance.
Exceeding £5,000 but not exceeding £20,000 .....	12 per cent on the first £200; 7 per cent on the next £800; 5 per cent on the next £4,000; 3 per cent on the balance.
Exceeding £20,000 but not exceeding £50,000 .....	12 per cent on the first £200; 7 per cent on the next £800; 5 per cent on the next £4,000; 4 per cent on the next £15,000; 3 per cent on the balance.
Exceeding £50,000	12 per cent on the first £200; 7 per cent on the next £800; 5 per cent on the next £4,000; 4 per cent on the next £15,000; 2 per cent on the next £30,000; 1 per cent on the balance.

**2. Trust Estates**

(1) Capital Fees—A capital fee at the following rate—

- (a) if the gross value of the capital of the trust property at the date of acceptance does not exceed £1,000—3 per cent in respect of that value;
- (b) if the gross value of the capital at the said date exceeds £1,000—3 per cent in respect of that value up to £1,000; 2 per cent in respect of any excess of that value over £1,000 up to £2,000 and 1½ per cent in respect of any excess of that value over £2,000.

(2) Investment Fees—

- (a) on the first investment of any capital moneys or trust funds, including the proceeds of sale of any investment realized by the Public Trustee—a fee of 3 per cent on the amount invested or realized;

*Public Trustee*

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- (b) on the sale of any immovable property or other investment, change of investment or re-investment of capital moneys or trust funds (not including money deposited with any savings bank or placed on fixed deposit with any bank)—a fee of 2 per cent on the amount realised on such sale or on the amount of value of the property changed or re-invested;
- (c) on any capital moneys or trust funds deposited in a saving bank or placed on fixed deposit with any bank—a fee of 1 per cent on the amount so deposited or placed;
- (d) on the renewal of any fixed deposit—a fee of ½ per cent on the amount so renewed:

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

**(3) Income Fees**

A fee of 6 per cent (with a minimum fee of one hundred shillings) on the annual income accruing for the benefit of any trust either from money invested or from properties held in trust up to £1,000 and 3 per cent on any excess over £1,000.

**(4) Distribution Fees**

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

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

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

**3. Custodian Trusts**

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

**4. Public Trustee Investment Income Account**

A fee of ½ per cent per annum on the income earned and placed on this account during the year for managing the Public Trustee Investment Fund.

**5. Miscellaneous Fees**

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| (1) Inspection per hour or part thereof .....                        | KSh. 20   |
| (2) Uncertified copies, per folio of 100 words or part thereof ..... | KSh. 5 but not less than KSh. 20 in respect of any one document |
| (3) For certifying any copy .....                                    | KSh. 50   |

