

# THE PUBLIC TRUSTEE (AMENDMENT) ACT, 1976

No. 10 of 1976

*Date of Assent: 7th September, 1976*

*Date of Commencement: By Notice*

## An Act of Parliament to amend the Public Trustee Act

ENACTED by the Parliament of Kenya, as follows:—

1. This Act may be cited as the Public Trustee (Amendment) Act, 1976, and shall come into operation on such day as the Minister may, by notice in the Gazette, appoint. Short title and commencement.
  
2. Section 2 of the Public Trustee Act (hereinafter referred to as the principal Act) is hereby amended— Amendment of section 2 of Cap. 168.
  - (a) by the deletion of the definition of “court”, and the substitution therefor of the following new definition—
 

“court” means any court having jurisdiction in the matter in question under the Law of Succession Act, 1972;

No. 14 of 1972.
  - (b) by the deletion of the definition of “immovable property”.
  
3. Section 2A of the principal Act is hereby amended by the deletion of paragraph (b). Amendment of section 2A of Cap. 168.
  
4. The principal Act is hereby amended by the insertion immediately after section 2A of the following new section— Insertion of new section 2B in Cap. 168.
  - 2B. Where there is a conflict between any of the provisions of this Act and those of the Law of Succession Act, 1972, the provisions of this Act shall prevail, unless it is expressly provided to the contrary in the Law of Succession Act, 1972.Provisions of this Act to prevail. No. 14 of 1972.
  
5. The principal Act is hereby amended by the repeal of section 4 and the substitution therefor of the following new section— Replacement of section 4 of Cap. 168.

Grant to  
Public  
Trustee.  
No. 14 of  
1972.

4. (1) Where a report of action taken under section 46 of the Law of Succession Act, 1972, has been made to the Public Trustee, or where the Public Trustee has been informed of the death of any person in Kenya and has been requested to take action in respect of the deceased's estate by any person appearing to have a legitimate interest in the succession to, or administration of, the estate, the Public Trustee shall cause further inquiries to be made as to the estate of the deceased.

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

- (a) that such person died intestate; or
- (b) that the deceased, having made a will devising or bequeathing his estate or any part thereof, has omitted to appoint an executor; or
- (c) that the person or persons named as executor or executors in the will of the deceased are dead or have renounced probate thereof or otherwise are unable or unwilling to act; or
- (d) that probate of the will of the deceased or letters of administration with the will annexed to the deceased's estate has or have not been obtained within six months from the date of the death of the deceased; or
- (e) that the deceased has appointed the Public Trustee as an executor of his will; or
- (f) that the whole or any part of the estate of the deceased has been left unadministered and that the executors of the will of the deceased to whom probate has been granted, or the persons to whom a grant of letters of administration to the deceased's estate has been made, are dead or otherwise are unable or unwilling to complete the administration of the estate,

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

(3) Where the Public Trustee has been requested in writing by the executor or administrator (as the case may be) to obtain a sealing in Kenya of any probate, letters of administration or any equivalent thereof in respect of the estate of a deceased person under the provisions of section 77 of the Law of Succession Act, 1972, the Public Trustee may without any further formality apply to the court to seal and the court may seal such probate, letters of administration or any equivalent thereof.

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1972.

(4) Nothing in this section shall operate so as to prevent—

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

(b) the Court, in exercise of its discretion under section 66 of the Law of Succession Act, 1972 from granting letters of administration to the Public Trustee.

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1972.

6. The principal Act is hereby amended by the repeal of section 5 and the substitution therefor of the following new section—

Replacement  
of section 5  
of Cap. 168.

Grant to  
Public  
Trustee  
in certain  
circum-  
stances.

5. Where the particular circumstances of any case appear to the court so to require, the court may, if it thinks fit for reasons recorded in its proceedings, of its own motion or otherwise, after having heard the Public Trustee, grant under the Law of Succession Act, 1972, letters of administration to the Public Trustee notwithstanding that there are persons who, under that Act or any other written law, would in the ordinary course be legally entitled to administer the estate of the deceased person concerned in preference to the Public Trustee.

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1972.

Replacement  
of section 6  
of Cap. 168.

7. The principal Act is hereby amended by the repeal of section 6 and the substitution therefor of the following new section—

Administra-  
tion of  
deceased  
estate  
without  
grant.

6.(1) Where the estate of a deceased person consists of property of an estimated gross value not exceeding twenty thousand shillings and the deceased has died intestate or left a will in such circumstances that the Public Trustee may apply for a grant of probate or letters of administration pursuant to section 4 of this Act, the Public Trustee may take possession of, and administer the estate of, the deceased person without making an application under the Law of Succession Act, 1972, to the Court for probate or letters of administration, as the case may be, and no court fees shall be chargeable in respect of any such estate.

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1972.

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1972.

(2) Where the estate of a deceased person consists of property of an estimated gross value not exceeding five thousand shillings, the Public Trustee, on the application of any person to whom probate or letters of administration, as the case may be, might be granted under the Law of Succession Act, 1972, may at any time after the expiration of fourteen days after the death of the deceased, grant to such person a certificate entitling him to administer the estate of such deceased person and to pay out of the estate any debts or charges, and to pay, remit or deliver any surplus to the person or persons entitled thereto according to law, or as he may be directed by the Public Trustee.

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

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

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

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

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

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

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

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

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

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

and, on revocation of the certificate, the holder thereof shall, on the requisition of the Public Trustee, deliver it up to the Public Trustee, but shall not be entitled to the refund of any fee paid thereon, and if such person wilfully and without reasonable cause omits to deliver up the certificate, he shall be guilty of an offence and liable to a fine not exceeding two thousand shillings, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

Amendment of  
section 9 of  
Cap. 168.

8. Section 9 of the principal Act is hereby amended by the deletion in paragraph (ii) of the proviso of the commas and words “, exclusive of any land registered under the Land Adjudication Act or the Land Consolidation Act.”.

Repeal of  
section 10 of  
Cap. 168.

9. The principal Act is hereby amended by the repeal of section 10.

Amendment of  
section 11 of  
Cap. 168.

10. Section 11 of the principal Act is hereby amended—

(a) by the deletion in the proviso to subsection (1) of the word “fifteen” and the substitution therefor of the word “twenty”;

(b) by the substitution of a colon for the full stop at the end of subsection (2) and the insertion thereafter of the following proviso to that subsection—

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1972.

Provided that where the value of an estate is within the jurisdiction of a Resident Magistrate or a District Magistrate under the Law of Succession Act, 1972, it shall not be necessary for such publication to be made in the Gazette but the Public Trustee shall cause such advertisements to be published in accordance with the rules made under section 97 of that Act or, if the magistrate directs otherwise, in accordance with that direction.

Amendment of  
section 12 of  
Cap. 168.

11. Section 12 of the principal Act is hereby amended by the deletion of the commas, words and numbers “the provisions of the Succession Act, 1865 of India, or of any other Act, or”.

Amendment of  
section 16 of  
Cap. 168.

12. Section 16 of the principal Act is hereby amended by the insertion in paragraph (d) of subsection (2) after the word “charges” of the words “or taxes”.

Repeal of  
Section 30 of  
Cap. 168.

13. Section 30 of the principal Act is hereby repealed.