

Zambia

## Wills and Administration of Testate Estates Act, 1989 Chapter 60

Legislation as at 31 December 1996

FRBR URI: /akn/zm/act/1989/6/eng@1996-12-31

There may have been updates since this file was created.

PDF created on 26 September 2023 at 22:10.

*Collection last checked for updates: 31 December 1996.*

[Check for updates](#)



### About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

[www.laws.africa](http://www.laws.africa)  
[info@laws.africa](mailto:info@laws.africa)

There is no copyright on the legislative content of this document.  
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Wills and Administration of Testate Estates Act, 1989  
 Contents

Part I – Preliminary ..... 1

    1. Short title ..... 1

    2. Application ..... 1

    3. Interpretation ..... 1

Part II – Wills generally ..... 2

    4. Capacity to make will ..... 2

    5. Powers exercisable by will ..... 2

    6. Execution of will ..... 3

    7. Rules relating to foreign wills ..... 3

    8. Gifts to beneficiary who witnessed will ..... 4

    9. Incompetency of witness ..... 4

    10. Creditor witnessing will ..... 5

    11. Executor competent witness ..... 5

    12. Erasure, interlineation and alteration ..... 5

    13. Revocation of will ..... 5

    14. Incorporation of other documents ..... 5

    15. Revival of revoked will ..... 6

    16. Construction of will ..... 6

    17. Doctrines of equity ..... 7

    18. Residuary estate ..... 7

    19. Custody of wills ..... 7

Part III – Family provisions in will ..... 7

    20. Unreasonable provisions in will ..... 7

    21. Matters to be considered by court when varying will ..... 8

    22. Time within which application must be made ..... 8

    23. Effect and form of order ..... 8

    24. Variation of orders ..... 8

Part IV – Executors ..... 9

    25. Executors ..... 9

    26. Express renunciation of right to probate ..... 9

    27. Citation and presumed renunciation ..... 9

    28. Effect of renunciation ..... 9

Part V – Grant of probate and letters of administration by court ..... 9

    29. Grant of probate ..... 9

30. Number of executors and administrators .....	9
31. Corporations .....	10
32. Probate of copy, draft or contents of will .....	10
33. Codicil propounded after probate .....	10
34. Authenticated copy of will proved abroad .....	10
35. Effect of probate .....	10
36. Failure of executors .....	10
37. Attorney of absent executor .....	11
38. Attorney of person entitled to letters of administration .....	11
39. Codicil propounded after letters of administration .....	11
40. Appointment of administrator pending litigation .....	11
41. Trust property .....	12
42. Grants with exception .....	12
43. Grants of excepted part .....	12
44. Effect of grant of letters of administration or probate .....	12
45. Duties and powers of personal representative .....	12
46. How powers of several personal representatives exercised .....	12
47. Death of one of several personal representatives .....	13
48. Death of sole or surviving personal representative .....	13
49. Expiry of limited grant when estate not fully administered .....	13
50. Guarantees on granting letters of administration .....	13
Part VI – Revocation and alteration of grants and removal of executors and administrators .....	13
51. Revocation of grants and removal .....	13
52. Payments to personal representatives whose grants are revoked .....	14
53. Surrender of revoked grants .....	14
Part VII – General .....	14
54. Sealing of certain grants made outside Zambia .....	14
55. Guardians .....	15
56. Expenditure on care and management .....	15
57. Personal representative or guardian not to derive benefit .....	15
58. Offences by personal representative or guardian .....	15
59. Beneficiary causing death of deceased .....	15
60. Receiver pending grant .....	16
61. Sale by order of court .....	16
62. No suit against receiver .....	16

63. Rectification of errors .....	16
64. Disputes .....	16
65. Intermeddling with property of deceased prohibited .....	16
66. Jurisdiction of court .....	17
67. Regulations .....	17
68. Practice and procedure .....	17
69. Savings .....	17
70. Non-application of 1837 Wills Act of United Kingdom .....	17

## Zambia

# Wills and Administration of Testate Estates Act, 1989

## Chapter 60

Published

Commenced on 19 May 1989

*[This is the version of this document at 31 December 1996.]*

**An Act to simplify the law governing the making of wills; to provide for adequate financial and other provisions to be made for dependants in a will; to provide for the administration of estates of persons dying having made a valid will; and to provide for matters connected with or incidental to the foregoing.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Wills and Administration of Testate Estates Act.

#### 2. Application

This Act shall not apply to—

- (a) land which at the death of the testator had been acquired and was held under customary law and which under that law could not be disposed of by will;
- (b) property which at the death of the testator was institutionalised property of a chieftainship and had been acquired and was being held as part of chieftainship property.

#### 3. Interpretation

In this Act, unless the context otherwise requires—

"**active service**" has the meaning assigned to it in the Defence Act;

*[Cap. 106]*

"**administrator**" means a person to whom a grant of letters of administration has been made and includes the Administrator-General;

"**Administrator-General**" has the meaning assigned to it by section two of the Administrator-General's Act;

*[Cap. 58]*

"**brother or sister**" includes a half-brother or half-sister and brother or sister by adoption;

"**child**" means a child born in or out of marriage, an adopted child, a child who is conceived but not yet born;

"**codicil**" means any document which supplements a will and contains anything which the testator wishes to add to the will or any explanation or revocation of what the will contains;

"**court of probate**" means a court or authority by whatever name designated, having jurisdiction in matters of probate;

"**dependant**" means a wife, husband, child or parent;

"**estate**" means all the assets and liabilities of a deceased, including those accruing to him by virtue of death or after his death;

"**executor**" means a person to whom the administration of the estate of a testator or part of it is entrusted by express or implied appointment under a will;

"**internal law**" in relation to any territory or state means the law which would apply in a case where no question of law in force in any other territory or state arises;

"**issue**" in relation to any person means the children, grandchildren and other remoter descendants of that person;

"**letters of administration**" means letters of administration with the will annexed;

"**marriage**" includes a polygamous marriage and "husband" "wife", "widow" and "widower" shall be construed accordingly;

"**minor**" means a person who has not attained the age of eighteen years;

"**personal representative**" includes an executor and administrator;

"**security forces**" includes the Defence force, Police Force, Prison Service, Zambia National Service, Zambia Security Intelligence Service and any other body or organisation which engages in operations of a security nature;

"**security operation**" means war operations or security manoeuvres which endanger life;

"**signature**" includes a thumbprint;

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

"**will**" includes a codicil.

## Part II – Wills generally

### 4. Capacity to make will

Subject to subsection (3) of section six, any person who is not a minor and is of sound mind may make a will.

### 5. Powers exercisable by will

Without prejudice to any power which may be exercised by a testator in his will, a testator may—

- (a) dispose of any property which is his or to which he will be entitled at the time of his death or to which he may be entitled thereafter;
- (b) appoint one or more persons to be his executor or executors;
- (c) subject to the Trust Restrictions Act attach any terms and conditions in relation to the disposition of any part of his estate; or
- (d) appoint a guardian for his minor child where the surviving parent of the minor child is incapable, by physical or mental infirmity, to take guardianship of the minor child.

*[Cap. 63]*

## 6. Execution of will

- (1) A will shall be valid if it is in writing and—
  - (a) is signed at the foot or end, by the testator or by some other person in the testator's presence and by his direction; and
  - (b) the signature referred to in paragraph (a) is made or acknowledged by the testator in the presence of two witnesses present at the same time who have also signed at the foot or end of the will.
- (2) Any person who is not blind and is of sound mind, may be a witness to a will.
- (3) Where the testator is blind or illiterate, any person competent to make a will and who has not participated in the making of the will, shall carefully read over and explain to him the contents of the will before it is executed and shall declare in writing upon the will that he had so read over and explained its contents to the testator and that the testator appeared perfectly to understand it before it was executed.
- (4) Notwithstanding any other provisions of this Act—
  - (a) a member of the defence forces who is on active service;
  - (b) a member of the security forces who is engaged on security operations;
  - (c) any person who is ill or is physically injured and who has a settled or hopeless expectation of death and who has abandoned all hope of recovery and who eventually dies due to that illness or physical injury.

may make a will in any of the following forms:

- (a) written and unattested, if the material provisions and signature are in the handwriting of the testator;
  - (b) written (whether or not in the handwriting of the testator) and attested by one witness;
  - (c) orally before two witnesses.
- (5) Any beneficial disposition of, or affecting, any property other than charges or directions for the payment of any debt, given by will made under this section to a witness to that will, shall be void unless the will is duly executed (if written) or witnessed (if oral) if the attestation of that witness and that of every other witness who is a beneficiary under the will are excluded.

## 7. Rules relating to foreign wills

- (1) A will shall be treated as properly executed if its execution conformed to the internal law in force in the state where it was executed, or in the state where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of these times, he was a national.
- (2) Without prejudice to subsection (1), the following will shall be treated as properly executed:
  - (a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the state with which having regard to its registration, if any, and other relevant circumstances, the vessel or aircraft may be considered as having been most closely connected;
  - (b) a will which disposes of immovable property, if its execution conformed to the internal law in force in the state where the property was situated;

- (c) a will, so far as it revokes a previous will which under this Act would be treated as a properly executed will if the execution of that will conformed to any law by reference to which the revoked will or provision would be so treated; or
  - (d) a will, so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.
- (3) A will so far as it exercises a power of appointment shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.
- (4) Where a law in force outside Zambia falls to be applied in relation to a will, any requirement of that law whereby—
- (a) special formalities are to be observed by testators answering a particular description; or
  - (b) witnesses to the execution of a will are to possess certain qualifications;
- shall be deemed to be a formal requirement only, notwithstanding any rule of that law to the contrary.
- (5) Where under this Act the internal law in force in any state is to be applied in the case of a will, but there are in force in that state two or more systems of internal law relating to the formal validity of wills, the system to be applied shall be ascertained as follows:
- (a) if there is in force throughout the state a rule indicating which of those systems can properly be applied in the case in question, that rule shall be followed; or
  - (b) if there is no such rule, the system to be applied shall be that with which the testator was most closely connected at the relevant time, and for this purpose the relevant time is the time of the testator's death where the matter is to be determined by reference to circumstances prevailing at his death, and the time of execution of the will in any other case.
- (6) In determining, for the purposes of this Act, whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at that time if the alteration enables the will to be treated as properly executed.

## 8. Gifts to beneficiary who witnessed will

A beneficiary who witnessed the execution of a will shall lose his gift under the will other than any charges or debts directed by the will to be paid:

Provided that—

- (a) that beneficiary shall be competent to be admitted as a witness to prove the execution of that will or to prove its validity;
- (b) a beneficiary shall not lose his gift under a will by reason that he witnessed a codicil confirming the will; and
- (c) a witness shall not lose his gift under this section if at least two other witnesses attested the will who are not beneficiaries under the will and the will is otherwise duly executed.

## 9. Incompetency of witness

A will shall not be invalid only for the reason that at any time after execution any person witnessing the execution is incompetent to be admitted as a witness to prove its execution.



## 10. Creditor witnessing will

Any creditor under a will who witnessed the execution of a will shall be competent to be admitted as a witness to prove the execution or the validity of a will notwithstanding that the property of the testator is charged by the will with the payment of debts.

## 11. Executor competent witness

An executor of a will shall be competent to be a witness to prove the execution or validity of that will.

## 12. Erasure, interlineation and alteration

No erasure, interlineation or other alteration made in a will after its execution shall have any effect unless that erasure, interlineation or other alteration is—

- (a) signed in accordance with the provisions of section six by the testator and the witness in the margin or on some other part of the will opposite or near the alteration; or
- (b) referred to in a memorandum written at the end or some other part of the will and the memorandum is signed by the testator and the witnesses in accordance with the provisions of section six.

## 13. Revocation of will

- (1) A will or any part of it may be revoked by—
  - (a) a later will or codicil duly executed and expressed to revoke the earlier will;
  - (b) a written declaration of intention to revoke, executed in the same manner as a will;
  - (c) burning, tearing or otherwise destroying the will by the testator or someone in his presence and by his direction with the intention of revoking it.
- (2) Where a testator dies having made more than one will the latest in time shall prevail over the earlier to the extent of any revocation, variation or inconsistency.
- (3) A will made in accordance with subsection (4) of section six may be revoked by another will made in accordance with that subsection or by any of the means of revocation provided under this section.
- (4) A will made in accordance with subsection (4) of section six may revoke an earlier will made by the testator in accordance with section six.
- (5) Where a testator destroys a will—
  - (a) as a result of fraud or undue influence;
  - (b) by accident;
  - (c) under a mistake of fact or law intending to make some other disposition of his property which is not validly made;the destruction shall not be deemed to have revoked the will.
- (6) Any delegation by the testator of his power to revoke his will shall cease to have effect upon his death.

## 14. Incorporation of other documents

- (1) A will may not incorporate another document unless that document is in existence at the time the will is executed and is sufficiently identified in the will.
- (2) Oral evidence shall be admissible for the purpose of identification.

## 15. Revival of revoked will

- (1) A will which has been revoked shall not be revived by the revocation of a subsequent will.
- (2) A will which has been revoked may be revived by—
  - (a) re-executing it; or
  - (b) executing a codicil in accordance with the provisions of section six, which shows an intention to revive that will.
- (3) A will which has been revived in accordance with subsection (2) shall be deemed to have been made at the time when it was revived.

## 16. Construction of will

- (1) The intention of a testator 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.
- (2) Where any clause is capable of having two meanings, one of which has some effect and the other can have none, the former shall be preferred.
- (3) Every will shall be construed, with reference to the estate comprised in it, to speak and take effect as if it has been executed immediately before the death of the testator, unless a contrary intention appears in the will.
- (4) A disposition of immovable property without any words of limitation shall pass the whole of the interest in it which the testator has power to dispose of by will.
- (5) A general disposition of the land of a testator or of his land at any place, or in the occupation of any person or otherwise described in a general manner, shall include lands of whatsoever tenure or interest, unless a contrary intention appears from the will.
- (6) Unless a contrary intention appears in a will, a bequest of property described in a general manner shall be construed so as to include the property with respect to which the testator has a power of appointment only and operate as an exercise of that power of appointment.
- (7) A general or residuary disposition shall operate to confer a power to exercise a power of appointment, unless a contrary intention appears from the will.
- (8) A residuary disposition shall include property comprised in lapsed and void dispositions, unless a contrary intention appears from the will.
- (9) Any disposition by will or transfer under this Act of land within the meaning of the Lands Act shall be subject to the provisions of that Act.  
*[Cap. 184]*
- (10) Subject to subsection (11) a gift to a person who dies before the testator shall lapse and have no effect.
- (11) Notwithstanding subsection (10) a gift to a beneficiary who dies before the testator (other than for an estate determinable at or before the death of that beneficiary) leaving issue shall take effect as if the death of the beneficiary had occurred immediately after the death of the testator and shall devolve upon his issue.
- (12) Where a testator and a beneficiary under his will die in circumstances—
  - (a) in which it appears that their deaths were simultaneous; or

- (b) rendering it uncertain which of them survived the other;

the beneficiary shall be deemed to have survived the testator for all purposes affecting the entitlement to property under the will of that testator; but for the purposes of the entitlement of that testator to that property under any will of the afore-mentioned beneficiary, that beneficiary shall be deemed to have survived the aforementioned testator, unless a contrary intention appears from the will.

### **17. Doctrines of equity**

Except as provided in section sixteen, every will shall be construed in accordance with the doctrines of equity.

### **18. Residuary estate**

Unless a contrary intention appears in the will, any bequest which cannot take effect due to the death, fulfilment or non-fulfilment of the conditions upon which it was bequeathed shall lapse and shall be part of the residuary estate of the testator.

### **19. Custody of wills**

A will may be kept in any place but any person may, in his lifetime, deposit for safe custody in the High Court his own will, sealed up and sealed with the seal of the court.

## **Part III – Family provisions in will**

### **20. Unreasonable provisions in will**

- (1) If, upon application made by or on behalf of a dependant of the testator, the court is of the opinion that a testator has not made reasonable provision whether during his life time or by his will, for the maintenance of the dependant, and that hardship will thereby be caused, the court may, taking account of all relevant circumstances and subject to such conditions and restrictions as the court may impose, notwithstanding the provisions of the will, order that such reasonable provision as the court thinks fit shall be made out of the testator's estate for the maintenance of that dependant.
- (2) The provision for maintenance to be made by an order may include—
- (a) payment of a lump sum, whether immediate or deferred or grant of an annuity or a series of payments;
  - (b) grant of an interest in immovable property for life or any lesser period;
- and where the order provides for periodical payments, it shall provide for their termination not later than—
- (i) in the case of a husband or wife, his or her remarriage;
  - (ii) in the case of a child, his attaining the age of eighteen years or upon leaving secondary school or under graduate university, whichever is the later;
  - (iii) in the case of a child under disability, the cesser of the disability; or
  - (iv) the death of the dependant.
- (3) In determining whether, and in what manner, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the testator's estate and shall not order any such provision to be made as would necessitate a realisation that would be unwise having regard to the interests of the testator's dependants and of any person who, apart from the order, would be entitled to that property.

## 21. Matters to be considered by court when varying will

- (1) The court shall, on any application made under this Part, have regard to the testator's reasons for making the dispositions made by his will or for not making any provision or any further provision, as the case may be, for a dependant, and the court may accept such evidence as it considers sufficient, including any statement in writing signed by the testator and dated; so however that in estimating the weight, if any, to be attached to any such statement, the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.
- (2) The court shall also, upon any application made under this Part, have regard to any past, present or future capital or income from any source of the dependant to whom the application relates, to the conduct of that dependant in relation to the testator and to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant and to the beneficiaries under the will.

## 22. Time within which application must be made

- (1) Except as provided by section twenty-four, an order under this Part shall not be made except on an application made within six months from the date on which representation in regard to the testator's estate for general purposes is first taken out.
- (2) For the purpose of the exercise by the court of its discretion as to the persons to whom letters of administration are to be granted, a dependant of the testator by whom or on whose behalf an application under this Part is proposed to be made shall be deemed to be a person interested in the estate.

## 23. Effect and form of order

- (1) Where an order is made under this Part, the will shall for all purposes, including the purposes of the enactments relating to death duties, be deemed to have had effect, as from the testator's death, as if it had been executed with such variation as specified in the order for the purposes of giving effect to the provision for maintenance made by it.
- (2) The court may give such consequential directions as it thinks fit for the purposes of giving effect to an order made under this Part, but no larger part of the estate shall be set aside or appropriated to answer by its income the provision for maintenance made by the order than such part as, at the date of the order, is sufficient to produce by its income the amount of that provision.
- (3) An office copy of every order made under this Part shall be sent to the principal probate registry for entry and filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the probate of the will of the testator or the letters of administration, as the case may be.

## 24. Variation of orders

- (1) On an application made on a date after the expiration of the period specified in section twenty-two, the court may make, only as respects property the income of which is at that date applicable for the maintenance of a dependant of the testator:
  - (a) an order for varying a previous order on the ground that any material fact was not disclosed to the court when the order was made, or that any substantial change has taken place in the circumstances of the dependant or a person beneficially interested under the will in the property; or
  - (b) an order for making provision for the maintenance of another dependant of the testator.
- (2) An application to the court for an order under subsection (1) may be made by or on behalf of a dependant of the testator by the trustee of the property or by or on behalf of a person beneficially interested in it under the will.

## Part IV – Executors

### 25. Executors

Any person of, or above, the age of twenty-one years and having capacity to enter into a contract may be appointed an executor of a will.

### 26. Express renunciation of right to probate

An executor may expressly renounce the right to probate orally on the hearing of any application to the court or in writing signed by the executor and attested by a person before whom an affidavit may be sworn.

### 27. Citation and presumed renunciation

- (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 an executor appointed by the will of the deceased calling upon the executor to accept or renounce the executorship.
- (2) An executor shall be deemed to have renounced his executorship if he is served with a citation but does not enter an appearance.
- (3) Where an executor does enter an appearance but does not proceed to apply for probate, the court may specify a time within which the application is to be made and if the application for probate is not made within that time the executor in default shall be deemed to have renounced his right to probate.

### 28. Effect of renunciation

Renunciation under section twenty-six or twenty-seven shall preclude the person so renouncing from probate but the court may, at any time, grant probate to that person if it is shown that the grant is likely to benefit the estate of persons interested in it.

## Part V – Grant of probate and letters of administration by court

### 29. Grant of probate

- (1) Except as provided by the Administrator-General's Act, probate may be granted by a court only to an executor appointed by a will, and shall not be granted to a minor or person of unsound mind.
- (2) The appointment referred to in subsection (1) 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 a will for a limited purpose only, probate granted to him shall be limited to that purpose.

*[Cap. 58]*

### 30. Number of executors and administrators

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

- (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 administrators in addition to the existing personal representative.

### **31. Corporations**

- (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. Probate of copy, draft or contents of will**

- (1) Where a will has been lost or mislaid or has been destroyed by any wrongful act or accident and not by any act of the testator—
  - (a) if a copy or draft of the will has been preserved, probate may be granted of that copy or draft, limited until the original or a properly authenticated copy of it is admitted to probate;
  - (b) if no copy or draft has been preserved, probate, limited as described in paragraph (a), may be granted to the contents of the will if the contents can be established by evidence.
- (2) Where a will is in the possession of a person outside Zambia 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 transmitted, limited according to subsection (1).

### **33. Codicil propounded after probate**

- (1) Where, after probate has been granted, a codicil of a will is propounded, probate may be granted of the codicil:

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

### **34. Authenticated copy of will proved abroad**

Where a will has been proved and deposited in a court of competent jurisdiction outside Zambia, and a properly authenticated copy of the will is produced, probate may be granted of that copy or letter of administration granted with a copy of the will annexed.

### **35. Effect of probate**

Probate of a will when granted shall establish the will and evidence the title of the executor from the death of the testator.

### **36. Failure of executors**

- (1) 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 a will do not appear and take out probate;

letters of administration may be granted of the whole estate or so much of it as may be unadministered to such person or persons as the court considers the most suitable 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, being beneficiary 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.
- (2) Subject to section forty-eight a court shall not grant letters of administration in respect of a will by which an executor is appointed, if the executor—
- (a) is living and his whereabouts are known;
  - (b) is a person to whom probate may be granted; and
  - (c) 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 section twenty-six or twenty-seven.

### **37. Attorney of absent executor**

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

### **38. Attorney of person entitled to letters of administration**

Where any person, to whom letters of administration might be granted under section thirty-six, is absent from Zambia, letters of administration may be granted to his lawfully constituted attorney ordinarily resident in Zambia, limited in the manner provided in section thirty-seven.

### **39. Codicil propounded after letters of administration**

Section thirty-three shall apply in the case of a grant of letters of administration in like manner as it applies in the case of a grant of probate.

### **40. Appointment of administrator pending litigation**

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 that deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing the estate, and every such administrator shall be subject to immediate control of the court and shall act under its direction.

#### **41. Trust property**

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 executor, or one who is unable or unwilling to act as such, letters of administration limited to that property may be granted to the beneficiary, or to some other person on his behalf.

#### **42. Grants with exception**

Whenever the nature of the case requires that an exception be made, probate or letters of administration shall be granted subject to such exception.

#### **43. Grants of excepted part**

Whenever a grant with exception of probate or letters of administration has been made, further grant may be made of the part of the estate so excepted.

#### **44. Effect of grant of letters of administration or probate**

- (1) Subject to all such limitations and exceptions contained in a grant of probate or letters of administration, probate and letters of administration entitle the personal representative to all rights belonging to the deceased as if the administration had been granted at the moment after his death.
- (2) Probate and letters of administration have effect over all the property of the deceased throughout Zambia and shall—
  - (a) 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 that property to the persons to whom probate or letters of administration have been granted.

#### **45. Duties and powers of personal representative**

- (1) The duties and powers of a personal representative shall include—
  - (a) the payment of the debts and funeral expenses of the deceased;
  - (b) if the deceased left a valid will, the distribution of the property disposed of by the will in accordance with its provisions or an order of court made under section twenty.
  - (c) when required to do so by the court, either on the application of an interested party or on its own motion—
    - (i) the production on oath in court of the full inventory of the estate of the deceased; and
    - (ii) the rendering to the court of an account of the administration of the estate.
- (2) Where a personal representative considers that 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 his duties, the administrator may sell the property in such manner as appears to him likely to secure receipt of the best price available for that property.

#### **46. How powers of several personal representatives exercised**

Where there are several personal representatives, their powers may, in the absence of any direction to the contrary in the will, be exercised by the majority of them.



#### **47. Death of one of several personal representatives**

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.

#### **48. Death of sole or surviving personal representative**

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

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

#### **49. Expiry of limited grant when estate not fully administered**

Where 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.

#### **50. Guarantees on granting letters of administration**

- (1) As a condition of granting letters of administration to any person, a court may, subject to subsection (4), require one or more sureties to guarantee, within any limit imposed by a court, any loss which any person interested in the administration of an estate may incur in consequence of a breach by the administrator of his duties as such.
- (2) A guarantee given under subsection (1) shall have the effect, in relation to any person interested in the administration of an estate of a deceased, of a contract by the surety or sureties with any such person.
- (3) No action shall be brought against a guarantor without the leave of the court.
- (4) This section shall not apply where administration is granted to the Administrator-General.

### **Part VI – Revocation and alteration of grants and removal of executors and administrators**

#### **51. Revocation of grants and removal**

- (1) A grant of probate or letters of administration may be revoked or annulled for any of the following reasons:
  - (a) that the proceedings to obtain them were defective in substance;
  - (b) that the grant was obtained fraudulently by making a false statement, 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 the allegation was made in ignorance or inadvertently;
  - (d) that the grant has become useless and inoperative; or
  - (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 to it so require, the court may suspend or remove an executor or administrator and provide for the succession of another person to the office of that executor or administrator who may cease to hold office, and for the vesting in that person of any property belonging to the estate.

## 52. Payments to personal representatives whose grants are revoked

- (1) Where any probate or letters of administration are revoked, all payments made in good faith to any executor or administrator under that probate or letters of administration before the revocation shall, notwithstanding the revocation, be a legal discharge to the person making the payment.
- (2) The executor or administrator who has acted under any revoked probate or letters of administration may retain and reimburse himself out of the assets of the deceased in respect of any expenses incurred or fees paid out by him which any person, to whom probate or letters of administration are afterwards granted, could have lawfully incurred or paid.

## 53. Surrender of revoked grants

- (1) Where a grant of probate or letters of administration are revoked under this Act, the person to whom the grant was made shall immediately deliver up the probate or letters of administration to the court which made the grant.
- (2) If a person referred to in subsection (1) wilfully and without sufficient cause fails to deliver up the probate or letters of administration, he shall be guilty of an offence and liable, on conviction, to a fine not exceeding one hundred and twenty-five penalty units or to imprisonment not exceeding three months, or both.

*[As amended by Act [No. 13 of 1994](#)]*

## Part VII – General

### 54. Sealing of certain grants made outside Zambia

- (1) Where a court of probate outside Zambia has, after the commencement of this Act, granted probate or letters of administration to the estate of a deceased person, the High Court—
  - (a) upon production of—
    - (i) the grant;
    - (ii) a duplicate sealed with the seal of the court granting it; or
    - (iii) a copy of the grant certified by or under the authority of the court of probate which made the grant; and
  - (b) upon the deposit of any of the foregoing documents with the court;may seal with the seal of the High Court the document produced and deposited and thereupon the grant so made outside Zambia shall be of the same force and effect and have the same operation in Zambia as if granted by the High Court.
- (2) Rules made under section sixty-eight may prescribe the security to be given and evidence of domicile to be furnished in relation to any application for sealing under subsection (1).

## 55. Guardians

- (1) Where it is known to a court that a guardian of a minor has been appointed by will, the court shall not appoint any other person to be guardian of that minor except in exercise of its powers under section sixty-four.
- (2) A court may direct the transfer to, or vesting in, the guardian of a minor of any property of the minor and may authorise or direct the sale of the property or any part of the property belonging to the minor.
- (3) A guardian appointed by 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.

## 56. Expenditure on care and management

A personal representative 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.

## 57. Personal representative or guardian not to derive benefit

- (1) Unless there is express provision to that effect in the will, a personal representative or guardian shall not derive any pecuniary benefit from his office.
- (2) If a personal representative 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.

## 58. Offences by personal representative or guardian

- (1) A personal representative or guardian who wrongfully deprives a minor of property or a share in property to which the minor is entitled intending to benefit himself or any person, other than the minor, shall be guilty of an offence and liable upon conviction to a fine not exceeding five hundred penalty units or to imprisonment not exceeding one year, or both.
- (2) When any person is convicted of an offence under subsection (1), the court may, in addition to any penalty which may be imposed—
  - (a) order the restitution to the minor of the property which has passed in connection with the commission of the offence; or
  - (b) if such property cannot be restituted or cannot be found, order the convicted person to make compensation to the minor of such sum as the court may assess as the value of the property-
- (3) 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.

*[As amended by Act [No. 13 of 1994](#)]*

## 59. Beneficiary causing death of deceased

Any beneficiary who intentionally causes the death of the testator shall forfeit the right to inherit any part of the estate of the deceased.

## 60. Receiver pending grant

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

- (a) claiming to be interested in that property; or
- (b) having the custody or control of it at the time of the death of the testator;

that there is danger that the property may be wasted.

## 61. Sale by order of court

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

## 62. No suit against receiver

No suit shall be brought against a receiver appointed under section sixty in relation to anything done or intended to be done by him in respect of the property of the deceased in the intended, purported or actual 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 which appointed the receiver for directions in the matter, and the court may make such order as it thinks just.

## 63. Rectification of errors

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.

## 64. Disputes

On application in the prescribed manner, by an interested person, a court shall have jurisdiction in relation to a deceased person's estate—

- (a) to decide whether a document purporting to be a will is a valid will and whether or not the deceased person died testate;
- (b) to decide what is the property to which a deceased person was entitled at the date of his death;
- (c) 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;
- (d) to appoint a guardian in place of a guardian who has acted improperly.

## 65. Intermeddling with property of deceased prohibited

- (1) When a person dies, within or outside Zambia leaving property within Zambia, any person who without being duly authorised by law, takes possession of, causes to be moved or otherwise intermeddles with any such property, except in so far as may be urgently necessary for its preservation, shall be guilty of an offence; and any person taking any action in regard to any such property for its preservation shall forthwith report particulars of the property and of the steps taken to the Administrator-General; and if he fails to do so, he shall be guilty of an offence.

- (2) Any person who—
- (a) unlawfully deprives any person of the use of any part of the property of the deceased to which that person is entitled under this Act; or
  - (b) otherwise unlawfully interferes with the use by any person of any property referred to in paragraph (a);
- shall be guilty of an offence and liable on conviction to a fine not exceeding seven hundred and fifty penalty units or imprisonment not exceeding two years or both.

*[As amended by Act [No. 13 of 1994](#)]*

## **66. Jurisdiction of court**

The High Court shall have original and unlimited jurisdiction in all matters relating to wills.

## **67. Regulations**

The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

## **68. Practice and procedure**

The Chief Justice may, by statutory instrument, make rules regulating the practice and procedure of the court under this Act.

## **69. Savings**

Except as is expressly provided, nothing in this Act shall affect—

- (a) any rights, duties or obligation of an administrator or executor existing under any law relating to the administration of estates immediately before the commencement of this Act;
- (b) the rights, or duties or obligations of beneficiaries in respect of any person who died before the commencement of this Act.

## **70. Non-application of 1837 Wills Act of United Kingdom**

From the commencement of this Act, the Wills Act, 1837, of the United Kingdom shall cease to apply to Zambia.