

MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS, OFFICE OF THE ADMINISTRATOR GENERAL.

A PAPER PRESENTED AT THE INDUCTION/ORIENTATION TRAINING FOR NEWLY APPOINTED JUDICIAL OFFICERS AT COLLINE HOTEL, MUKONO ON 21st MARCH, 2024 BY CHARLES KASIBAYO, ADMINISTRATOR GENERAL.

TOPIC: THE LAW AND PRACTICE ON SUCCESSION AND ESTATE MANAGEMENT; THE PERSPECTIVE FROM ADMINISTRATOR GENERAL.

BACKGROUND

The Office of Administrator General is created by the Administrator General's Act Cap 157.

Under the Act, the Administrator General is given the mandate to administer estates, issue Certificates of No Objections and to verify beneficiaries among other matters.

The Office of Administrator General is a body corporate with perpetual succession and an official seal. It is capable of suing and being sued in all legal proceedings although, the government represented by the Attorney General is still vicariously liable for all the Administrator General's acts and/or omissions like any other Government department.

Headed by the Administrator General who also doubles as a Public Trustee, The Administrator General is assisted by the Deputy Administrator General and other legal officers referred to as Assistant Administrator general

The law under which the office operates;

In carrying out these duties and functions, Administrator General applies the following law:

- i. Constitution of Uganda 1995,
- ii. The Administrator General's Act Cap 157, (as amended)

- iii. The Succession Act Cap 162 as amended, (As amended by Act 3 of 2022)
- iv. The Public Trustee Act Cap 161,
- v. Administration of Estates (Small Estates) Special Provisions Act Cap 156, (As amended)
- vi. Trustee Act Cap 164, the Missing Persons (Management) Act Cap 159 and
- vii. The Administration of Estates of Persons of Unsound Mind Act Cap 155.

At a time like this when Parliament has just amended most of the succession laws, an opportunity to address you on the same law is a welcome opportunity to highlight the new amendments to the respective succession laws.

The Constitutional Court declared several provisions of the Succession Act Cap. 162 as being unconstitutional in **Law Advocacy for Women in Uganda v. Attorney General, Const. Petition No s 13/2005 & 05/2006** in as far as they discriminated on the basis of sex and did not accord equal treatment in the division of property between male and female.

The declaration by the Court left a lacuna in the law and this necessitated amendments to the Succession Act in order to accord equal rights between men and women and bring the Act in conformity with the Constitution.

By and large, the substantive legal framework within which estate management operates is as enumerated above. This is hand in hand with the procedural law which includes the Civil Procedure Act Cap 71 and the Civil Procedure Rules, SI 71-1 and relevant case law.

ESTATE MANAGEMENT

An estate is defined to mean the aggregate of all property owned by a deceased person or the property in which a deceased person was beneficially entitled immediately before his or her deathⁱ. The law as already stated above regulates how this property is governed or managed.

Estate management is divided into two broad categories, that is, testate succession and intestate succession. The former relates to the scenario where a deceased person left a valid will before his death and the latter refers to the scenario where the deceased person did not leave a valid will.

There are three main types of grants that Court can issue in respect of an estate of a deceased person.

- a) Probate. This operates in cases where the deceased left a valid will. (For testate estates).
- b) Letters of administration with the will annexed. This operates in cases where despite the deceased leaving a will, there are peculiar circumstances, for instance, where the will did not appoint an executor/executrix, or where the executor does not apply for probate within the specified time.
- c) Letters of administration (for intestate estates).

A: PROBATE:

Probate is granted in respect of estates where the deceased left a valid will before his or her demise. Here, consideration is given to the validity of the will (for instance, it should be signed by the testator, and the testator's Names, address, and signature on each page and names, address, and signature of at least two witnesses on each page)

attested by at least two witnesses). (Note that The Succession Amendment) Act No. 3 of 2022 makes it an obligation to sign on all the pages of the will)

If all the requirements are met Court will grant probate to the executors/executrix appointed in the will (the appointment may be express or by necessary implication) - Sections 182 & 183 Succession Act.

Where a testator is survived by a child only and does not expressly appoint an executor/executrix, but appoints a guardian for the child, the guardian so

appointed shall be the executor or executrix of the will of the deceased person
- **Section 183 (2) the Succession Act (Introduced by the (Amendment) Act 2022)**

Under testate succession, the executor/executrix files the application direct in Court without first obtaining a certificate of no objection (CONO) from the Administrator General – See **section 5 Administrator General's Act.**

Who may apply for probate?

The persons who qualify to be granted probate in a testate estate are: -

- The executor/executrix appointed in a will.
- The guardian of a child under **section 183 (2) Succession Act** regarding that child, *where the testator is survived by a child only and has not expressly appointed an executor/executrix in the will. (Succession Amendment Act)*
- The executor/executrix must not be a minor or a person who has a mental illness - Section 184 (1) Succession Act (*Succession Amendment Act*)

B. LETTERS OF ADMINISTRATION WITH WILL ANNEXED

This occurs in such cases where the deceased left a will but did not appoint an executor/executrix, or where the executor does not apply for probate within the specified time, or where he/she renounces, fails to accept or refuses executorship – **Section 196 Succession Act.**

Court will grant “*letters of administration with will annexed*” to the person nominated by the family of the deceased person to perform the deceased's wishes and, in this case, the nominated person should first obtain a Certificate of No Objection (CONO) from the Administrator General.

C. LETTERS OF ADMINISTRATION.

Letters of Administration are issued where the deceased died intestate - **Section 24-25 Succession Act**

Where the estate is intestate there are **preliminary steps** to be taken before a petition is lodged in court, that is:

- i. To report the death of the deceased to the Administrator General. This will require availing the Admin Gen relevant documents like a **death certificate from NIRA** and a letter from a Local Council (LC) Executive stating the fact of the death (See Section 4 Administrator General's Act.
- ii. To obtaining a Certificate of no Objection from the Administrator General pursuant to Section 5 of the Administrator General's Act.
- iii. If it is a small estate, there is no need for the petitioner to first obtain a CONO from the Administrator General – Section 10 (5) of the Administration of Estates (Small Estates) (Special Provisions) Act

Section 4 of the Administrator General's Act gives the Administrator General authority over estates of deceased persons.

The Administrator General's duty is to convene meeting with the deceased's family for the purpose of them nominating a person(s) to apply for letters of administration. The Administrator General can perform this duty through his/her Assistants, or through his/her representatives, like the Chief Administrative Officers.

The nominated person is issued a CONO - **Section 5 Administrator General's Act**

Upon receipt of the CONO, the nominated person can then proceed to file a petition for grant of Letters of Administration in Court.

Who may apply for letters of administration?

- Those connected to the deceased by **marriage** or by **consanguinity** – **Section 201 Succession.**
- In **Christine Male V Sylifiya Mary Namanda & Another [1982] HCB 140 (HC)** – A wife/widow, jointly with the deceased's sister, petitioned for grant of LOA to administer the estate of the deceased intestate, who left a total of 12 children by different mothers. The petition attracted two caveats. One was lodged by a woman the deceased had had children with, on grounds that the petitioner had only three children with the deceased, and for that reason she would not adequately care for the other children. The second caveator, the mother of the deceased, based her caveat on the argument that the house left by the deceased had been purchased by him (deceased) on a loan of which she was guarantor and therefore she was entitled to stay in it. Court **held** that the petitioner who was validly married to the deceased was the one entitled to apply for LOA; that the mere fact that one had children with a woman does not entitle that woman to have a share in the estate of the deceased. Both caveats were held to be baseless and were removed. LOA were granted to the widow only. The second petitioner (the sister to the deceased) had not obtained a CONO from the Admin Gen and had not advertised her application.
- This position has further been strengthened and entrenched in the recent *amendments* Succession legislation.
- *The surviving spouse (widow/widower) shall have preference over any other person to administer the estate of a deceased intestate* - **Section 201A Succession Act.**

- *The Administrator General may disregard the preference of the surviving spouse under section 201A Succession Act if such spouse is not a fit and proper person to administer the estate; or if he/she finds it necessary, in the circumstances of the case, to grant the administration to another person – **Section 201A (2) Succession Act*****
- The Administrator General - **Section 4 Administrator General's Act & section 202 Succession Act.**
- The person entitled to the greatest portion of the estate under section 27 Succession Act - **Section 202 of the succession Act.**

THE PROCEDURE FOR APPLICATION FOR PROBATE OR LETTERS OF ADMINISTRATION.

Whereas an application to court for probate occurs only where the applicant(s) is a named executor of a will, an application for Letters of Administration occurs where the deceased did not leave a valid will. In that latter scenario, the application to court is for Letters of Administration.

The petition should state the time and place of the deceased's death; the family or other relatives of the deceased & their respective residences; the right in which the petitioner claims; that the deceased left some property in the jurisdiction of the court to whom the application is made; the amount of assets, *etcetera* - **Section 246 Succession Act**. It has to be **signed** by the petitioner or his/her Advocate, and **verified** by the petitioner in accordance with **Section 247 Succession Act**

It must be accompanied by the following documents:

- i. **Petition**, which must be verified as stated above, and signed before a Commissioner for Oaths.
- ii. **Notice of application** – a copy of the publication of the notice of application in a widely circulating newspaper.
- iii. **Declaration** where the petitioner(s) declare that they will administer the estate according to law and will exhibit a true inventory and render

a just and true account of how they administered the estate. The Declaration, like the petition, is signed by the petitioner(s) before a Commissioner for Oaths before being filed with the petition.

- iv. **Administration Bond**- the purpose is to bind the executor/executrix or administrator to court to perform their duties, **See section 260 Succession Act**
- v. A monetary value is attached to the Bond.
- vi. The Bond is normally signed before the Registrar of the Court, but in practice it is among the documents that are filed with the petition.

The annexures in original copy to the petition, where applicable, include: -

- Proof of death of the deceased (e.g., death certificate, affidavit in proof of death, or other such authentic documents)
- The Will and, if in vernacular, its English translation (English being the language of Court)
- Certificate of No Objection (CONO)
- Marriage certificate, if the petitioner was a spouse of the deceased
- Minutes of the family meeting chaired by a neutral person, e.g. the LC executive or the Admin Gen/his representative (like the Chief Administrative Officer – CAO), where the petitioners were nominated to petition for LOA, Family Consent/Resolution extracted from such meeting
- Introductory LC letters for the applicants (petitioners)
- Identification Documents (Identity Cards, passports)
- Passport size photographs of the deceased and the petitioners
- The Newspaper publication of the notice of application, as stated above.

CIRCUMSTANCES UNDER WHICH ADMINISTRATOR GENERAL MAY APPLY FOR ADMINISTRATION OF ESTATES

Section 4 of the Administrator General's Act cap 157, highlights the circumstances under which the Administrator General may apply for letters of Administration. It provides that where a person dies intestate, the Administrator General may apply for Letters of Administration of his/her Estate and Court shall except for good cause shown grant Letters of Administration in the following circumstances-

- a) Where the deceased has left a Will appointing Administrator General as sole executor;
- b) Where the deceased having made a Will devising or bequeathing his or her estate or any part of it has omitted to appoint an executor;
- c) Where the person or persons named as executor or executors in the Will have predeceased the testator or renounced probate of the Will;
- d) Where probate or letters of administration have not been obtained within two months from the death of the testator; or
- e) Where the person died intestate.

While administering the estate the Administrator General just like a private administrator of an estate, has the power to sell off any property of the estate under his administration, to mortgage property, pay school dues and other utilities and generally distribute the estate in accordance with the law and in the interests of the beneficiaries. In all cases, decisions to sell or mortgage off property are carried out after extensive consultation with the beneficiaries.

EFFECT OF GRANT OF PROBATE/ LETTERS OF ADMINISTRATION:

Once a grant is issued by court, the executor/executrix or administrator becomes the deceased's legal representative for all purposes.

This however, does not mean that such executor/executrix/administrator becomes the owner of the property. It merely means that he/she holds the property in trust for those entitled to it, and is responsible for identifying it, distributing it among the beneficiaries/debtors or other entitled persons, and, after that, accounting to court within the prescribed time that he/she has discharged her obligations under the law.

Letters of Administration/Probate expire after two years with the Court retaining the power to extend the operation of the Letters of Administration/Probate for a further period of two years or such other period as the Court may determine. The Court, before extending the grant must be satisfied that it is in the best interest of the beneficiaries and that the beneficiaries have consented in writing; and that the administrator/executor has complied with any conditions upon which the grant was issued by the Court, however;

- a) Where 20% of the estate is preserved for minors, dependent relatives and beneficiaries with disabilities, the grant shall remain valid only in respect of that part of the estate (trust created).
- b) Grants made in respect of estates receiving pension shall only expire after the pension has been fully paid.

Having said the above, I wish to note that it is imperative for every judicial officer to continuously make deliberate efforts to acquaint themselves with the amendments to the succession lawsⁱⁱ.

Thank you for listening and God bless you.

Thank you, God Bless You all.

ⁱ John Barlow, Lesley King and Anthony King: Wills and Administration Law and Practice. Sweet and Maxwell 12th Edition 4.02

ⁱⁱ See simplified guide to the amended laws whereto attached for easy reference.