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LAWS OF KENYA

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**THE PROBATE AND ADMINISTRATION RULES, 1980**

NO. 104 OF 1980

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Kenya

Law of Succession Act

## The Probate and Administration Rules, 1980

Legal Notice 104 of 1980

Legislation as at 11 July 1980

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The Probate and Administration Rules, 1980 (Legal Notice 104 of 1980)  
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## LAW OF SUCCESSION ACT

### THE PROBATE AND ADMINISTRATION RULES, 1980 LEGAL NOTICE 104 OF 1980

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#### Part I – PRELIMINARY

##### 1. Citation and commencement

The Rules may be cited as the Probate and Administration Rules, 1980, and shall come into operation upon the date of commencement of the Act.

##### 2. Interpretation

In these Rules, except where the context otherwise requires -

"**applicant**" means a person who is applying or has applied for a grant or other relief under the Act or these Rules;

"**authenticated copy**" of a document means a copy of the document which is printed, type-written or produced in a permanent form by a photographic process and which bears at foot a certificate in Form 29 signed and dated by a judge, magistrate, the Registrar or a deputy registrar of the High Court, the Registrar-General or a deputy or assistant register-general;

"**authorized agent**" means an agent authorized by his principal in writing;

"**caveator**" has the meaning assigned to it by rule 15(2);

"**certified copy**" has the same meaning as "**authenticated copy**" save that the certificate may alternatively be signed by an advocate;

"**child**" has the meaning assigned to it by [section 3\(2\)](#) of the Act;

"**citor**" means the person seeking the issue of a citation under Part VI;

"**court**" means a judge of the High Court or a resident magistrate;

"**district registrar**" means a deputy registrar of the High Court and also an executive officer of the Resident Magistrate's Court or other official for the time being appointed by the Chief Justice to have charge of the administration of a High Court district registry or a resident magistrate's registry;

"**district registry**" means a registry other than the principal registry;

"**Form**" means the appropriate form set out in the First Schedule;

"**grant**" means a grant of representation, whether a grant of probate or of letters of administration with or without a will annexed, to the estate of a deceased person;

"**High Court district registry**" means a registry of the High Court other than the principal registry;

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

"**Mombasa registry**" means the probate registry of the High Court at Mombasa;

"**objector**" means a person who has lodged an objection under rule 17 to the issue of a grant;

- “**personal applicant**” means an applicant (not being a trust corporation or the Public Trustee) who has applied for a grant otherwise than through an advocate;
- “**personal representative**” means a person to whom a grant of representation has been made and is still subsisting;
- “**prescribed fee**” means the appropriate fee prescribed in the Third Schedule;
- “**principal registry**” means the principal probate registry of the High Court at Nairobi;
- “**protester**” means a person who has filed a protest under rule 40(6) against the confirmation of a grant;
- “**registrar**” means the Registrar of the High Court (who shall be the registrar of the principal registry and is herein referred to as the principal registrar) or a district registrar;
- “**registry**” means a probate registry of the High Court or of the Resident Magistrate’s Court and includes the principal registry;
- “**resident magistrate’s registry**” means a district registry for the time being attached to the Resident Magistrate’s Court;
- “**signed**” in relation to a will includes the affixing of a mark or thumbprint;
- “**will**” includes a codicil;
- “**written will**” means a will the entire of which is written, and does not include any oral instructions or observations given or made by the testator or any person by his direction prior to or at the time of execution of the will.

## Part II – THE REGISTRIES

### 3. Probate registries

- (1) The principal registry and every High Court district registry or resident magistrate’s registry shall be under the control of the Registrar of the High Court as principal registrar.
- (2) There shall be a High Court district registry or a resident magistrate’s registry at such places as the Chief Justice may from time to time by notice in the *Gazette* appoint.

### 4. Duties of district registrars in relation to principal registry

- (1) A district registrar shall send to the principal registry a notice in Form 73 of every application made in his registry for a grant as soon as may be after the application has been filed and no such grant may be signed by the court until the receipt from the principal registry of a certificate in Form 30 to the effect that no other application made in respect of the estate of the deceased has been granted or notified to the principal registry as pending; and such certificate shall be despatched promptly by the principal registry to the district registrar.
- (2) The notice referred to in subrule (1) shall be accompanied by an index card in Form 59 stating the full name and address of the deceased, his domicile and the date and place of his death, so far as these are known; and such index cards shall be filed by the principal registry, together with similar index cards to be prepared by the principal registry upon the filing therein of applications in that registry for grants, in a separate file in alphabetical order according to the names of the deceased persons.
- (3) Where any such notice is received from a district registry the principal registry shall examine all other notices of applications for grants received from the several district registries and all applications for grants at the principal registry so far as may be necessary for the purpose of ascertaining whether an application for a grant in respect of the estate of that deceased person has been made in more registries than one, and shall communicate with each district registrar as occasion may require in relation thereto.

- (4) A district registrar shall, once in every month or at such other intervals of time as the Chief Justice may direct, send to the principal registry a return in Form 103 of all grants made or confirmed by him and not included in a previous return, together with a copy of every grant or confirmation mentioned in such list, certified by him in Form 29 to be correct.
- (5) Each registrar shall file and preserve every original written will of which a grant has been made or confirmed at his registry subject to such regulations with respect to the removal, preservation or inspection of wills as may from time to time be made by the Chief Justice.

#### **5. Record of grants to be maintained at principal registry**

A record shall be kept in the principal registry of every grant issued by that registry and every district registry and shall be open to public inspection upon payment of the prescribed fee.

#### **6. Depository for wills of living persons**

- (1) There shall be provided in the principal registry a safe and convenient depository for the custody of the wills of living persons, and any testator may on his personal application or the application of his advocate deposit his will in a sealed packet therein on payment of the prescribed fee and subject to regulations made by the Chief Justice.
- (2) No will while deposited under subrule (1) shall be withdrawn by or be open to inspection during the lifetime of the depositor by any person other than the depositor or his authorised agent.
- (3) Every will while so deposited may be withdrawn or inspected at any time by the depositor or his authorized agent on payment of the prescribed fee and on production of satisfactory evidence that the will was made by the depositor and deposited by him or his authorized agent.
- (4) Any person other than the testator who has in his possession a document which it appears might be the original or a copy of a will of any person may deposit it in the principal registry without payment of a fee together with a written statement showing how and when it came into his possession, and every such document shall for the purposes of this rule be treated as a will.
- (5) Any person depositing a will under this rule shall complete in duplicate and deliver to the registry with the instrument a deposit docket in Form 40 to be supplied by the registry and the registrar shall forthwith return to him the duplicate copy of the docket stamped by the registry.
- (6) There shall be maintained in the principal registry a register in chronological order of the wills deposited under this rule, together with a card index in alphabetical order recording the names and addresses of the testators and the dates of deposit.
- (7) Upon proof of the death of the testator the will may be inspected by and copies supplied to any executor named therein or his authorized agent and such other person as the principal registrar may decide; and the principal registrar, after making and retaining a copy thereof certified by a registrar for his records, shall deliver the will to such person as the court may direct.

### **Part III – APPLICATIONS FOR GRANTS OF REPRESENTATION**

#### **7. Application for grant: general provisions**

- (1) Subject to the provisions of subrule (9), where an applicant seeks a grant of representation to the estate of a deceased person to whose estate no grant or no grant other than one under [section 49](#) or a limited grant under [section 67](#) of the Act has been made, the application shall be by petition in the appropriate Form supported by an affidavit in one of Forms 3 to 6 as appropriate containing, so far as they may be within the knowledge of the applicant, the following particulars—
  - (a) the full names of the deceased;

- (b) the date and place of his death, his last known place of residence, and his domicile at date of death;
  - (c) whether he died testate or intestate and, if testate, whether his last will was written or oral, and the place where and the date upon which it was made;
  - (d) a full inventory of all his assets and liabilities at the date of his death (including such, if any, as may have arisen or become known since that date) together with an estimate of the value of his assets movable and immovable and his liabilities;
  - (e) in cases of total or partial intestacy-
    - (i) the names, addresses, marital state and description of all surviving spouses and children of the deceased, or, where the deceased left no surviving spouse or child, like particulars of such person or persons who would succeed in accordance with [section 39 \(1\)](#) of the Act;
    - (ii) whether any and if so which of those persons is under the age of eighteen years or is suffering from any mental disorder, and, if so, details of it;
    - (iii) for the purposes of determining the degree of consanguinity reference shall be made to the table set out in the Second Schedule;
  - (f) the relationship (if any) which the applicant bore to the deceased or the capacity in which he claims;
  - (g) if the deceased died testate leaving a written will, the names and present addresses of any executors named therein; and
  - (h) the postal and residential addresses of the applicant.
- (2) There shall be exhibited in the affidavit a certificate or a photocopy of a certificate of the death of the deceased or such other written evidence of the death as may be available.
- (3) The petition may be filed in the principal registry or a High Court district registry or, in the case of a deceased the gross value of whose estate does not exceed one hundred thousand shillings, in a resident magistrate's registry or, in the case of an application to the Resident Magistrate's Court under [section 49](#) of the Act, in a resident magistrate's registry within the area of that court in which the deceased had his last known place of residence; and upon its being so filed and until it has been considered and determined, the court may, upon request and payment of the prescribed fee, afford inspection of the will or copy will to any person having an interest in the estate; and any such inspection shall take place during office hours in the registry in the presence of an officer of the registry.
- (4) The registrar shall cause to be inserted, at the cost of the applicant, in the *Gazette* and, if he so decides, in a daily newspaper, and to be exhibited conspicuously in the courthouse attached to the registry where the application is intended to be made, a notice of the application for the grant in Form 60 inviting objections thereto to be made known to that registry within a period, to be specified in the notice, of not less than thirty days from the date of the last of such publications.
- (5) Where the grant sought is one of probate of a written will or of letters of administration with the written will annexed there shall be lodged in the registry on the filing of the petition the original of the will or, if the will is alleged to have been lost or destroyed otherwise than by way of revocation or for any other reason cannot be produced, then a copy authenticated by a competent court or otherwise to the satisfaction of the court.
- (6) Where the grant sought is one of letters of administration with a written will annexed the applicant shall satisfy the court before the issue of the grant that every executor appointed by the will who is living at the time of the application either has consented in writing to the issue of the grant to the applicant, or has renounced his executorship, or has been issued with a citation calling upon him either to renounce his executorship or to apply for a grant of probate of the will.

- (7) Where a person who is not a person in the order of preference set out in [section 66](#) of the Act seeks a grant of administration intestate he shall before the making of the grant furnish to the court such information as the court may require to enable it to exercise its discretion under that section and shall also satisfy the court that every person having a prior preference to a grant by virtue of that section has—
  - (a) renounced his right generally to apply for a grant; or
  - (b) consented in writing to the making of the grant to the applicant; or
  - (c) been issued with a citation calling upon him either to renounce such right or to apply for a grant.
- (8) Where a grant of administration is sought jointly by more persons than one (but not exceeding four) the provisions of this rule shall apply to all applicants save that the affidavit need be sworn by one only.
- (9) This rule shall not apply to applications brought under the provisions of rule 36, 37, 42 or 48.

### **8. Application for grant made through advocate**

- (1) An applicant for a grant may apply either as a personal applicant or through an advocate.
- (2) An applicant shall not apply through an agent other than an advocate.
- (3) An application for a grant through an advocate may be made otherwise than by post at any registry and may be made by post at such registries as the Chief Justice directs.

### **9. Personal application for grant**

- (1) A personal applicant may apply for a grant in person at any registry.
- (2) A personal applicant may not apply through an advocate or agent.
- (3) A personal application shall not be proceeded with—
  - (a) if an application has already been made by an advocate on behalf of the same applicant and has not been withdrawn:

Provided that where such an applicant at any time in writing withdraws his instructions to the advocate and thereafter gives notice in writing to the registry of his intention to act in person he may do so; or
  - (b) if the registrar so directs for reasons to be recorded.
- (4) After a written will of a deceased has been deposited in a registry by a personal applicant it may not be delivered to the applicant or to any other person unless in special circumstances the registrar, for reasons to be recorded by him, so directs.
- (5) If a personal applicant desires, at any time after making his application but prior to the issue of the grant applied for, to cease to be a personal applicant in relation to that application and to continue with such application through an advocate he may do so by filing in the registry at which the application was made a notice in Form 63 of intention to act through an advocate and containing an express appointment of some person to be his advocate in the matter, together with the name and address of the advocate and his acceptance in writing of such appointment.
- (6) No legal advice shall be given to a personal applicant by an officer of a registry.

#### **10. Application for order presuming death**

An application for an order presuming the death of a person of whose death there is no sufficient written evidence and to whose estate a grant is sought shall be made by summons to the court and shall be supported by an affidavit setting out the grounds of the application.

#### **11. Application for grant in additional names**

Where it is desired to describe the deceased in a grant by more names than one the applicant shall state in the application the usual name or names of the deceased and shall also state the reason for the inclusion of the other name or names in the grant.

#### **12. Application for limited grant under Fifth Schedule to the Act**

An application for a grant of representation to be limited in any of the several respects described in the Fifth Schedule to the Act shall be by petition in the appropriate Form and shall be supported by such evidence by affidavit in Form 19 as is required by these Rules including such evidence as is sufficient to establish the existence of the facts and circumstances relative to the particular respect in which the grant is to be limited.

#### **13. Application for proof of oral will**

- (1) An application for proof of an oral will or of letters of administration with a written record of the terms of an oral will annexed shall be by petition in Form 78 or 92 and be supported by such evidence on affidavit in Form 4 or 6 as the applicant can adduce as to the matters referred to in rule 7, so far as relevant, together with evidence as to -
  - (a) the making and date of the will;
  - (b) the terms of the will;
  - (c) the names and addresses of any executors appointed;
  - (d) the names and addresses of all the alleged witnesses before whom the will was made;
  - (e) whether at the respective dates both of the making of the will and of his death the deceased was a member of the armed forces or merchant marine engaged on the same period of active service;
  - (f) whether the deceased at any time executed or caused to be executed a written will.
- (2) Subject to the provisions of sub rule (1) the provisions of these Rules relating to applications for probate of written wills or of letters of administration with such wills annexed shall apply in relation to applications for the proof of oral wills.

#### **14. Amendment or withdrawal of application for grant**

- (1) An applicant for a grant may amend his application before the making of the grant by notice in Form 62 to be filed in the registry in which his original application was filed and serving forthwith a copy of such notice upon every objector who has lodged an objection and cross-application in the matter; and he shall pay to every such objector such costs (if any) as the court may direct:

Provided that where the proposed amendment is of a minor nature the registrar may permit the amendment to be made forthwith without notice to any party.
- (2) An applicant for a grant may withdraw his application at any time before the making of the grant by notice in Form 65 and shall pay to the other parties to the proceedings such costs (if any) as the court may direct.

- (3) Every district registry shall forthwith upon the filing in it of a notice of amendment or withdrawal of an application for a grant notify the principal registry accordingly.
- (4) If at the time of the filing of a notice of withdrawal of an application there has been filed in any registry an objection to the making of the grant, that registry shall forthwith notify in writing every person who has filed an objection therein.
- (5) A notice of withdrawal of an application for a grant shall preclude the making of a subsequent application by the same person for a grant in relation to the same deceased.

#### **Part IV – CAVEATS AND OBJECTIONS TO APPLICATIONS FOR THE MAKING OR CONFIRMING OF GRANTS**

##### **15. Caveats, objections and warnings**

- (1) Any person who wishes to ensure that he shall receive notice of any application either for the making or the confirming of a grant of representation to the estate of a particular deceased person may enter a caveat in any registry.
- (2) Any person who wishes to enter a caveat (herein called the caveator) may do so by completing and signing Form 28 in the appropriate book at the registry, paying the prescribed fee, and obtaining an acknowledgement of entry from the proper officer, or by sending through the post at his own risk a caveat in Form 28, signed by him and accompanied by the prescribed fee, to the registry in which he wishes the caveat to be entered.
- (3) No caveat shall be entered by or on behalf of more persons than one.
- (4) Where a caveat is entered by an advocate on behalf of a caveator, the name and postal address of the caveator shall be stated in the caveat in addition to those of the advocate.
- (5) Every district registry shall immediately upon receipt of a caveat forward a copy thereof to the principal registry where it shall be filed and retained.
- (6) The principal registrar shall maintain a comprehensive index of caveats entered in any registry (including the principal registry) and, on receiving an application for the making or confirming of a grant, or notice of an application made in a district registry, shall forthwith cause the index to be searched to ascertain if any caveat has been lodged in the matter.
- (7) Where it appears that a caveat has been lodged against the making or confirming of a grant to the estate of a deceased and that such a grant has been applied for in any registry, the principal registry shall forthwith notify the registrar at that registry of the name and particulars of the caveator.
- (8) The registrar shall not allow any grant to be made or confirmed in his registry if he has knowledge of the existence of an effective caveat in respect thereof:

Provided that no caveat shall operate to prevent the making or confirming of a grant on the day on which the caveat is lodged.

- (9) Where it appears to the principal registrar that an application has been made in any registry for the making of a grant to the estate of a deceased in regard to which a caveat has been lodged and is subsisting, the principal registrar shall send a notice in Form 112 to the caveator warning him of the making of the application and notifying him that if he wishes to object to the making of the proposed grant he must, pursuant to the provisions of [section 68\(1\)](#) of the Act, lodge such objection in the principal registry within thirty days, or such longer period as the registry for reasons to be recorded may allow, from the receipt of such notification, in default of which the caveat shall cease to have effect with respect to the making of such grant.

**16. Notice to court of facts relevant to an application for grant**

- (1) Any person who wishes to bring to the notice of the court any matter as to the making or contents of the will of a deceased (whether written or oral), the rights of dependants or of persons who might be entitled to interests on the intestacy of the deceased, or any other matter which might require further investigation before a grant is made or confirmed, may file in any registry in which an application for a grant to the estate has been made or in the principal registry an affidavit giving full particulars of the matter in question.
- (2) No fee shall be payable on the filing of such a statement.
- (3) Upon the filing of such a statement the registrar may take such action thereon as he deems fit.

**17. Objections, answers and cross-applications**

- (1) Any person who has not applied for a grant to the estate of a deceased and wishes to object to the making of a grant which has been already applied for by another person may do so by lodging within the period specified in the notice of the application published under rule 7(4), or such longer period as the court may allow, either in the registry in which the pending application has been made or in the principal registry, an objection in Form 76 or 77 in triplicate stating his full name and address for service, his relationship (if any) to the deceased and the grounds of his objection.
- (2) A request by an intending objector for an extension under section 68(1) of the Act of the period specified in the notice under rule 7(4) shall be made to the registry at which the application for a grant was made or by which the notice was issued, as the case may be, by summons supported by an affidavit, if necessary, and upon notice to the applicant for the grant.
- (3) There shall be maintained at each registry a register of objections, answers and cross-applications in which the registrar shall enter particulars of every objection, answer and cross-application lodged under this rule in the registry and of every withdrawal of objection and withdrawal and amendment of every answer or cross-application under this rule.
- (4) Upon receipt of an objection in triplicate within the period referred to in subrule (1), or an extension thereof, the registrar shall forthwith file and retain the original thereof and cause an appropriate entry to be made in the register and shall transmit forthwith by registered post a notification in Form 61 of the receipt of the objection, together with a copy thereof, to the person or to each of the persons by whom the application for a grant has been made and also, save where the objection is lodged in the principal registry, transmit a copy of the notice and objection to the principal registrar by whom it shall be filed and retained.
- (5) The registrar of the registry in which the objection is lodged shall forthwith upon the lodgement of the objection cause a notice in Form 67 to be sent to the objector, by registered post or otherwise as he may think fit, requiring him to file in the registry within such period as the registrar may specify in the notice an answer in Form 25 to the petition for a grant together with a petition by way of cross-application in Form 84, supported by affidavit, for a grant to the estate of the deceased to be made to the objector.
- (6) If within the period specified in subrule (5) the objector has filed in the registry in the proper form an answer to the petition for a grant, together with a petition by way of cross-application for a grant to himself, the registrar shall refer the matter to the court for directions, and shall notify the petitioner and the objector of the time and place set for the hearing of the petition, answer and cross-application.
- (7) An objector may at any time prior to the filing of his answer and cross-application withdraw his objection by filing in the registry in Form 66 a notice of withdrawal of objection and serving upon the petitioner personally or by registered post a copy of such notice of withdrawal, in which event the objection shall cease to have effect and the objector shall not be liable for any costs or expenses which may have been occasioned to the applicant by reason for the objection:

Provided that an objector who has withdrawn his objection shall not be entitled to file a further objection in respect of the same application for a grant.

- (8) An objector who wishes to amend his answer or his cross-application prior to the making of the grant may do so by filing in the registry in which his objection was lodged an amended answer and cross-application, a copy of which, unless the registrar otherwise directs, he shall serve forthwith upon the applicant for the grant:

Provided that where the proposed amendment is of a minor nature the registrar may permit the amendment to be made forthwith, notification whereof, unless the registrar otherwise directs, the objector shall thereupon give to the applicant in writing.

- (9) An objector who wishes to withdraw his answer and cross-application may do so by filing a notice in Form 64 in the same registry as that in which he filed his answer and cross-application and, unless the registrar otherwise directs, by serving a copy thereof upon each of the other parties; and he shall thereupon become liable to pay to the other parties to the proceedings such sum (if any) by way of costs and expenses as the court may direct.
- (10) When an answer and cross-application have been withdrawn pursuant to subrule (9), the objection pursuant to which such answer and cross-application were filed shall be deemed also to have been withdrawn and the registry at which the notice of withdrawal is filed shall forthwith notify the principal registry of that fact.
- (11) So long as an objection which has been lodged has not been withdrawn pursuant to subrule (10) no grant shall be made by any registry to the estate of the deceased prior to the expiration of the period for the filing by the objector of an answer and cross-application specified by the court under section 68 of the Act.
- (12) The principal registrar shall maintain a comprehensive index of objections entered in any registry (including the principal registry), and on being made aware of an application for a grant having been made in any such registry he shall cause the index to be searched and shall notify that registry in the event of an objection having been lodged in any registry against the making of such grant.
- (13) Where two or more answers and cross-applications have been filed in response to the same petition then, unless the registrar otherwise directs, they shall all be heard together with the petition.
- (14) No registrar shall make a grant if he has knowledge of the existence of an effective objection lodged in any registry in respect of the estate of the deceased:

Provided that an objection shall not operate to invalidate a grant made not less than twenty-one days after the period specified for inviting objections under section 67 of the Act but before knowledge or notification of the lodging of the objection is received by the registrar making the grant.

- (15) Where an objector in his objection, answer and cross-application expressly limits his objection to the making of the grant applied for to a challenge to the due execution of the alleged written or oral will and similarly restricts his right to call or cross-examine witnesses solely in regard to matters which might tend to disprove or prove such execution, he shall not be required to pay the costs or expenses of any other party to the proceedings unless the court before which the hearing takes place is of the opinion that there was no reasonable ground for challenging the execution.

## Part V – RENUNCIATION

### 18. Renunciation of probate or of right to apply for administration

- (1) A renunciation of probate whether of a written or an oral will, or of the right to apply for administration, may be in one of the Forms 98 to 102 as appropriate.

- (2) A renunciation of probate by an executor, whether by oral declaration or in writing, shall not operate as a renunciation of any right which he may have to a grant of letters of administration in some other capacity unless he expressly renounces such right.
- (3) Unless the court otherwise directs for reasons to be recorded, a renunciation of a right to apply for letters of administration intestate may not be retracted.

#### **19. Where one of several executors neither renounces nor applies for grant**

- (1) Where there are more executors than one and the application for a grant is made by one or more but not by all the executors, those not so applying or any of them may, if they have not renounced probate, apply subsequently to be thereafter joined by endorsement on the grant.
- (2) Before such an application is heard the court shall, unless it for reasons to be recorded otherwise directs, require the existing grant and all certified copies thereof already issued to be filed in the registry for endorsement.

#### **20. Death of executor who has not renounced**

Where an executor has predeceased the testator or has survived the testator but has died before a grant is applied for and without having renounced, a certificate or other evidence acceptable to the court of the death of such executor shall, unless the court for reasons to be recorded otherwise directs, be filed before the making of the grant.

### **Part VI – CITATIONS**

#### **21. Citations generally**

- (1) Every citation shall be drawn by the applicant in one of the Forms 31 to 36 as appropriate and settled by the registrar of the registry from which, upon payment of the prescribed fee, it is to be issued.
- (2) Every averment in a citation, and such other information as the registrar may require, shall be verified by an affidavit in one of the Forms 20 to 24 as appropriate sworn by the citor or, if there are two or more citors, by one of them:  

Provided that the registrar may in special circumstances, for reasons to be recorded, accept an affidavit sworn by the citor's advocate.
- (3) Every citation shall be served on the person cited either personally or by acknowledged registered post unless the registrar directs some other mode of service, which may include notice by advertisement.
- (4) Except where a will is not in the citor's possession and the registrar is satisfied that it is impracticable to require it to be filed, every will referred to in a citation shall be filed in the registry from which the citation is to issue but before such issue takes place.
- (5) A person who has been cited to appear may, within fifteen days of service of the citation upon him, inclusive of the day of such service, or at any time thereafter if no application has been made by the citor under rule 22(5) or rule 23(2), enter an appearance either in the principal registry or in the Mombasa registry by filing Form 27 and shall forthwith thereafter serve on the citor a copy of that Form sealed with the seal of the registry:  

Provided that the registrar may in any case at the time of issue of the citation increase the period of fifteen days to such period as he thinks fit.
- (6) The provisions of this rule shall apply also to the issue of a citation by direction of the court under section 71(2)(d) of the Act.

## 22. Citation to accept or refuse or to take a grant

- (1) A citation may be issued at the instance of any person who would himself be entitled to a grant in the event of the person cited renouncing his right thereto.
- (2) Where power to make a grant to an executor has been reserved, a citation calling on him to accept or refuse a grant may be issued at the instance of the executors who have proved the will or of the last survivor of such executors or of any beneficiary under the will.
- (3) A citation in Form 35 calling on an executor who has intermeddled in the estate of the deceased to show cause why he should not be ordered to take a grant may be issued at the instance of any person interested in the estate at any time after the expiration of three months from the death of the deceased:

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

- (4) A person cited who is willing to accept or take a grant may petition the court for a grant on filing an affidavit showing that he has entered an appearance and that he has not been served by the citor with notice of any application for a grant to himself.
- (5) If the time limited for appearance has expired and the person cited has not entered an appearance in either the principal registry or the Mombasa registry, the citor may—
  - (a) in the case of a citation under subrule (1), petition the court (if he has not already done so) for a grant to himself;
  - (b) in the case of a citation under subrule (2), apply to the court by summons for an order that a note be made on the grant that the executor in respect of whom power was reserved has been duly cited and has not appeared and that all his rights in respect of the executorship have wholly ceased;
  - (c) in the case of a citation under subrule (3), apply to the court by summons on notice to the person cited for an order requiring such person to take a grant within a specified time or for a grant to himself or to some other person specified in the application.
- (6) An application under subrule (5) shall be supported by an affidavit showing that the citation was duly served and that the person cited has not entered an appearance.
- (7) If the person cited has entered an appearance but has not within 30 days after his appearance applied for a grant under subrule (4), or has failed to prosecute his application with reasonable diligence, the citor may—
  - (a) in the case of a citation under subrule (1), petition the court for a grant to himself;
  - (b) in the case of a citation under subrule (2), apply by summons to the court for an order striking out the appearance and for the endorsement on the grant of such a note as is mentioned in paragraph (b) of subrule (5);
  - (c) in the case of a citation under subrule (3), apply by summons to the court for an order requiring the person cited to take a grant within a specified time or petition the court for a grant to himself or to some other person specified in the petition,

and the application shall in each case be served on the person cited.

## 23. Citation to propound a document as a will

- (1) A citation to propound a document as a will shall be supported by an affidavit in Form 23 and be directed to the executors named therein (if any) and still living and to all persons interested thereunder, and may be issued at the instance of any citor having an interest contrary to that of the executors or such other persons.

- (2) If the time limited for appearance has expired and no person cited has entered an appearance in either the principal registry or the Mombasa registry, or if no person who has appeared proceeds with reasonable diligence to propound the document, the citor may petition the court for a grant as if the document were not a valid will and the court before making a grant may direct such inquires and make such orders as it thinks fit.

#### **24. Order to bring in a will or to attend for examination**

- (1) The court may, on the application by summons supported by affidavit of any person claiming to be beneficially interested in the estate of a deceased, or of its own motion, make an order requiring any other person to bring into any High Court registry any document being or appearing to be a testamentary instrument executed by, or in the presence and by the direction of, the deceased which is shown to be in the possession or under the control of such other person; and if it be not shown that any such document is in the possession or under the control of such other person but it appears that there are reasonable grounds for believing that he has knowledge of any such document the court may direct such other person to attend for the purpose of being examined in open court or in chambers respecting it or to answer upon oath interrogatories in the matter and if so directed to produce and lodge in court such document.
- (2) If any person served with an order under subrule (1) denies that any document being or appearing to be a testamentary instrument executed by or in the presence and by the direction of the deceased person referred to in the summons is in his possession or under his control he may file an affidavit to that effect.
- (3) Where a person served with an order under subrule (1) has in his possession or under his control a document referred to in such summons by virtue of his having been an advocate or other professional adviser acting for the deceased person by whom or by whose direction the document was executed, or for or in relation to his estate, or of his having been appointed an executor or trustee of the deceased person, he shall, in complying with the order, so inform the court in writing.
- (4) If a person served with an order under subrule (1) fails to comply therewith so far as lies in his power he may be committed to prison for contempt of court for such period not exceeding twelve months as the court shall decide.

### **Part VII – MAKING OF GRANTS**

#### **25. Signing, sealing and issue of grants**

- (1) Every grant made and issued through the principal registry or a High Court district registry shall be in one of Forms 41 to 52 as appropriate and shall be signed by a judge of the High Court and sealed with the seal of that registry.
- (2) Every grant made and issued through a resident magistrate's registry shall be in one of Forms 41 to 53 as appropriate and shall be signed by a resident magistrate and sealed with the seal of that registry.
- (3) The court shall not make a grant until all inquiries which it may require to be made have been answered to its satisfaction, and it may require proof of the identity of the deceased and of the applicant.
- (4) Except with the leave of the court given for reasons to be recorded, no grant shall be made within fifteen days of the death of the deceased.
- (5) The court after the making of a grant may at any time and from time to time require the personal representative to render to the court a true account of the estate of the deceased and of his administration of it.
- (6) A grant may be made either to a single person (including the Public Trustee or a trust corporation) or jointly to two or more persons (including a trust corporation) not exceeding four.

**26. Grants of letters of administration**

- (1) Letters of administration shall not be granted to any applicant without notice to every other person entitled in the same degree as or in priority to the applicant.
- (2) An application for a grant where the applicant is entitled in a degree equal to or lower than that of any other person shall, in default of renunciation, or written consent in Form 38 or 39, by all persons so entitled in equality or priority, be supported by an affidavit of the applicant and such other evidence as the court may require.
- (3) Unless the court otherwise directs for reasons to be recorded, administration shall be granted to a living person in his own right in preference to the personal representative of a deceased person who would, if living, have been entitled in the same degree, and to a person not under disability in preference to an infant entitled in the same degree.

**27. Exceptions to rules as to priority**

Nothing in rule 26 shall operate to prevent a grant being made to any person to whom a grant may be made, or may be required to be made, under the Act.

**28. Grant where deceased died domiciled outside Kenya**

Where the deceased died domiciled outside Kenya, the court may make a grant—

- (a) to the person entrusted with the administration of the estate by a court having jurisdiction at the place where the deceased died domiciled; or
- (b) to a person entitled to administer the estate by the law of the place where the deceased died domiciled; or
- (c) if there is no such person as is mentioned in paragraph (a) or (b) or if in the opinion of the court the circumstances so require, to such other person as the court directs; or
- (d) if the court considers that a grant should be made to not less than two administrators, to such person as the court may direct jointly with any such person as is mentioned in paragraph (a) or (b) or with any other person:

Provided that without any such grant under this rule—

- (i) probate of a will which is admissible to proof may be granted if the will appoints a named person as executor or describes the duties of a named person in terms sufficient to constitute him executor according to the tenor of the will, to that person;
- (ii) where the whole of the estate in Kenya consists of immovable property a grant limited thereto may be made by the court in accordance with the law which would have been applicable if the deceased had died domiciled in Kenya.

**29. Court may require to be satisfied as to solvency of administrator**

- (1) In the exercise of its discretion as to the person to be appointed an administrator (with or without the will annexed) the court shall endeavour to satisfy itself as to the financial solvency of such person and, having regard to the nature and extent of the estate of the deceased likely to come to his hands, as to the probability of his being able properly to complete the administration of the estate.
- (2) For the purpose of subrule (1) the court may require the proposed administrator to furnish an affidavit in Form 12 as to his means.
- (3) As a condition of granting letters of administration (whether with or without the will annexed) the court may, for reasons to be recorded and subject to the following provisions of this rule, require

one or more sureties to guarantee that they will make good, within any limit imposed by the court pursuant to subrule (8) on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of a breach by the administrator of his duties as such.

- (4) A guarantee given in pursuance of any such requirement shall take effect for the benefit of every person interested in the administration of the estate of the deceased as if contained in a contract under seal made by the surety or sureties with every such person and, where there are two or more sureties, as if they had bound themselves jointly and severally.
- (5) Every guarantee shall be in Form 56, 57 or 58, as the case may be, and no action shall be brought on any such guarantee without the leave of the High Court previously obtained.
- (6) This rule shall not apply where administration is granted to the Public Trustee or to a widow of the deceased or, except in special circumstances and for reasons to be recorded, where it is granted to—
  - (a) a trust corporation;
  - (b) an advocate of the High Court holding a current practising certificate who has never (save at his own request) been struck off the roll of advocates or suspended from practising as an advocate;
  - (c) a public officer acting in his official capacity;
  - (d) a person specifically authorized in writing by a Government Department to apply for administration and to act as such administrator if appointed;
  - (e) the attorney of an executor who is absent from Kenya, there being no executor within Kenya who is willing to act, for the use and benefit of his principal and limited until such principal shall obtain probate or letters of administration granted to himself.
- (7) Except where the surety is a corporation, the signature of the surety on every such guarantee shall be attested by an advocate or by a commissioner for oaths or other person authorized by law to administer an oath.
- (8) Unless the court otherwise directs—
  - (a) a guarantee shall be given by two sureties, except where either the gross value of the estate does not exceed Sh. 10,000 or a corporation is a proposed surety, and in such cases one surety shall suffice;
  - (b) no person shall be accepted as a surety unless he or it is ordinarily resident in Kenya;
  - (c) no officer of a registry shall be accepted as a surety;
  - (d) the liability of the surety or sureties under a guarantee shall be such sum as the court thinks fit but shall not exceed the gross amount of the estate as sworn on the application for the grant:

Provided that the court may in any case where the gross amount has in its opinion been underestimated require that before confirmation of the grant the amount of the guarantee shall be increased to such amount as it thinks fit;

- (e) every surety, other than a corporation, shall justify in Form 11.
- (9) Where the proposed surety is a corporation there shall be filed an affidavit by the proper officer of the corporation to the effect that it has power to act as surety and has executed the guarantee in the manner prescribed by its constitution, and containing sufficient information as to the financial position of the corporation to satisfy the registrar that its assets are sufficient to discharge all claims which may be made against it under any guarantee which it has given or is likely to give for the purposes of these Rules:

Provided that the court may, instead of requiring an affidavit in every case, accept an affidavit made not less often than once in every year together with an undertaking by the corporation to notify

the court forthwith in the event of any alteration in its constitution affecting its power to become a surety under these Rules.

### **30. Evidence of foreign law**

Where evidence of the law of a country outside Kenya is required on any application for a grant, the affidavit of any person who practises, or has practised, as a barrister, solicitor, advocate or other legal practitioner in that country and who is conversant with its law may be accepted by the court unless the deponent is a person claiming to be entitled to the grant or his attorney, or is the spouse of any such person or attorney:

Provided that the court may in special circumstances accept the affidavit of some other person who does not otherwise possess the qualifications required by this rule if the court is satisfied, on grounds to be recorded, that by reason of such person's official position or otherwise he has knowledge of the relevant law of the country in question.

### **31. Grant to attesting witness**

Where a gift to any person fails by reason of [section 13\(2\)](#) of the Act, such person shall not have any right to a grant as a beneficiary named in the will, but such failure shall not of itself prejudice his right to a grant in any other capacity.

### **32. Grant intestate on behalf of infant**

- (1) Where in the case of intestacy the person to whom a grant could otherwise be made is an infant, administration for his use and benefit until he attains the age of eighteen years may, subject to subrule (2), be granted to both parents of the infant jointly or to the surviving parent or to the statutory or testamentary guardian of the infant or to any guardian appointed by a court of competent jurisdiction.
- (2) Notwithstanding anything in this rule, administration intestate for the use and benefit of an infant until he attains the age of eighteen years may be granted by the court to any person assigned as guardian by order of the court in default of, or jointly with, or to the exclusion of, any such person as is mentioned in subrule (1); and such an order may be made on the petition of the intended guardian, who shall file an affidavit in support of the application and, if required by the court, an affidavit of fitness sworn by a responsible person.

### **33. Grant where infant a co-executor**

Where one of two or more executors is an infant, probate may be granted by the court to the other executor or executors not under disability, with power reserved of making the like grant to the infant on his attaining the age of eighteen years; and administration with the will annexed for the use and benefit of the infant until he attains the age of eighteen years may be granted by the court only if the executor or executors who is or are not under disability renounce or, on being cited to accept or refuse a grant, fail to make an effective application therefor.

### **34. Infant's right to probate not to be renounced on his behalf**

An infant executor's right to probate on attaining the age of eighteen years may not be renounced by any person on his behalf.

### **35. Grant to trust corporation**

- (1) Any trust corporation wishing to petition for a grant shall file with its petition evidence that it is a trust corporation within the definition thereof in [section 3](#) of the Act and an undertaking to inform the principal registry of any change in its eligibility.

- (2) The principal registry shall maintain a register of trust corporations to which grants have been issued under subrule (1) and shall on request supply copies of the register and all amendments thereto to the Mombasa registry.
- (3) There shall be produced with every petition by a trust corporation a copy certified by the advocate for the petitioner of the power of attorney or other authority of the officer of the corporation making the application which the registry shall note and return.
- (4) Every application by a trust corporation for a grant shall be made in the principal registry or the Mombasa registry.

### **36. Grant *ad colligenda bona* under s. 67 of the Act**

- (1) Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration *ad colligenda bona defuncti* of the estate of the deceased.
- (2) Every such grant shall be in Form 47 and be expressly limited for the purpose only of collecting and getting in and receiving the estate and doing such acts as may be necessary for the preservation of the estate and until a further grant is made.
- (3) Application for such a grant shall be by petition in Form 85 signed by the applicant in the presence of not less than two adult witnesses supported by an affidavit containing the material facts together with the reasons for the application and showing the urgency of the matter and shall be made at the principal registry or at the Mombasa registry.
- (4) The provisions of rule 7(4) shall not apply to applications under this rule.
- (5) Copies of the proceedings and of the grant when issued shall be served upon such persons (if any) and in such manner as the court shall direct.

### **37. Temporary grant by resident magistrate under s. 49 of the Act**

- (1) Every application to a resident magistrate under [section 49](#) of the Act for a temporary grant of representation limited to the collection of assets and payment of debts shall be by petition in Form 97A signed by the applicant in the presence of not less than two adult witnesses supported by an affidavit containing the material facts and showing the reasons for the application and the apparent urgency of the matter and exhibiting copies of the two notices which have been published pursuant to the provisions of [section 29\(1\)](#) of the Trustee Act (Cap. 167).
- (2) A grant made under this rule shall be in Form 53 and, unless a shorter time is directed by the court, shall expire at the end of six months after its making and shall be limited to the collection of assets of the deceased situated within the area of the resident magistrate by whom it is made and the payment of debts of the deceased.

### **38. Grant under rules 36 or 37 not to prejudice making of full grant**

- (1) The making of a grant of representation under rule 36 or 37 shall be without prejudice to the right of the representative so appointed or of any other person to apply under any other provision of these Rules for a grant of representation to the deceased.
- (2) Upon the making of a grant under any provision of these Rules other than rules 36 and 37, any earlier grant made under either of those rules (in this subrule called the temporary grant) shall cease to have effect, but without prejudice to any act or other thing lawfully done thereunder, and the holder of the temporary grant shall forthwith surrender that temporary grant and account to the court for all the assets collected and shall be given credit for any payments properly made and expenses properly incurred by him as such holder.

### 39. Right of assignee to a grant

- (1) Where all the persons entitled to the estate of the deceased (whether under a will or on intestacy) have assigned their whole interest in the estate to one or more persons, the assignee or assignees shall replace, in the order of preference for a grant of administration, the assignor or, if there are two or more assignors, the assignor with the highest preference.
- (2) Where there are two or more assignees, administration may be granted with the consent of the other or others to any one or more (not exceeding four) of them.
- (3) In any case where administration is applied for by an assignee, a copy of the instrument of assignment certified by an advocate or magistrate shall be lodged in the registry.

## Part VIII – CONFIRMATION, SEALING, RECTIFICATION AND REVOCATION OF GRANTS

### 40. Application for confirmation of grant

- (1) Where the holder of a grant which has not been confirmed seeks confirmation of the grant he shall apply for such confirmation by summons in Form 108 in the cause in which the grant was issued, supported by an affidavit in Form 8 or 9 exhibiting the grant together with an estate duty compliance certificate or other satisfactory evidence that no estate duty is payable and setting out the full names of the deceased person to whose estate the grant relates, and he shall satisfy the court that no application under Part III of the Act is pending.
- (2) An application for confirmation by virtue of [section 71 \(3\)](#) of the Act shall be by summons in Form 109 in the cause and the applicant shall in addition to the requirements of subrule (1) satisfy the court by affidavit in Form 18 that there is in existence no dependant of the deceased and that it is expedient in all the circumstances of the case that the grant be confirmed before the expiration of six months from its date of making.
- (3) Save in the case of whole or partial intestacy or where the application is brought by virtue of [section 71\(3\)](#) of the Act, there shall be filed with the summons an affidavit containing the following information and particulars so far as known to the applicant—
  - (a) the names, ages and addresses of the children of the deceased by whom he was survived (whether or not they were being maintained by him immediately prior to his death) and of such of his parents, step-parents, grand-parents, grand-children whom he had taken into his family as his own, brothers, sisters, half-brothers and half-sisters, as were living at his death and were being maintained by him immediately prior thereto with full details of the manner and extent and for what period they were being or had been so maintained;
  - (b) in the case of a male deceased, his wife or wives or former wife or wives living at his death and, in the case of a female deceased, her surviving husband if he was being maintained by her immediately prior to her death with full details of the manner and extent and for what period he was being or had been so maintained.
- (4) Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined.
- (5) Where it appears to the principal registrar that an application has been made in any registry for the confirmation of a grant to the estate of a deceased in regard to which a caveat has been entered pursuant to rule 15 and is subsisting, the principal registrar shall send a notice in Form 111 to the caveator warning him of the making of the application and notifying him that if he wishes to object to the confirmation of the grant he must file in duplicate an affidavit of protest in Form 10 in the principal registry within fifteen days (or such longer period as the registry for reasons to be

recorded may allow) from the receipt of the notice, in default of which the caveat shall cease to have effect in regard to the confirmation of the grant.

- (6) Any person wishing to object to the proposed confirmation of a grant shall file in the cause in duplicate at the principal registry an affidavit of protest in Form 10 against such confirmation stating the grounds of his objection.
- (7) The registrar shall without delay forward to the applicant a copy of each protest filed in the cause under subrule (5) or (6).
- (8) Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 37 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions in chambers on notice in Form 74 to the applicant, the protester and to such other persons as the court thinks fit.
- (9) In giving directions the magistrate's court may in a case before it either order that the application for confirmation should proceed in that court, or at the request of any party or of its own motion order that it be transferred to the High Court and give all necessary consequential directions in that behalf to enable the application to be dealt with by the High Court.

#### 41. Hearing of application for confirmation

- (1) At the hearing of the application for confirmation the court shall first read out in the language or respective languages in which they appear the application, the grant, the affidavits and any written protests which have been filed and shall then hear the applicant and each protester and any other person interested, whether such persons appear personally or by advocate or by a representative.
- (2) The court may either confirm the grant or refer it back for further consideration by the applicant or adjourn the hearing for further evidence to be adduced or make any other order necessary for satisfying itself as to the expediency of confirming the applicant as the holder of the grant or concerning the identities, shares and interests of the persons beneficially entitled and any other issue which has arisen including the interpretation of any will.
- (3) Where a question arises as to the identity, share or estate of any person claiming to be beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of [section 82](#) of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to [section 71\(2\)](#) of the Act, proceed to confirm the grant.
- (4) In proceedings under subrule (3), unless the court otherwise directs, the personal representative of the deceased shall be the applicant seeking determination of the question, and the person claiming so to be beneficially interested together with the residuary legatee or other person to be appointed by the court to represent the residuary estate shall be the respondents; and the court in such proceedings shall give all necessary directions relative to the prosecution thereof including the safeguarding of the share or estate so appropriated and set aside and the provision of costs.
- (5) Where the court in exercise of its power under [section 71\(2\)\(a\)](#) of the Act directs that a grant be confirmed it shall cause a certificate of such confirmation in Form 54 to be affixed to the grant together with the seal of the court and shall appoint a date not more than six months ahead, by which time the accounts of the completed administration shall be produced to the court for its approval.
- (6) Where the court, in exercise of its power under [section 71\(2\)\(b\)](#) of the Act, instead of confirming a grant already issued directs the issue of a confirmed grant, this grant may be in Form 55.

- (7) On production of the accounts in court any person beneficially entitled and any creditor may appear and be heard before the court's approval is given.
- (8) The approval of the accounts in court may be dispensed with if all persons beneficially entitled have signed as consenting to the accounts as produced.
- (9) On the date for approval of the accounts and on any adjourned date application may be made for an adjournment to a fixed date not longer than three months away.

#### 42. Sealing of grant issued in another country

- (1) An application under [section 77](#) of the Act for the sealing of a grant issued by a court or other authority of a Commonwealth country or other country to which that section applies shall be made to the principal registry or to the Mombasa registry by the person to whom the grant was made or by his attorney empowered in writing to apply on his behalf.
- (2) Every such application shall be brought by petition in Form 81 or 82 supported by affidavit in Form 7 and shall be dealt with by a judge of the High Court.
- (3) There shall be produced on every such application either—
  - (a) the original grant; or
  - (b) a duplicate of the grant sealed with the seal of the court or other authority which issued the grant; or
  - (c) a copy of the grant certified by or on behalf of such court or authority; or
  - (d) the original power of attorney (if any) in exercise of which the application is made.
- (4) There shall be filed in the registry with every such application—
  - (a) a certificate from the Estate Duty Commissioner either to the effect that all estate duty payable to him has been or will be paid or to the effect that no such duty is payable, or alternatively such evidence as the registrar shall require that no such duty is payable;
  - (b) true copies of the instruments produced under subrule (3);
  - (c) unless the registrar otherwise directs, a full inventory of the assets and liabilities of the estate of the deceased in Kenya;
  - (d) such evidence (if any) as the court may require as to the domicile of the deceased; and
  - (e) such proof (if any) as the registrar may require of or in relation to the death of the deceased.
- (5) Where it is sought to seal a grant of representation issued in another country the court may on the application of a creditor require the applicant to give, within a time to be limited and in accordance with [section 77\(2\)\(c\)](#) of the Act, adequate security in Form 58 specifically for the payment of debts due from the estate to creditors residing within the jurisdiction.
- (6) The registrar shall cause to be inserted in the *Gazette* and to be exhibited conspicuously in the courthouse attached to the registry a notice in Form 71 of the application for the sealing, inviting objections thereto to be made known to that registry within a period to be specified in the notice of not less than thirty days from the date of such respective publications.
- (7) At the expiry of the notice, if there is no objection and all the necessary requirements have been complied with, the court may make an order for sealing the grant.
- (8) A limited or temporary grant may be sealed only upon the filing of a certificate from the issuing court or authority that the grant to be sealed is, on the date of application, still valid and in force.
- (9) Every grant lodged for sealing shall include or be accompanied by a copy of any will to which the grant relates certified as correct by or under the authority of the court or authority by which the grant was made, which copy shall be filed in the registry.

- (10) If prior to the expiration of the notice referred to in subrule (5) an objection in writing has been filed in the registry through which the application for sealing is made, the registrar shall forthwith submit the objection to the court for directions whereupon the court shall require the objector within a time to be limited to file evidence by affidavit in support of the objection, in default of which the objection shall be deemed to have been withdrawn:

Provided that the judge may for reasons to be recorded extend such time prior to its expiration.

- (11) Where an objector has filed his objection and affidavit as required by subrule (10) the court shall give directions for the hearing of the objection.
- (12) On sealing a grant the registrar shall endorse on the grant under the seal of the High Court a certificate confirming that the grant has been sealed for use within Kenya by an order of the High Court and giving the date of the order.
- (13) The registrar shall send notice in Form 72 of the sealing to the court or authority which made the grant.
- (14) Where notice is received in the principal registry of the sealing in another country of a Kenya grant, notice of any amendment or revocation of the grant shall forthwith be sent by the principal registrar to the court by which it was sealed.

#### 43. Rectification of grant

- (1) Where the holder of a grant seeks pursuant to the provisions of [section 74](#) of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of the death of the deceased or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued.
- (2) Unless at the time of issue of the summons the registrar otherwise directs there shall be filed with the summons an affidavit in Form 13 by the applicant containing such information as is necessary to enable the court to deal with the matter.
- (3) The summons, together with the affidavit (if any), shall without delay be laid by the registrar before the court which may either grant the application without the attendance of any person or direct that it be set down for hearing on notice to the applicant and to such other persons (if any) as the court shall think fit.

#### 44. Revocation or annulment of grant

- (1) Where any person interested in the estate of the deceased seeks pursuant to the provisions of [section 76](#) of the Act to have a grant revoked or annulled he shall, save where the court otherwise directs, apply to the High Court for such relief by summons in Form 107 and, where the grant was issued through the High Court, such application shall be made through the registry to which and in the cause in which the grant was issued or, where the grant was issued by a resident magistrate, through the High Court registry situated nearest to that resident magistrate's registry.
- (2) There shall be filed with the summons an affidavit of the applicant in Form 14 for revocation or annulment identifying the cause and the grant and containing the following particulars so far as they are known to him—
  - (a) whether the applicant seeks to have the grant revoked or annulled and the grounds and facts upon which the application is based; and
  - (b) the extent to which the estate of the deceased has been or is believed to have been administered or to remain unadministered, together with any other material information.
- (3) The summons and affidavit shall without delay be placed by the registrar before the High Court on notice in Form 70 to the applicant for the giving of directions as to what persons (if any) shall be served by the applicant with a copy of the summons and affidavit and as to the manner of effecting

service; and the applicant, upon the giving of directions, shall serve each of the persons so directed to be served with a notice in Form 68, and every person so served may file an affidavit stating whether he supports or opposes the application and his grounds therefor.

- (4) When the persons (if any) so directed to be served (or such of them as the applicant has been able to serve) have been served with a copy of the proceedings, the matter shall be placed before the High Court on notice by the court to the applicant and to every person so served, and the court may either proceed to determine the application or make such other order as it sees fit.
- (5) Where the High Court requires that notice shall be given to any person of its intention of its own motion to revoke or annul a grant on any of the grounds set out in [section 76](#) of the Act the notice shall be in Form 69 and shall be served on such persons as the court may direct.

## **Part IX – APPLICATIONS UNDER SPECIAL PROVISIONS OF THE ACT**

### **45. Application under s. 26 of the Act**

- (1) Every application to the court under [section 26](#) of the Act shall, where a grant has been applied for or made but not confirmed, be brought by summons in Form 106 in that cause, or, where no grant has been applied for, be brought by petition in Form 96; and the summons or petition and supporting affidavit shall be filed in the registry and copies thereof served upon the personal representative of the deceased:

Provided that, if representation has not been granted to any person, a copy of the petition and supporting affidavit shall be served upon the persons who appear to be entitled to apply for a grant under the Act.

- (2) The application shall be supported by evidence on affidavit in Form 15 or 16 stating that no grant of representation to the estate of the deceased has been confirmed and containing, so far as may be within the knowledge of the applicant, the following information and particulars—
  - (a) the date of the death of the deceased and whether he died testate or intestate and, if testate, the date of his last will and whether oral or written;
  - (b) the relationship of the applicant to the deceased and the grounds upon which, having regard to the provisions of [section 29](#) of the Act, the applicant claims to have been a dependant of the deceased at the time of his death;
  - (c) the name and address of every other dependant of the deceased at the time of his death;
  - (d) whether the deceased made any gift in contemplation of death (whether or not falling within the provisions of section 31 of the Act) and, if so, the nature, amount and value thereof;
  - (e) whether a grant to the estate of the deceased has been issued and, if so, to whom and upon what date;
  - (f) the nature, situation and amount of the deceased's property and the value of his net estate;
  - (g) any past, present or future capital or income of the applicant derived or expected to be derived from any source;
  - (h) the existing and future means and needs of the applicant;
  - (i) whether the deceased had during his lifetime made any advancement or other gift to the applicant;
  - (j) the conduct of the applicant in relation to the deceased;
  - (k) the situation and circumstances of the deceased's other dependants (if any) and of the beneficiaries under any will of the deceased; and

- (1) the general circumstances of the case including the deceased's reasons for not making provision for the applicant.
- (3) Copies of the proceedings shall be served upon such persons (if any) as the court may direct.
- (4) The application shall without delay be set down by the registry before the court for hearing upon notice to the applicant and to such persons as have been served with the proceedings and to such other persons (if any) as the court may direct.
- (5) At the hearing of the application the court shall have regard to the information and particulars referred to in subrule (2) and also to such evidence as may be adduced as to the conduct of the applicant in relation to the deceased as required by paragraph (e) of [section 28](#) of the Act.

#### 46. Application under s. 35(3) of the Act

- (1) Every application to the court under [section 35\(3\)](#) of the Act shall be brought by summons in Form 105 in the cause in which the grant was confirmed and shall pray for the appointment to the applicant of such share of the estate of the deceased as the court thinks fit; and the application shall be supported by an affidavit in Form 17 verifying the contents of the summons and setting out the particulars required in [section 35\(4\)](#) of the Act so far as the deponent is able, as follows—
  - (a) whether the deceased had been married more than once under any system of law permitting polygamy and if so specifying the system and stating the number of spouses of the deceased living at the date of his death;
  - (b) the name of each spouse by whom the deceased was survived and whether each such spouse is living and, if so, his or her place of residence or, if not living, the date and place of his or her death;
  - (c) whether any spouse (if a widow) has re-married;
  - (d) the nature, situation and amount of the deceased's property and of the capital of his or her net intestate estate other than personal and household effects and the extent to which such property and capital are comprised in the house, as defined in [section 3](#) of the Act, (if any) to which the applicant belongs;
  - (e) whether any valid appointment of such estate has been made by the surviving spouse of the deceased pursuant to the power conferred by [section 35\(2\)](#) of the Act and, if so, in what manner;
  - (f) the full name, age, sex and last known address of each other child of the deceased by whom he or she was survived;
  - (g) particulars of the existing and future means and needs of the applicant and of the surviving spouse;
  - (h) particulars of any past, present or future capital or income from any source of the applicant and of each surviving spouse;
  - (i) whether the deceased had made any advancement or other gift to the applicant during his lifetime or by will;
  - (j) the situation and circumstances of any other person who has any interest in the net intestate estate of the deceased or (where the deceased died intestate as to part only of his estate) as a beneficiary under his will; and
  - (k) the general circumstances of the case including the reasons for the withholding or exercising by the surviving spouse of the power of appointment conferred by [section 35\(2\)](#) of the Act, the manner employed and particulars of any other application made under that section and the awarding of any property to the applicant under the provisions of [section 26 or 35](#) of the Act.

- (2) The summons and all supporting affidavits shall be filed in the registry and copies served upon the surviving spouse, any surviving children of the same spouse and upon such other persons as the registrar in writing directs.
- (3) Upon the hearing of the application the court may direct that notice be given to such other persons as it deems fit and that such additional information be made available to the court as may be expedient to enable it to hear and determine the application or make such other order as the court considers proper.

#### **47. Applications under s. 61(1) or 75 of the Act**

- (1) Every application under [section 61\(1\)](#) of the Act for a grant of probate of a codicil discovered after the will was proved shall be by summons in the cause in which the will was proved which shall be filed in the registry through which the original grant was made to the applicant.
- (2) The codicil shall be lodged in the appropriate registry with or prior to the filing of the summons.
- (3) The summons shall be supported by an affidavit of the applicant identifying the codicil and stating the reasons so far as they may be known to him why the codicil was not submitted for proof together with the will and such further facts as may be necessary for consideration by the court.
- (4) The provisions of this rule shall apply *mutatis mutandis* to every application under [section 75](#) of the Act for the addition of a codicil to a grant of letters of administration with the will annexed:

Provided that where the applicant is not one of the persons to whom the grant was made a copy of the summons and of the codicil and of every supporting affidavit shall be served upon every such person, if living, not less than twenty-one days before the hearing of the application and every such person shall be named as a respondent to the application.

- (5) The court may require the applicant and every respondent to file such further affidavits as may be necessary.

#### **48. Application under s. 61(2) of the Act**

- (1) Every application under [section 61\(2\)](#) of the Act for the revocation of a grant of probate of a will (or of a will and one or more codicils) and the grant of a new probate of the will (or of the will with one or more codicils) together with a codicil discovered subsequently to the grant (in this rule referred to as the new codicil) shall be by petition in Form 97 in the cause in which probate has been granted, which petition shall be filed in the registry through which the grant of probate was issued.
- (2) The new codicil shall be lodged with the petition.
- (3) The petition shall be supported by an affidavit of the applicant in Form 14A identifying the new codicil and stating the reasons so far as they may be known to him why such codicil was not submitted for proof together with the will and such further facts as may be necessary for consideration by the court.
- (4) Every executor to whom probate of the will (or of the will with one or more codicils) has been granted shall be named as a respondent to the application and be served with copy of the petition and of the new codicil and of every supporting affidavit not less than 21 days prior to the hearing of the application.
- (5) Where there is no executor of the will or none can be found for the purpose of being served under subrule (4), the applicant shall apply to the court in Form 70A for directions as to service of the petition and supporting affidavit.
- (6) The court may require the applicant and every respondent to file such further affidavits as are necessary.

**49. Applications not otherwise provided for**

A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported if necessary by affidavit.

**Part X – PROVISIONS RELATING TO WILLS****50. Wills registers**

At every registry there shall be maintained a register called the wills register for that registry in which the following information shall be recorded relating to every will of a deceased person in regard to which an application is made—

- (a) the name of the testator;
- (b) the cause number;
- (c) the serial number assigned to the will;
- (d) the date of filing of the will and of the issue of any grant;
- (e) where a grant has been confirmed, the date of confirmation.

**51. Retention of original wills of deceased**

All original wills, or court authenticated copies thereof, of which probate or letters of administration with the will annexed have been granted by or applied for in any registry, shall be retained by and preserved among the records of that registry unless removed therefrom pursuant to regulations made under these Rules.

**52. Marking of wills and furnishing of translations**

- (1) A photocopy of every will in respect of which an application for a grant is made shall be marked by the signature of the applicant and shall also be exhibited in any affidavit or declaration which may be required under these Rules as to the validity, terms, physical condition or date of execution of the will.
- (2) Where the will is written in any language other than English there shall be an English translation thereof, made by a person competent to do so, annexed to the application for the grant; and the translation shall be verified by the translator in the following manner—

“I (A.B.) a ..... (*occupation*) of ..... (full address) declare that I have read and perfectly understood the language and character of the original will of, ..... (name of deceased) which is written in the ..... language and that the above is a true and accurate English translation thereof.”

**53. Engrossment of wills for purposes of record**

- (1) Where the registrar considers that in any particular case a photographic copy of the original written will would not be satisfactory for purposes of record, he may require an engrossment suitable for photographic reproduction to be lodged.
- (2) Where a written will contains alterations which are not admissible to proof there shall be lodged an engrossment of the will in the form in which it is intended to be or has been proved.
- (3) Any engrossment lodged under this rule shall reproduce the punctuation, spacing and division into paragraphs of the will and, if it is one to which subrule (2) applies, it shall be made bookwise on durable paper following continuously from page to page on both sides of the paper.

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

#### **54. Evidence as to due execution of written will**

- (1) Where a written will contains no attestation clause or the attestation clause is insufficient or where it appears to the court that there is some doubt about the due execution of the will, the court shall, before admitting the will to proof, require an affidavit of due execution from one or more of the attesting witnesses or, if no attesting witness is conveniently available, from any other person who was present at the time the will was executed.
- (2) If no affidavit can be obtained in accordance with subrule (1) the court may, if it thinks fit having regard to the desirability of protecting the interests of any person who may be prejudiced by the will, accept evidence on affidavit from any person it may think fit to show that the signature on the will is in the handwriting of the deceased, or evidence of any other matter which may raise a presumption in favour of the due execution of the will.
- (3) Before admitting to proof a written will which appears to have been signed by a blind or illiterate testator or by another person by direction of such a testator, or which appears to be written in a language with which the testator was not wholly familiar, or which for any other reason gives rise to doubt as to such testator having had knowledge of the contents of the will at the time of its execution, the court shall satisfy itself that the testator had such knowledge by requiring an affidavit stating that the contents of the will had been read over to, and explained to, and appeared to be understood by, the testator immediately before the execution of the will.
- (4) If the court, after considering the evidence—
  - (a) is satisfied that a written will was not duly executed, it shall refuse probate and shall mark the will accordingly;
  - (b) is doubtful whether the will was duly executed, it shall make an order for hearing and give such directions in regard thereto as it deems fit.

#### **55. Evidence as to terms, conditions and date of execution of written will**

- (1) Where there appears in a written will any obliteration, interlineation or other alteration which is not authenticated in the manner prescribed by section 20 of the Act or by the re-execution of the will or by the execution of a codicil, the court may require evidence to show whether the alteration was present at the time the will was executed and shall give directions as to the form in which the will is to be proved:

Provided that this subrule shall not apply to any alteration which appears to the court to be of no practical importance.

- (2) If from any mark on a will it appears to the court that some other document has been attached to the will, or if a will contains any reference to another document in such terms as to suggest that it ought to be incorporated in the will, the court may require the other document to be produced and may call for such evidence in regard to the attaching or incorporation of the document as it thinks fit.
- (3) Where there is doubt as to the date on which a written or oral will was executed or made the court may require such evidence as it thinks necessary to establish the date.

#### **56. Apparent revocation of written or oral will**

Any appearance of attempted revocation of a written will by burning, tearing or otherwise, and every other circumstance leading to a presumption of revocation of a written will by the testator, and every fact or

circumstance leading to a presumption of revocation of an oral will by the testator, shall be accounted for to the satisfaction of the court.

#### 57. Affidavit of facts relative to rules 54, 55 and 56

- (1) The court may require an affidavit from any person it thinks fit for the purpose of satisfying itself as to any of the matters referred to in rules 54, 55 and 56, and in any such affidavit sworn by an attesting witness or other person present at the time of the execution or making of a will the deponent shall depose to the manner in which the will was executed or made.
- (2) Where by reason of any of the matters referred to in rules 54, 55 and 56 the court is of the opinion that a petition should be filed under the provisions of rule 7 it may so direct.

### Part XI – LITIGIOUS PROCEEDINGS

#### 58. Title and cause number of proceedings

- (1) Every application under these Rules which relates to the will, or to the devolution of property on the intestacy, of a deceased person in regard to whom or whose property there are no proceedings either pending or concluded under the Act shall be headed **“In the Matter of the Estate of (name) Deceased”** and shall be given by the registry in which it is made a cause number which shall identify the registry and the year of commencement of the proceedings, and all such applications within such registry shall be numbered consecutively for that year.
- (2) Where at the time of the making of an application relating to the will, or to the devolution of property on the intestacy, of a deceased person there are pending or have previously been proceedings under the Act regarding that or any other will or the property of such person, the application shall be made in and bear the cause number of those proceedings.
- (3) Where proceedings under the Act are transferred by order of the court from one registry to another the original cause number shall be amended by the addition thereto after the name of the transferring registry of the words **“now (name of the new registry)”**.

#### 59. Form of proceedings

- (1) Save where otherwise provided in these Rules every application to the court or to a registry shall be brought in the form of a petition, caveat or summons as may be appropriate.
- (2) In the case of a pending proceeding the court or a registrar may of its or his own motion or at the request of any party, but without a formal application, cause the matter to be set down for mention before the court or registrar upon notice to such persons (if any) as the court or registrar may direct.
- (3) Unless otherwise directed by the court every application shall be heard in chambers in the presence only of the parties, their advocates and such other persons as the court or registrar may permit.
- (4) Every petition and cross-application for a grant shall be signed by the petitioner in the presence of his advocate or not less than two other adult witnesses who must sign giving their names, addresses and descriptions.
- (5) A summons shall be in one of Forms 104 to 110 as appropriate and be signed by the applicant or his advocate.
- (6) Save where it is otherwise provided in these Rules there shall be filed with every application such affidavits (if any) setting out such material facts and exhibiting such documents as the applicant may think necessary.

**60. Entry of appearance**

Every interested person (whether or not he has been served with notice thereof) who wishes to be heard upon or to oppose any application, and has not already appeared in the proceedings, shall enter an appearance in Form 26 in the registry in which the application is made giving his address for service, and may file such affidavits as he considers proper, to each of which the applicant may with leave of the court file an affidavit in reply.

**61. Application to be considered by registrar**

- (1) Every application shall without delay be considered by the registrar who shall give all necessary directions as to the time and place of the hearing and as to the giving of notice of the proceedings to such persons as he shall determine to be interested in or affected by the matter, for which purpose he may require the applicant to attend in chambers.
- (2) When the registrar has given the necessary directions the applicant shall thereafter give notice of the application in Form 75 within such time and to such persons as the registrar has directed.

**62. Registrar may hear application or transfer it to court**

- (1) The registrar may hear and determine any matter brought before him or may at the request of any party thereto or of his own motion transfer it or any other matter or question before him to the court for determination.
- (2) Save where otherwise provided any party who is aggrieved by any decision of a registrar may require the registrar to record the decision in writing and furnish a copy thereof to the aggrieved party who may appeal by summons to the court, which summons shall be filed in the registry within 14 days after the recording of such decision.

**63. Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules**

- (1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX ([Cap. 21](#), Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.
- (2) Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.

**64. Application of African customary law**

Where during the hearing of any cause or matter any party desires to provide evidence as to the application or effect of African customary law he may do so by the production of oral evidence or by reference to any recognized treatise or other publication dealing with the subject, notwithstanding that the author or writer thereof shall be living and shall not be available for cross-examination.

**Part XII – MISCELLANEOUS PROVISIONS****65. Service of documents**

- (1) Every document other than a testamentary instrument filed in any registry shall bear at foot the name and an address for service within Kenya of the advocate or other person by whom it is

presented for filing together with the name and address of the person on whose behalf it is so presented.

- (2) The address for service for the purpose of this rule shall be—
  - (a) in the case of an advocate, his place of business; and
  - (b) in any other case, the postal address within the jurisdiction of the person by whom the document is filed.
- (3) The court or registrar may direct that any document for the service of which no other provision is made by these Rules shall be served on such person or persons as the court or registrar may direct.
- (4) Where by these Rules or by any direction given under subrule (3) a document relative to proceedings under the Act is required to be served on any person, it shall be served—
  - (a) in the case of proceedings before the court, not less than fourteen clear days before the hearing; and
  - (b) in the case of proceedings before a registrar, not less than four clear days before the hearing, unless the court or registrar at or prior to the hearing otherwise directs.
- (5) Unless the court or registrar for reasons to be recorded otherwise directs or these Rules otherwise provide, every notice or document required to be given to or served upon any person who has not entered an appearance nor given an address for service shall be given or served in accordance with the provisions of Order V of the Civil Procedure Rules ([Cap. 21](#), Sub. Leg.).

## 66. Affidavits

Where provision is made in any rule for the filing by any person of an affidavit for a specific purpose that provision shall be construed as enabling that person in a proper case to file more affidavits than one for that purpose.

## 67. Enlargement of time

Where any period is fixed or granted by these Rules or by an order of the court for the doing of any act or thing, the court upon request or of its own motion may from time to time enlarge such period notwithstanding that the period originally fixed or granted may have expired.

## 68. Official copies of wills, grants and other documents

Where copies of any documents lodged, filed or issued in or from a registry are required such copies may, subject to the provisions of these Rules, be obtained from the registry, and such may be photographic copies with the seal of the registry and certified under the hand of a registrar to be true copies.

## 69. Costs

The costs of all proceedings under these Rules shall be in the discretion of the court.

## 70. Forms

The forms set out in the First Schedule, with such adaptations, additions and amendments as may be necessary, shall, when appropriate, be used in all proceedings under these Rules:

Provided that the Chief Justice may by notice in the *Gazette* vary the forms and prescribe such other or additional forms as he thinks fit.

**71. Court fees**

- (1) The fees to be paid in proceedings under these Rules shall be those set out in the Third Schedule and shall be paid in cash.
- (2) The Chief Justice may from time to time by notice in the *Gazette* amend the Third Schedule.

**72. Application of Rules to pending proceedings**

- (1) Subject to the provisions of the Act and in any particular case to any direction given by the court, these Rules shall apply to every application and proceeding which is pending on the date on which they come into operation but not so as to invalidate anything previously done or made in lawful compliance with the practice and procedure existing and in force at the time.
- (2) If any question arises as to the application of the Act or of these Rules to any such pending proceedings it may be referred to the court or a registrar for determination.

**73. Saving of inherent powers of court**

Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

**74. Revocation G. N. 264/1940**

The Probate and Administration (Contested Suits) Rules, 1940, are revoked.

**FIRST SCHEDULE****FORMS**

[Rule 70.]

Rule 70 of these Rules provides that the forms in this Schedule, with such adaptations, additions and amendments as may be necessary, shall when appropriate be used in all proceedings under the Rules, with the proviso that the Chief Justice may by notice in the *Gazette* vary the forms and prescribe such other or additional forms as he thinks fit.

[Section 72](#) of the Interpretation and General Provisions Act (Cap. 2) declares that, save as is otherwise expressly provided, whenever any form is prescribed by any written law, an instrument or document which purports to be in that form shall not be void by reason of any deviation therefrom which does not affect the substance of the instrument or document and which is not calculated to mislead.

Although the collection of forms in this Schedule does not purport to provide for every circumstance that may arise, it contains the majority of the forms which, adapted when necessary, will be found to be of general use by legal practitioners and members of the public.

*(These notes are for guidance only and do not form part of the Schedule)*

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 Consents..... Forms 37–39.  
 Cross-application for grant... Form 84.  
 Deposit docket.....Form 40.  
 General heading and address for service ..... Form 1.  
 Grant of representation ..... Forms 41–53,55.  
 Guarantee ..... Forms 56–58.  
 Index card ..... Form 59.  
 Notice ..... Forms 60–70, 71–75.  
 Objection..... Forms 76–77.  
 Petition.....Forms 78–83, 85–97A.  
 Renunciation..... Forms 98–102.  
 Return ..... Form 103.  
 Summons ..... Forms 70A, 104–110.  
 Warning ..... Forms 111–112.

<b>FORM 1</b>	<b>Rules. 58, 65</b>
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**GENERAL HEADING AND ADDRESS FOR SERVICE**

1. GENERAL HEADING

Unless otherwise indicated and subject to the provisions of rule 58 as to litigious proceedings the heading of each form should be as one of the following—

- (1) Non-litigious proceedings. Forms not initiating litigious proceedings or relating to existing proceedings should be headed—

*In the Matter of the Estate of AB (full name and alternatives, if any) Deceased.*

- (2) Litigious proceedings in the High Court.

Forms initiating or relating to existing proceedings in the High Court should be headed —

In the High Court of Kenya at .....

Succession cause No. H.C. .... of 19 .....

*In the Matter of the Estate of CD (full name and alternatives, if any) Deceased.*

- (3) Litigious proceedings in the Resident Magistrate’s Court.

Forms initiating or relating to existing proceedings in the Resident Magistrate’s Court should be headed—

In the Resident Magistrate’s Court at .....

Succession Cause No. R.M. .... of 19 .....

In the Matter of the Estate of EF *(full name and alternatives, if any)* Deceased.

- (4) For application where there are no litigious proceedings either pending or concluded under the Act see rule 58(1).

2. ADDRESS OF SERVICE

Except in the case of testamentary instruments every document presented for filing in any registry must bear at foot the name and an address for service within Kenya of the advocate or other person by whom it is so presented together with the name and address of the person on whose behalf it is presented.

<b>FORM 2</b>		<b>Rules. 65</b>
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**AFFIDAVITS**

**Formal parts**

***(Heading as Form 1)***

Opening paragraphs-

I CD of *(description, true place of abode and postal address)* aged over 18 years *(or if desponent is a minor, his age)* make oath and say as follows-

-----  
concluding paragraph-

The facts herein deposed to are known to me of my personal knowledge save that *(set out any matters failing within the proviso to O. XVIII r.3 (1) of the Civil Pocedure Rules)*.

-----  
Jurat and address for service-

sworn by said CD at *(place of swearing)* on this ----- 19 .....,  
before me

		----- <i>Commissioner of Oaths</i> <i>(or other swearing officer)</i>
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*Filed by (name and address for service within Kenya of the advocate or other person by whom it is presented for filing together with the name and address of the person on whose behalf it is presented)*

-----  
*Note - As to Affidavits generally see Civil Procedure Rules [Cap. 21](#), Sub, leg.) Order XVIII.*

<b>FORM 3</b>	<b>Rule 7</b>
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**AFFIDAVIT IN SUPPORT OF PETITION FOR PROBATE OR FOR LETTERS OF ADMINISTRATION WITH WRITTEN WILL ANNEXED**

*(Heading as in Form 1)*

I, CD, of (as in Form 2) make oath and say as follows-

1. The full name of the deceased to whose estate the proceedings herein relate is AB (also known as ABC) and I am the petitioner named in the petition herein dated the .....20. .... upon which I have endorsed my name at the time of swearing this affidavit.
2. The deceased died on the ....., 19 ....., at ..... *(name of place)* as appears from the attached certificate (or photocopy of the certificate) of death *(or other document)* marked "CD 1" upon which I have written my name at the time of swearing hereof.
3. The deceased was at the date of his death domiciled in ..... *(name of country)* and his last known place of residence was at ..... *(name of place)*.
4. The deceased died leaving a valid written will dated the ....., 19 .....*(and a codicil thereto dated the ....., 19 .....*).
5. I am seeking a grant of representation to the deceased on the grounds that (state) .....
6. The following is a full inventory of all the assets and liabilities of the deceased at the date of his death including such assets (if any) as have arisen or become known since that date  
 Assets-  
 (Complete as necessary)  
 Total estimated value Sh.....  
 Liabilities-  
 (Complete as necessary)  
 Total estimated value Sh.....
7. *If deceased died partially intestate give details of persons related to the deceased as in Form 8 paragraph 3.*
8. The facts herein deposed *(continue as in Form 2)*.  
 Sworn, etc., *(as in Form 2)*.

\_\_\_\_\_

<b>FORM 4</b>	<b>Rule 7, (13)</b>
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**AFFIDAVIT IN SUPPORT OF PETITION FOR PROOF OF ORAL WILL**

*(Heading as in Form 1)*

I, CD, of (as in Form 2) make oath and say as follows

- (1)
- (2) *(As in Form 3 paragraphs 1 to 3)*.

- (3)
- (4) The deceased made a valid oral will on the ....., 19 ....., at ..... before the following witnesses *(give names and addresses of all alleged witnesses as required by section 51(3)(b) of the Act)* .....
- (5) I truly believe that the words used by the deceased in making his said will were as follows *(state the exact words used by the deceased so far as they were actually heard by the deponent personally)* .....
- (6) Both at the time of making of his said will and the time of his death the deceased was a member of the armed forces (or merchant marine) (a) of Kenya within the same continuous period of active service (b).
- (7) The said oral will is not contrary to any written will which was made by the deceased at any time either before or after the making of the said oral will and which had not been revoked at the time of his death save that *(set out exceptions, if any)* .....
- (8)
- (9) *(As in Form 3 paragraphs 5 to 7).*
- (10)
- (11) The facts herein deposed *(continue as in Form 2).*

Sworn,etc. (as in Form 2).

Notes:

- (a) Strike out if not applicable.
- (b) See the proviso to [section 9\(1\)](#) of the Act.

<b>FORM 5</b>	<b>Rule 7</b>
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FORM 5 (r.7)

**AFFIDAVIT IN SUPPORT OF PETITION FOR LETTERS OF ADMINISTRATION INTESTATE**

**(Heading as in Form 1)**

I, CD, of *(as in Form 2)* make oath and say as follows:

- (1)
- (2) *(As in Form 3)*
- (3)
- (4) The deceased died intestate and left the following persons surviving him-  
*(names, addresses, marital state and descriptions of all persons related to the deceased in the manner referred to in rule 7(1)(e)(i) together with the information required by rule 7(1)(e)(ii) .....*
- (5) I am related to the deceased by reason of being his (state) .....
- (6) *(As in Form 3)*
- (7) The facts herein deposed *(continue as in Form 2).*

Sworn,etc. *(as in Form 2).*

FORM 6	Rule 7(13)
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**AFFIDAVIT IN SUPPORT OF PETITION FOR LETTERS OF ADMINISTRATION WITH TERMS OF ORAL WILL ANNEXED**

*(Heading as in Form 1)*

I, CD, of *(as in Form 2)* make oath and say as follows

- 1)
- 2) *(As in Form 3 paragraphs 1 to 3).*
- 3)
- 4)
- 5) *(As in Form 4 paragraphs 4 to 6).*
- \*6)
- 7) By his said will the deceased did not appoint any executor (or The executor appointed by the said will, namely, GH died on the ..... day of ....., 20. ...., before the deceased).
- 8) *(As in Form 4 paragraph 7).*
- 9)
- 10) *(As in Form 3 paragraphs 5 to 7).*
- 11)
- 12) The facts herein deposed *(continue as in Form 2)*. Sworn, etc., *(as in Form 2)*.

\*Omit if inapplicable.

FORM 7	Rule (42)(2)
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**AFFIDAVIT IN SUPPORT OF PETITION BY PERSONAL REPRESENTATIVE FOR SEALING OF GRANT ISSUED IN ANOTHER COUNTRY**

*(Heading as in Form 1)*

I, CD, of *(as in Form 2)* make oath and say as follows-

1. The full names of the deceased to whose estate the proceedings herein relate are AB also known as ABZ.
2. The deceased died on the ....., 19 ....., at .....
3. The deceased was at the date of his death domiciled in .....

4. A grant of probate of the last will dated the ..... , 19 ..... (and codicil thereto dated the ..... ,19 .....)(or of letters of administration with the will {and codicil) annexed or of letters of administration intestate to the estate) of the deceased was issued to me by ..... (name of issuing court or authority) on ..... (date).
5. The following is a full inventory of all the assets and liabilities of the deceased in Kenya at the date of his death so far as known to the petitioner-
 

Assets-

(Complete as necessary)

Total estimated value ..... Liabilities-

(Complete as necessary)

Total estimated value .....
6. No estate duty is payable (or remains unpaid) in Kenya in respect of the said estate.
7. The facts herein deposed (continue as in Form 2).  
Sworn, etc.,(as in Form 2).

<b>FORM 8</b>	<b>Rule (40)(1)</b>
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**AFFIDAVIT IN SUPPORT OF SUMMONS FOR CONFIRMATION OF GRANT OF PROBATE OR LETTERS OF ADMINISTRATION WITH WILL ANNEXED**

*(Heading as in Form 1)*

I, CD, of (as in Form 2) the executor of the will of (or the administrator with the will (and codicil) annexed of the estate of) the above-named AB who died on the ..... , 19....., make oath and say as follows-

1. A grant of probate of the last will dated the ..... ,19 ..... (and of the codicil thereto dated the ..... ,19 .....) (or letters of administration with the will (and codicil annexed) of the deceased was made to me in this matter on the ..... , 19.....
2. The deceased was survived by the following children (set out names,addresses and ages) .....
3. The deceased was survived by the following other dependants (set out the name, address and age of each of the persons (other than his children) falling within the provisions of rule 40(3)(a) and (b), stating the extent to which each was being maintained by the deceased immediately prior to his death) .....
4. No application for provision for dependants is pending (or as the case may be).
5. No estate duty is payable (or remains unpaid) in respect of the estate of the deceased and I refer to an estate duty compliance certificate annexed hereto and marked "CD 1".
6. Set out any further necessary facts.

7. The facts herein deposed (*continue as in Form 2*).

Sworn, etc., (*as in Form 2*).

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heading 1	heading 2
cell 1	cell 2
cell 3	cell 4

FORM 9 (r.40(1))

**AFFIDAVIT IN SUPPORT OF SUMMONS FOR CONFIRMATION  
OF GRANT OF ADMINISTRATION INTESTATE**

*(Heading as in Form 1)*

I, CD, of (*as in Form 2*) the administrator of the estate of AB who died on the ....., 19 ..... intestate make oath and say as follows-

1. A grant of letters of administration of the said estate was made to me in this matter on the ....., 19 .....
- 2)
- 3) (*As in Form 8 paragraphs 2, 3 and 4*).
- 4)
- 5) The identification and shares of all persons beneficially entitled to the said estate have been ascertained and determined as follows (*set out the names of the persons and their respective entitlements*)  
.....
- 6)
- 7) (*As in Form 8 paragraphs 5,6 and 7*)
- 8)

Sworn, etc., (*as in Form 2*).

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<b>FORM 10</b>	<b>Rule 40(6)</b>
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FORM 10 (r.40(6))

**AFFIDAVIT OF PROTEST AGAINST CONFIRMATION OF GRANT**

*(Heading as in Form 1)*

I, CD, of *(as in Form 2)*, in protest against the proposed confirmation of the grant of probate (or letters of administration) made to E.F. in this matter on the ....., 19 ....., make oath and say as follows-

1. *(Set out grounds of protest in full)* .....
2. The facts herein deposed *(continue as in Form 2)*.

Sworn, etc., *(as in Form 2)*.

\*This affidavit must be filed in the principal registry.

<b>FORM 11</b>	<b>Rule 29(8)(e)</b>
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**AFFIDAVIT OF JUSTIFICATION OF PROPOSED SURETIES**

*(Heading as in Form 1)*

We, GH of ..... and JK of ..... jointly and severally make oath and say as follows-

1. We are the proposed sureties on behalf of CD the intended administrator (with will (and codicil) annexed) of the estate of the above-named AB in the sum of Kenya Shillings ..... (KSh.....).
2. I, GH, for myself say that I am, after payment of all my just debts and having taken into account all my liabilities, well and truly worth net of such debts and liabilities in immovable and movable assets in Kenya at least the sum of Kenya Shillings ..... (KSh.....).
3. I, JK, for myself say that I am, after payment of all my just debts and having taken into account all my liabilities, well and truly worth net of such debts and liabilities in immovable and movable assets in Kenya at least the sum of Kenya Shillings .....(KSh.. ..).
4. The facts herein deposed *(continue as in Form 2)*.

Swam,etc., *(as in Form 2)*.

<b>FORM 12</b>	<b>Rule 29(2)</b>
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FORM 12 (r. 29(2))

**AFFIDAVIT OF JUSTIFICATION OF PROPOSED ADMINISTRATOR**

*(Heading as in Form 1)*

I, CD, of *(as in Form 2)* having petitioned this Honourable Court for a grant of letters of administration intestate (or with the will (and codicil) annexed) of the estate of the above-named AB who died on the ....., 20 ....., make oath and say as follows-

1. I am after payment of all my just debts and having taken into account all my liabilities well and truly worth net of such debts and liabilities in immovable and movable assets in Kenya at least the sum of Kenya Shillings ..... (KSh.....).

2. The facts herein deposed (*continue as in Form 2*). Sworn,etc., (*as in Form 2*).

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<b>FORM 13</b>	<b>Rule 43(2)</b>
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FORM 13 (r. 43(2))

**AFFIDAVIT IN SUPPORT OF SUMMONS FOR RECTIFICATION OF GRANT**

*(Heading as in Form 1)*

I, CD, of (*as in Form 2*) the executor of the last will dated the ....., 19 .....  
 (and the codicil thereto dated the ..... 19 .....)(or the administrator of the  
 estate) of the above-named AB make oath and say as follows-

1. A grant of probate of the said will (and codicil) (or of letters of administration  
 (with the will (and codicil) annexed) was made to me by this Honourable Court on  
 the....., 19 .....
2. The said grant contains errors as to (*set out the errors capable of rectification under rule 43(1)*)  
 .....
3. The said grant has not been confirmed (or was confirmed on  
 the .....19 .....).
4. It is desirable that the above errors be rectified by the court.
5. The facts herein deposed (*continue as in Form 2*) Sworn, etc., (*as in Form 2*).

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<b>FORM 14</b>	<b>Rule 44(2)</b>
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FORM 14 (r.44(2))

**AFFIDAVIT IN SUPPORT OF SUMMONS FOR THE REVOCATION OR ANNULMENT OF GRANT**

*(Heading as in Form 1)*

I, CD, of (*as in Form 2*), the applicant herein, make oath and say as follows-

1. The above-named AB died on the .....,  
 19 ....., and a grant of probate (or letters of admni istration intestate or with the will (and  
 codicil) of the said A.B.annexed) was made to (name and address) ..... by this  
 Honourable Court on the .....,20 .....
2. The said grant was (set out in detail the facts relied upon as bringing the matter within section 76. of the  
 Act) .....
3. (State whether tije grant was confirmed and the extent to which and by whom the estate has been  
 administered, the relationship of the applicant to the deceased, tIje applicant's degree of priority in  
 seeking a fresh grant, and any other material facts) .....
4. The facts herein deposed (*continue as in Form 2*). Sworn,etc., (*as in Form 2*).

<b>FORM 14A</b>	<b>Rule 48 (3)</b>
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**AFFIDAVIT IN SUPPORT OF PETITION FOR REVOCATION OF PROBATE OF A WILL AND ISSUE OF NEW PROBATE OF THE SAME WILL AND A CODICIL THERETO DISCOVERED SINCE THE GRANT**

**(Heading as in Form 1 but in the cause in which probate was issued)**

I, CD, (as in Form 2) make oath and say as follows-

1. The above-named AB died on the ....., 20 ..... and a grant of probate of his will (or of his will and codicil(s)) was made in this cause to (name and address) by this Honourable Court on the ....., 20 .....
2. (State whether the grant was confirmed and the extent to which and by whom the estate has been administered).
3. Subsequently to the date of the said grant a codicil to the will of the deceased was discovered by (name) at (place) (state the circumstances which rendered it impossible for the codicil to be included with the will in the original application for probate and any other material facts rendering inclusion of the codicil in the existing probate impossible).
4. For the reasons set out in the preceding paragraph it was not possible to submit the said codicil for proof together with the will.
5. I identify the codicil attached to the petition to be filed herewith as the original codicil referred to in paragraphs 3 and 4 hereof.
6. The facts herein deposed (continue as in Form 2). Sworn, etc. (as in Form 2).
  - This form should be used only when the applicant is not a proving executor of the will: section 61(2) of the Act.

<b>FORM 15</b>	<b>Rule 45(2)</b>
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**AFFIDAVIT IN SUPPORT OF PETITION BY DEPENDANT UNDER SECTION 26 OF THE ACT**

**(Heading as in Form 1)**

I, CD, of (as in Form 2) make oath and say as follows (1)

- (2) (As in Form 3 paragraphs 1 to 3). (3)
- (4) The deceased died intestate (or leaving a valid will) (continue as in Form 3 paragraph 4). (5) No grant of representation to the estate of the deceased has been applied for.
- (6) My relationship to the deceased is as follows (state in full):
- (7) The grounds upon which, having regard to the provisions of section 29 of the Law of Succession Act, I claim to have been a dependant of the said AB at the time of his death are as follows (state in full)
  - (a): .....
- (8) The only other persons who were dependent upon the said AB at the time of his death are (set out names and addresses in full including persons who have died subsequently to the death of the deceased)
  - (a): .....

- (9) The said AB made the following gifts in contemplation of his death (set out names and addresses of donees together with the nature, amount and value of each gift ) (b): .....
- (10) The property of the deceased at date of death was ( set out in full, stating the nature and amount thereof) (c) .....
- (11) I believe that the value of the deceased's net estate after payment of reasonable funeral expenses, debts and liabilities, the expenses of raising representation to his estate, other reasonable expenses of administration and estate duty (if any) will be approximately Sh. ....(state estimated figure).
- (12) My present capital assets consist of the following (set out in full): .....
- (13) In addition to my said capital assets I have from time to time received the following items of capital which are no longer in existence or available to me (set out in full): .....
- (14) I anticipate that I may in the future receive the following capital assets (set out in full with a statement of the source and anticipated date of receipt and of expected gross and net income therefrom): .....
- (15) My present annual income is (state) consisting of (state) and my probable future income and means are (set out): .....
- (16) My present needs are (set out in full), and my anticipated future needs are (set out in full): .....
- (17) The deceased during his lifetime made the following and no other gifts to me (set out in full): .....
- (18) My conduct in relation to the deceased during his lifetime consisted principally of (set out in general terms): ... ..
- (19) The situation and circumstances of the deceased's other dependants, so far as known to me, are as follows (set out): .....
- (20) The situation and circumstances, so far as known to me, of each of the persons named as beneficiaries in the will (and codicil) of the deceased referred to in paragraph 4 above are as follows (set out): .....
- (21) I do not know why the deceased made no (or no sufficient) provision for me (or The reason why the deceased did not make the provision for me which I now seek is) (state fully if known):
- (22) The facts herein deposed (continue as in Form 2).

Sworn, etc., (as in Form 2).

Notes-

- (a) For the meaning of "dependant" see section 29 of the Act.
- (b) For the meaning of a "gift in contemplation of death" see section 31 of the Act, Such gifts fall within section 26 of the Act.
- (c) The information indicated in paragraphs 10 to 21 (inclusive) is required by section 28 of the Act.

FORM 16 (r.45(2))

AFFIDAVIT IN SUPPORT OF SUMMONS UNDER SECTION 26 OF THE ACT (Heading as in Form 1)

I, CD (continue as in Form 2) .....•.....

make oath and say as follows (1)

- (2) (As in Form 3 paragraphs 1 to 3). (3)

- (4) (As in Form 15 paragraph 4).
- (5) A grant of representation to the estate of the deceased was applied for by .....  
 ..... (name and .address) to this court on the  
 .....,20 .....,but such grant had not yet been made or confirmed'.
- (6) to) ..... {As in Form 15 paragraph 6 to 21).
- (21)
- (22) The facts herein deposed (continue as in Form 2). Sworn, etc., (as in Form 2).
  - If grant made but not confirmed delete the words "made or".

<b>FORM 17</b>	<b>Rule 46(1)</b>
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**AFFIDAVIT IN SUPPORT OF SUMMONS BY A CHILD OF THE DECEASED (OR,  
 IF A MINOR, HIS REPRESENTATIVE) UNDER SECTION 35(3) OF THE ACT**

**(Heading as in Form 1)**

I, CD, of (as in Form 2) (or EF of (as in Form 2) acting for and on behalf of GH a minor) (hereinafter called "the applicant") make oath and say as follows-

- (1)
- (2) (As in Form 3 paragraphs 1 to 3.)
- (3)
- (4) The deceased died intestate and letters of administration were granted to ....  
 .....(name and address) on .....•.....{dale)
- (5) The deceased left surviving h m one spouse only (name) .....  
 {herein called "the surviving spouse') and the following child (children) only (names): .....•.....  
 (•SA) The deceased having married more than once under a system of law permitting polygamy left surviving him severalspouses one of which includes the applicant s mother (herein called "the surviving spouse") and the following child (children) only (names)..... ..
- (6) The power of appointment conferred by section 35(2) of the Law of Succession Act upon the surviving spouse has not been exercised (or has been exercised by the appointment of) (slate manner and in whose favour ): .....
- (7) I consider that the action of the surviving spousein not making an appo ntment constituted an improper and umeasonable withholding (or in so exercising the power of appo ntment constituted an improper and unreasonable exercise) of the statutory power in that behalf and I seek (on behalf of the minor applicant) an order to the following effect,namely (set oul): .....
- (8) The property of the deceased at date of death was (set out in full stating the nature and amount thereof): .....
- (9) The present capital assets of the surviving spouse and of the applicant respectively are (set out in full): . . . . .

- (10) In addition to the said capital assets the surviving spouse and I (or the minor applicant) respectively received the following items of capital which are no longer in existence or available (set out in full): .....
- (11) I anticipate that the surviving spouse and I (or the minor applicant) respectively may in the future receive the following capital assets (set out in full with a statement of the source and the anticipated date of receipt and of the expected gross and net income therefrom): .....
- (12) The present and anticipated future annual incomes of the surviving spouse and of myself (or the minor applicant) respectively are (state): ..... consisting of (state) .....
- (13) The present and anticipated future needs of the surviving spouse and of myself (or the minor applicant) respectively are (set out in full): .....
- (14) The deceased made no advancement or other gift to me (or the minor applicant) in his lifetime or by will (or the only gifts made to me (or the minor applicant) by the deceased by way of advancement during his lifetime or by will are as follows (state)): .....
- (15) My (or the minor applicant's) conduct in relation to the surviving spouse and to the deceased respectively consisted principally of (set out in general terms so far as relevant): .....
- (16) The situation and circumstance of each other person who has a vested or contingent interest in the net intestate estate of the deceased or as a beneficiary under any will of his so far as known to me are (state): .....
- (17) The surviving spouse's reasons for so withholding (or exercising) the said power of appointment are not known to me (or the minor applicant) (or so far as known to me (or the minor applicant) (state)):.....
- (18) The facts herein deposed (continue as in Form 2).

Sworn, etc., (as in Form 2).

- Delete either para. 5 or para. SA as appropriate.