



INSTITUTION OF PROBATE PROCEEDINGS

• GENERAL OVERVIEW OF PROBATE AND ADMINISTRATION OF ESTATES IN TANZANIA.

The issue of Probate and Administration of Estates in Tanzania is governed by the Probate and Administration of Estates Act, Chapter 352, (hereinafter referred to as "***the Act***"), together with the Probate and Administration of Estates Rules (hereinafter referred to as "***the Rules***"), Cap 352. The Act defines an Administrator or administratrix; in case it is a female, to be a person appointed by the court to administer the estate of a deceased person when there is no executor or no executor is able and willing to act.

The jurisdiction pertaining to probate proceedings in Tanzania as a general rule is categorized to the High Court and Primary Court. The High Court is the one vested with unlimited jurisdiction over any probate matter in terms of value or any mode of life of the deceased as per section 3 of the Cap 352. However, it has original, appellate and revision jurisdiction in almost all matters. Also, the High Court has jurisdiction to re-seal certain grants from other jurisdictions as per section 4 of the Probate and Administration of Estate Act, Cap.352. Primary court is vested with jurisdiction to entertain probate matters under Islamic or Customary law with unlimited jurisdiction as per section 18(1) (a) (i) of the Magistrate's Courts Act [CAP 11 Revised Edition, 2019].

Apart from the jurisdictions above, the law provides other special court for probate matters to include the District Delegate Court, established under section 5 of Cap 352, having unlimited jurisdiction for matters which are not contentious i.e. Islamic estate or customary power. Also, section 6(1) of Cap.352 provides for District Court been empowered to deal with administration of small estates, with powers to appoint Administrator of small estate.

PROCEDURES FOR INSTITUTION OF PROBATE PROCEEDINGS.

1. Filing an application for grant of probate or letters of administration. The first procedure that should be met in institution of probate proceedings, is filing of the application to the competent court for either grant of probate or letters of administration. For grant of probate, the petitioner shall file Form 18 accompanied by form 19, and for the letters of administration, form number 27 and 19 of Rules accompanied by a certificate of death of the deceased, an Affidavit as to the deceased domicile, administrator's oath, administrator bond, certificate as to the financial position of the sureties, consent of heirs and a minute from the family members as provided under Rules.



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1. After a petitioner filing an application for a grant of probate or a letter of administration, the court will issue a **general citation** which is in Form No. 58 of the Rules to inform the public that the petitioner has made an application that will enable him to be granted a probate or letters of administration. The general citation is advertised at the court which issued it, as well as in a newspaper of daily circulation in Tanzania. An interested party (in this instance, a caveator) upon seeing and/or taking notice of the general citation and if he/she intends to object to the application, will be required to lodge a **caveat** which is in Form No. 62 of the Rules. The caveat is to be filed within fourteen days (14) from the date of the last publication of such citation.

1. After a caveat is lodged, the petitioner is required to make an application for **citation to a caveator** via Form No. 63 of the Rule within thirty (30) days and in serving this application for citation to a caveator it is to be accompanied with a copy of the petition filed by the petitioner together with all other documents which were used to petition. If the petitioner fails to make such application within the timeframe specified, the Registrar of the court will issue **a notice to the petitioner** under Form No. 63A of the Rules directing the petitioner to lodge the application for citation to a caveator within a further period of twenty one (21) days from the date of the service of such notice. If upon receiving the notice and after the lapse of the additional twenty one (21) days which is more or so a grace period the petitioner fails to make the application for citation to a caveator, then the petition filed by the petitioner shall be deemed to have been withdrawn automatically, that is to say, the grant of probate or letters of administration will not be issued unless the petitioner files an application for restoration.

1. If the petitioner makes the application for citation to a caveator within the required timeframe, then upon such application to be received by the court, the Registrar will issue a **citation to a caveator** (hereinafter referred to as “the Citation”) which is in Form No. 64 of the Rules. The purpose of this is to call upon a caveator to state within a period of thirty (30) days from the date of service of the Citation, whether or not he supports the grant of probate or a letter of administration to the petitioner. If a caveator does not support the grant, will have to enter **appearance** by using Form No 65 of the Rules accompanied by an affidavit which will state the rights and interests of a caveator together with the grounds of objection to the petitioner’s application for the



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grant of probate or letters of administration. A copy of each of these documents will then be served on the petitioner.

1. Upon a caveator entering appearance in the modality described above, the proceeding takes form of a normal civil suit. That is to mean, for the purpose of determining a caveat, there will not be a probate cause but it will be a civil case pending determination of the probate cause. If a caveat is successful and is determined in favour of a caveator and upon the court being satisfied that the property which is the subject matter of caveat is not subject to distribution, then such property will be excluded from such distribution. However, if a caveator fails to prove his interest in the property, then the caveat will be dismissed and the matter will be taken back as an ordinary probate cause.

CONCLUSION.

Generally, upon receive of an application for either grant of probate or letters of administration, if no objection raised the court shall proceed to issue the grant of probate or letters of administration to the petitioner. The procedures that are discussed hereinabove are mandatory and important procedures that one must be conversant with in dealing with either grants of probate or letters of administration. It is also important to be well versed in the laws governing such procedures including but not limited to the Act and the Rules and also the appropriate court to file the matter.