



# **PROBATE PROCEEDINGS IN TANZANIA**

*By Winnerleah Amiel*

## **INTRODUCTION.**

Probate refers to the legal process of administering a deceased person's estate. This includes identifying and collecting the deceased's assets, paying any debts or taxes, and distributing the remaining assets to the beneficiaries named in the will. The probate proceedings depend whether the deceased died intestate (not leaving a will behind) or testate (leaving a will). When a person dies testate, a copy of will must be found where such will must be Valid. The will may appoint an executor who will petition for a grant of Probate as per section 55 of the Probate and Administration of Estates Act, Rule 33 of the Probate and Administration and Estates Rules, Probate may be granted only the executor as per section 24 of the Probate and Administration of Estates Act or Trust or Corporation may be granted probate as per section 21 of the Probate and Administration of Estates Act.

## **CONTENTIOUS POCEEDINGS IN THE GRANT OF PROBATE.**

This occurs where two or more parties are in dispute over probate The most common issues that give rise to contentious proceedings in probate and/or letters of administration matters include, but are not limited to disputes between executors/executrix and beneficiaries of a deceased's estate, disputes among beneficiaries of a deceased's estate, such as entitlements of such beneficiaries, validity of wills, whether made under duress, coercion or under undue influence; and disputes regarding the capacity of the executor/executrix. If a person intends to raise any objection(s) based on the mentioned grounds above then such a person will have to raise an objection which is known as a caveat. The procedure for lodging a caveat is governed by sections 58 and 59 of the Probate and Administration of Estates Act, Chapter 352,

### **The procedure are as follows:**

1. After a petitioner filing an application for a grant of probate, the court will issue a general citation which is in Form No. 58 of the Rules to inform the public that an applicant has made an application that will enable him to be granted a probate or letters of administration as provided under Rule 75 and 76 of the Rules.
2. 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 upon seeing and taking notice of the general citation and if he or 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 from the date of the last publication of such citation.

3. After a caveat is lodged, the petitioner is required to make an application for citation to a caveator through Form No. 63 of the Rules within thirty days and in serving this application for citation to a caveator it is to be accompanied with a copy of the petition that was filed by the petitioner together with all other documents which were used to petition. If the petitioner fails to make such application within the time frame specified above, 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 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 will not be issued unless the petitioner files an application for restoration.
4. If the petitioner makes the application for citation to a caveator within the required time frame, then upon such application to be received by the court, the Registrar will issue a citation to a caveator 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 days from the date of service of the Citation, whether or not he supports the grant of probate to the petitioner. If a caveator does not support the grant, he 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 grant of probate or A copy of each of these documents will then be served on the petitioner. In practice, sometimes an application by way of chamber summons is used instead of Form No. 65.
5. Upon a caveator entering appearance in the modality described above, the proceeding will take the 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.



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