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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**ACTS, 2018**

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**NAIROBI, 24th May, 2018**

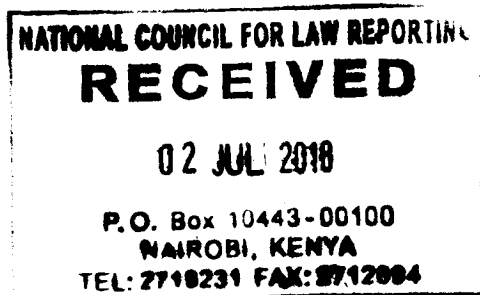
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CONTENT

Act—

PAGE

The Public Trustees (Amendment) Act, 2018 .....93



**THE PUBLIC TRUSTEE (AMENDMENT) ACT****No. 6 of 2018***Date of Assent: 16th May, 2018**Date of Commencement: 8th June, 2018***AN ACT of Parliament to amend the Public Trustee Act and for connected purposes****ENACTED** by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Trustee (Amendment) Act, 2018.

Short title.

2. The Public Trustee Act, in this Act referred to as “the principal Act”, is amended in section 2 by—

Amendment of section 2 of Cap. 168.

(a) inserting the following new definitions in their proper alphabetical sequence—

“Board” means the Investment Board established under section 5E;

“Certificate of Summary Administration” means a certificate issued under section 8;

“compensation” means compensation as provided for under the Work Injury Benefits Act or any compensation for death arising out of an accident;

No. 13 of 2007.

“enemy” has the meaning assigned to it under the Kenya Defence Forces Act;

No. 25 of 2012.

“missing person” means a person whose whereabouts are unknown despite reasonable efforts to locate the person and—

(a) who is no longer in communication or contact with those persons who the missing person would likely or ordinarily be in communication or contact with; or

(b) whose safety and welfare are feared for given the person’s physical or mental capabilities or the circumstances surrounding the individual’s absence; and

(c) who had not made provision for the administration of his or her property.

“Public Guardian” means the Public Trustee acting as trustee for a person who has impaired capacity and has no one willing or able to act on behalf of the person; and

“Public Trustee” means the Public Trustee appointed under section 5 of the Act and includes an officer appointed in an acting capacity for that position.

3. The principal Act is amended by inserting the following new section immediately after section 2—

Insertion of a new section into Cap. 168.

Objects of the Act.

**2A.** The objects of the Act are to provide for—

- (a) a manager, administrator, executor or trustee;
- (b) trustee and executor services to the public; and
- (c) the establishment of the Public Trustee Investment Board for purposes of investment.

4. The principal Act is amended by repealing section 3.

Repeal of section 3.

5. Section 5 of the principal Act is amended by deleting the word “Minister” and substituting therefor the word “Attorney-General”.

Amendment of section 5 of Cap. 168.

6. The principal Act is amended by inserting the following new sections immediately after section 5—

Insertion of new sections 5A, 5B, 5C, 5D, 5E, 5F and 5G into Cap. 168.

Qualification for appointment as a public trustee.

**5A.** A person qualifies for appointment as the Public Trustee if the person—

- (a) has at least fifteen years’ experience as a legal practitioner or is a distinguished academic in the legal field; or
- (b) qualifies to be appointed as a judge.

Office of the Public Trustee to be a body corporate.

**5B.** There is established an office to be known as the Public Trustee which —

- (a) shall be a body corporate with perpetual succession and a common seal;

2018

- (b) may acquire, hold and dispose of property; and
- (c) is capable of suing and being sued in its corporate name.

Missing persons.

**5C.** (1) Where a person is missing for at least one hundred and eighty days, the Public Trustee may make an application to the court and the court may by order—

- (a) declare the person to be a missing person; and
- (b) appoint the Public Trustee as trustee of—
  - (i) part of the property of the missing person; or
  - (ii) the missing person's property generally.

(2) On being appointed trustee under subsection (1), the Public Trustee may—

- (a) administer and may with the consent of the court sell, dispose of or otherwise deal with the property or any portion of it; and
- (b) pay out of the capital or income of the property—
  - (i) money that the missing person might otherwise have been liable to pay; and
  - (ii) money for the benefit of any or more of the following—
    - (a) a spouse or dependant of the missing person;
    - (b) a minor child of the missing person; and
    - (c) an adult child of the missing person who by reason of a physical or mental disability, is unable to earn a livelihood.

## (3) The Land Registrar—

- (a) on production of the order or a certified copy of the order referred to in subsection (1); and
- (b) on production of an instrument effecting a disposition of immovable property under subsection (2),

shall deal with the instrument in the same manner as if the instrument were executed by the missing person.

(4) The Public Trustee shall, by a further order of the court, with respect to the property of a missing person—

- (a) where the missing person is located, return the property to the person; or
- (b) where it is determined that the missing person is deceased, administer the estate or transfer the property to the personal representative of the person's estate.

(5) Where a court is seized of an application under this section, the court may only grant an order or consent to the sale, charge, transfer, exchange or disposal of any property if the total value does not exceed two hundred and fifty thousand shillings or ten percent of the gross value of the estate of the missing person, whichever is lower.

Act No. 25 of 2012

(6) The provisions of this section shall not apply to members of the Kenya Defence Forces in accordance with section 245 of the Kenya Defence Forces Act, 2012.

Payment of money for adults incapable of taking decisions by virtue of age, infirmity or other reasons to be determined by court.

**5D.** (1) On application, the court may appoint the Public Trustee to act as a guardian for adults who are incapable of taking decisions by virtue of age, infirmity or any other reason that may be considered by the court.

(2) Where any amount of money becomes payable to any person described under subsection (1), the amount may be paid to the Public Trustee.

(3) The Public Trustee shall charge fees under this section in accordance with any Rules made under the Act.

Public Trustee  
Investment Board.

**5E.** (1) There is established an Investment Board to be known as the Public Trustee Investment Board.

(2) The Investment Board shall comprise of—

- (a) the Solicitor-General as the Chairperson;
- (b) the person for the time being in charge of public investment and portfolio management at the ministry responsible for matters relating to finance or a designated representative;
- (c) one advocate having at least ten years' experience nominated by the Law Society of Kenya;
- (d) three persons with knowledge and at least fifteen years' experience in matters relating to finance, economics and investments —
  - (i) one of whom shall be of opposite gender from the other two ;
  - (ii) not being public officers; and
  - (iii) not being full time employees or directors of a public company;and
- (e) the Public Trustee.

(3) The members of the Board under subsection 2 (c) and (d) shall be appointed by the Attorney-General.

(4) The Investment Board shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Board in any financial year.

(5) The Board shall submit quarterly reports to the Attorney-General.

(6) A member of the Board appointed under section 5E (2) (c) and (d) shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(7) Appointment of the members of the Board under this section shall be done in a staggered manner separated by two months so that the respective expiry dates of their terms shall fall at different times.

(8) A Board member appointed under this Act may—

- (a) at any writing to the Attorney-General or otherwise cease to represent the interests of the nominating body; or
- (b) be removed from office by the Attorney-General if the person—
  - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson and is unable or has neglected to furnish any plausible reason for absence; or
  - (ii) is disqualified under any provision of the Constitution or any other written law from holding a public office.

(9) Members of the Board shall be paid such allowances as the Attorney-General shall determine from time to time.

(10) The Board, by instrument in writing, may from time to time resign from office by notice in time delegate to the Public Trustee its powers in respect of the investment of money as it deems fit.

(11) The Board may from time to time make by-laws for the control of its business and proceedings.

Functions of the  
Investment Board.

**5F.** (1) The functions of the Board shall be to—

- (a) review and oversee matters pertaining to the investment of estate and trust funds;
- (b) formulate, review and oversee the implementation of the Public Trustee Investment Policy; and
- (c) advise the Attorney-General on the management of the investment portfolio.

Receipt of  
payments by  
Public Trustee.  
No. 13 of 2007  
Cap. 189

**5G.** The Public Trustee may receive payments of compensation under the Work Injury Benefits Act, Pensions Act, Civil Servants Group Accident Insurance Scheme and any other payment arising from compensation as a result of an accident and administer the funds as prescribed.

**7.** The principal Act is amended by inserting the following new section immediately after section 6—

Insertion of new  
section 6A into  
Cap. 168.

Consent of a missing  
person.

**6A.** Where the consent of a person is required before the appointment of the Public Trustee as an administrator or trustee and the person required to give consent is declared to be missing by a court of law, the appointment of the Public Trustee may be made without the consent from the missing person having been obtained.

**8.** Section 8 of the principal Act is amended—

Amendment of  
section 8 of Cap.  
168.

- (a) in subsection (1) by deleting the words “five hundred thousand” appearing immediately after the word “exceeding” and substituting therefor the words “three million”;
- (b) by inserting the following new subsection immediately after subsection (1)—



(1A) Where the Public Trustee takes possession of an estate under subsection (1), the Public Trustee shall draw a Certificate of Summary Administration entitling him or her to administer and distribute the estate.

- (c) in subsection (2) by deleting the words “twenty thousand” and substituting therefor the words “one hundred thousand”;
- (d) by inserting the following new subsection immediately after subsection (2)—

(2A) The proposed grantee of the Certificate of Summary Administration shall submit to the Public Trustee a statutory declaration verifying that the gross value of the deceased’s estate does not exceed one hundred thousand shillings.

**9.** Section 11 of the principal Act is amended by deleting the words “five hundred” appearing in paragraph (ii) of the proviso and substituting therefor the words “three million”.

Amendment of section 11 of Cap. 168.

**10.** Section 12 of the principal Act is amended—

Amendment of section 12 of Cap. 168.

- (a) in subsection (2) by—
  - (i) inserting the words “section 8 (1) of” appearing immediately after the word “administering under”; and
  - (ii) deleting the words “two months” and substituting therefor the words “thirty days”;
- (b) by deleting subsection (5) and substituting therefor the following subsection—
  - (5) Where—
    - (a) upon the conclusion of the administration of the estate of a testate or intestate person, there remain in the possession of the Public Trustee funds of which the Public Trustee is unable to dispose by distribution in accordance with the law by reason of the untraceability of the person entitled to give a discharge, or for any other cause; or

(b) the Public Trustee is unable to conclude the administration of any trust as there are remaining funds of which he or she is unable to dispose by distribution in accordance with the law by reason of the untraceability of the beneficiaries under the trust or for any other cause,

the Public Trustee shall credit those funds to an account to be called the Unclaimed Estates Account and those funds shall be kept in the account for seven years, and if they remain unclaimed at the expiration of that period the funds together with any interest earned thereon shall be paid into the Consolidated Fund.

(c) by inserting a new subsection immediately after subsection (5)—

(6) If any claim is made to any part of the funds so transferred to the Consolidated Fund and if the claim is established to the satisfaction of the Public Trustee, the amount certified by the Public Trustee to be due to the claimant shall be paid, without interest, from the Consolidated Fund:

Provided that the Attorney-General may dispose of and distribute the estate or any part thereof among any kindred of the deceased or other persons having a legal claim thereto.

**11.** Section 16 of the principal Act is amended—

Amendment of section 16 of Cap. 168.

(a) in subsection (1) by deleting the word “one” appearing in the proviso and substituting therefor the word “three”;

(b) in subsection (2) by deleting the words “twenty thousand” and substituting therefor the words “two hundred thousand”.

**12.** The heading of Part III of the principal Act is amended by deleting the word “Trusts” and substituting therefor the words “Powers and Duties of the Public Trustee”.

Amendment of the heading to Part III of Cap. 168.

**13.** Section 17 of the principal Act is amended by—

Amendment of section 17 of Cap. 168.

(a) deleting subsection (1) and substituting therefor the following subsection—

(1) The Public Trustee may—

- (a) act as personal representative of a deceased person;
- (b) act as an ordinary trustee of any trust not prohibited under this Act or any other law;
- (c) act as a custodian trustee;
- (d) act as a custodian of property of missing persons;
- (e) act as a custodian of enemy property;
- (f) act as an administrator of the Estate Duty Act;
- (g) be appointed as a Public Guardian or Conservator;
- (h) be appointed trustee by a court of law;
- (i) act as a Registrar of wills; and
- (j) formulate, implement and oversee programmes to raise awareness on law of succession and trusteeship.

Cap 483.

(b) deleting subsection (2).

**14.** Section 21 of the principal Act is amended—

Amendment of  
section 21 of Cap  
168.

(a) by deleting the marginal note and substituting therefor the following new marginal note—

“Transfer of legacy, etc of minor or person suffering from mental disorder”.

(b) by deleting the words “of unsound mind” and substituting therefor the words “suffering from mental disorder”.

2018

*Public Trustee (Amendment)***No. 6**

**15.** Section 25 of the principal Act is amended—

Amendment of  
section 25 of Cap.  
168.

- (a) by deleting subsection (1);
- (b) in paragraph (2) (c) by deleting the word “Minister” and substituting therefor the word “Attorney-General”;
- (c) by deleting subsection (7);
- (d) by deleting subsection (8) and substituting therefore the following subsection—

(8) The Public Trustee may whenever necessary for the purposes of this Act, summon and examine witnesses on oath and compel the production of documents.

- (e) by inserting the following new subsection immediately after subsection (8)—

(9) The annual accounts of the Public Trustee shall be prepared, audited and reported in accordance with the Public Audit Act, 2015.

No. 34 of 2015.

**16.** Section 27 of the principal Act is amended by deleting the word “Minister” and substituting therefor the word “Attorney-General”.

Amendment of  
section 27 of Cap.  
168.

**17.** The principal Act is amended by inserting the following new sections immediately after section 27—

Insertion of new  
sections 28 and 29  
into Cap. 168.

Application of the  
Unclaimed Financial  
Assets Act No. 40 of  
2011.

**28.** The provisions in the Unclaimed Financial Assets Act that require institutions to remit unclaimed assets to the Unclaimed Financial Assets Authority shall not apply to the Public Trustee.”

Alternative dispute  
resolution.

**29.** The Public Trustee may apply alternative forms of dispute resolution mechanisms to resolve disputes relating to the administration of estates and trusts.

