

# THE AFRICANS' WILLS ORDINANCE, 1961

No. 35 of 1961

*Date of assent: 23rd December, 1961*

*Date of commencement: 26th December, 1961*

## AN ORDINANCE TO MAKE PROVISION FOR THE MAKING OF WILLS BY AFRICANS AND FOR MATTERS CONNECTED THEREWITH

ENACTED by the Legislature of the Colony and Protectorate of Kenya as follows:—

1. This Ordinance may be cited as the Africans' Wills Ordinance, 1961, and shall be construed as one with the Indian Succession Act, 1865, with the modifications specified in the First Schedule to this Ordinance.

Short title and construction.  
Act X of 1865

2. (1) In this Ordinance, and for the purposes of subsection (1) of section 9 of the Indian Acts (Amendments) Ordinance in relation to the Indian Succession Act, 1865, and the Probate and Administration Act, 1881, "African" shall have the meaning defined in section 5 of the Interpretation and General Provisions Ordinance, 1956, but shall not include any person who, after his death, on the motion of any other person, is proved to the satisfaction of the Court—

Interpretation.  
Cap. 2.  
Act X of 1865  
Act V of 1881  
38 of 1956

(a) to have been partly of non-African descent; and

(b) not to have lived among the members of any African tribe or community in accordance with their customary mode of life.

(2) Where, in any matter arising under or by virtue of this Ordinance, there is any reasonable doubt as to whether a deceased person was an African, the burden of proving that he was not an African shall be upon the person alleging that he was not an African.

3. The provisions of the Indian Succession Act, 1865, specified in the Second Schedule to this Ordinance, shall apply to all wills and codicils made by any African on or after 1st January, 1962.

Certain provisions of Act X of 1865 to apply to Africans.

4. Nothing in this Ordinance shall—

Savings.

(a) authorize a testator to bequeath property which he could not have alienated *inter vivos*;

(b) vest in the executor or administrator with the will annexed of a deceased person any property which such person could not have alienated *inter vivos*;

(c) deprive any person of any right of maintenance to which such person would otherwise have been entitled;

- (d) affect any law of adoption or of intestate succession, or the administration of intestate estates;
- (e) validate any testamentary disposition which would otherwise have been invalid, or invalidate any such disposition which would otherwise have been valid.

5. The Land Registration (Special Areas) Ordinance, 1959, is amended in accordance with the provisions of the Third Schedule to this Ordinance.

FIRST SCHEDULE (s. 1)  
MODIFICATIONS

<i>Section of Act</i>	<i>Modification</i>
191	There shall be substituted for the word "intestate" the word "deceased".
195	There shall be added the words "or to an universal or a residuary legatee".

SECOND SCHEDULE (s. 3)  
PROVISIONS APPLIED

Sections 46, 48, 49, 50, 51, 54 to 77 (both inclusive), 82, 83, 84, 85, 87 to 189 (both inclusive), 191 to 199 (both inclusive), 222, 223 and 333.

So much of Parts XXX and XXXI as relates to grants of probate and letters of administration with the will annexed.

Part XXXII so far as it relates to an estate of a deceased who has made a testamentary disposition which is capable of taking effect.

Parts XXXIII to XL (both inclusive) so far as they relate to an executor and an administrator with the will annexed.

THIRD SCHEDULE (s. 6)

THE LAND REGISTRATION (SPECIAL AREAS) ORDINANCE, 1959

There shall be substituted for subsection (1) of section 79 a new subsection as follows:—

(1) If no application for probate or for letters of administration in respect of any land or charge of a deceased proprietor is made within thirty days of the Registrar being informed of the death of the proprietor, or if such application having been made is not granted, or so far as any grant of probate or of letters of administration does not extend, the Registrar, after satisfying himself of the death of the proprietor, shall apply to the African court for the determination of the heirs, and the African court shall prepare a certificate showing every person entitled by or under native law and custom to any share in any land or charge of the deceased proprietor and specifying the nature and the extent of such share.

There shall be inserted, immediately after section 79, a new section as follows—

79A. Upon production of any grant of probate or of letters of administration applying to any land or charge, the Registrar shall register the personal representatives therein named as proprietors of such land or charge.

Registration after grant of probate or letters of administration.