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THE PUBLIC TRUSTEE ACT

CHAPTER 168

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CHAPTER 168

PUBLIC TRUSTEE ACT

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CHAPTER 168

PUBLIC TRUSTEE ACT

[Date of commencement: 29th May, 1925.]

An Act of Parliament to make provision for the appointment of a Public Trustee and to define his powers and duties

[Act No. 15 of 1951, Act No. 33 of 1955, Legal Notice 299 of 1956, Legal Notice 300 of 1956, Act No. 15 of 1961, Act No. 21 of 1961, Act No. 28 of 1961, Act No. 35 of 1962, Legal Notice 462 of 1963, Legal Notice 168 of 1964, Legal Notice 2 of 1964, Act No. 21 of 1966, Act No. 10 of 1969, Act No. 4 of 1973, Act No. 10 of 1976, Act No. 11 of 1993, Act No. 7 of 2007, Act No. 6 of 2018.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Public Trustee Act.

2. Interpretation

In this Act, except where the context otherwise requires—

"agent" means an agent of the Public Trustee appointed under section 25(2);

"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 (Cap. 236) or any compensation for death arising out of an accident;

"court" means any court having jurisdiction in the matter in question under the Law of Succession Act (Cap. 160);

"enemy" has the meaning assigned to it under the Kenya Defence Forces Act (Cap. 199);

"estate" means all immovable property and all movable property;

"letters of administration" includes any letters of administration, whether general or with a copy of the will annexed or limited in time or otherwise;

"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;

"Public Trustee" means the Public Trustee appointed under section 5 and includes an officer appointed in an acting capacity for that position;

"taxing officer" means the Registrar of the court or an officer duly appointed to act for him.

[Act No. 33 of 1955, s. 2, Act No. 35 of 1962, s. 2, Act No. 10 of 1976, s. 2, Act No. 6 of 2018, s. 2.]

2A. Objects of the Act

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.

[Act No. 6 of 2018, s. 3.]

3.

[Repealed by Act No. 6 of 2018, s. 4.]

4. Provisions of this Act to prevail

Where there is a conflict between any of the provisions of this Act and those of the Law of Succession Act (Cap. 160), the provisions of this Act shall prevail, unless it is expressly provided to the contrary in the Law of Succession Act (Cap. 160).

[Act No. 10 of 1976, s. 4.]

5. Appointment of Public Trustee

The Attorney-General may appoint a fit and proper person to be Public Trustee (hereinafter referred to as the Public Trustee), and may also appoint one or more Deputy Public Trustees and one or more Assistant Public Trustees to assist the Public Trustee; and any Deputy or Assistant so appointed shall, subject to any general or special orders of the Public Trustee, be competent to discharge any of the duties and to exercise any of the powers of the Public Trustee, and when discharging those duties or exercising those powers shall have the same privileges and be subject to the same liabilities as the Public Trustee.

[Act No. 28 of 1961, Sch., L.N. 168/1964, Sch., Act No. 11 of 1993, Sch., Act No. 6 of 2018, s. 5.]

5A. Qualification for appointment as a public trustee

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.

[Act No. 6 of 2018, s. 6.]

5B. Office of the Public Trustee to be a body corporate

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

[Act No. 6 of 2018, s. 6.]

5C. Missing persons

(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.

(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 (Cap. 199).

[Act No. 6 of 2018, s. 6.]

5D. Payment of money for adults incapable of taking decisions by virtue of age, infirmity or other reasons to be determined by court

(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.

[Act No. 6 of 2018, s. 6.]

5E. Public Trustee Investment Board

(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.

[Act No. 6 of 2018, s. 6.]

5F. Functions of the Investment Board

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.

[Act No. 6 of 2018, s. 6.]

5G. Receipt of payments by Public Trustee

The Public Trustee may receive payments of compensation under the Work Injury Benefits Act (Cap. 236), Pensions Act (Cap. 189), 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.

[Act No. 6 of 2018, s. 6.]

PART II – ADMINISTRATION OF ESTATES OF DECEASED PERSONS

6. Grant to Public Trustee

(1) Where a report of action taken under section 46 of the Law of Succession Act (Cap. 160) has been made to the Public Trustee, or where the Public Trustee has been informed of the death of any person in Kenya and has been requested to take action in respect of the deceased's estate by any person appearing to have a legitimate interest in the succession to, or administration of, the estate, the Public Trustee shall cause further inquiries to be made as to the estate of the deceased.

(2) If it appears to the Public Trustee as a result of inquiries made under subsection (1) as to the estate of a deceased person that—

- (a) the person died intestate;
- (b) the deceased, having made a will devising or bequeathing his estate or any part thereof, has omitted to appoint an executor;
- (c) the person or persons named as executor or executors in the will of the deceased are dead or have renounced probate thereof or otherwise are unable or unwilling to act;

- (d) probate of the will of the deceased or letters of administration with the will annexed to the deceased's estate has or have not been obtained within six months from the date of the death of the deceased;
- (e) the deceased has appointed the Public Trustee as an executor of his will; or
- (f) the whole or any part of the estate of the deceased has been left unadministered and the executors of the will of the deceased to whom probate has been granted, or the persons to whom a grant of letters of administration to the deceased's estate has been made, are dead or otherwise are unable or unwilling to complete the administration of the estate,

he may apply under the Law of Succession Act (Cap. 160) to the court for a grant of representation and the court shall, except for good cause shown, make a grant of representation to the Public Trustee.

(3) Where the Public Trustee has been requested in writing by the executor or administrator (as the case may be) to obtain a sealing in Kenya of any probate, letters of administration or any equivalent thereof in respect of the estate of a deceased person under the provisions of section 77 of the Law of Succession Act (Cap. 160), the Public Trustee may without any further formality apply to the court to seal and the court may seal the probate, letters of administration or any equivalent thereof.

(4) Nothing in this section shall prevent—

- (a) the Public Trustee from renouncing the executorship of any will; or
- (b) the court, in exercise of its discretion under section 66 of the Law of Succession Act, from granting letters of administration to the Public Trustee.

[Act No. 10 of 1976, s. 5.]

6A. Consent of a missing person

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.

[Act No. 6 of 2018, s. 7.]

7. Grant to Public Trustee in certain circumstances

Where the particular circumstances of any case appear to the court so to require, the court may, if it thinks fit for reasons recorded in its proceedings, of its own motion or otherwise, after having heard the Public Trustee, grant under the Law of Succession Act (Cap. 160) letters of administration to the Public Trustee notwithstanding that there are persons who, under that Act or any other written law, would in the ordinary course be legally entitled to administer the estate of the deceased person concerned in preference to the Public Trustee.

[Act No. 10 of 1976, s. 6.]

8. Administration of deceased's estate without grant

(1) Where the estate of a deceased person consists of property of an estimated gross value not exceeding three million and the deceased has died intestate or left a will in such circumstances that the Public Trustee may apply for a grant of

probate or letters of administration pursuant to section 6, the Public Trustee may take possession of, and administer the estate of, the deceased person without making an application under the Law of Succession Act (Cap. 160), to the court for probate or letters of administration, as the case may be, and no court fees shall be chargeable in respect of any such estate.

(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.

(2) Where the estate of a deceased person consists of property of an estimated gross value not exceeding one hundred thousand shillings, the Public Trustee, on the application of any person to whom probate or letters of administration, as the case may be, might be granted under the Law of Succession Act (Cap. 160) may at any time after the expiration of fourteen days after the death of the deceased, grant to that person a certificate entitling him to administer the estate of the deceased person and to pay out of the estate any debts or charges, and to pay, remit or deliver any surplus to the person or persons entitled thereto according to law, or as he may be directed by the Public Trustee.

(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.

(3) The Public Trustee shall not be bound to grant a certificate under subsection (2) unless he is satisfied as to the title of the applicant and of the value of the property left by the deceased, either by oath of the applicant, or by such other evidence as he may require.

(4) The grant of a certificate under subsection (2) shall be a full and final discharge of the Public Trustee as against all persons from any further liability in respect of the estate concerned.

(5) Where a certificate is granted under subsection (2)—

- (a) a fee shall be payable calculated at the rate of five per centum of the gross value of the estate;
- (b) the holder of the certificate shall have, in respect of the assets specified in the certificate, the same powers and duties and be subject to the same liabilities, as he would have had or been subject to if letters of administration had been granted and confirmed to him, but shall not be required—
 - (i) to file accounts or inventories of the assets of the deceased before any court or other authority; or
 - (ii) to give any bond for the due administration of the estate;
- (c) the Public Trustee may revoke the certificate on either of the following grounds—
 - (i) that the certificate was obtained by fraud or misrepresentation made to him; or
 - (ii) that the certificate was obtained by means of an untrue allegation of a fact essential in law to justify the grant though the allegation was made in ignorance or inadvertently,

and, on revocation of the certificate, the holder thereof shall, on the requisition of the Public Trustee, deliver it up to the Public Trustee, but shall not be entitled to the refund of any fee paid thereon, and if that person wilfully and without reasonable

cause omits to deliver up the certificate, he shall be guilty of an offence and liable to a fine not exceeding two thousand shillings, or to imprisonment for a period not exceeding three months, or to both such fine and imprisonment.

[Act No. 10 of 1976, s. 7, Act No. 11 of 1993,
Sch., Act No. 7 of 2007, Sch., Act No. 6 of 2018, s. 8.]

9. Grant to Public Trustee may be revoked and made to other person

(1) At any time after a grant of letters of administration to the Public Trustee under this Act, any person to whom the court might have committed administration if no such grant had been made may apply to the court for revocation of the grant and for a grant to himself of probate of the will or letters of administration; but no such application shall be made until seven days after notice in writing of intention to make it has been given to the Public Trustee.

(2) Upon such application the court, after hearing the Public Trustee if he appears, may revoke the grant to the Public Trustee and grant probate or letters of administration to the applicant subject to such limitations and conditions as the court thinks fit:

Provided that letters of administration granted to the Public Trustee shall not be so revoked unless the application is made within six months after the grant to the Public Trustee and the court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made.

(3) Upon a revocation and new grant, all the interest, powers, rights and duties of the Public Trustee in regard to the estate affected by the grant, and all liabilities of the Public Trustee under any contract or agreement entered into by him in relation to the estate or any part thereof, shall cease; and such portion of the estate as is left unadministered by the Public Trustee shall vest in the person obtaining the new grant, subject nevertheless to all lawful contracts theretofore made relating to the estate and to the allowance and payment of all outlays, disbursements, costs, fees, charges and expenses reasonably incurred in the administration thereof.

(4) This section shall apply in the case of an estate of which the Public Trustee has taken possession under section 8(1) as if there had been a grant of letters of administration to the Public Trustee on the date upon which he took possession.

10. Public Trustee to take charge of property on death of agent

If at any time the agent or agents in charge of any estate belonging to any person not residing in Kenya die leaving the property without any responsible person in charge thereof, the Public Trustee shall, when that fact comes to his notice, apply to the court for an order to take charge of the property, and the court shall make such order in the case as it thinks fit.

11. Disputes to be decided on petition by the court

Where probate of the will or letters of administration has been granted to the Public Trustee under this Act or where the Public Trustee, in accordance with the provisions of section 8(1), is administering the estate of a deceased person without having made application for any such grant, then, except as hereinafter provided, the court, on the petition of the Public Trustee or any person interested in the estate, shall decide all disputes, matters, claims and demands in respect thereof and shall make such orders as it thinks fit concerning the collection, sale, investment, disposal or administration of the estate:

Provided that—

- (i) in any case in which it appears to be not desirable that the matter in question should be so decided, the court may direct such proceedings to be instituted as appear proper for the due decision thereof;
- (ii) in the case of an estate consisting solely of property which does not exceed in gross value three million shillings, no petition referred to in this section shall be presented to the court, but the Public Trustee shall decide all disputes, matters, claims and demands arising out of or in respect of or in connexion with the estate, and shall make such orders as he thinks fit concerning the collection, sale, investment, disposal or administration of the estate, and the decision and order of the Public Trustee in respect of any of those matters shall be final and without appeal.

[Act No. 35 of 1962, s. 6, Act No. 21 of 1966, 1st Sch., Act No. 10 of 1969, Sch., Act No. 10 of 1976, s. 8, Act No. 11 of 1993, Act No. 7 of 2007, Sch., Act No. 6 of 2018, s. 9.]

12. Movable property to be realised

(1) The Public Trustee may convert into money all movable property of an estate which he administers under this Act, and may with the consent of the court convert into money all or any part of the immovable property of the estate:

Provided that if all parties interested in the immovable the property consent in writing to its conversion into money by the Public Trustee, or if the value of that property does not exceed five hundred thousand shillings and the Public Trustee is satisfied that the conversion of that property into money would be to the advantage of the estate, the consent of the court shall not be necessary.

(2) The Public Trustee shall cause advertisements to be published in the *Gazette* and in such other manner as he deems expedient calling upon the creditors of the person whose estate he is administering under section 8(1) of this Act to come in and prove their debts before him within the space of thirty days from the date of publication:

Provided that where the value of an estate is within the jurisdiction of a resident magistrate or a district magistrate under the Law of Succession Act (Cap. 160), it shall not be necessary for publication to be made in the *Gazette* but the Public Trustee shall cause the advertisements to be published in accordance with rules made under section 97 of that Act or, if the magistrate directs otherwise, in accordance with that direction.

(3) The Public Trustee shall, after the expiration of the period referred to in subsection (2), pay the debts proved, and if the whole thereof cannot be paid he shall pay a dividend thereon; and if he collects any further assets after making those payments, he shall, in case any part of the debts proved remains unpaid, pay that part and any debts subsequently proved before him, or a dividend thereon; but such debts as are subsequently proved shall first be paid a dividend in proportion to their amount equal to the dividend paid to creditors having previously proved their debts.

(4) After payment of all debts, fees and expenses incident to the collection, management and administration of the estate, the Public Trustee shall pay over the residue to the persons beneficially entitled thereto; and where those persons are resident outside Kenya payment may be made to an agent or representative duly authorized to receive it; and remittances made by registered letter shall be deemed equivalent to payment:

Provided that—

- (i) in the event of the Public Trustee being unable to trace the parties beneficially entitled to the residue of the estate or any of them, he shall transfer the residue or proportionate part thereof as the case may be to the unclaimed property account;
- (ii) where the Public Trustee has been granted letters of administration to the estate in Kenya of a person who at the time of his death was not domiciled, or who appears to the Public Trustee to have then not been domiciled, in Kenya, and a grant of probate of the deceased person's will or letters of administration to his estate has been made in the country of the deceased person's domicile, the Public Trustee may pay over or transfer to the person holding the grant the residue of the estate in Kenya without seeing to the application thereof and without incurring any liability in regard to that payment or transfer;
- (iii) where the deceased person was domiciled in a foreign State, the payment or transfer may be made to a consular officer of that State, whose receipt shall be a full and complete discharge to the Public Trustee in respect thereof.

(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.

(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.

[L.N. 172/1960, Sch., Act No. 21 of 1966, 1st Sch., L.N. 299/1956, Sch., Act No. 10 of 1976, s. 10, Act No. 11 of 1993, Sch., Act No. 7 of 2007, Sch., Act No. 6 of 2018, s. 10.]

13. Priority of Public Trustee's fees and expenses

Notwithstanding any rule of law to the contrary, the fees payable to the Public Trustee under this Act and any rules made thereunder and any court fees and realization expenses and other charges incurred by the Public Trustee in collecting and realizing the assets of the estate of a deceased person shall rank for payment

after any funeral expenses and death-bed charges of the deceased but in priority to all other expenses and to the debts for which the deceased was liable.

[Act No. 15 of 1951, s. 2, L.N. 168/1964, Sch., Act No. 10 of 1976, s. 11.]

14. Court may order partition of immovable property

(1) Any person beneficially interested in any immovable property vested in the Public Trustee may apply by petition to the court for a partition thereof, and the court, if satisfied that partition would be beneficial to all persons interested, may appoint one or more arbitrators to effect it.

(2) The report and final award of the arbitrators, setting out the particulars of the immovable property allotted to each of the parties interested, shall, when signed by them and confirmed by order of the court, be effectual, without any further conveyance, to vest in each allottee the immovable property so allotted; and, if the allotment be made subject to the charge of any money payable to any other interested party for equalising the partition, the charge shall take effect according to the terms and conditions in regard to time and mode of payment and otherwise which shall be expressed in the award.

15. Power to collect, realize and hand over assets to Administrator-General

(1) Where a person dies leaving estate in Kenya consisting of movable property only and also estate in Uganda, Tanzania, or Malawi administration whereof is committed to the Administrator-General or Public Trustee of any such territory, the Public Trustee may, if requested so to do by the Administrator-General or Public Trustee of the territory, and if satisfied that the reciprocal legislation exists in that territory and that the interests of creditors in Kenya will not thereby be prejudiced, apply to the court for an order, which order the court is hereby empowered to make, authorizing him to collect the assets of the estate in Kenya and hand them over to the Administrator-General or Public Trustee of that territory; and, upon the making of the order, the Public Trustee shall have the same rights and duties as regards the collection and realization of the assets of the estate as if administration had been committed to him, and shall not be liable therefor to any creditor or claimant, but shall be discharged from liabilities upon handing over the assets or the proceeds of the realization thereof to the Administrator-General or Public Trustee of that territory.

(2) There shall be chargeable in respect of proceedings under this section the following—

- (a) one half of the scale of the fees payable to the Public Trustee under this Act and the rules thereunder;
- (b) estate duty in accordance with the Estate Duty Act (Cap. 483);
- (c) fees of court; and
- (d) any out-of-pocket realization expenses and other charges or taxes incurred by the Public Trustee in collecting, realizing and disposing of or transmitting the assets, or the proceeds of realization thereof, of the estate in Kenya.

[Act No. 35 of 1962, s. 8, Act No. 21 of 1966, 1st Sch., Act No. 10 of 1976, s. 12.]

16. Treatment of assets received from outside Kenya

(1) Where the administration of an estate has been committed to the Public Trustee and he receives assets which at the time of the death of the deceased

were situated outside Kenya, those assets shall for all purposes be treated in the same manner as assets within Kenya at the time of death:

Provided that the fees chargeable by the Public Trustee on any assets or moneys received from outside Kenya only for the purpose of distribution among the heirs or beneficiaries shall be restricted to three per centum of the gross value of those assets or the net amount of money received.

(2) Where any person entitled to a share under the will, or otherwise in the distribution of the estate, of a deceased person whose estate is being administered by the Public Trustee is a minor, the court may, upon the application of the Public Trustee, appoint the father or mother of the minor or some other suitable person to receive the share of the minor on his behalf, and when the appointment is made the Public Trustee may pay the share of the minor to that person on behalf of the minor, and the receipt of that person shall be a full and complete discharge to the Public Trustee so far as regards that share:

Provided that, where the share of the minor does not exceed two hundred thousand shillings in value, the Public Trustee may pay or transfer it to the father or mother of the minor or some other suitable person on behalf of the minor, and the receipt of the father or mother or other person referred to herein shall be a full and complete discharge to the Public Trustee in respect of that share.

[Act No. 4 of 1973, Sch., Act No. 11 of 1993, Sch., Act No. 6 of 2018, s. 11.]

PART III – POWERS AND DUTIES OF THE PUBLIC TRUSTEE

[Act No. 6 of 2018, s. 12.]

17. Duties of Public Trustee

(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 (Cap. 483);
- (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.

(2) *Deleted by Act No. 6 of 2018, s. 13.*

(3) The Public Trustee may decline either absolutely, or except on such conditions as he may impose, to accept any trust.

(4) The Public Trustee shall not accept any trust under any composition or scheme of arrangement for the benefit of creditors.

(5) The Public Trustee shall not, save as provided by any rules made under this Act, accept any trust which involves the management or carrying on of any business.

[Act No. 15 of 1951, s. 3, L.N. 462/1963, Sch., L.N. 168/1964, Sch., Act No. 6 of 2018, s. 13.]

18. Appointment of Public Trustee as trustee by person creating trust

(1) Any person intending to create a trust other than a trust which the Public Trustee is prohibited from accepting under this Act may, by the instrument creating the trust, and with the consent of the Public Trustee, appoint him by that or any other sufficient description to be either sole or joint trustee of the property subject to the trust:

Provided that the consent of the Public Trustee shall be recited in the instrument, and the instrument shall be duly executed by the Public Trustee.

(2) Upon any such appointment, the property subject to the trust shall vest in the trustee or trustees either solely or jointly, and shall be held by him or them upon the trusts declared in the instrument.

19. Appointment of Public Trustee as trustee by court

If the property is subject to a trust other than a trust which the Public Trustee is prohibited from accepting under this Act, and there is no trustee within Kenya willing or capable to act in the trust, the court may on application make an order for the appointment of the Public Trustee by that name with his consent to be the trustee of that property.

20. Custodian trustee

(1) Subject to any rules made under this Act, the Public Trustee may, if he consents to act as such, and whether or not the number of trustees has been reduced below the original number, be appointed to be custodian trustee of any trust—

- (a) by order of the court made on the application of any person on whose application the court may order the appointment of a new trustee; or
- (b) by the testator, settlor, or other creator of any trust; or
- (c) by the person having power to appoint new trustees.

(2) Where the Public Trustee is appointed to be custodian trustee of any trust—

- (a) the trust property shall be transferred to the custodian trustee as if he were sole trustee, and for that purpose vesting orders may, where necessary, be made under the Trustee Act (Cap. 167);
- (b) the management of the trust property and the exercise of any power or discretion exercisable by trustees under the trust shall remain vested in the trustees other than the custodian trustee (which trustees are hereinafter referred to as the managing trustees);
- (c) as between the custodian trustee and the managing trustees, and subject and without prejudice to the rights of any other persons, the custodian trustee shall have the custody of all securities and documents of title relating to the trust property, but the managing trustees shall have free access thereto, and be entitled to take copies thereof or extracts therefrom;
- (d) the custodian trustee shall concur in and perform all acts necessary to enable the managing trustees to exercise their powers of management or any other power or discretion vested in them (including the power to pay money or securities into court), unless the matter in which he is requested to concur is a breach of trust, or involves a personal liability upon him in respect of calls or otherwise,

- (e) all sums payable to or out of the income or capital of the trust property shall be paid to or by the custodian trustee—

Provided that the custodian trustee may allow the dividends and other income derived from the trust property to be paid to the managing trustees or to such person as they direct, or into such bank to the credit of such person as they may direct, and in that case shall be exonerated from seeing to the application thereof and shall not be answerable for any loss or misapplication thereof;

- (f) the power of appointing new trustees, when exercisable by the trustees, shall be exercisable by the managing trustees alone, but the custodian trustee shall have the same power of applying to the court for the appointment of a new trustee as any other trustee;
- (g) in determining the number of trustees for the purposes of the Trustee Act (Cap. 167), the custodian trustee shall not be reckoned as a trustee;
- (h) the custodian trustee, if he acts in good faith, shall not be liable for accepting as correct and acting upon the faith of any written statement by the managing trustees as to any birth, death, marriage, or other matter of pedigree or relationship, or other matter of fact, upon which the title to the trust property or any part thereof may depend, nor for acting upon any legal advice obtained by the managing trustees independently of the custodian trustee;
- (i) the court may, on the application of either the custodian trustee, or any of the managing trustees, or of any beneficiary, and on proof to its satisfaction that it is the general wish of the beneficiaries, or that on other grounds it is expedient to terminate the custodian trusteeship, make an order for that purpose, and the court may thereupon make such vesting orders and give such directions as under the circumstances seems to the court to be necessary or expedient.

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

If any person suffering from mental disorder, within the definition of that term contained in section 2 of the Mental Health Act (Cap. 248) of whose estate the Public Trustee has been appointed manager under section 38 of that Act, or any minor is entitled to any gift legacy or share of the assets of a deceased person, the person by whom the gift is made, or the executor or administrator by whom the legacy or share is payable or transferable, or any trustee of any gift, legacy or share, may transfer it by an instrument in writing to the Public Trustee by that name or any other sufficient description with his consent:

Provided that the consent of the Public Trustee shall be recited in the instrument and the instrument shall be duly executed by the Public Trustee.

[Act No. 35 of 1962, s. 9, Act No. 6 of 2018, s. 14.]

PART IV – GENERAL

22. Security not required

The Public Trustee shall not be required by any court to enter into any bond or security on his appointment in any capacity under this Act.

23. Court orders

The court may make such orders as it thinks fit respecting any trust property vested in the Public Trustee or the interest or produce thereof.

24. Power to incur expenditure

The Public Trustee may, in addition to any other powers of expenditure lawfully exercisable by him, incur expenditure on such acts as may be necessary for the proper care and management of any property belonging to any trust or estate administered by him.

25. Other provisions regarding Public Trustee

(1) Deleted by Act No. 6 of 2018, s. 15.

(2) The Public Trustee shall appoint such person or persons as he shall think fit to act as his agents in the managing, collecting and getting in of property belonging to deceased persons whose estates are in course of administration by him or of any estate of which he is the trustee; and the agents shall—

- (a) in all respects act in the management, collection and getting in of property under the direction of the Public Trustee, who shall not be answerable for any act or omission of an agent not in conformity with his direction or which has not happened by the Public Trustee's own fault or neglect;
- (b) find security to the satisfaction of the Public Trustee for the performance of his duty;
- (c) be remunerated either by salary or by such fees or portion thereof chargeable under this Act as the Attorney-General shall fix.

(3) In all proceedings under this Act and in all proceedings at law, the Public Trustee shall sue and be sued by the name of the Public Trustee, and it shall be necessary to state and prove his authority and title in the specific estate to which the proceedings may relate, but not his general authority or appointment.

(4) The Public Trustee shall be at liberty without the previous leave of the court to instruct and employ an advocate in any case he thinks fit and the advocate shall be remunerated out of the funds of the particular estate involved.

(5) Whenever the office of Public Trustee becomes vacant by the death or removal or absence from Kenya of the Public Trustee for the time being, and another officer is appointed to that office during the pendency of any petition, action, suit or other proceeding that petition, action, suit or other proceeding shall not abate or become defective, but shall be continued by or against the officer newly appointed.

(6) Neither the Public Trustee nor any agent shall be personally liable to any person in respect of goods or chattels in the possession at the time of his death of any person whose estate is administered by the Public Trustee, which shall be sold by the Public Trustee or agent, unless the Public Trustee or agent knew or had actual notice before the sale that the goods or chattels were not in fact the property of the person whose estate is being administered by him; and generally neither the Public Trustee nor an agent shall be liable for any act done by him *bona fide* in the supposed and intended performance of their duties, unless it is shown that the act was done not only illegally, but wilfully or with gross negligence:

Provided that, in case of a sale by the Public Trustee or agent of goods or chattels belonging in fact to any third person, the amount realized by the sale

thereof shall be paid over to the owner upon proof by him of ownership, unless it has already been applied in payment of the debts of the deceased or has been distributed according to a will of the deceased in the ordinary course of administration whilst the Public Trustee or agent was in ignorance and without actual notice of the claim of that person to the goods or chattels sold.

(7) Deleted by Act No. 6 of 2018, s. 15.

(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.

(9) The annual accounts of the Public Trustee shall be prepared, audited and reported in accordance with the Public Audit Act (Cap. 412B).

[L.N. 300/1956, Sch., L.N. 173/1960, Sch, Act No. 6 of 2018, s. 15.]

26. Government liability for acts of Public Trustee

(1) The Government shall be liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private executor, administrator or trustee, would be personally liable to discharge, except when the liability is one to which neither the Public Trustee nor any of his officers has in any way contributed, and which neither he nor any of his officers could by the exercise of reasonable diligence have averted, and in that case, the Public Trustee shall not, nor shall the Government, be subject to any liability.

(2) Every sum required to meet a liability of the Government under this section shall be charged upon and paid out of the Consolidated Fund.

[Act No. 21 of 1961, Sch.]

27. Rules

The Attorney-General may make rules for—

- (a) defining the duties of the Public Trustee;
- (b) defining the powers and liabilities of agents, appointing such persons as may be thought advisable to be *ex officio* agents, fixing the amount of security to be given by agents and generally regulating their duties;
- (c) prescribing forms and scales of fees;
- (d) the safe custody, deposit and investment of funds which come into the hands of the Public Trustee; and
- (e) generally making provision for the better carrying out of the purposes of this Act.

[L.N. 300/1956, Sch., L.N. 173/1960, Sch, Act No. 6 of 2018, s. 16.]

28. Application of the Unclaimed Financial Assets Act (Cap. 494)

The provisions in the Unclaimed Financial Assets Act (Cap. 494) that require institutions to remit unclaimed assets to the Unclaimed Financial Assets Authority shall not apply to the Public Trustee.

[Act No. 6 of 2018, s. 17.]

29. Alternative dispute resolution

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

[Act No. 6 of 2018, s. 17.]
