

WHERE THERE IS A VALID WILL (TESTATE SUCCESSION)

Application for grant of probate

Preliminary steps

1. Obtain the original will plus two photocopies (of the will)
2. The deceased's death certificate

Where there is a valid will, an application to determine the validity of the will (grant of probate) can be filed by:

- a) Persons named as executors to the will
- b) Persons other than the executor(s) provided they can demonstrate special circumstances such as death of the executor(s), authority from the executor etc.

The following documents are filed:

- P&A 78-Petition
- P&A 3-Affidavit
- Original will (annexed)
- Two photocopies of the will
- Certified copy of the death certificate

If the will is held to be valid, inheritance is done in accordance with the wishes of the deceased.

Important points to note:

1. The will could either be oral or written.
2. The number of persons applying for grant of probate should not exceed four.
3. If the value of the deceased person's property is greater than 20 million shillings these documents should be filed at the High court.
4. If the value of the deceased person's property is less than 20 million shillings then these documents should be filed at the Magistrate's court.

1



WHERE THERE IS NO VALID WILL (INTESTACY)

Application for letters of Administration

This arises when either a person dies without a will or the will left by the deceased is held to be invalid by the probate court.

An applicant in such cases petitions the court for grant of letters of administration intestate. The following documents are lodged in the registry (depending on the age of the persons surviving the deceased):

i) Widow or widower (with minor children) as survivors

- P&A 80-Petition
- P&A 5-Affidavit
- P&A 11-Affidavit of justification (Proposed sureties)
- P&A 12-Affidavit of justification (Proposed administrator)
- P&A 57-Guarantee of personal sureties
- Certified copy of the death certificate
- Applicant's identity card
- A letter from the area chief listing all the beneficiaries to the property, their ages and relationship with the deceased
- Identity cards of all sureties (those who have taken responsibility for what you say)
- Proof of ownership of the property of the deceased e.g. Title deeds, logbooks, share certificates etc.

2



ii) Widow or widower (with adult children) as survivors

- P&A 80-Petition
- P&A 5-Affidavit
- P&A 12-Affidavit of justification (Proposed administrator)
- P&A 38-Consent form
- A letter from the area chief listing all the beneficiaries to the property, their ages and relationship to the deceased
- Certified copy of the death certificate
- Applicant's identity card
- Identity cards of the beneficiaries (those entitled to the property of the deceased)

iii) Minors as beneficiaries

The application for letters of administration shall be made by not more than two adult relatives appointed by court to hold the property on behalf of the minors until they become adults. Unless the administrator is the public trustee who is legally allowed to be a sole administrator.

Important points to note:

1. The number of persons applying for letters of administration should not exceed four.
2. After an application has been filed, with or without a will annexed, one must publish a notice in the Kenya Gazette; and wait for 30 days to allow for any objections.
3. Any person with an objection must clearly state them in court for determination.



Document filing:

File all the documents above at the nearest court for approval and assessment of fees.

3



Payment:

Once an invoice is issued by the deputy registrar, make two separate payments for the court fee and gazette fee at the specified bank. Present the bank slips at registration to obtain receipts.

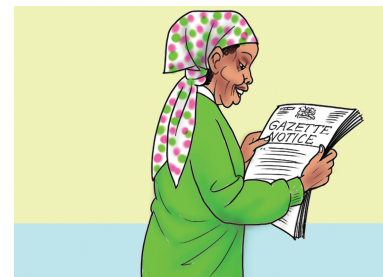
4



Gazette:

Once the notice is published in the Kenya Gazette, wait for 30 days to allow for any objections.

5



Letter of administration:

Six months after gazette, if there is no objection, grant of letters of administration is issued.

6



Errors in names, descriptions, place and time of death may be rectified before or after the confirmation of grant.

If the error is fundamental and likely to interfere with the rights of parties then the parties should apply for the grant to be cancelled after which the court will direct the parties to re-apply.

N/B Rectification is for correcting errors only not redistribution

APPLICATION FOR A LIMITED GRANT

This is an application made to enable transactions for a specific reason as one waits for the full grant (such as payment of school fees, selling farm produce and other acts necessary in collecting and preserving the estate)

Who is entitled to apply for a limited grant?

- a. A person appointed in the will as the one to manage the property of the deceased (executor)
- b. An adult who is not bankrupt and is of sound mind
- c. Any person can apply for a limited grant. However, priority is given to the spouse, children and parents, according to the degree of closeness.

Required documents

1. A letter from the area chief listing all the beneficiaries to the property, their ages and relationship to the deceased
2. Certified copy of the death certificate
3. Applicant's identity card
4. Identity cards of the beneficiaries (those entitled to the property of the deceased)
5. Form P&A 85-Petition
6. Form P&A 19-Affidavit

CONFIRMATION OF GRANT

Six months after gazette, if there is no objection, an application to confirm the grant of administration and distribution of estate must be applied for (issued).

