

Act
No. 14 of 2011

I assent

NGWAZI PROF. BINGU WA MUTHARIKA

PRESIDENT

18th August, 2011

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An Act to provide for the making of wills and the devolution of property under a will; the inheritance to the estates of persons dying without valid wills; the protection of deceased estates; the administration of deceased estates; the prosecution of offences relating to deceased estates; the civic education of the public; the functions of courts in relation to deceased estates and for other connected matters

ENACTED by the Parliament of Malawi as follows-

PART I – PRELIMINARY

- Short title **1.** – This Act may be cited as the Deceased Estates (Wills, Inheritance and Protection) Act, 2011.
- Application **2.** – (1) Subject to subsection (2) this Act shall apply to the administration of estates of all persons dying domiciled, or leaving property, in Malawi on or after the date upon which it comes into operation; but any property belonging to the estate of such persons which, at the coming into operation of this Act, remains partly or wholly undistributed, shall be distributed in accordance with the provisions of this Act.
- (2) This Act shall not apply to any benefit or other entitlement of a deceased person occurring out of a pension fund unless that benefit or entitlement was already payable or had accrued at the time of the deceased's death.
- Interpretation **3.** – (1) In this Act, unless the context otherwise requires –
- “administration grant” means the grant made under section 65;
- “administrator” means a person to whom a grant of letters of administration or administration grant has been made under this Act;
- “child” means, a child of the deceased person, regardless of the circumstances of the birth of the child and includes an adopted child, and an unborn child in the womb of its mother ;

“court” means the High Court or a court having jurisdiction as specified under section 20;

“court of probate” means a court or authority by whatever name designated, in any country, having jurisdiction in matters of probate;

“dependant” in relation to a deceased person means a person, other than a member of the immediate family, who was maintained by that deceased person immediately prior to his or her death and who was-

- (a) his or her parent; or
- (b) a minor whose education was being provided for by that deceased person, who is not capable, wholly or in part, of maintaining himself or herself;

“executor” means a person to whom the administration of the estate of a testator or part of such estate is entrusted by express or implied appointment under a will;

“guardian” means a person who has lawful or legitimate custody, care or control of a child in place of a parent;

“hardship” in relation to any person means deprivation of the ordinary necessities of life according to the way of living enjoyed by that person during the lifetime of the intestate, and in the case of a minor includes deprivation of the opportunities for education which he or she could reasonably have expected had the intestate continued to live;

“household belongings” means articles and effects of every description used in, and for the purpose, of maintaining and enjoying a home and family life;

“inheritable property” includes all causes of action which survive the deceased, clothing and institutional money but does not include any property which passes to another person by right of survivorship;

“institutional money” means money –

- (a) held on a deposit or current account with a bank or a financial or similar institution;
- (b) due under any policy of insurance or assurance;
- (c) due under provisions of any provident fund or similar provision for employees;

- (d) by way of gratuity, pension, terminal benefits, leave pay or otherwise under the terms of employment of the deceased;
- (e) received by any public officer, other than the Administrator General, or received by a bank or a financial or similar institution, as representing the property of a person domiciled in Malawi who has died outside Malawi;
- (f) held by way of treasury bills or other government bonds;
- (g) due under a court order;
- (h) due under the Workers' Compensation Act; or
- (i) held in or with such other institution as the Minister may prescribe by an order published in the *Gazette*;

Cap. 55:03

“intestate property” means property in respect of which there is an intestacy under section 16;

“immediate family”, in relation to any person, means that person's spouse and children;

“minor” means a person who has not yet attained the age of eighteen years unless:

- (a) the person is lawfully married;
- (b) the person is heading a household and is not below the age of fourteen years; or
- (c) the person holds property in his or her own right in accordance with this Act or any other written law;

“parent” includes an adoptive parent, foster parent or any other person acting in whatever way as parent;

“personal representative” includes an administrator and executor;

Cap. 4:07

“probate” means the certificate of the court that a will, of which a certified copy in accordance with the Oaths, Declarations and Affirmations Act is attached, has been proved a valid will;

“Probate Rules” means rules made by the Chief Justice under section 22;

“provident fund” means fund for the future welfare of any person and includes a similar provision for employees;

Cap. 3:02

Registrar” means the Registrar of the High Court as defined under the Courts Act;

“small estate” means the estate of a deceased person consisting of property which does not exceed K1,000,000 or such higher amount as the Minister shall from time to time specify by notice in *Gazette* in value at the date of the death of the deceased without making any deduction for debts;

“spouse” means a person’s husband or wife in relation to a marriage recognized under section 22(5) of the Constitution;

“will” means a legal declaration by a person of his or her wishes or intentions regarding the disposition of his or her property after his or her death.

(2) A person is said to die intestate if he or she dies without leaving a will which is valid in accordance with Part II of the Act.

Variation of customary law relating to inheritance

4. Except as provided for in this Act, no person shall be entitled under any other written law or under customary law to take by inheritance any of the property to which a deceased person was entitled at the date of his or her death.

PART II – WILLS

Capacity to dispose of property by will

5. – (1) Subject to this Act, a person who is of sound mind and is not a minor may dispose of all or any of his or her property after his or her death by will.

(2) A will may appoint persons who are not minors to administer the estate of the testator or any property which is disposed of by will.

(3) Subject to section 6, disposal of property by will may be made to any person and subject to any condition other than special provision.

(4) A parent may by his or her will appoint a guardian of his or her minor child for the administration of the benefits of such child under the will; and subject to Part XIII, a guardian so appointed shall,

to the exclusion of any customary guardian, have such powers as are conferred by law upon a guardian.

(5) Where a person appointed as a guardian under subsection (4) dies or otherwise desists from taking up the appointment, the court shall appoint another person as a guardian in the absence of the initial appointee.

(6) A will may nominate a subordinate court to which applications relating to the administration of the testator's estate may be made and a court so nominated shall, subject to section 20, have jurisdiction accordingly.

Making
of wills

6. –(1) Every will shall be made in writing and shall be signed by the testator in the presence of at least two competent witnesses who shall also sign the will in the presence of the testator and in the presence of each other as witnesses to the signature of the testator.

(2) Any person who is of sound mind and is not a minor shall be a competent witness for the purpose of this section.

(3) A will may be made outside Malawi in respect of any property in Malawi and a will so made shall be valid if made in accordance with the provisions of this section or of the law of the place where it was made, or the law of the place where the testator had his or her domicile when the will was made.

(4) Notwithstanding the other provisions of this section and of section 5 (1), a member of the defence forces of Malawi, on actual service as such, may make a will which shall be valid notwithstanding that he or she is a minor or that any of the formalities required by this section have not been complied with.

(5) Subject to subsection (6), the Minister may, for the guidance of the general public, by notice in the *Gazette*, prescribe a form in which a will may be made.

(6) The validity of a will shall not be affected by reason of the fact that it is not made in the form prescribed by the Minister or any other form if that will otherwise complies with the requirements of this section.

Witness under
will

7. – (1) Subject to subsection (2), a person who witnesses the testator's signature of a will and a spouse of such witness shall not be

entitled to take any benefit under the will but shall be entitled to act as executor of the will:

Provided that a beneficiary under a will shall not be disentitled to a benefit under the will by reason that he or she or his or her spouse has attested a codicil confirming the will.

(2) A benefit under a will to a witness who is a member of the immediate family of the testator shall be valid if a court is satisfied, upon the application of or on behalf of the witness, that-

- (a) there was no other competent person who could have been witness to the will;
- (b) the benefit is fair in all the circumstances or the benefit consists of property that would have devolved to the witness upon intestacy; and
- (c) there is no evidence of fraud, coercion, undue influence or other impropriety or suspicious circumstances surrounding the making of the will.

(3) A benefit to a witness as provided under subsection (2) shall not take effect except upon an order of the court made after hearing the application in respect thereof confirming the conditions set out in that subsection.

Safe custody
of will

8. – (1) A living person may deposit his or her will for safe custody with the Registrar or at the office of the District Commissioner or a resident magistrate or a magistrate of the first grade subject to such conditions relating to the deposit and withdrawal thereof as may be prescribed in Probate Rules.

(2) Nothing in this section shall preclude the deposit of a will with any other person, whether such other person is a bank, an insurer, a law firm, an administrator of a provident fund or an employer.

Revocation
and alteration
of wills

9. – (1) The testator may at any time revoke his or her will-

- (a) by destroying the will with the intention to revoke it; or
- (b) by making in a subsequent will or some document executed like a will a statement of his or her intention to that effect.

(2) Where a testator dies having made more than one will the latest in time of the said wills shall prevail over the earlier wills to the extent of any revocation, variation or inconsistency.

(3) No obliteration, interlineations or other alteration made in a will after its execution has any effect unless such alteration is signed and attested as a will is required to be signed and attested under section 6, or is referred to in a memorandum written at the end or some other part of the will and so signed and attested.

Effect of
subsequent
marriage
and divorce

10. – (1) A will shall be revoked by the marriage after the making of the will by the testator unless the will was made in contemplation of marriage with the person who becomes the spouse of the testator as the case may be.

(2) Upon the end of a marriage of a testator by reason of divorce, unless the will provides otherwise-

(a) any gift made in a will in existence at the time the marriage ends by the testator to the spouse; or

(b) any appointment of the spouse as an executor, trustee, advisory trustee or guardian made by the will,

shall be revoked.

PART III – CONSTRUCTION OF WILLS

Intention of
the testator
to prevail

11. – (1) Subject to the provisions of this Part and Part IV, it shall be the duty of a court, in construing a will, to give effect to the intention of the testator so far as such intention can be ascertained from the wording of the will, and, in so doing, the court shall not be bound to follow any statutory provision, rule of common law or doctrine of equity.

(2) The intention of a testator, as disclosed by his or her will, shall not be set aside because it cannot take effect to the full extent, but effect shall be given to it as far as possible.

Where two
constructions
possible

12. Where any clause of a will is susceptible of two meanings, one of which has some effect and one of which can have none, the former shall be preferred.

Will to speak
as from death

13. – (1) Every will shall be construed with reference to the estate comprised therein, so as to take effect as if made immediately before the death of the testator.

(2) A gift to a person who predeceases the testator shall lapse and be of no effect.

Technical words and terms not necessary

14. It shall not be necessary for technical words or terms of art to be used in a will, but only that the wording be such that the intention of the testator can be ascertained therefrom.

PART IV – PROVISION IN A WILL FOR THE IMMEDIATE FAMILY OF THE TESTATOR

Provision for immediate family not adequately provided for by will

15. – (1) Subject to section 11, on the application in the prescribed manner of a person claiming to be, or to be acting on behalf of, a member of the immediate family of a testator, a court may, if it is satisfied that-

- (a) the applicant is a member of the immediate family or person acting on behalf of such member; and
- (b) the testator has, inadvertently or otherwise, omitted to make a reasonable provision in his or her will for such member,

order that a reasonable provision shall be made for the member in accordance with this section.

(2) Where an application is made under subsection (1), it shall be competent for the court to order, as the court considers on reasonable grounds to be just and proper, that such part of the value of the testator's estate after payment of the testator's debts and funeral and administration expenses of the estate, be applied for the maintenance of the member, and the manner in which it is to be so applied.

(3) In considering whether an order under this section should be made and, if so, what order is proper, the court shall have regard to-

- (a) the nature of testator's property;
- (b) any past, present or future capital or income from any source of the applicant;
- (c) the conduct of the applicant in relation to the testator and otherwise;
- (d) the circumstances of the other members of the immediate family and the beneficiaries under the will; and
- (e) the general circumstances of the case.

PART V – INTESTACY

Property in respect of which there is intestacy

16. – If a person dies without having left a will valid under section 6, there shall be an intestacy in respect of the property to which he or she was entitled at the date of his or her death:

Provided that if the deceased person left a will which does not dispose of all his or her property there shall be an intestacy in respect of the property which is not disposed of by will.

Principles of distribution of intestate property to immediate family and dependants

17. – (1) Upon intestacy the persons entitled to inherit the intestate property shall be the members of the immediate family and dependants of the intestate and their shares shall be ascertained upon the following principles of fair distribution -

(a) protection shall be provided for members of the immediate family and dependants from hardship so far as the property available for distribution can provide such protection;

(b) every spouse of the intestate shall be entitled to retain all the household belongings which belong to his or her household;

(c) if any property shall remain after paragraphs (a) and (b) have been complied with, the remaining property shall be divided between the surviving spouse or spouses and the children of the intestate;

(d) as between the surviving spouse or spouses and the children of the intestate their shares shall be determined in accordance with all the special circumstances including-

(i) any wishes expressed by the intestate in the presence of reliable witnesses;

(ii) such assistance by way of education or other basic necessities any of the spouses or children may have received from the intestate during his or her lifetime; and

(iii) any contribution made by the spouse or child of the intestate to the value of any business or other property forming part of the estate of the intestate, and in this regard the surviving spouse shall be considered to have contributed to the business unless proof to the contrary is shown by or on behalf of the child,

but in the absence of special circumstances the spouses and children shall, subject to subsection (3) be entitled to equal shares;

(e) as among the children of the intestate, the age of each child shall be taken into account with the younger child being

entitled to a greater share of the property than the older child unless the interests of the children require otherwise; and

(f) in the absence of any spouse or child of the intestate the property described in paragraph (c) shall be distributed between the dependants of the intestate, if more than one, in equal shares.

(2) If the intestate left more than one female spouse surviving him each living in a different locality, each spouse and her children by the intestate shall be entitled to a share of the property of the intestate in their locality in accordance with this section; but such spouse and children shall have no claim to any share of the property of the intestate in the locality where another spouse lives:

Provided that this subsection shall not apply to the property of the intestate of a value exceeding a small estate or institutional money or private land.

(3) If the intestate left more than one female spouse surviving him all living in the same locality, each spouse and her children by the intestate shall be entitled to a share of the property of the intestate proportionate to their contribution.

(4) Re-marriage shall not deprive a surviving spouse of property inherited under intestacy except in the case of property on customary land where title in that property shall devolve to the children of the spouse by the intestate upon the re-marriage of the surviving spouse.

Inheritance
of intestate
property by
other
relations

18. – In the absence of the beneficiaries to the estate of an intestate referred to under section 17, the whole of such property comprising the estate of the intestate shall be distributed as follows –

(a) the grandchildren of the intestate shall, if they survive the intestate, be entitled in equal shares;

(b) if none of the persons referred to in paragraph (a) survive the intestate, the brothers and sisters of the whole blood of the intestate shall, if they survive the intestate, be entitled in equal shares and failing any surviving brothers and sisters of the whole blood of the intestate, the brothers and sisters of the half blood of the intestate shall, if they survive the intestate, be entitled in equal shares;

(c) if none of the persons referred to in paragraphs (a) and (b) survive the intestate, the grandparents of the intestate shall, if they survive the intestate, be entitled in equal shares;

(d) if none of the persons referred to in paragraphs (a), (b) and (c) survive the intestate, the uncles, aunts, nephews and nieces of the intestate shall be entitled in equal shares;

(e) if none of the persons referred to in paragraphs (a), (b), (c) and (d) survive the intestate, other relatives who are in the nearest degree of consanguinity shall, if they survive the intestate, be entitled in equal shares; or

(f) if none of the persons referred to in paragraphs (a), (b), (c) and (d) survive the intestate, the Government shall be entitled to take title in the property comprising the estate of the intestate.

PART VI – SURVIVORSHIP

Uncertainty
regarding
survivorship

19. Where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such death shall, subject to any order of a court, for all purposes affecting rights in, to or over property, be presumed to have occurred in order of seniority in the age of the deceased persons, and accordingly the younger shall be deemed to have survived the elder.

PART VII – JURISDICTION OF COURTS AND POWERS OF CONSULAR OFFICERS

Jurisdiction of
courts and
powers of
consular
officers

20. – (1) Subject to this section, the High Court shall have jurisdiction in all matters relating to the probate and the administration of estates of deceased persons, with power to grant probates of wills and letters of administration to the estates of deceased persons and to alter or revoke such grants.

(2) The High Court shall have jurisdiction to reseal grants of probate and letters of administration made by a court of probate in any country.

(3) A court of a resident magistrate or a court of a magistrate of the first grade shall exercise jurisdiction relating to the estate of a

deceased person which is a small estate to grant probate and letters of administration in relation thereto.

(4) No act of a magistrate exercising jurisdiction under subsection (3) shall be invalid because it is afterwards discovered that the gross value of the estate exceeds the limit of a small estate but the magistrate shall report to the High Court any such discovery of which he or she becomes aware.

(5) The High Court may direct that any proceedings under this Act in a court of a resident magistrate or magistrate of the first grade are to be removed to and continued in the High Court:

Provided that the High Court shall not give any direction under this subsection unless it considers that it is necessary in the interests of justice or for the protection of a beneficiary or creditor that the estate should be administered under the supervision of the High Court.

(6) The High Court may authorize the payment to an executor or administrator of remuneration for his or her services as such, to such extent as, in all circumstances, appears reasonable:

Provided that nothing in this subsection shall be construed so as to deprive an executor of remuneration to which he or she is entitled under the provisions of a will.

Grants to
Consular
Officers

21. – (1) Where a foreign national–

(a) dies within Malawi; or

(b) dies outside Malawi leaving property within Malawi, and no person is present in Malawi at the time of his or her death who is rightfully entitled to administer the estate of such deceased person, a consular officer of the foreign State of which the deceased is a national, within Malawi, may take possession of the property of such deceased person, and shall be entitled to obtain from the court letters of administration of the property of such deceased person limited in such manner as the court may deem fit.

(2) Where any person who is a foreign national is a person to whom a grant of representation to the estate of a deceased person in Malawi may be made, then, if the court is satisfied that such national is not resident in Malawi, the court may, on the application of a consular officer of that State, make to that consular officer such grant of representation to the estate of the deceased as would be made to him or her if he or she were duly authorized by power of attorney to act for the person entitled to the grant.

(3) Letters of administration granted to a consular officer shall be granted to him or her in his or her official style and title and not in his or her personal name, and the estate of the deceased shall vest in each successive holder of the office during his or her continuance in office without any order of court or instrument whatsoever.

(4) Where a person who is a foreign national—

(a) is entitled to any money or other property in Malawi forming part of the estate of a deceased person, or to receive payment in Malawi of any money becoming due on the death of a deceased person; or

(b) is among the persons to whom any money or other property of a deceased person may under any written law be paid or delivered without any grant of probate or other proof of title,

then, if that national is not resident in Malawi, a consular officer of that foreign State of which he or she is a national shall have the right and power to receive and give a valid discharge for any such money or property as if he or she were duly authorized by power of attorney to act for him in that behalf:

Provided that no person shall be authorized or required by this subsection to pay or deliver any money or property to a consular officer if it is within his or her knowledge that any other person in Malawi has been expressly authorized to receive that money or property on behalf of such national.

(5) Notwithstanding any rule of law conferring immunity or privilege in respect of the official acts and documents of consular officers, a consular officer shall not be entitled to any immunity or privilege in respect of any act done by virtue of the powers conferred on him or her by or under this section or in respect of any document for the time being in his or her possession relating thereto.

Chief Justice
to make
Probate Rules

22. – (1) The Chief Justice may make Probate Rules—

(a) regulating proceedings for the grant of probate and letters of administration and other proceedings under this Act;

(b) for the procedure to be observed in relation to wills deposited under section 8 and for the preservation, copying and inspection of wills and grants of probate and administration;

(c) prescribing fees and forms; and

(d) generally in relation to matters of probate and letters of administration.

(2) Without prejudice to the generality of subsection (1), Probate Rules may require a person to whom a grant of letters of administration is made to give security for the due administration of the estate by a bond with one or more sureties and for the furnishing of accounts to court.

(3) A bond for the due administration of an estate shall engage the parties thereto to make payment to the Registrar or a resident magistrate or magistrate of the first grade.

(4) Upon the application of any person beneficially interested in the estate and upon being satisfied that the engagement of any such bond has not been kept the Court may direct the Registrar to, or a resident magistrate or a magistrate of the first grade shall, assign the bond to some proper person and thereupon such person shall be entitled to sue on the bond in his or her own name as if it had originally been given to him or her and not to the Registrar or resident magistrate or magistrate of the first grade and to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

PART VIII – PROTECTION OF ESTATES PENDING GRANT

Receiver
pending grant

23. Where any person dies leaving property in Malawi, the court, may appoint such person as the court thinks fit to be a receiver of probate or letters of administration, if it appears on the application of any person –

- (a) claiming to be interested in such property;
- (b) having custody or control thereof at the time of the death of the deceased; or
- (c) being at such time an attorney of the deceased,

that there is danger that such property may be wasted or may otherwise be dealt with in contravention of this Act.

Sale against
receiver

24. The court may, on application by a receiver of property appointed under section 23, or any person interested in the estate, order the sale of the whole or any part of such property, if it appears that such sale will be beneficial to the estate.

Suits against
receiver

25. A person aggrieved may bring a suit against a receiver appointed under section 23 in relation to any thing done or intended to be done by him or her in respect of the property of the deceased in the exercise or intended exercise of the powers vested in him or her.

Chief Justice to make rules for application to receiver

26. The Chief Justice may make rules to guide the court in hearing an application for appointment of a receiver under section 23.

PART IX – RENUNCIATION BY EXECUTORS

Express renunciation of right to probate

27. A person who is entitled to probate may expressly renounce such right orally on the hearing of any application to the court or in writing signed by the person making the renunciation and attested by a person before whom an affidavit may be sworn.

Citation and presumed renunciation

28. – (1) A person claiming an interest in the estate of a deceased person or a creditor of a deceased person may cause to be issued by the court a citation directed to the executors appointed by the will of the deceased calling upon them to accept or renounce their executorship.

(2) A person served with a citation may acknowledge service thereof, but if he or she defaults on the terms of the acknowledgement of the service, he or she shall be deemed to have renounced his or her executorship; and if, having made such acknowledgement, he or she does not proceed to apply for probate, the court may limit the time within which such application is to be made and if the application for probate is not made within the time so limited the executor in default shall be deemed to have renounced his or her right to probate and the court may appoint another person it deems fit to be the executor of the estate.

Effects of renunciation

29. Renunciation under section 27 or 28 shall preclude the right of the person so renouncing to probate but the court may at any time grant probate to such person if it is shown that the grant is likely to benefit the estate or the persons interested therein.

PART X – GRANT OF PROBATE AND LETTERS OF ADMINISTRATION BY THE COURT

Grants to corporations

30. – (1) A corporation or company or trust corporation may be granted probate or letters of administration either solely or jointly with another person.

(2) Probate or letters of administration shall not be granted to a syndic or nominee on behalf of a corporation or company.

Number of executors and administrators

31. – (1) Probate or letters of administration shall not be granted to more than four persons in respect of the same property.

(2) In the case of a minority or life interest under a will or on intestacy, probate or letters of administration shall, subject to the maximum number specified in subsection (1), be granted to not less than two persons and a court shall appoint another person to act as an executor or an administrator in such cases if there is one person acting as such at any time.

Beneficiary may oppose appointment of executor or administrator

32. Any beneficiary under a will or on intestacy may apply to the court opposing the appointment of an executor or an administrator under a will or on intestacy.

Grant of probate

33. – (1) Probate may be granted only to an executor appointed by the will, and shall not be granted to a minor or person of unsound mind.

(2) The appointment of an executor may be express or by necessary implication.

(3) Where several executors are appointed, probate may be granted to them simultaneously or at different times.

(4) If an executor is appointed by the will for a limited purpose only, probate shall not be granted to him or her except limited to that purpose.

Estate duty affidavit

34. Every application for a grant of probate or letters of administration shall be accompanied by a copy of the estate duty affidavit and by a certificate of the Secretary to the Estate Duty Commissioners under section 33 of the Estate Duty Act.

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Probate of copy, draft or contents of will

35. – (1) Where a will has been lost or mislaid or has been destroyed by a wrong or an accident and not only by any act of the testator–

(a) if a copy or draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it is admitted to probate;

(b) if no such copy or draft has been preserved, probate, limited as provided in paragraph (a), may be granted to the contents of the will if they can be established by evidence.

(2) Where a will is in the possession of a person outside Malawi who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, probate may, if the interests of the estate so require, be granted of the copy so transmitted, limited as provided in paragraph (a).

Codicil
propounded
after probate

36. Where, after probate has been granted, a codicil of the will is propounded, probate may be granted of the codicil:

Provided that where the codicil expressly revokes the appointment of any executor to whom probate has been granted, such probate shall be revoked and a new probate granted of the will and codicil together.

Authenticated
copy of will
proved abroad

37. Where a will has been proved and deposited in a court of competent jurisdiction outside Malawi, and a properly authenticated copy of the will is produced, probate may be granted of the authenticated copy of the will or letters of administration granted with a copy of the authenticated copy of the will attached.

Effect of
probate

38. – (1) Probate of a will when granted establishes the will and evidences the title of the executor from the death of the testator.

(2) Probate of a will shall also have the effects described in section 50.

Failure of
executors

39. – (1) Subject to subsections (2) and (3), where–

- (a) no executor is appointed by a will;
- (b) the executor or all the executors appointed by a will have renounced, or are persons to whom probate may not be granted;
- (c) no executor survives the testator;
- (d) all the executors die before obtaining probate or before having administered all the estate of the deceased; or
- (e) the executors appointed by any will do not appear and take out probate,

letters of administration with the will annexed may be granted of the whole estate or so much thereof as may be unadministered to such person or persons as the court deems the fittest to administer the estate.

(2) A prior right to such grant shall belong to the following persons in the following order–

- (a) a universal or residuary beneficiary;
- (b) an executor or administrator of a deceased universal or residuary beneficiary;
- (c) such person or persons, being beneficiaries under the will, as would have been entitled to a grant of letters of administration if the deceased had died intestate;

- (d) a beneficiary having a beneficial interest;
- (e) a creditor of the deceased; and
- (f) the Administrator General as the public trustee.

(3) A court shall not grant letters of administration with the will annexed in respect of a will by which an executor is appointed, if the executor—

- (a) is living and his or her whereabouts are known; and
- (b) is a person to whom probate may be granted; and
- (c) has not renounced his or her office,

unless and until a citation has been issued calling upon the executor to accept or renounce his or her office and the executor has renounced or has been deemed to have renounced his or her office in accordance with sections 27 and 28.

Attorney of
absent
executor

40. Where any executor is absent from Malawi, and there is no other executor within Malawi willing to act, letters of administration with the will annexed may be granted to a lawfully constituted attorney, ordinarily resident within Malawi, of the absent executor, limited until the absent executor obtains probate for himself or herself, and in the meantime to any purpose to which the attorney's authority is limited.

Attorney of
person entitled
to letters of
administration

41. Where any person, to whom letters of administration might be granted under section 39, is absent from Malawi, letters of administration with the will annexed may be granted to his lawfully constituted attorney ordinarily resident in Malawi, limited in the manner provided in section 40.

Codicil
propounded after
letters of
administration
granted

42. The provisions of section 36 shall apply in the case of a grant of letters of administration with the will annexed in like manner as they apply in the case of a grant of probate.

Letters of
administration
on intestacy

43. – (1) Where the deceased has died intestate, letters of administration of his or her estate may be granted to any person who, under sections 17 or 18, would be entitled to the whole or any part of such deceased's estate.

(2) Where more than one person applies for letters of administration, it shall be in the discretion of the court to make a grant to any one or more of them, and in the exercise of its discretion the court shall take into account greater and immediate interests in the deceased's estate in priority to lesser or more remote interests.

(3) Where no person as mentioned in subsection (1) applies for letters of administration, letters of administration may be granted to a creditor of the deceased.

(4) Where it appears to the court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of letters of administration, the court may, in its discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as it thinks fit to be administrator; and in every such case letters of administration may be limited or not as the court thinks fit.

Attorney of person entitled to administration

44. Where a person entitled to letters of administration in the case of an intestacy is absent from Malawi, and no person equally entitled is willing to act, letters of administration may be granted to a lawfully constituted attorney, ordinarily resident in Malawi, of such person, limited until such person obtains letters of administration himself or herself and in the meantime to any purpose to which the attorney's authority is limited.

Letters of administration pending production of will

45. When no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy thereof is produced.

Pending litigation

46. Pending the determination of any proceedings touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing such estate, and every such administrator shall be subject to the immediate control of the court and shall act under its discretion.

Trust property

47. Where a person dies, leaving property of which he or she was the sole surviving trustee, or in which he or she had no beneficial interest on his or her own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his or her behalf.

Grants with exception

48. Whenever the nature of the case requires that an exception be made, probate or letters of administration with or without the will annexed shall be granted subject to such exception.

Grants of
excepted part

49. Whenever a grant with exception of probate or letters of administration with or without the will annexed has been made, further grant may be made of the part of the estate so excepted.

Effects of grant
of letters of
administration
or probate

50. – (1) Subject to all such limitations and exceptions contained therein and, where the grant is made for a special purpose, for that purpose only, letters of administration entitle the administrator to all rights belonging to the deceased as if the letters of administration had been granted at the moment of his or her death:

Provided that letters of administration shall not render valid any intermediate acts of the administrator tending to the diminution or damage of an intestate's estate.

(2) Probate and, subject to subsection (1), letters of administration have effect over all the inheritable property of the deceased throughout Malawi and—

(a) shall be conclusive against all debtors of the deceased and all persons holding inheritable property of the deceased;

(b) afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Death of one of
several
executors or
administrators

51. Subject to section 31, where probate or letters of administration have been granted to more than one executor or administrator and one of them dies, the representation of the estate to be administered shall, in the absence of any direction in the will or grant, accrue to the surviving executor or administrator.

Death of sole
surviving
personal
representative

52. Subject to section 31, on the death of a sole or sole surviving executor who has proved the will or of a sole or sole surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in granting such letters of administration the court shall apply the same provisions as apply to original grants:

Provided that where one or more executors have proved the will or where letters of administration with the will annexed have been issued, the court may grant letters of administration under this section without citing an executor who has not proved the will.

Expiry of
limited grant
when estate not
fully
administered

53. When a limited grant has expired by lapse of time, or the happening of the event of contingency on which it was limited and

there is still some part of the deceased's estate unadministered, letters of administration may be granted to those persons to whom original grants might have been made.

PART XI – REVOCATION AND ALTERATION OF GRANTS AND REMOVAL OF EXECUTOR AND ADMINISTRATOR

Rectification of errors

54. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or in specifying the purpose in a limited grant, may be rectified by the court, and the grant of probate or letters of administration may be altered and amended accordingly.

Revocation of grants and removal of executors or administrators

55. – (1) The grant of probate and letters of administration may be revoked or annulled for any of the following reasons—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

(d) that the grant has become useless and inoperative;

(e) that the person to whom the grant was made has without reasonable cause omitted to furnish an account of his or her administration after having been lawfully called upon to do so or has prepared an account which is untrue in a material respect.

(2) Where it is satisfied that the due and proper administration of the estate and the interests of the persons beneficially entitled thereto so require, the court may suspend or remove an executor or administrator and provide for the succession of another person to the office of such executor or administrator who may cease to hold office, and for the vesting in such person of any property belonging to the estate.

Payments by or to representatives whose grants are revoked

56. – (1) Where any probate is, or letters of administration are, revoked, all payments made in good faith to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same.

(2) The executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself or herself out of the assets of the deceased in respect of any payments made by him or her which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Surrender of
revoked grants

57. – (1) When a grant of probate or letters of administration is revoked under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the court which made the grant.

(2) If the person wilfully and without sufficient cause omits so to deliver up the probate or letters, he or she shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for three months.

PART XII – RE-SEALING

Sealing of
certain grants
made outside
Malawi

58. – (1) Where a court of probate has, before or after this Act, granted probate or letters of administration to the estate of a deceased person, the court–

(a) upon production of–

- (i) the grant so made;
- (ii) a duplicate sealed with the seal of the court which made the grant; or
- (iii) a copy certified by or under the authority of the court of probate which made the grant; and

(b) upon the deposit of a copy of the grant,

may seal with the seal of the court the document so produced and deposited and thereupon the grant so made outside Malawi shall be of the like force and effect and have the same operation in Malawi as if granted by the court.

(2) Probate Rules may prescribe the security to be given and evidence of domicile to be furnished in relation to any application for sealing under subsection (1).

PART XIII – SMALL ESTATES

Application

59. This Part shall apply only to small estates except as may be otherwise expressly provided.

Exercise of jurisdiction by magistrate courts

60. – (1) Parts VIII, IX, X and XII shall not apply to the exercise by a court of resident magistrate or a court of a magistrate of the first grade of jurisdiction under this Act, but instead this Part shall apply.

(2) Part XI shall apply to a court of resident magistrate or a court of a magistrate of the first grade as though an administration grant made by such court was a grant of probate or of letters of administration.

Relatives may agree between themselves

61. – (1) Where all the members of immediate family and dependants of a deceased person who are not minors agree on the manner of distribution and administration of a small estate they may proceed in accordance with such agreement:

Provided that–

(a) such agreement shall be recorded at the District Commissioner's office;

(b) this section shall not apply to the distribution or administration of private land or institutional money;

(c) no such agreement shall prevent a court from exercising its jurisdiction under this Act; and

(d) upon an application to a court relating to such estate the rights of the persons entitled to any share or interest in the estate shall be the rights and interests provided for in this Act notwithstanding any agreement to the contrary.

(2) Where none of the members of the immediate family and dependants of a deceased person who are not minors is not available to proceed in accordance with subsection (1), persons comprising the next degree of consanguinity of the relations of the deceased person as outlined under section 17, who are not minors and survive the deceased, may agree on the manner of distribution and administration of the small estate subject to the proviso in subsection (1).

Private land

62. Where a small estate includes private land, no dealing with such land shall, subject to Part VIII, be lawful until an administration grant has been made in respect of the estate under section 65.

Institutional
money

63. – (1) Where upon the death of a person, institutional money is payable to the executor or administrator or to members of the immediate family or to dependants of that person or to any person, such institutional money shall be dealt with in accordance with this section.

(2) Where subsection (1) applies –

(a) the executor or administrator or a member of the immediate family or a dependant of the deceased or any person in possession of evidence that institutional money is payable may report the death of the deceased to the District Commissioner of the district which the deceased claimed to be or was known to be the deceased's district of origin or where the deceased ordinarily resided prior to his or her death, and on making such report, shall deposit with the District Commissioner the evidence that institutional money is payable together with a death certificate or other suitable evidence of the death;

(b) in the event that there is more than one District Commissioner as referred to in paragraph (a) they each receive a report of the death of a person, the District Commissioners shall decide, giving due weight to the wishes of the members of the immediate family, or failing agreement among such members, of the most senior member of the immediate family, which of the District Commissioners shall proceed under this section and if the District Commissioners fail so to decide, the District Commissioner preferred by the members of the immediate family or, where applicable by the most senior member of the immediate family shall have the authority to proceed under this section;

(c) the District Commissioner shall thereupon verify the amount of the institutional money and shall cause enquiries to be made whether or not such money is disposed of by any will made by the deceased;

(d) where it appears to the District Commissioner that the institutional money may have been disposed of by a valid will he or she shall take no further action except to advise the persons concerned to apply for an administration grant under section 65;

(e) where it appears to the District Commissioner that the institutional money is not disposed of by a valid will, he or she shall refer the matter to court and shall request the court to certify the beneficiaries of the institutional money and their shares and the creditors of the deceased;

(f) in the reference under paragraph (e), the District Commissioner shall set out the facts of the case to the best of his or her knowledge or information;

(g) upon receipt of the reference under paragraph (e), the court shall certify who are the beneficiaries or creditors of the deceased and their shares and shall forward the certificate to the District Commissioner who made the reference;

(h) upon receipt of a certificate issued under paragraph (g) and a request for payment by a District Commissioner, the holder of or a person liable to pay, the institutional money shall within ninety days from the date of the request send to the District Commissioner a separate cheque payable to each of the persons shown in the certificate for the amount shown therein to be payable to him or her:

Provided that in the case of any person shown to be a minor the cheque shall be made payable to the Government and the District Commissioner shall open a separate deposit account for every such minor and shall deposit therein the amount due to the minor.

(3) The receipt of a District Commissioner for a sum paid to the District Commissioner under subsection (2) by the holder of, or by a person liable to pay institutional money shall be a good discharge to the person paying the money for the sum so paid.

(4) Money held by a District Commissioner under a deposit account on behalf of a minor under subsection (2) may be applied for the benefit of such minor by the District Commissioner deems fit.

(5) Where subsection (1) applies and institutional money is disposed of by will, payment may be made to the personal representative of the deceased.

(6) Where institutional money is due under a contract of employment, a policy of insurance or assurance, a provident fund, the employer, insurer or administrator of a provident fund shall, if it appears that the institutional money is not disposed of by a valid will, refer the matter to court, setting out the facts as known according to available information and shall request the court to certify the beneficiaries and their shares and the creditors of the deceased, and the certificate of the court shall be authority for the employer, insurer or administrator of a provident fund to make payments to the beneficiaries and the creditors.

Production to court of a will and court to which application may be made

- 64.** – (1) Where a person dies having left a will–
- (a) if the will has been deposited with any person under section 8 and a court to which an application is made under subsection (4) so requests, or if a court to which an original will is produced sends the will to the Registrar, the Registrar shall send to the court making the request or sending the original will two certified copies of the will;
- (b) in any other case the person in possession of the will shall produce the original will to a court to which an application may be made under subsection (4) and may apply to such court for an administration grant.

(2) Any person with whom a will is deposited under section 8 shall, on request of the court, forward the will to the court.

(3) Where an original will is produced to a court under subsection (1) (b), the court shall make a copy thereof and issue written notices under section 65.

- (4) A person who has verified the fact that a deceased person left a will which is deposited for safety under section 8 may apply to–
- (a) the court nominated by the will;
- (b) the court having jurisdiction in the area in which the deceased ordinarily resided prior to his or her death;
- (c) the court having jurisdiction in the area in which private land belonging to the estate is situated;
- (d) such other court as may be prescribed,

for a certified copy of the will to be produced to the court, and for an administration grant.

Administration grant

65. – (1) Any person interested in a small estate as executor of a will, beneficiary or, under a will or intestacy, creditor of an estate, may apply to a court for an administration grant in such manner as may be prescribed.

(2) Before hearing any application under subsection (1), the court shall, by notice, require the members of the immediate family and the persons, if any, named in the will, if any, as executors to attend before the court for the hearing of the application on a date and at a time specified in the notice, which date shall not be less than thirty days and not more than sixty days from the date of service of the notice.

Effects of
administration
grant

66. Subject to section 63, an administration grant entitles the administrator to all the inheritable property of the deceased with effect from the date of the death of the deceased.

Death or
disability of
administrator

67. If a person to whom an administration grant has been made dies or becomes unable by reason of illness, whether physical or mental, or any other cause to carry out his or her duties before the estate has been fully administered, the other persons to whom the grant was made, if more than one, shall be entitled to continue and complete the administration:

Provided that on the application of any interested person the court may and, if there is only one remaining administrator, shall appoint another administrator.

Guardians

68. – (1) Where it is known to a court that a guardian of a minor has been appointed by a will, the court shall not appoint any other person to be guardian of that minor except in exercise of its powers under section 73.

(2) A court may direct the transfer to, or the vesting in, the guardian of a minor of any property of the minor and may authorize or direct the sale of the property of a minor or any part thereof.

(3) A guardian appointed by a will or under this Act shall be entitled to represent the interests of the minor in any proceedings in court relating to the administration of the estate in which the minor has a share.

Duties and powers
of administrator
or executor

69. – (1) The duties of every administrator and executor, where applicable shall be–

(a) to pay the debts and funeral expenses of the deceased and to pay estate duty if estate duty is payable;

(b) if the deceased left a valid will, to distribute the property disposed of by the will in accordance with the provision thereof or of an order of court under section 15;

(c) in respect of intestate property, to effect a distribution thereof in accordance with the rights of the persons interested therein under this Act.

(2) Where a sale of any of the property forming part of the estate of a deceased person is necessary or desirable in order to carry out the duties outlined in subsection (1) the administrators shall have power to

sell such property in such manner as appears likely to secure receipt of the best price available for such property.

(3) Where the value of the property to which a person was entitled at the date of his or her death is less than the limit of a small estate, an administrator of his or her estate shall not be deemed to be an executor within the meaning of the Estate Duty Act.

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Expenditure
for care and
management

70. An administrator or guardian may incur expenditure on such acts as may be necessary for the proper care and management of any property belonging to the estate of a deceased person or to a minor.

Administrator or
guardian not to
derive benefit

71. – (1) Unless there is express provision to that effect in the will, no administrator or guardian shall derive any pecuniary benefit from his or her office.

(2) If an administrator or guardian purchases, either directly or indirectly, any part of the property of the deceased or of a minor for whom he or she is responsible, the sale may be set aside by the court on the application made within a reasonable time of any other person interested in the property sold or in the proceeds of sale.

Exercise powers
of several
administrators

72. – (1) Where there are several administrators, the powers of all may, in the absence of any direction to the contrary in the will or administration grant, be exercised by the majority of them.

(2) Where there are only two administrators, the court shall have power on the application by either or both of the two administrators, to appoint one more administrator to act generally or in respect of a particular matter in question.

Disputes

73. – (1) On the application in the prescribed manner by an interested person, a court shall have jurisdiction, where there is a dispute, in relation to a deceased person's estate –

(a) to decide whether a document purporting to be a will is a valid will and whether the deceased person died testate or intestate;

(b) to decide what is the property to which the deceased person was entitled at the date of his or her death;

(c) to decide if any person is or is not entitled as a beneficiary of the estate;

(d) to decide how the distribution of the property forming part of the deceased person's estate should be carried out;

(e) to order the sale or other disposition of property belonging to a deceased person's estate for the purpose of paying the debts of the deceased or for the purposes of distribution;

(f) to appoint a guardian in place of a guardian who has acted improperly;

(g) to decide whether an administrator or the person administering the property of a deceased person by agreement under section 61 has failed to carry out any of his or her duties and to order payment of compensation by such administrator or other person to a person who has suffered injury as a result of such failure; and

(h) to decide any other matter in dispute which the court considers to be competent for its jurisdiction.

(2) In the determination of a dispute under subsection 1 (g), the court shall be guided by the following principles-

(a) that no order for compensation shall be made if the injury had come to the knowledge of the injured person, not being a minor, more than two years before the application relating thereto was made to the court;

(b) that in case the injured person was a minor an application for compensation for injury suffered may be made within two years after-

(i) he or she ceased to be a minor; or

(ii) the date when the injury came to his or her knowledge, whichever is later in time.

Offence by
administrators and
guardians

74. – (1) An administrator or guardian who wrongfully deprives a minor of property or a share in property to which the minor is entitled intending thereby to benefit such administrator or guardian or any other person, commits an offence and shall, on conviction, be liable to a fine of one million Kwacha (K1, 000,000) and to imprisonment for three years.

(2) A court shall order restitution of property or otherwise in favour of the minor against the administrator or guardian found guilty under this section.

Subsequent
discovery that
estate dealt with as
small estate
exceeds limit

75. – (1) No act of a court exercising jurisdiction under this Part or of an administrator to whom an administration grant has been made shall be invalid because it is afterwards discovered that the gross value of the estate in relation to which the act was done exceeds the value of a small estate.

(2) Every administrator of an estate appointed under this Part who discovers that the gross value of estate exceeds the value of a small estate shall immediately report the discovery to the court by which he or she was appointed and to the Secretary to the Commissioners of

Estate Duty, stating what he or she now considers the gross value of the estate to have been at the death of the deceased and the reason for the lateness of the discovery.

(3) The presiding officer of a court who discovers that the gross value of an estate, which has been the subject of the proceedings in the court is believed to exceed the value of a small estate or who receives a report under subsection (2) shall, after such further inquiry, if any, as he or she deems appropriate, report the matter to the High Court and to the Secretary to the Commissioners of Estate Duty; and such report shall set out briefly the circumstances of the estate and shall contain a recommendation whether further proceedings in court relating to the estate should be continued in the High Court or the original court.

(4) After making a report under subsection (3), the presiding officer of the court shall not exercise jurisdiction under this Part without the written directions of the High Court and shall do so subject to such directions as the High Court may consider it appropriate.

Chief Justice to
make rules on
small estates

76. The Chief Justice may make rules prescribing the procedure to be observed in respect of applications relating to small estates, the forms to be used and the fees to be paid and all other matters arising under this Part.

PART XIV – GENERAL

Preservation of
will and register
of wills

77. – (1) The original of every will of which probate is granted or in respect of which a grant of letters of administration with a certified copy of the will annexed or an administration grant with a certified copy of the will annexed is made under this Act shall be deposited and preserved in the registry of the court that made the grant, but it may, if the court so determines, be transmitted for such preservation to a registry of the High Court.

(2) A court shall maintain a register of all wills deposited with it and may at any time furnish a certified copy thereof to any person.

(3) Subject to the control of the court and to the provisions of any rules made under this Act, a will deposited with a court shall be open to inspection.

Court's discretion in matters of probate or letters of administration

78. – (1) A court shall not be bound to grant any application under this Act for a grant of probate or letters of administration but may exercise its discretion in relation thereto.

(2) If an application for a grant of probate or letters of administration is refused the court shall state the reason for refusal within a reasonable time not being more than a period of thirty days failing which the application shall be deemed granted by that court and the court shall proceed to effect the grant unless the interests of justice require otherwise.

Payment of salary or wages by employers

79. – (1) Notwithstanding any of the other provisions of this Act, where a person was employed at the date of his or her death, his or her employer shall immediately pay directly to the surviving spouse or in the absence of a surviving spouse to the senior and responsible member of the deceased person's family known to be living with him or her, the amount due to his or her estate in respect of salary, wages, allowances or arrears for the pay period interrupted by his or her death and, if still unpaid, the immediately prior pay period and the payment to such surviving spouse or other member of his or her family shall be a good discharge to the employer for the amount so paid and the recipient of the amount shall, if required, account to the personal representative of the deceased for the expenditure thereof.

(2) The person to whom money is paid under subsection (1) may apply the money for the purpose of paying normal household expenses of the family of the deceased or family expenses in relation to the funeral of the deceased.

Sane murderer not to benefit from estate of victims

80. – (1) Notwithstanding any of the other provisions of this Act, a person who, while sane, murders another person, shall not be entitled, directly or indirectly, to any share in the estate of the murdered person and the beneficiaries to the estate of the murdered person shall be ascertained as though the person who murdered the other had never been born.

(2) For the purposes of this section the conviction of a person of a crime of murder shall be sufficient evidence of the fact that the person convicted committed the murder unless the contrary is proved.

(3) Subject to subsections (1) and (2), the benefit under a will or on intestacy accruing to a person charged with the murder of testator or intestate shall be held upon trust as directed by the court and upon his

or her conviction the proceeds from the trust shall be applied as the court may deem appropriate.

Application of
Trustee Act
Cap. 5:02

81. – (1) The Trustee Act shall apply to executor or administrator of small estates as it applies to all other executor or administrator in respect of deceased estates.

(2) A personal representative shall have all the powers of investment of trustees and Part II of the Trustee Act shall apply in relation to investments made or retained by an executor or administrator.

(3) Nothing in this section shall be construed so as to derogate from the generality of the provisions of the Trustee Act.

Proof of
Claims

82. – (1) When an executor or administrator has received a notice from a claimant in respect of an estate or property which he or she wishes to distribute, he or she may, by a notice in writing served personally or by post, require the claimant prior to a date to be named in such notice, which shall not be less than sixty days from the service of such notice, either to institute proceedings to establish the claim or otherwise to satisfy the executor or administrator of the validity of the claim by affidavit.

(2) At the expiry of the time mentioned in the notice, the executor or administrator shall be at liberty to distribute the estate or property to which the notice relates amongst the parties entitled thereto without having regard to the claims of persons who shall have been served with such notice but shall have failed to comply with the requirements thereof and the personal representative shall not be liable to any such person for the estate or property so distributed.

(3) Nothing in this section shall prejudice the right of any claimant to trace the property or any property representing the property being claimed into the hands of any person, other than a *bona fide* purchaser of the legal estate in the property for value without notice, who may have received it.

Payments of
representatives in
country of
domicile

83. Where an executor or administrator in Malawi has been granted probate or letters of administration to the estate in Malawi of any person who was at the time of his or her death domiciled outside Malawi and probate of whose will or letters of administration of whose estate or equivalent grant in the place of such domicile has been granted to some other person, the executor or administrator may pay over to such other person the balance of the estate in Malawi after payment of proved debts and funeral and administration expenses

without seeing to the application of such balance and without incurring any liability in regard to such payment.

Unlawful possession of deceased estate

84. – (1) Any person not being entitled thereto under a will or upon any intestacy who, in contravention of the will or of this Act, takes possession of, grabs, seizes, diverts or in any manner deals in, or disposes of, any property forming part of the estate of a deceased person, or does anything, in relation to such property, which occasions or causes or is likely to occasion or cause deprivation or any form of hardship to a person who is entitled thereto under the will or upon the intestacy, shall be guilty of an offence and liable to a fine of K1,000,000 and to imprisonment for ten years and in addition to such sentence, the court shall make an order directing that-

(a) the property or the monetary value thereof be immediately restored to the person or persons lawfully entitled thereto or to the estate of the deceased person; and

(b) the whole, or such part as the court shall specify in the order, of the fine imposed be paid to the person or persons entitled or into the estate of the deceased person.

(2) Subject to any other written law in relation to spent convictions, a person found guilty under this section shall not qualify as an administrator or guardian in relation to an estate of a deceased person in Malawi.

Civic Awareness

85. The Minister responsible for matters of gender and community affairs shall have the power to design and implement programmes for the civic awareness of the law under this Act and, for that purpose –

(a) that Minister shall enlist the services of chiefs and other traditional authorities and the services of non-governmental organisations in disseminating information, and in the conduct of any other activities, connected with such programmes;

(b) there shall be appointed in the public service such officers as shall be required to carry out activities for the implementation of such programmes.

Regulations

86. The Minister may make regulations for the better carrying out of this Act.

Periodic reports by executors and administrators

87. An executor and administrator shall, periodically, make reports and update the beneficiaries of the estate, in a form and manner as prescribed by the Minister from time to time.

Offences by
executors and
administrators

88. – (1) An executor or administrator who wrongfully deprives a minor of property or a share in property to which the minor is entitled intending thereby to benefit such administrator or guardian or any other person, commits an offence and shall, on conviction, be liable to a fine of one million Kwacha (K1, 000,000) and to imprisonment for three (3) years.

Repeal and savings
Cap. 10:02

89. – (1) Subject to subsection (2), the Wills and Inheritance Act is hereby repealed.

(2) Any subsidiary legislation made under the Act repealed by subsection (1) in force immediately before the commencement of this Act –

(a) shall remain in force unless in conflict with this Act and shall be deemed to be subsidiary legislation made under this Act.

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

PART XV – TRANSITIONAL PROVISIONS

Existing rights

90. Except as expressly provided, nothing in this Act shall be deemed to affect the rights and duties of executors or administrators or the law relating to the administration of estates.

Transitional

91. An application to the court for probate, letters of administration or re-sealing made before the coming into operation of this Act may be continued as though the application had been made under this Act.

Passed in Parliament this second day of June, two thousand and eleven.

M.M. KATOPOLA
Clerk of Parliament
