

CHAPTER 59

THE INTESTATE SUCCESSION ACT

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Title
2. Application
3. Interpretation

PART II

SUCCESSION

4. Intestacy and partial intestacy
5. Distribution of estate
6. Distribution where intestate survived by no spouse, etc.
7. Distribution where intestate survived by spouse, etc.
8. Devolution of personal chattels in monogamous marriage
9. Surviving spouse or child or both to be entitled to house
10. Devolution of homestead and common property in polygamous marriage
11. Small estates
12. Chief Justice to alter value of small estates

13. Arrangements outside Act
14. Offences against an entitled person

PART III

ADMINISTRATION OF ESTATES

15. Letters of administration on intestacy
16. Number of administrators
17. Attorney of person entitled to administration
18. Appointment of administrator pending litigation
19. Duties and powers of administrator
20. How powers of several administrators exercised
21. Trust property
22. Grants with exception

Section

23. Grants of excepted part
24. Effect of grant of letters of administration
25. Death of one of several administrators
26. Death of sole or surviving administrator
27. Expiry of limited grant when estate not fully administered
28. Guarantees on granting letters of administration
29. Revocation of grants and removal
30. Payment of or to administrators whose grants are revoked
31. Surrender of revoked grants

PART IV

GENERAL

32. Guardians
33. Expenditure on care and management
34. Administrator or guardian not to derive benefit
35. Offences by administrators and guardians
36. Beneficiary causing death of deceased
37. Receiver pending grant

38. Sale by order of court
39. No suit against receiver
40. Uncertainty regarding survivorship
41. Rectification of errors
42. Disputes
43. Jurisdiction of courts
44. Transfer of applications for orders relating to succession to High Court
45. Appeals to High Court
46. Regulations
47. Practice and procedure
48. Savings

CHAPTER 59

INTESTATE SUCCESSION

Act No.
5 of 1989
13 of 1994

An Act to provide a uniform intestate succession law that will be applicable throughout the country; to make adequate financial and other provisions for the surviving spouse, children, dependants and other relatives of an intestate to provide for the administration of the estates of persons dying not having made a will; and to provide for matters connected with or incidental to the foregoing.

[19th May, 1989

PART I

PRELIMINARY

1. This Act may be cited as the Intestate Succession Act. Title and commencement
2. (1) Except to the extent specifically provided in this Act, this Act shall apply to all persons who are at their death domiciled in Zambia and Application

shall apply only to a member of a community to which customary law would have applied if this Act had not been passed.

(2) This Act shall not apply to-

(a) land which at the time of death of the intestate had been acquired and was held under customary law;

(b) property which immediately before the death of the intestate was institutionalised property of a chieftainship and had been acquired and was being held as part of chieftainship property;

(c) family property.

3. In this Act, unless the context otherwise requires-

Interpretation

"administrator" means a person to whom a grant of letters of administration has been made and includes the Administrator-General;

"Administrator-General" has the meaning assigned to it by section *six* of the Administrator-General's Act; Cap. 58

"brother or sister" includes a half-brother or half-sister and brother or sister by adoption;

"child" means a child born in, or out of marriage, an adopted child, a child who is conceived but not yet born;

"common property" in relation to a polygamous marriage, means all personal chattels of the deceased which were used in common by him, his wives and children of every household to which the deceased was connected by his marriage, not being household property;

"Court" means the High Court, subordinate court or a local court;

"death duty" means estate duty chargeable under the Estate Duty Act and any other duty payable on death; Cap. 334

"dependant" in relation to a deceased person means a person who was maintained by that deceased person immediately prior to his death and

who was-

(a) a person living with that deceased person; or

(b) a minor whose education was being provided for by that deceased person; and who is incapable, either wholly or in part of maintaining himself;

"estate" means all the assets and liabilities of a deceased, including those accruing to him by virtue of death or after his death and for the purposes of administration of the estate under Part III includes personal chattels;

"family property" means any property, whether movable or immovable, which belongs to the members collectively of a particular family or is held for the benefit of such members and any receipts or proceeds from such property;

"homestead property" in relation to a polygamous marriage means all personal chattels of the deceased and used by him, his wife and children of a particular household to which the deceased was connected by his marriage, not being common property;

"intestate" means a person who dies without having made a will and includes a person who leaves a will but dies intestate as to some beneficial interest in his movable or immovable property;

"issue" in relation to any person means the children, grandchildren and other remoter descendants of that person;

"local court" means a court recognised or established under section *four* Cap. 29 of the Local Courts Act;

"marriage" includes a polygamous marriage and "husband", "surviving spouse", "wife" or "widow" shall be construed accordingly;

"minor" means a person who has not attained the age of eighteen years;

"near relative" means issue, brother, sister, grandparent and other remoter descendants of the deceased;

"parent" includes a guardian who has been responsible for the welfare and education of the deceased;

"personal chattel" means clothing, articles of personal use or adornment, furniture and furnishing, appliances, utensils and all other articles of household use or decoration, simple agricultural equipment, hunting equipment, books, motor vehicles and consumable stores but does not include chattels used for business purposes, money or securities for money;

"priority dependant" means a wife, husband, child or parent;

"subordinate court" means a court constituted under section *three* of the Subordinate Courts Act; Cap. 28

"syndic" means a person deputed to represent and transact the affairs of a corporation.

PART II

SUCCESSION

4. (1) A person dies intestate under this Act if at the time of his death he has not made a will disposing of his estate. Intestacy and partial intestacy

(2) Any person who dies leaving a will disposing of part of his estate has died intestate under this Act in respect of that part of his estate which is not disposed of in the will.

5. (1) Subject to sections *eight, nine, ten* and *eleven* the estate of an intestate shall be distributed as follows: Distribution of estate

(a) twenty per cent of the estate shall devolve upon the surviving spouse; except that where more than one widow survives the intestate, twenty per cent of the estate shall be distributed among them proportional to the duration of their respective marriages to the deceased, and other factors such as the widow's contribution to the deceased's property may be taken into account when justice so requires;

(b) fifty per cent of the estate shall devolve upon the children in such proportions as are commensurate with a child's age or educational needs or both;

(c) twenty per cent of the estate shall devolve upon the parents of the deceased;

(d) ten per cent of the estate shall devolve upon the dependants, in equal shares:

Provided that a priority dependant whose portion of the estate under this section is unreasonably small having regard to his degree of dependence on the deceased shall have the right to apply to a court for adjustment to be made to the portions inherited and in that case, Part III of the Wills and Administration of Testate Estates Act shall apply, with the necessary changes, to the application. Cap. 60

(2) In respect of a minor, the mother, father or guardian shall hold his share of the estate in trust until he ceases to be a minor.

6. Where an intestate leaves-

(a) no spouse, the portion of the estate which the spouse would have inherited shall be distributed to the children in such proportions as are commensurate with a child's age or educational needs or both;

Distribution where intestate survived by no spouse, etc.

(b) no spouse or children; the aggregate portion of the estate which the spouse and children would have inherited shall be distributed equally to the parents of the deceased;

(c) no spouse, children or parents, the estate shall be distributed to dependants in equal shares;

(d) no spouse, children, parents, or dependants, the estate shall be distributed to near relatives in equal shares;

(e) no spouse, children, parents, dependants or near relatives, the estate shall be *bona vacantia* and shall devolve upon the State;

7. Where an intestate leaves-

(a) a spouse, children, dependants but no parents, the proportion of the estate which the parents would have inherited shall be shared equally

Distribution where intestate survived by

between the surviving spouse and children on the one hand and the dependants on the other; spouse, etc.

(b) a spouse, parents, dependants but no children, the portion of the estate which the children would have inherited shall be distributed to the surviving spouse, parents and dependants in proportion to their shares of the estate as specified in section *five*;

(c) a spouse, children, parents but no dependants, the portion which the dependants would have inherited shall be distributed equally to the parents;

(d) a spouse and dependants but no children or parents, the portion of the estate which the children and parents would have inherited shall be distributed to the surviving spouse and the dependants in proportion to their shares of the estate as specified in section *five*;

(e) a spouse and children but no parents or dependants, the portion of the estate which the parents and dependants would have inherited shall be shared equally among the surviving spouse on the one hand and the children on the other;

(f) a spouse but no children, parents or dependants, the portion of the estate which the children, parents and dependants would have inherited shall be distributed equally between the surviving spouse on the one hand and the near relatives on the other.

8. Notwithstanding section *five* where the intestate in the case of a monogamous marriage is survived by a spouse or child or both, the spouse or child or both of them, as the case may be, shall be entitled equally and absolutely to the personal chattels of the intestate. Devolution of personal chattels in monogamous marriages

9. (1) Notwithstanding section *five* where the estate includes a house the surviving spouse or child or both, shall be entitled to that house: Surviving spouse or child or both to be entitled to house

Provided that-

(a) where there is more than one surviving spouse or child or both they shall hold the house as tenants in common; and

(b) the surviving spouse shall have a life interest in that house which shall determine upon that spouse's remarriage.

(2) Where the estate includes more than one house the surviving spouse or child or both shall determine which of the houses shall devolve upon them and the remainder shall form part of the estate.

10. Notwithstanding section *five* where the intestate is survived by more than one widow or a child from any of them, then, each widow or her child or both of them shall be entitled-

(a) absolutely to the homestead property of the intestate; and

(b) in equal shares to the common property of the intestate.

Devolution of homestead and common property in polygamous marriage

11. Notwithstanding section *five*, where the total value of the estate does not exceed K30,000 the estate shall-

(a) devolve upon the surviving spouse or child of the intestate or to both; or

(b) where there is no surviving spouse or children, devolve upon the surviving parent.

Small estates

12. The Minister, may by statutory instrument, vary the maximum value of the estate prescribed under section *eleven*.

Minister to alter value of small estates

13. Notwithstanding anything in this Act, any person entitled to share in the estate may transfer his share in the estate to a priority dependant.

Transfer of share in estate to priority dependant

14. Any person who-

(a) unlawfully deprives any person of the use of-

(i) any part of the property of the deceased to which that person is entitled under this Act; or

(ii) any property shared with the deceased to which this Act applies; or

(b) otherwise unlawfully interferes with the use by any person of

Offences against an entitled person

any property referred to in paragraph (a);

shall be guilty of an offence and liable on conviction to a fine not exceeding seven hundred and fifty penalty units or imprisonment not exceeding two years, or both.

(As amended by Act No. 13 of 1994)

PART III

ADMINISTRATION OF ESTATES

15. (1) Where the deceased has died intestate the court may, on the application of any interested person, grant letters of administration of the estate to that interested person.

Letters of
administration
on intestacy

(2) Subject to section *sixteen* where more than one person applies for letters of administration, the court may 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 applies for letters of administration, letters of administration may be granted to the Administrator-General or 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 of it other than the person who under subsection (1) in ordinary circumstances would be entitled to a grant of letters of administration, the court may, having regard to consanguinity, amount of interest, the security of the estate and the probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

(5) Where letters of administration are granted under subsection (4) the grant may be limited or not limited as the court thinks fit.

16. (1) Letters of administration shall not be granted to more than four persons in respect of the same estate and if there is a minority or a life interest, letters of administration shall be granted to the

Number of
administrators

Administrator-General, to a trust corporation solely or jointly with an individual or to not less than two individuals.

(2) If there is only one administrator (not being a trust corporation or the Administrator-General) then, during the minority of a beneficiary or the subsistence of a life interest, the court may appoint one or more administrators in addition to the existing administrator.

17. Where a person who is entitled to letters of administration is absent from Zambia, and there is no other person equally entitled who is willing to act as administrator, letters of administration may be granted to a lawfully constituted attorney, of the administrator ordinarily resident in Zambia, limited until that administrator obtains letters of administration himself and in the meantime to any purpose to which the attorney's authority is limited.

Attorney of person entitled to administration

18. Pending the determination of any proceedings for obtaining or revoking any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing the estate, and an administrator so appointed shall be subject to the immediate control of the court and shall act under its direction.

Appointment of administrator pending litigation

19. (1) The duties and powers of an administrator shall be-

Duties and powers of administrator

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

(b) to effect distribution of the estate in accordance with the rights of the persons interested in the estate under this Act;

(c) when required to do so by the court, either on the application of an interested party or on its own motion-

(i) to produce on oath in court the full inventory of the estate of the deceased; and

(ii) to render to the court an account of the administration of the estate.

(2) Where an administrator considers that 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 his duties, the administrator may, with the authority of the Court, sell the property in such manner as appears to him likely to secure receipt of the best price available for the property.

20. Where there are several administrators, their powers may, in the absence of any direction to the contrary contained in the letters of administration, be exercised by the majority of them.

How powers of several administrators to be exercised

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

Trust property

22. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to that exception.

Grants with exception

23. Whenever a grant with exception of letters of administration has been made, a further grant may be made of the part of the estate so excepted.

Grants of excepted part

24. (1) Subject to any limitations and exceptions contained in a grant of letters of administration the grant entitles the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death except 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.

Effect of grant of letters of administration

(2) Subject to subsection (1), letters of administration shall have effect over the whole of the estate of the deceased throughout Zambia and shall-

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

(b) afford full indemnity to all debtors paying their debts, and all persons delivering up that property to the administrator.

25. Where letters of administration have been granted to more than one administrator and one of them dies, the representation of the estate to be administered shall, in the absence of any direction in the grant, accrue to the surviving administrator. Death of one of several administrators

26. On the death of a sole or surviving administrator, letters of administration may be granted in respect of that part of the estate not fully administered, and in granting the letters of administration the court shall have regard to the original grants. Death of sole or surviving administrator

27. Where a limited grant has expired by effluxion of time, or the happening of the event or 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. Expiry of limited grant when estate not fully administered

28. (1) As a condition of granting letters of administration to any person, a court may, subject to this section, require one or more sureties to guarantee, within any limit imposed by the court, any loss which any person interested in the administration of an estate may incur in consequence of a breach by the administrator. Guarantees on granting letters of administration

(2) A guarantee given under subsection (1) shall have the effect, in relation to any person interested in the administration of an estate of a deceased, of a contract by the surety or sureties with that person.

(3) No action shall be brought against a guarantor to whom this section relates without the leave of the court.

(4) This section shall not apply where administration is granted to the Administrator-General.

29. (1) Letters of administration may be revoked or annulled for any of the following reasons- Revocation of grants and removal

- (a) that the proceedings to obtain them were defective in substance;
- (b) that the grant was obtained fraudulently;
- (c) that the grant was obtained by means of an untrue statement of a fact essential in point of law to justify the grant, though that statement was made in ignorance or inadvertently;
- (d) that the grant has become of no use and inoperative;
- (e) that the person to whom the grant was made has, without reasonable cause failed, to furnish an account of his administration after having been lawfully called upon to do so, or has prepared an account which is untrue in a material particular.

(2) Where the court is satisfied that proper administration of the estate and the interests of the persons beneficially entitled to them so require, it may-

- (a) suspend or remove an administrator;
- (b) provide for the succession of another person to the office of that administrator who shall cease to hold office; and
- (c) provide for the vesting in the successor of any property belonging to the estate.

30. (1) Where letters of administration are revoked, all payments made in good faith to any administrator under the letters of administration before the revocation of those letters shall, notwithstanding the revocation, be a legal discharge to the person making the payment.

Payment of or to administrators whose grants are revoked

(2) An administrator who has acted under any revoked letters of administration may retain and reimburse himself out of the assets of the deceased in respect of any expenses incurred by him or fees paid out by him which any person to whom letters of administration are afterwards granted could have lawfully incurred or paid.

31. (1) Where letters of administration are revoked under this Act, the Court shall order the person to whom the grant was made to deliver up the letters to the court immediately. Surrender of revoked grants

(2) A person who wilfully and without sufficient cause fails to deliver up the letters of administration, in accordance with subsection (1), shall be guilty of an offence and liable upon conviction to a fine not exceeding one hundred and twenty-five penalty units or to imprisonment not exceeding three months, or both.

(As amended by Act No. 13 of 1994)

PART IV

GENERAL

32. (1) A court may appoint any person to be the guardian of a minor. Guardians

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

(3) A guardian appointed 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.

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

34. (1) An administrator or guardian shall not derive any pecuniary benefit from his office. Administrator or guardian not to derive benefit

(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 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.

35. (1) An administrator or guardian who wrongfully deprives a minor of property or a share in property to which the minor is entitled intending to benefit the administrator or guardian or any person other than the minor shall be guilty of an offence and liable upon conviction to a fine not exceeding five hundred penalty units or to imprisonment not exceeding one year, or both.

Offences by administrators and guardians

(2) When any person is convicted of an offence under subsection (1), the court may, in addition to any penalty which may be imposed-

(a) order the restitution to the minor of the property which has passed in connection with the commission of the offence;

(b) if the property cannot be restituted or cannot be found, order the convicted person to make compensation to the minor of such sum as the court may assess as the value of the property.

(3) A court shall have jurisdiction to try an offence under this section although it has previously dealt with an application relating to the property in question.

(As amended by Act No. 13 of 1994)

36. Any beneficiary who intentionally causes the death of the deceased shall forfeit the right to inherit any part of the property of the deceased.

Beneficiary causing death of deceased

37. A court may appoint any person it considers fit to be a receiver of the property of an intestate pending a grant of letters of administration if it appears on the application of any person-

Receiver pending grant

(a) claiming to be interested in the property; or

(b) having the custody or control of it at the time of the death of the deceased;

that there is danger that the property may be wasted.

38. A court may, on application by a receiver of property appointed

Sale by order of

under section *thirty-seven* or any person interested in the estate, order the sale of the whole or any part of the property, if it appears to the court that the sale will be beneficial to the estate. court

39. No suit shall be brought against a receiver appointed under section *thirty-seven* in relation to anything done or intended to be done by him in respect of the property of the deceased in the intended, purported or actual exercise of the powers vested in him; but a person aggrieved by anything so done or intended to be done may apply to the court which appointed the receiver, for directions in the matter, and the court may make such order as is just. No suit against receiver

40. For the purpose of this Act where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, the deaths shall, for all purposes affecting rights in, to or over property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder. Uncertainty regarding survivorship

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

42. On application in the prescribed manner, by an interested person, a court shall have jurisdiction in relation to a deceased person's estate- Disputes

- (a) to decide whether or not the deceased person died intestate;
- (b) to decide what is the property to which the deceased person was entitled at the date of his death;
- (c) to decide how the distribution of the property forming part of a deceased person's estate should be carried out;
- (d) 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 purpose of distribution;
- (e) to appoint a guardian in place of a guardian who has acted improperly, or who has died.

43. (1) The High Court shall have jurisdiction in matters relating to succession. Jurisdiction of courts

(2) A local court shall have and may exercise jurisdiction in matters relating to succession if the value of the estate does not exceed fifty thousand kwacha.

(3) In matters relating to succession, a subordinate court of the first, second or third class shall, within the territorial limits of its jurisdiction, have jurisdiction to entertain any application if the value of the estate does not exceed one hundred thousand kwacha.

44. (1) A subordinate court or a local court to which application is made under this Act shall transfer the application to the High Court if-

Transfer of applications for orders relating to succession to High Court

(a) the subordinate court or the local court is satisfied that an interested party has made application to the High Court for an order relating to the administration or distribution of the estate of the deceased to which the application relates; and

(b) the subordinate court or the local court is satisfied that it is in the interests of justice to transfer the application to the High Court or that it is otherwise necessary to seek directions from the High Court as to the correctness or legality of the application or order to be made thereunder; or

(c) the subordinate court or the local court is so ordered or directed by the High Court.

(2) Where an application is transferred to the High Court under subsection (1) the High Court shall make such order or give such directions in relation to it as it considers fit.

45. An appeal shall lie to the High Court in respect of any order or decree made by a subordinate court or a local court and the decision of the High Court on it shall be final.

Appeals to High Court

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

Regulations

47. The Chief Justice may, by statutory instrument, make rules regulating the practice and procedure of the court under this Act.

Practice and
procedure

48. Except as is expressly provided, nothing in this Act shall affect-

(a) any rights, duties or obligations of an administrator under any law relating to the administration of estates existing immediately before the commencement of this Act; or

(b) the rights, duties or obligations of beneficiaries in respect of any person who died before the commencement of this Act.