Academy™

COUNTER BOOK

NYAGAWA, J.
PROBATE & ADMINISTRATION
OF ESTATE
LS 108

- Long Life Hard Cover
- Excellent Strength
- Laminated Cover
- Fully Sewn Book

2 QUIRE
192 PAGES

LS 108 - Probate, Administration of Estate & Trusts.

Kelvin Nyagawa, - 40TH COHORT

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14/04/2025

Probate & Administration of Estate & Trusts

LS 108

Coordinator: Advocate Kitta Husein

14/04/2025 - Morning Session
Instructor:

ESTATE PLANNING: The Basic Tools

- Wills: Drafting and Deposition
- PoAs (Power of Attorneys)
- Gifts

- Trusts: Creation, incorporation and management

Advocate Husein Kitta.

Very easy to pass this subject.

The secret is in the statute and not case Laws or Notes.

Read the statutes everyday so as you become aware of them all.

I will Bene a list of statutes that I want you guys to have. I want all of ~~your~~ you to have Hard Copies.

Please give all Instructors maximum Cooperation.

Business of a Lawyer is time.

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ADVOCATE NDITI

ESTATE PLANNING: THE BASIC TOOLS

- Will: Drafting and Deposition.
- PoA
- Gifts

How do you acquire wealth
How do you maintain
And how do you dispose upon death?

Estate Planning.

To know estate Planning you should know the following terms:-
Estate
Planning

Estate means networth of a person at any an point in time alive or dead!

Is there any person between wealthier or rich?

You can be rich but not wealthier.

Estate Planning helps you to maintain your wealth.

Planning is a process now

Estate planning:
Is a comprehensive and dynamic legal concept which by its own nature connotes process of arranging the estate and maintaining the same.

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When Estate Planning start?

When Estate Planning ends?

Why do we have estate Planning? Jurisprudential Basis

What is nature of Life?

* Every human being passes through four season in life.

1. Morning season (0-25)
   Dependent age
   Depends either to the parents or guardian.

2. Afternoon season (26-50)
   Independent age / season
   A person start to work hard independently

3. Evening season (51-75)
   Age where a person start to build Legacy
   After accumulating wealth

4. Null season (76 years and above)
   Age of rest

Time is a very important factor in Estate Planning.

* The following questions are essential:- So as you become aware of Jurisprudential basis of Estate Planning:-
  Why do people work?

What things most people fear in Life?

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Why do people work?

- So as to earn income so as to take of ourself and dependants.
- Also we work to save (to use in the future).

What things do most people fear the most?

1. Incapacitation
2. Death

INCAPACITATION

Situation in which a person is no longer able to earn due to number of factors such as:-

(i) Age
(ii) Unemployment
(iii) Physical and mental disability caused by accident or diseases - Cancer, HIV or Mental diseases

These are unforeseen events that may happen at any time, that is why Estate planning come into pace.

DEATH

This comes naturally because human being were initially created to live eternally. Death come as punishment Genesis Chapter 3: 17 - 19

All Holy Books are natural Law and are sources of Law.

Death is a spiritual being. It will happen. Whether you like or not it will come. You Lawyers should take death as normal because after death problems start. Everyone want to assume that he knows the deceased

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very well.

And everyone thinks he is entitled to the estate of the deceased.
Estate is a personal Law.

Mama nili mtengenezea wasia, kwenye wasia kaka yake aliwekwa. But in the end alijanika. Saying that the properties will go to the children. So I as an Advocate I went there and gave my position. So they agreed and Petitioned for letters of Administration of Estate.

You should always find your ways to serve or planning or maintain your Estate.

As a Lawyer know that issues of Probate is feelings. If is not contest. Be careful.

Now from the definition of Estate Planning we have the formula / Equation below:-

Estate planning = Work - (Time + Incapacitation + death)

WHEN DOES IT START

When you apply estate Planning tools whether knowingly or not.

It comes to an end when one is able to solve any issue relating to time, Incapacitation or death.

It pass when it is admitted to Court.

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PRACTICAL ASPECT FOR ESTATE PLANNING.

Two aspect:
Before Owner's death
After Owner's death

BEFORE DEATH -

1. Where estate owner is mentally and physically ok.
2. Where Estate Owner is mentally ok but physically not ok
3. Where he is mentally and physically incapacitated.

1. WHERE ESTATE OWNER IS MENTALLY AND PHYSICALLY OK.

We expect the estate owner to work more and more. Use time properly. Serve as well for the following:

- Emergency
- Investment

Work hard at this stage so as you can ~~serve~~ save and use the savings in case of Emergency and in other ways to invest.

You should learn to save.

Investment.

You can invest through Trust. Tripatite relationship between Settlor — Trustee — Beneficiaries. The chosen one can be sued after being registered.

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→ while you are still alive.

It can be Intervivos Trust or Testamentary Trust
↓
In will

It can also be Private Trust or Public Trust.

E.g Hospitals, schools e.t.c are formed under Trust.

The objective might be to give education — Charitable Trust.

Also it can be done through business entities such as: —

- Company
- Patternership.
- Joint ventures
- Proprietorship

Why riches have many companies but you see it from one Group E.g BAKHRESA GROUP — !!!
That is estate planning.

Do not use family assets / estate for personal gain. Make / Create Legacy.

We deal on Maintaining the estate.

You can also invest through STOCK EXCHANGE — Buying shares.
You can invest through UTT.

Advice your clients diligently.

Social security schemes — Automatic estate planning.
E.g Health services. You just contribute but in return

you will receive something. Look at NSSF, PSPF and others.

WAYS OF TRANSFERRING THE PROPERTIES

NOTE Think also of transferring your properties by the following:-

(i) Gift in contemplation of death
CHAPTER XV in Nditi's book
Does this gift the same as dying declaration?

(ii) Gift Intervivos
While you are still alive.
Transfer should complete. If you receive a gift make sure transfer is complete.

(iii) Joint ownership.
E.g Joint tenancy / occupation
Section 159 of Land Act, Right of survivorship.

(iv) Through Nomination
E.g Some schemes you choose a person who will receive. UTT and social security schemes have it. These proceeds form part of the deceased estates. Cooperatives have also these issues.

It helps you to know which properties form part of the deceased estates. If it was gift then it does not form part of estate of deceased.

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2. WHERE ESTATE OWNER IS MENTALLY OK BUT PHYSICALLY INCAPACITATED

The best way is to use Power of Attorney (POA) is it General or Specific? You choose

3. WHERE ESTATE OWNER LOOSES MENTAL CAPACITY

Mental Health Act, No. 21 of 2008
Go and read this Act
And which Court can choose the person to administer the estate of a person who is mentally incapacitated

RE - APPLICATION FOR THE MANAGEMENT OF NMB ACCOUNT OF DAYANA MARUNDA

↓

RE-APPLICATION BY LILIAN BERNARD MASAKI (DAUGHTER), Mwenmpani, J

The Court is District but the above case was applied to the High Court. Go and read.

Section 7 of the Act

Possible if you are in the High and of Unsound Mind

→ IN THE MATTER OF APPLICATION FOR THE MANAGEMENT AND ADMINISTRATION OF THE NMB ACCOUNT OF DINA MARUNDA MMARI AND IN THE MATTER OF APPLICATION BY LILIAN BERNARD MASAKI (DAUGHTER) MISCELLANEOUS CIVIL APPLICATION No. 7 of 2022 Mwenmpani, J, HIGH COURT MOSHI.

Section 17(1) (2) and (3) of the Mental Health Act No. 21 of 2008 moved the High Court.

" Unsound mind is a reason for grant of Application

So here administration of estate can be done even when one is still alive but is mentally incapacitated.

2. AFTER ESTATE OWNER'S DEATH: ESTATE PLANNING

Refers Testate vis-a-vis Intestacy succession

What is SUCCESSION?

Is a transmission of wholly or substantially of an estates after death through operation of the law.

WHAT IS TESTATE.

Occurs when a person dies living a Valid Last will.

INTESTACY

Dies without leaving WILL or Leaving Invalid will.

TYPES OF INTESTACY

1. Total
2. Partial

TOTAL

Occurs when a person Leaves no will or Invalid will

PARTIAL

Only part of the beneficial interest is disclosed
E.g Islamic estate.

Because some are not in the share.

Kelvin Ngaganga 40TH Cohort

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REGIMES REGULATING SUCCESSION

1. Statutory Law
   Regulated by Indian succession Act
   Covers christian

2. Islamic Law
   By Quran and Sunna

3. Customary Law
   Local customary Order No. 4 of 1963 G.N No. 434 of. Based on Patrineal societies. Be aware.

4. Hindu Law

Every regime has its own ways of wiring the above.

DRAFTING OF A WILL

TESTATE SUCCESSION

Draping of a will ▷ a process → Estate Planning.

Will- Is a declaration made by a person during his life time regarding matters which he/she wishes to take place after his/her death.

Things to consider when draping a will

1. A person who make a will ▷ a Testater or Testatrix
2. A person appointed ▷ Executor or Executrix
3. A person to whom bequeth ▷ made ▷ heir/Beneficiary
4. A person who prepare ▷ a Draftsman.

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TYPES OF WILLS

1. Will under statutory Law
2. Will under Islamic Law
3. Will under Customary Law
4. Will under Hindu Law

Be aware of all the above.

There are other Special wills:-

1. Joint will
2. Mutual / Reciprocal will
3. Conditional will
* 4. Horographic will
5. Non-Captive will

Special wills are creation of COMMON LAW.

E.g One comes to you him and his wife. How do you go about?

If you have conflict with your WIFE prepare MUTUAL WILL. You should both agree. If for instance you wife has ~~properties~~ a daughter/son outside the wedlock. So, do this.

Again one old man came, prepared two pages, saying that I want a will. He put several conditions. Especially to its properties. E.g I do not want my daughter to own. Also, my properties not to go to anyone. Later after counselling he accepted his daughter to inherit. But refused the Title of his properties to pass then

under that circumstance you should prepare CONDITIONAL WILL

THINGS TO CONSIDER IN DRAFTING WILLS

Theoretical and practical aspect. Have both of them.

THEORETICAL ASPECT

1. Factors to consider in drafting will
2. Principals in drafting will

FACTORS TO CONSIDER

1. Testamentary Capacity
2. Intention to make will - Animus Testandi
3. Formality

TESTAMENTARY CAPACITY

1. Age
2. Mental Capacity
3. Physical capacity.

AGE

18 years - Indian succession Act
Islamic Law - Puberty
Customary Law - 21 years

MENTAL CAPACITY

A person is said to be of sound mind if at the time of making a will is capable of understanding and form a rational Judgement upon its effect.

Look at the time of making of a will.

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PHYSICAL CAPACITY

Illiterate, blind e.t.c is physically incapacitated.
Be cautious.
Have evidence
Have witnesses

Take measures
Read Probate Rules, what are the conditions to consider.

INTENTION/ANIMUS TESTANDI

A testator should have Animus Testandi

Factors which may vitiate will / intention of testator:-
(i) False
(ii) Fraud
(iii) Fear
(iv) Undue Influence

FORMALITY

Every regime has its rules.

Wills under statutory Law allows Privileged and unprivileged wills

E.g Privileged wills - anyhow
Unprivileged - requires at least 2 witnesses.

In Islamic ~~taft~~ Laws you are not supposed to bequeth more than 1/3 of the estates.

2 witnesses - Matured.

1. Parents
2. Spouse
3. Children.

Seek guidance from the experts.

The remained 1/3 you can give to other not available in the shares. E.g those not in the family, children born out of the Wedlock.

Some challenged the above saying that it is unconstitution. The decision was and is still debatable as it involves FAITH. As in Islamic it is tied with Quran. These issues are very delicate.

NOTE. There are new development. They say if you do not want the Islamic Law to apply, you should state so in the WILL. But is still challenging.

Under CUSTOMARY LAW recognises two types of WILLS:-

1. Oral
2. ~~Written~~ Written

Oral Wills. To be valid: should have:-
4 witnesses - 2 clan members and 2 non-clan members.

Written Will and Testator Illiterate
4 witnesses - Wife should be there not as witness

Written Will and Testor Literate
2 witnesses - One clan, one non-clan
Wife should be there not as witness

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PRINCIPLES IN DRAFTING WILL

1. Draftsman aim

The aim of draftsman should be to prepare a document which will not only be considered a VALID WILL by the court but must anticipate the problems which may arise after that WILL.

Look on the issue of Divorce - What will happen

2. Possibility of death of Executor - What will we do?

3. Drafting style

May take form of legalese or Plain Language.
We are encouraged to use kiswahili.
Make sure your will is clear

Use of precedents. Have an example. Same format but content changes. Look if it is suitable.

4. Basic Structure

(i) Opening words
(ii) Revocation - of previous will
(iii) Date
(iv) Definition
(v) Brief History of the ~~Exec~~ Testator
(vi) Appointment of Executor
(vii) Legacies and residuals
(viii) Formation of Trust
(ix) Deposition of body

(x) Attestation Clause.

It depends on the need of the client.

PRACTICAL ASPECTS IN DRAFTING A WILL

Procedures in Drafting a Will

The process of drafting a will is governed by the Principle of Attestation.

High degree of care and attention is required. It is highly recommended that a WILL be prepared by Expert.

STAGES IN DRAFTING A WILL

1. Taking instructions
2. Reducing instructions into writing
3. Execution and Attestation
4. Deposition of the Will

1. TAKING INSTRUCTIONS FROM TESTATOR

The Testators wishes is paramount factor. It is from Testator and Testator alone, the information should be taken, It should not be taken from the third party. Even where Testator is sick, go visit him so as you can ascertain his capacity - and intention.

Things to consider when taking Instructions:

1. The Manner of taking instruction
   Interview or Written Instruction

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2. Ascertain Testator capacity and Intention.
You will get this through the Interview
Ask about his age, why he want to give properties to his son and not daughter.
Or what is his intention.

3. Whether there is ~~former~~ former will and codicils
If there are other Wills should be called and destroyed.

4. Ascertain traditions or religion.

5. Nature and Composition of Testator's family.
Here you will know the family even those born out of the Wedlock.
Here duty of Confidentiality is of utmost important.
First impression matters alot.
You should impress at first instance.
People tell you secret / their secret
Do not say to anyone.

6. Disinheritance of heir

You may inherit through Marriage or blood.

As a general Rule we expect Wife or children to be in the WILL
Read: REGINALD MENGA - CASE
You should know reasons of disinherit

7. Types and Extent of Testator's Estate
With details

8. The need to form Trust.
If you want your properties not to change Title then you should form TESTAMENTARY TRUST IN THE WILL

9. Direction as to disposition of the body.
A person should say where he should be buried

10. Know the heirs and Executors.

It is not Limited. Other details may come.

You will be in position to know everything.

II. REDUCING INSTRUCTIONS INTO WRITING

It is after gathering the information as above.

SAMPLE

LAST TESTAMENTARY WILL OF
KELVIN EXZAUDI. NYAGAWA

GIFT

Legacy or Residual - Forms

TYPES OF LEGACY
Chapter XIII of NDIH Book

i Specific Legacy
ii General
iii Demonstrative
iv Pecuniary

RESIDUAL GIFT

Includes surplus - What remained - or after the

will be generate other properties then you put in the Residual clause.

Know also whether estate are Insolvent or Solvent

Lesacy may either be:-

1. Vested bequeth / bequest
2. Contigent bequeth
3. Absolute bequeth
4. Conditional bequeth

You may also get ANUITIES — anaryo.zalaha from the properties.

Know how to put the same in the WILL

This is a technicall party. — Part.

After preparing a WILL what follows is the EXECUTION OF THE WILL

EXECUTION OF THE WILL is the signing of the WILL.

As an Advocate make sure that the WITNESSES do not see the CONTENTS of The WILL Unless otherwise he consented.

It is a different instrument which execute the WILL in the presence of Testator.
So WITNESSES signs a different document.
Then Testator will sign every page.

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Advocate normally signs because it is like an Affidavit.

You sign on the declaration only. You witness the capacity and Intention of the maker of the WILL.

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SESSION II

ADVOCATE KITTA

TRUSTS: CREATION, INCORPORATION AND MANAGEMENT

- Will
- Trust
- Wagf
- Gift Intervivos — Donation Mortis Causa
- Gift in contemplation of Death
- Medical PoA
- Durable PoA

TOOLS → OF → ESTATE → PLANNING

Gift Intervivos - If you are still alive, or You are not about to die.

Donation Mortis causa - Once a person is about to die.

Gift Intervivos and Gift in contemplation of death.

NOTE In contemplation of death - Is conditional upon death. If I die the House is yours. If I survive the House return.

The condition is PASSING

Gift Intervivos is Absolute, The one who receives should accept. If he does not accept then it fails. Then transfer should be done. If no transfer then challenges may arise:

Medical PoA

Made for purpose of giving Power a Person to make decision on your health once you have no such power to make that decision. Especially when you are in a

Critical condition.
E.g Euthenesia

Who should say that, then Medical PoA come into place.

Durable PoA
It is general.

TRUSTS

It is something that you guys are all aware of.

An honest person cannot ask to be trusted. He is a liar.

Trusting someone is because you have FAITH.
Without faith you cannot TRUST.

TRUST
belief, faith or confidence that someone bestows upon another. There should be one who have faith to the one who hold him and the one who hold should know he has that obligation.

Lets bring TRUST in the context of succession.

TRUST IN LEGAL CONCEPT MEANS:
A legal arrangement where a person (the settlor or Testator) transfers property to another person or Institution (the Trustee) to manage and hold the properties on behalf of the Beneficiaries.

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There should be:-

1. Property
2. Testator / settlor / Donor
3. Trustee
4. Beneficiary / ies Cestui que Trust

E.g you Live your properties while your sons/daughters are still young then you choose a person to hold and Manage the properties upon them reaching the age of Majority. That is where you create a TRUST

Trust is a FICTION

NOTE. Ordinarily in Law, the person who holds a Title to the property is < Legal and Equitable owner. But in Trust it is different. The property will be in the name of TRUSTEE but he is not the real owner. Means even the Beneficiaries are not in the Title.

Make sure you establish that triangle (Tripartite). Ask if it does meet the three circles:-

Is there a Testator?
" " " Trustee?
" " " Beneficiary?

They are of different types:- TYPES OF TRUST

1. TESTAMENTARY
2. LIVING

A person can write a WILL saying that his properties should not be sold - should be Managed by my WIFE for the benefit of My daughters and grandson

That is actually a Trust in the WILL whether you know or you do not know.

Ordinarily the WILL is to distribute.

Once the will has Trust, then that is called TESTAMENTARY ~~WILL~~ TRUST.

Your wife is trusted to keep the property to the time when the sons are of age of Majority.

Sometimes it can be LIVING, you create when you are still alive.

Remember a WILL operates after the DEATH.

BUT LIVING TRUST you create while you are still alive and transfer the properties to The Trustee but again you can still be the Beneficiary of the said property.

TESTAMENTARY TRUST - Made through WILL

LIVING TRUST - Made through TRUST DEED or DEED of TRUST

TESTAMENTARY TRUST is incorporated in the WILL. There should be a specific clause stating when exactly the Beneficiary will exactly be required to transfer to the Beneficiaries may be after the attainment of the age of Majority.

The clause may appear as follows:-
"I direct that all my estate be held in trust by my appointed trustee for the benefit of my children. The Trustee shall have full authority to use the income and capital of the trust to provide for their education, health, and general welfare until each of them attains the age of 25 years, at which point their share of the trust shall be distributed to them absolutely."

NOTE
- Beneficiaries should be certain
- Properties should be certain - full description of the property should be given, If surveyed Land you should go and ask certificate of Title.
- Trustee should be well-identified.

Discuss

Challenges of Testamentary Trusts

1. It would depend on the Validity of the will
Probate means a copy of a will, or, in the case of an oral will, a statement of the contents thereof, certified under the seal of the Court, with a grant of administration to the estate of the testator - Section 2 of PAEA, Cap. 352

Means that is a problem if it has to go to that procedures
2. It consumes time
3. No privacy - It makes your things to be public.
Read The case of REGINALD MENGI

NOTE. Between Testamentary and Living Trust, what should be the best option?
Advice accordingly, choose one because of this any this.

Advantages of forming a Living Trust

WILL	LIVING TRUST
↓	↓
PROBATE	
↓	↓
HEIRS	HEIRS

REQUIRES:	REQUIRES:
1. Attorneys	No Attorneys
2. Public disclosure of your Heirs and Properties	No disclosure
3. Delay	No delays -
4. Expenses	No expenses
5. No contest claims family conflict	No contest claims
6. May be granted or not	No such cumbersome
7. Hassles	No hassles
8. No Probate case	No probate
9. Court control.	No court control.
10. Unnecessary Taxes	No unnecessary Taxes (Tax exemptions)
11. Not Private	Private and total controlled by the family.

NOTE When you create a trust means you are choosing to continue having control of your Estate from your GRAVE.

(DEAD HAND CONTROL)

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You may choose someone to stay at your house then you are gone and you wife get another man. start living at your house and there is nothing you can do. You can control that by writing. Put a Trust.

Question: Eg I want to be buried infront of my House. The aim being to control the heirs to sale the House. I want to control that. But there is GRAVE & CONTROL ACT. Will that prevent heirs from selling the house?

Witchcraft Act, 1925, Grave & Control Act

→ Educate him, that he should put trust, conditional trust. And the House will not be sold.

Kuzikwa mbele ya Nyumba sio solution.

WHAT SHOULD BE YOUR BASIC CHECKLIST IN CREATING TRUST / BEFORE CREATING A TRUST

1. Capacity
18 years - Age of Majority Act, should be of sound mind

2. Competence
Ownership, should be competent to dispose properties.

3. 3 certainities, words, (should be certain) subject matter, (the property should be certain) object (Beneficiaries)

4. The necessary formalities
Those of deeds - Date, parties, Title, Terms, Signature

5. Trust must be completely created or be supported by valuable Consideration

The property should be transferred to the Trustee's name. If not then Beneficiaries should furnish consideration.

6. Must not be intended to defraud Creditors of Contrary to public policy

Question: Must all Trusts be incorporated?

In ordinary way, once you mention Trust, people think of RITA.

Is it a must to Incorporate Trust or Trustees? or If we end at the Deed is it over or a will should we end there?

Yes, TRUST should be INCORPORATED however, not every Trust is compasory registrable. Some going to RITA is OPTION

Read Section 2 of the Trustee's Incorporation Act [Cap. 318 R.E 2002]

It says you may apply for Incorporation if it falls within subsection 1 of section 2

TO BUY I HAVE IT

Read also Trustees Incorporation Rules, GN 165 of 1956

Compulsory Incorporation is provided under section 3 of the Act.

Waqf - Islamic Trust, falls within ~~Compasat~~ Compulsory

Incorporation.

To Buy Public Trustees (Power and Functions) Act
Eg where The Trustee dies and object is still there.
~~or~~

To Buy Trustee Investment Act
The property under trust if produces more. Where do you invest, under which law?

ELIGIBILITY OF INCORPORATION

Section 4 of Cap. 318 - - -
- Convicts of Crimes relating to fraud and/or dishonesty not allowed -
- Persons adjudged to be bankrupt - not allowed
- If sole trustee, then must be resident
- When two or more trustees, then at least two must be residents of Tanzania

To Buy - THE BANKRUPT ACT
You go to Court and Petition for Bankruptcy. And the Court will grant you, You will be declared as such. You will actually be declared/pronounced dead financially
- You cannot enter into contract
- You cannot contest e.t.c

MODE OF APPLICATION

- Firm Title (Written, Printed, Type-written, English).
- Annexture "A" Trustees particulars (CVs) x 4 + 3 pp size Photos for Each trustee + IDs
- Constitution of the body corporate and Rules x 3 (In English).
- Recommendation from the Mtaa and WEO.

- Recommendation from DC
- Minutes of the meeting that passed the constitution and appoint the trustees.

fees Tshs. 200/coole Currently.

You just write a letter to the WEO and DC will send to RITA.

In the form, there is requirement of MINUTE but not all requires minutes e.g those created by a Testator / Settlor alone.

Some may require 'trusts' meeting:-
Eg Chama cha Mapinduzi
Simba Sports Club.
Young Sports Club
Etc cannot sue or being sued into their own names. Same they cannot enter into contract in their own names. But they require Body of Registered Trustees (Bodi ya Wadhamini)
The Bodies of Trustees can be sued or sue in their own names.

Minutes is on the above circumstances.

If the Question is all about SUCCESSION NO NEED of MINUTES OF MEETING is required.

Here we test if you know and not if ~~you~~ unaelekea.

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If you miss a single document means you will score Zero in the Examination.

Or if you have prepared the Chamber Summons & Affidavit and then Affidavit is not verified then you will score Zero.

EFFECT OF INCORPORATION OF TRUSTEES

Basic Elements of a Trust Deed / constitution
See samples of Deed of Trust
You should customize those samples.

WHAT TO DO AFTER INCORPORATION

Make sure you transfer. You completely transfer to the names of the Trustee.
There is funding and you should always file RETURNS with RITA just like what people do in BRELA.

The property should not be in your name anymore.

1 Once it is registered it acquire the LEGAL PERSONALITY like any other Incorporation it can acquire and own Land - Read section 8 and 10 of Cap. 318

Importance of registering the Trust it enables you to DOUBLE CHECK. There are safeguards under the Law.

NOTE. 1st safeguard is the Trust Deed itself. The more discretion you give, the more risk. But the vice versa is good.

A Trust Landed Property cannot be sold until you

receive consent from RITA. If they say no then the Contract becomes ENOPERATIVE

BABU ALLY AZIZI VS MBATIA BROTHERS

2. It can sue or being sued
Proper resolution required

See REGISTERED TRUSTEES OF JUMA MOSQUE MWANZA, MISC. CIVIL CAUSE NO. 92 OF 2019 HCT (MAIN REGISTRY) DSM

If incorporated, sue in the proper corporate name.

See: the case of Board of Trustees of Good Neighbours Tanzania, Commercial case No. 69 of 2019

DEALING WITH BREACH OF TRUST

2nd Safeguard, once they breach the Trustees can be sued, and Liabilities is personal,

Consent of AG is required Section 6A of CPC

Exhaust Statutory remedies under Cap. 318 before going to Court (Tie Section 14 and 26 of Cap. 318)

There are powers vested under Administrator General.

You cannot go to Court prematurely.

Case See: The Registered Trustees of Tanzania Field Evangelism VS Pius Rwegasira, Civil Case No.

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FAMILIARIZE YOURSELF WITH RITA AND BRELA

eRITA & ORS

Signing up / registration

https://trust.rita.go.tz/register

- Incorporation
- Filing Returns
- Change of address
- Consent to acquire Land
- Etc

TRUST & EQUITY – History of Trust

Maxim of Equity (Go & read KELVIN)

- Equity looks to the intent rather than the form.
- Equity regards as done that which ought to be done
- Equity is equality.

Equity can actually be used to make and unmake the trust.

It can be used to raise the trust which ought to fail.

→ Even if the House name was not mentioned then the trust will be saved. It will not fail.

→ But Again, if no Transfer was done, still the trust will not fail.

→ Ordinarily you say if for one or more reason the trust should fail and it should be distributed to the beneficiaries, You can say how should it be distributed. Then if you did not indicate then the court will say Equity is Equality. It will be distributed Equally.

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SIMON
HON. SWAI - PRM OSJC

JURISDICTION & PETITION FOR PROBATE & LETTERS OF ADMINISTRATION

During the filing of the matter there are procedures be it Primary Court, District Delegates, District Court, High court e.t.c.

Once you file the case - Petition for Probate or letters of Administration of Estates - that becomes Non-Contentio and in that circumstance then section 5(2)(a) of Probate and Administration of Estate Act, [Cap. 352 R.E 2002] becomes relevant that the District Delegate has jurisdiction.

Then, after that the process proceeds which in fact there should be advertisement of which anyone so interested may actually, if he so wishes to object, file Caveat, and in that circumstance it appears that the amount of Tshs. 150,000,000/= exceeds Tshs 15,000/= so the court would be 5(2)(b) of PAEA, High Court.

JURISDICTION

1. Law applicable
2. Faith / Dini
3. Value

Read the whole of section 92 of The PAEA Exceptions to Primary Court Jurisdiction.

JURISDICTION

Probate is an application where the deceased left a will.

If no will - Letters of Administration.

Probate has its own procedures.

Letters of Administration has its own procedures as well.

1 FILING OF ~~A~~CASE BEFORE PRIMARY COURT Through prescribed form No. 1

2. Petition before a District Court
Section 6(1) of PAEA - small estates.

Section 2 of PAEA defines the small estate not exceeding 100,000,000/= - Section 57 of The Written Laws (Miscellaneous Amendments) (No.2) Act, 2016

Small estate must be filed before a District court through the following prescribed forms:-

Application
~~Regula~~ Rule 85, 86, 87, 88, 89, and 90

Form No. 76 is used

Attach Original Will, which must be marked by the Petitioner, and attesting witness

- If will destroyed, attach affidavit of a person having knowledge.
- If you have a copy, attach affidavit showing Correctness of the copy, validity or why original will
- ~~Sometime~~ is not available.
- If the petition is made by other person other than the one who is in the will there should be CONSENT

ATTACHMENTS

* Rule 45 & 47

1. Death Certificate

NOTE What are the procedures once a person has disappeared within Five (5) years.

- Application to the Court - Chamber Summons + Affidavit - Then with the prayer that the High Court to declare that the person is presumed Dead.
- Then filed a Petition with that Order declaring someone is dead.
- Upon grant, the Court will issue form No. 78 Section 76 and 93

3. PETITION BEFORE HC & CDD

as Grant of Probate

Form No. 18, 19, 45, 47

FORMS		Rules / Provisions
Form No. 18	Petition for GP	S. 55 & R 33
19	Verification of Petition	S. 57 (2) & 34
	Deceased last will	R
45	Affidavit as to domicile	R. 33 (1) (a)
47	Executor's oath	R. 65

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Death Certificate should always be there

Verification of Petition for Probate - Verified by one witness

Affidavit of Domicile - In order to determine the Jurisdiction of the Court.

Executors Oath - He should swear that he will execute as per the Law.

FEATURES OF A VALID WILL

1. Proper and full name of Testator
2. Name of heir and beneficiaries
3. Name of Executor(s)
4. List and description of properties
5. Division of properties to heirs and a beneficiaries
6. Date
7. Signature of Testator and
8. Names and signature of witnesses. At least two witnesses one of them must be a relative of Testator.

RITA deals with drawing and storing a WILL.

Jurisdiction of High Court and District Delegates in Non-Contentious Probate case.

1. No limitation of pecuniary jurisdiction of the Court of District Delegates in Non Contentious.
- But in practice from 101 to 500 is filed in the CDD
And above 500 - High Court.

INVENTORY & ACCOUNT

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Inventory and Account
Form No. 5 & 6 - Primary Court
Form No. 80 & 81
↳ Inventory ↳ Account.
The beneficiaries should go to the Court and verify if all properties have been included.

Section 107 and Rule 106 - Inventory

Section 107 and Rule 107 - Account

GRANT OF LETTERS OF ADMINISTRATION
Where there is no WILL

S/N	STEP	Form No.	Provision
1.	Petition	27	S. 56 & R. 33
2.	Affidavit domicile	45	R. 64
3	Administrators oath	46	S. 66 & R. 65
4	Administration Bond with sureties OR	48	S. 67 & R. 66
	Administration without sureties	49	S. 67 & R. 66
5	Certificate as to sureties Financial Position	54	R. 69
6.	Consent OR	56	R. 71
	Citation where Consent not available	57	R. 72(2)
	Affidavit to Accompany Petition for Grant by sole Administrator	17	R. 32

Consent should come from the heirs of the deceased. So consent should actually be obtained.

CAVEAT

Why the Intended Administrator should not be appointed. And not that the properties attached are not of the deceased.

PETITION BEFORE HC & CDD

(c) Requirements of certain forms
- Administration Bond with sureties (F.45)

Consent (F.56)

Written consent of a person entitled to inheritance

NOTE. Mirathi should be published / advertised in the Government Gazette and also in the other circulating Newspaper.

If there is caveat, caveat will start to be determined.

If you have not filed Caveat then you should attend before the Court so as you explain your intention.

Then if the matter proceeds with hearing then in the end letters will be granted.

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Matrimonial property ends when one dies. And in Matrimonial what we do is extent of contribution.

When one dies, then we do not use the Law of Marriage Act. So actually we Matrimonial Property of Law governing the same once a spouse die.

After death, and before there is no divorce.

After death we look on who owns the properties. And after knowing the properties and the owner then we go to who should inherit on the following basis:-

(i) Marriage ties
(ii) Blood ties
(iii) Adopted children
(iv) People mentioned in the will.

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Hon. SIMON SWAI - PRM OBJC

CONTENTIOUS PROCEEDINGS

- Caveats and subsequent proceedings
- Revocation of grant and of probate and/or letters of administration

- Procedure and practice in Making Ancillary Applications
  - Pendent Lite
  - Grant Minority
  - Collection and preservation
  - Application for grant on residual assets
  - Joining the administrator general.

4. CONTENTIOUS PROCEEDINGS

Caveat:- form of notice filed by any interested person in the deceased's estate.

Why caveat? prevent the Court from granting probate or Letters of administration.

Section 58 of PAEA

Rule 6 & 11 of Probate Rules Primary Courts

Caveat entered under Form No. 62 under S.58 of PAEA and Rule 82

Petitioner is required under S. 59(2) and Rule 82(2) to apply for citation of the caveator through

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Form No. 63

Upon expiry of 20 days Court to issue notice through form No. 63A

NOTE The Court shall issue a citation to caveator through form No. 64, rule 82(7).

After issuance of citation, a caveator is supposed to enter appearance by filing Form No. 65 supported by an affidavit, Rule 82(4)

At this point, the proceedings takes as ready as it may be the form of normal civil suit. In which case the Petitioner becomes Plaintiff and the Caveator becomes defendant as required under section 52(5) of PAEA

The one who petitioned for Probate or Letters should actually file a counter-affidavit after receiving an affidavit ~~this~~ with the grounds of objections.

At this time the Court is not even aware with the properties of the deceased.

The Court now should look if it has Jurisdiction to hear the matter after it turning into Contentious.

For instance, District Court has jurisdiction over small estate

And District Delegates in contentions does not exceed

JANETH OSCAR MAPUNDA
vs
PETER ERNEST NGAHY, Revision

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TZS 15,000/= No. 01 of 2020, HCT Songea
"pecuniary jurisdiction is of essence".

What are the procedures before the District Court?

The District Court

Part VIII of PAEA

Section 73 (2) which directs us to section 52(b) of PAEA (Part VII) which allow us to proceed with contentious matter so it will proceed.

Once it is a small estate, the District Court has jurisdiction

PROCEDURES

- Caveat entered - Form No. 62 under Sr. 58 of PAEA and Rule 82
- Application for citation to caveator
- Form No. 63 under S. 59 (2) and Rule 82(2)
- The court issue citation to caveator through Form No. 64, Rule 82(3)
- Enter appearance by Caveator by filing Form No. 65 supported by an Affidavit, Rule 82(4)
- The case will turn into Normal civil suit. The provision of Civil Procedure Code [Cap. 33 R.E 2019]

He will swear/affirm and he will also tender exhibits

After closure of the case then, the other side case will proceed.

If the Court will not be satisfied with the reason in the Caveat then what it will do is that

It will dismiss the suit.

The Court will proceed to grant Probate and Letters of Administration after dismissal of the suit. It means they will not go back to hear the petition for grant of Probate or Letters of Administration of Estate.

If the caveator win the case and was interested to be appointed then the he should proceed to apply for Petition for Probate & letters and Administration of Estate.

Or If he is not interested then, the other interested should apply.

Or if during objection, if are said that he is able to administer the estate then he should be appointed as administrator and be order to file documents under Rule 39 of the Rules after that the petition as follows:-

(i) Administrator's Oath
(ii) Administrators Bond
(iii) Sureties
e.t.c

MAGDALENA ANTHONY SANGA VS THERESIA DOMINICUS TWEVE

"Once the will is nullified, the Court should Strike out the ~~A~~ petition and allow everything to start afresh and NOT TO APPOINT ADMINISTRATOR"

REVOCATIONS

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Once person has already been confirmed/appointed as Executor or Administrator now what are the grounds for Revocation.

Part VI of PAEA — conditions — s 49(2) of PAEA

Read section 49 of PAEA

OTHER REASONS:-

1. Failure to file Inventory and Account, Form No. 80 and 81 of PAEA Rules
2. Or failure to properly put other properties of the deceased (* Irrelevant)
3. Or not involving heirs in preparing the Inventory and Account.

OBJECTION ON INVENTORY OR ACCOUNTS FILED

In most cases objection are entered to challenge description of deceased's estate and they target inclusion or exclusion of properties which do not form part of deceased's estate.

If the objection rises question of ownership of the property the following factors must be considered.

The first test is to consider if the objection concerns administration of estate or ownership of the property

MGEMI SEIF VS MOHAMED YAHAYA KHALFAN Civil Application No. 1 of 2009 - CA at Dar es Salaam and DORICE KENETH RWAKATARE VS NURDIN ABDALLAH MUSHI & 4 OTHERS, CIVIL APPLICATION NO. 402/02 of 2021 - CAT At Dar es Salaam

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Distribution Order & Transfer of Title.

The objective of Probate and administration of deceased's estate is to transfer ownership of deceased properties to heirs and beneficiaries.

It is not enough to file inventory and accounts in Court. Advocate must lead the Executor or administrator to transfer

Rule 101 of PAEA Rules
Appointment & Notice to Creditors

The core duties of the Executor or Administrator

Closure of the Matter

Should be closed within 12 months or 6 for Primary Court

After revokation, the court should issue the following:-

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ORDER REVOKING GRANT

Rule 29

Form No. 15 of PAEA Rules

NOTICE TO SURRENDER PROBATE OR LETTERS OF ADMINISTRATION

Rule 29

So as he cannot misuse the said legal documents.

If he fails to surrender that amount to contempt of the court.

Form No. 16

Requisition of Inventory - Rule 110 (2) - Form No. 39

Section 139 of Indian Succession Act

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Advocate N.N. Nditi

PROCEDURE AND PRACTICE IN MAKING ANCILLARY APPLICATIONS

Additional Procedures in Ancillary Application.

In Succession we have two procedures only
1. Probate
2. Letters of Administration

} General Rule

The Question is under what circumstances probate is granted and letters is granted?
Where there is a WILL — Probate
Where there is NO WILL — Letters

In probate, make sure you pay attention to small details.
E.g in Kenya one petitioned for Probate, he attached a WILL which was declared as a valid WILL but in the end what happened is the High Court of Kenya granted Letters of Administration

REMEDY:
Go back to Kenya and ask them to give you a proper document.

NOTE The story is the wife who aliachana na Mume wake without divorce baada ya kifo cha Mume wake started to cry more and more. She then petition for grant letters before Primary Court of Kinondoni. It was granted. Then, I received the file and Petitioned for

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Letters of Administration of Estates to the High Court of Tanzania while aware that she was already granted pri' letters at the Primary Court.

I asked for adjournment before Hon. Mtenga I explained to them. And immediately I prayed the Petition to be withdrawn with no order as to costs.

ANSWER We were to go to the Primary Court because Inventory was not filed so we asked for Revocation of grant.

So make sure you pay attention to small details. Cases are always determined by facts.

If you discover anything, make sure you inform your Client of anything that is against your Client.

CIRCUMSTANCES WHERE PROBATE CAN BE GRANTED

1. Where there is a WILL annexed
2. Where there is an oral will
   There shall be witnesses and that WILL should be deduced into writing
3. Destroyed or Lost will
4. Copy or draft of the WILL
5. Probate on Codicils

S. 25 of PAEA

DRAFT WILL

Once one prepared a will, and the WILL has not been signed. And if he left draft in the Laptop

you may use that.

CIRCUMSTANCES TO GRANT LETTERS OF ADMINISTRATION

1. Where the person dies ~~of~~ Intestate

~~of~~ NDITI is Book

OTHER CIRCUMSTANCES - ~~ANCILLARY~~ APPLICATION - Read Chapter IX ~~NOT THERE~~ VII & VIII of Rules

1. Where there is a need to protect deceased estate.
2. Special Circumstances

① PROTECTION OF DECEASED'S ESTATE

Eg Issue of REGINALD MENGI

The Administrator is yet to be appointed, how about the properties?

How to do that / To make Ancillary Application?

1. PENDETE LITE - Rule 50 PAEA Rules

Is a person appointed specifically to administer the deceased estates when there is a pending suit which in one way or another may affect the safety of the deceased's estate.

RWAKATARE's & REGINALD MENGI's

Pendente Lite is vested with the right and duties to administer estate, save for distribution of properties.

It is done by CHAMBER SUMMONS & AFFIDAVIT

Section 38 of PAEA

Rule 51 of PAEA Rules

2. Collection and preservation of estate

It may happen there is no suit and you discover that the estate will be distorted then the Court may grant any person who it thinks fit Letters of Administration is limited to COLLECTION and PRESERVATION

Such person may discharge debt due and other Administration of estate duties. save for distribution to the heirs.

How to Apply / Circumstances are two

(i) Where the application for grant has already been made in Court

Affidavit + Chamber Summons

(ii) No application for granted filed

Then use Special form No. 38 !

Section 39 and Rule 51(1) of PAEA and PAEA Rules respectively

3. RECEIVER PENDING GRANT

This normally is an Application made by an Administrator General or other wishes to be Receiver. ← Form No. 8, Section 11 of the PAEA

How?

Through RITA you can deposit will.

Also, A.G is the one with power to administer estate of everyone

Also, where there is property BONA VACANTIA

Or the Law says Administrators or Leiu cannot agree. A.G can kick in.

Under what circumstances?

- Where a person dies in Tanzania and has properties in Tanzania and those properties are in danger of being wasted, misappropriated or distorted. Means where there is BONA VACANTIA,

APPLICATION

Chamber Summons + Affidavit

Read Section 10 - 14 of PAEA

2. SPECIAL CIRCUMSTANCES THAT LETTER OF ADMINISTRATION CAN BE GRANTED

It may happen everything is okay but small things happen; the Law allows other people to be granted as follows:-

1. Grant during Minority - Form No. 31

Minors are not entitled to be granted due to their age. But in some circumstances Letters can be be granted subject to Rules governing Minority. It will be granted through GUARDIAN

E.g conditional bequeth - That a child will receive the properties after attaining the age of Majority.

Section 36 & Rule 44 of PAEA & PAEA Rules

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Cessate grant can be made as well
Section 47 of PAEA - Form No. 34
If ceases the previous grant, grant during Minority. Whether there is condition or not but the Minor has attained the age of Majority.
Section 47 and Rule 47 of PAEA & Rules

2. Grant to Unsoundness of Mind
The Rules governing are the same as of the Minor. There will be a GUARDIAN
Section 37 of PAEA

PETITION
Special Form. No. ~~52~~ 32. (Section 37 and Rule ~~45~~ 45)

3. GRANT TO UNADMINISTERED ESTATE
When Executor or Administrator dies before completing ~~the~~ their jobs.

Where a person died and some properties are in the will and other were not mentioned in the WILL then start to apply PROBATE as per the WILL and follow with LETTERS for the remaining Estate (As residuals) (Unadministered estates).

PETITION
Prescribed form No. 33
(Rule 46 & Section 46

4. Grant for suit

Imagine the Administrator has already been appointed and in between a Land case or any other case but the Administrator is not ~~ba~~ ready to take party in that separate case. Then, other person will be appointed to take party.

It can be granted when it appears necessary for personal representative to be party, ~~in~~ pending suit and such representative appointed previous is unwilling to take part to the suit opened.

Ancillary Procedure helps to ensure flexibility in administration of Estates. Section 40 of PAEA

5. LETTERS TO AN ATTORNEY

This is done where there is an Administrator appointed but cannot do his/her job. It has sometimes International elements. Eg you are in Kenya and you cannot come in Tanzania and you have a person in Tanzania who can do on your behalf then Apply this. Give another the Power of Attorney.

PETITION

Prescribed Form No. 29, some contents to be adopted from Form No. 26

LAWS:

Section 30 & Rule 43 of PAEA and PAEA Rules.

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ADVOCATE TAISAMO

GRANT WITH FOREIGN ELEMENT

- Resealing
- Applications by Consular Officers

Common wealth Countries were colonized by the British Colony (ordinarily).

RESEALING is a process of validating foreign grant of Probate and Letters of administration.

They are valid in their countries of origin but not in Tanzania.

It is a legal process of recognition of foreign grant and letters of Administration.

It is practiced among common wealth Countries.

So to establish or to answer the question you should first know whether the county falls within the ambit of Common wealth Countries.

Countries are listed in the Interpretation Act. But there are new entries which are not listed in the Interpretation of Laws Act. So, be careful and actually look all new entries.

Foreigners in Tanzania cannot own Land.

So if you assume Cazakistan is listed then actually you should go for RESEALING S. 95 of PAEA

And if it is not then you should APPLY AFRESH by using our Laws. Procedures are in PAEA and PAEA Rules.

Question Are foreigners allowed to petition for Probate and letters of administration and administer properties in Tanzania? Including Landed property?

* Administration means collection, preservation and distribute.

Is it possible for a foreigner to apply for Land to be registered in his name so as he can administer?

Question Assignment 1. Is it possible for ~~an~~ a foreigner can be granted letters of Administration and administer the estate of the deceased? If yes explain the procedures for such transfer.

WHAT ABOUT ZANZIBAR?
You have papers in Zanzibar, paper of grant probate and letters of Administration, what do you do?

They are RESEALED in Tanzania. I do not know the reason but MUGETA, J revealed at ONE-STOP CENTRE

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Resealing is a domain of the High Court

Part X of PAEA and Part IX of PAEA Rules.

The Law says Main Registry - This has been overtaken by events.

Any High Court registry can reseal the probate or Letters of Administration.

There are CONDITIONS TO BE FULLFILLED Section 96 of PAEA

The Application is made by :-

NOTE Chambers + Affidavit - Rule 98 of PAEA Rules

And all papers obtained in the foreign jurisdiction should be annexed.

Do you annex only the Order or all the documents?

YES PUT ALL ANNEXTURES.

After filing everything in probate & Letters of Administration the Court should ISSUE GENERAL CITATION

And the one objecting should file a CAVEAT

The above is applicable in RESEALING.

Now, how will you object RESEALING?

How do we go about that?

The Law says you appear in Court. But how do you register your objection.

Read Rule 100 of PAEA. Rules at only provides you have to appear and be heard.

The Law does not give us what happen thereafter.

PRACTICE HAS BEEN THAT;
Copy of the Application of RESEALING will be served to you and then if you have to object you will file COUNTER - AFFIDAVIT.

So you will not file CAVEAT.

If you do not file COUNTER AFFIDAVIT then you will only object on Issues of Law only.

Next will be hearing of the Application.

QUESTION;
Is Reseating the only option to Chanight? That, she has to come here and Petition for Probate or Letters, what if she has no time or no fare.

You are saying RESEALING is not the only option so what are the other option? Please think

* 1. CONSULAR OFFICER
Diplomatic person discharging his/her duties in the Embassy of foreign Countries.

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Section 7 of PAEA refers you to the 1st schedule

COMMONWEALTH COUNTRIES has HIGH COMMISSION and not EMBASSIES

We have these 8 countries because does not fall within COMMON WEALTH COUNTRIES

EMBASSIES - Not part of the Commonwealth Countries.
But both serves the same core diplomatic functions.

RESEALING OR PETITION Afresh can be done by CONSULAR OFFICER.

NOTE When an Administration is issued to a consular officer, it is issued in his office capacity and not on his personal capacity the aim being whoever takes over to be able to proceed.

KAZKSTAN has no Embassy here so what is required is to PETITION.

WHAT ABOUT POWER OF ATTORNEY?
What is the legal term?
It is Ancillary Administrator

I Once set the question here,
" He was in England, ndege kwenda kwake no kwetu, the properties are in England and Tanzania, so actually

There were two options, one being Ancillary Administrator on and/or through Consular

FOR FOREIGNERS WE HAVE FOUR OPTIONS:-

1. RESEALING
2. PETITION A FRESH
3. CONSULAR OFFICER
4. ANCILLARY ADMINISTRATOR

ANCILLARY ADMINISTRATOR

Executor or Administrator

A person appointed through Power of Attorney to administer estate in a county or state in which the descendant is not domiciled in Tanzania he appoint another person who is in Tanzania to act on your behalf.

Ancillary Administrator assumes all powers of the Administrator or Executor

So if it is Resealing then he will do it

If to Petition afresh he will do it

Question,

Under which Law the Power of Attorney is made?
- Read Section 99 of Evidence Act, Rule 49 of PAEA Rules.
The power of Attorney should be registered in Tanzania.

But in practice, you just send to the Registrar for Lands or Land offices and it is over.

No other procedures.

S. 99 of TEA

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Section 68 of PAEA, the Court may give directions.

Missing Executors - You apply letters and not Probate because Probate is petitioned by Executor.

Shares is the part of the estate

The procedures of proceeding or selling shares is always vested to the Administrator or Executor.

CONTENTIOUS PROCEEDINGS

Common issues should - A person is not entitled to grant.

So a good CAVEAT is the one which state that a person should not be APPOINTED

BAD CAVEAT is the one which asks or challenges that properties attached are Mine or are not of the deceased.

You should wait for him to be appointed and you should sue the Executor / Administrator.

But you can challenge it anyhow and the Court can order the properties to be withdrawn to include only properties of the deceased.

NOTE You cannot invalidate the whole WILL just because you were not mentioned as beneficiaries or just because property attached is not of the deceased. They will just rule out and proceed with the WILL.

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FOOD FOR THOUGHT

Baba aliondoka na familia yake na Mke na watoto watatu mmoja ana miezi 6, Mwingine ni House girl. The little daughter survived in the accident, but was not mentioned in the WILL and the WILL mentioned the Mother as Executor who also died, the other children were listed but the other little daughter was not mentioned. In that circumstances, will the WILL be invalidated or inoperative. How will you help the little daughter who at the time of writing a WILL she was not born but survived all others..

THINK ISSUES TO CLARIFIED

Can High Court of Tanzania reseal a foreign grant from a Primary Court of Commonwealth Countries? Or Is it possible for a High Court of Kenya to reseal the probate granted by Sinza Primary Court in Tanzania

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GRANTS IN PRIMARY COURTS:

Practice & Procedures

Both Probate & Letters

Established by Section 3 of MCA - Primary Courts.

Section 18 of MCA provides for Power / Jurisdiction of Primary Court - on Islamic and Customary ~~Court~~ Law - Civil matter of which Probate is a civil matter.

Primary Court has original jurisdiction on Islamic and Customary matters.

In probate and letters, primary court have the Power to grant Probate & letters on matters having Islamic and Customary orientation. Only that but regardless of the value. Even Trillions, Billions, Quadrilion if it is Islamic or Islamic will go to the ~~Islamic~~ Primary Court.

Even a building of over 70 Trillion will, as an estate of deceased be administer by one granted by Primary Court.

The only courts in Tanzania having jurisdiction over Islamic and Customary Probate & Administration are Primary Court & Islamic High Court. The two Courts have concurrent jurisdiction.

So, High Court has unlimited jurisdiction to hear Probate cases and Administration of Estates cases.

So take it that we have two Courts.

If it is true that Primary Court hear, Islamic and Customary Probates, how about Christian?

ANSWER: Primary Court never hears Christians in as far as Probate and Administration of Estates.

Primary Court has original jurisdiction on Probate and administration of Estate on Islamic & Customary Law.

If you had a Matter before the Primary Court and you are aggrieved then you go to the DISTRICT COURT - Section 20 of MCA

A District Court has Appellate Jurisdiction.

You cannot appeal from Primary Court to High Court.

QUESTION:

You have a Matter at PC and it involves one of the asset is Land (registered Land), it has the Certificate of Title, and here comes an OBJECTOR saying that the Landed property is his, so the Land is mine, will Primary Court have Jurisdiction?

ANSWER:

Matters of Land have their special forums. That is all about ownership.

The person is not challenging appointment rather his property not to be Sold.

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Then, the court will ask you to writ and then you go and sue him into a proper forum.
Part X of the PAEA

Take stance of other laws governing these issues apart from MCA.

Read Rules governing probate in Pc including applicable forms.

OBJECTIONS touching ~~objec~~ on ownership of land are not within the Power of Pc

OBJECTION:- But Pc can hear objection on;-
1- Validity of WILL
You have reason to believe that WILL is a result of forgery then that objection is within the jurisdiction

We all know the attributes of a Valid will so if it happens, just file objection.

★ KNOW THE LAW If the will follow the attributes of that Law.
E.g Indian succession campaigns for equality this should not be the case for Customary Law and Islamic Law as there is no equality.

2- Objection on who is legally entitled to inherit
If they are filed before the Pc then the Pc has jurisdiction to determine the same. A child or any person entitled to ~~be~~ inherit can actually file that objection.

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- Nomination of Administrator of Estates
- done by Meeting. (Clan / Family Meeting).

There is no Caveat in Primary Court but there are objection.

3- Objection as to that I am entitled more than what has been provided in the WILL

My dad cannot do like that. so that goes direct to the validity of a WILL

or you are dealing with Handwritten will and your father was not able to write. So, you can challenge the WILL. We have such objections.

4. Objection from the DEPENDANTS' of the deceased

MRUMA, J rejected / overruled the objection of the Dependants who said that they were entitled to the estates of the deceased.

That is the dispute of Lawfully heirs.

Read Rule 8 of ~~Probate~~ & Admi
The Primary Courts (Administration of Estates) Rules

Rule 8 (9-h) - Other Matters to be decided by the Primary Court.

If the Primary Court has Power to grant then have Power to revoke

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REVOCATION OR ANNULMENT OF GRANT OF ADMINISTRATION

The same court which granted can revoke. Read Rule 9 of the Rules.

There is a question on section 49 of PAEA which provides general grounds for REVOCATION.

Rule 9 of the Rules as well provides for the grounds for Revocation. The Rule or grounds are not ~~exact~~ or does ~~don~~ not cover everything so read others especially cases to know other grounds.

TIME PRESCRIBED BY THE LAWS ON WHETHER OR WHEN TO INSTITUTE PROBATE & ADMINISTRATION OF ESTATE IN PRIMARY COURT

In the Primary Court Rules, there is no time prescribing limitation

But in PAEA, we have Rule 21 which is within 3 years of the death of the deceased.

If a cause of action expires, then where do you apply for Extension of time you go to the MINISTER by formal Letter.

TIME EXTENSION

Then, in PROBATE you just state the reason for your delay in your PETITION, Last but one paragraph in your PETITION should state that. There will be no determination of it separate.

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Section 65 — Direction by the Court

There is another provision relating to Rule 31 of PAEA Rules which is all about TIME TO ACT

Question:
Signed but No SEAL
SEAL but no signature } Section 63

It should have a SEAL but signature is not a must — Section 63 of PAEA.

WHEN TO ACT -

When you should PETITION for Probate and Letters of Administration of Estates?

This was a question

Look at section 67 — Administration Bond.

Section 62 - Probate should be granted after the expiration of seven clear days.

Letters after expiry of fourteen days, from the day of the testators or Intestate death.

For the Forms, Look at the Rules, you will be in a position to know the Forms.

Form No. 4 - Appointment
Form No. 5 - Inventory / orodha ya Mali
Form No. 6 - Account / Mgao - How estates have been distributed.

JURISDICTION - CLARIFICATION

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Primary court - Islamic & Customary regardless of their value

District Court - 0 - 100 Million small estate it should not be a customary or Islamic.

Once it has elements of customary or Islamic do not send to District Court.

District Delegates - It has no limitation on the value if the matter is Non-contentious. It should not be customary or Islamic and it should not be small estate.

From 101 Million onwards can be heard by the District Delegates. It should not be contentious as well.

I file my case at the District Delegates while not aware if it will be contentious because contentious after Caveat.

After Caveat, Jurisdiction will be questionable if it exceeds Tshs 15,000 then to High court for Directions.

Automatically, it will be forwarded to High Court or High Court will give it to proceed.

Read section 5 of PAEA which again if the District Delegates proceed to hear the matter above 15,000/= then, it should not invalidate the

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Proceedings:

District Delegates has no building. You file in the same District Court and you call it IN THE COURT OF DISTRICT DELEGATES

District Delegates cannot hear Probate & Administration of Estates which fall within small estate in jurisdiction of the Primary Court.

But in Exception Circumstances, it can hear as per Section 9e of PAEA. Be attentive.

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26/04/2025

DISCUSSIONS

&

SEMINARS

He wishes his property not to be discussed in Court. So think of the other ways other ~~that~~ than Testamentary trust or Will.

Think of:-

Trust

Incorporation of a Company

Living Trust

~~Trust = D~~

Property will be of the Trust and not the original owner.

Trust can be incorporated or not. It is not mandatory to be incorporated.

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ESTATE PLANNING DURING LIFE TIME

- Trust
- Gift

Qn- ICA 38TH Contract

Ardhi bought in the name of the child because he had no NIDA. The property is known to be of the mother to the whole of the family. Advice the mother as she think the property will cause problem upon his death.

⇒ Deed of gift from son to Mother then Mother to effect Transfer in her name then it will form part of the deceased estate

Because ownership of the property is to the son.

Φ

WAKF - The Wakf Act, 1954 & 1995

Vesting your properties to God. It goes to benefit People.

It might be Lifetime or upon Death.

LIFETIME WAQF

- No limitation, you can bequeth all of your property.

- ~~Wakf~~ Waqf - The one who bequeth

Section 140 →

UPON DEATH

1/3 will apply

PARTIES

- WAKIF - Founder
- MAWQUF "alayh" - Beneficiary
- MUTAWALLI - ADMINISTRATOR

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Not choose the Executor does not make the WILL INVALID. So you go with Petition for Letter of Administration with ~~the~~ the WILL annexed.

ESTATE PLANNING

- Management of the assets of the ~~state~~ person

Power of Attorney

- Durable PoA - This one is permanent someone to make decision on your behalf even where he become incapacitated or unable to make decisions.
- Mental
- Normal
  - To make decisions on your health and you are incapable of doing so.
- General
- Specific

SUCCESSION

JURISDICTION OF COURT

This depends on the lifestyle of the deceased

- Christian
- Islamic
- Customary

You may find there are two, then choose the latest And know if the previous religion or customary has been denounced.

Mode of Life test

Animus testandi - Intention

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Hybrid - we look which is dominant

DORMINANT will be seen even during burial Ceremony.

Primary Court
District Court
District Delegates
High court
Court of Appeal

PRIMARY COURT
Section 19, 18 and ~~Part~~ Schedule 5 of MCA

Issues of Parentage once arose. Can Primary court do that? No it has no jurisdiction. If the Appellate Court ~~dismiss~~ affirm that the Primary Court has jurisdiction, Advise whether the Judgement of District Court is proper?

Read Rule 8 of ~~Prima~~ Probate Rules in Primary Court.

⇒ → It has power to determine identity of any person named as heir.

Primary Court Rules - has Forms & also Primary Court Forms.

DISTRICT COURT - Section 6
Small estate = Does not exceed 100,000/00 and of Christian - Probate or letters of Administration Property of the deceased.

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Section 5
District Delegates
More than 100

District delegates in contentious proceedings pecuniary jurisdiction should not exceed 150,000,000/=
(But the Law says 15,000/=) - It is an error.

The High court has concurrent Jurisdiction then.

HOW DO WE MAKE APPLICATIONS
LETTERS OF ADMINISTRATION
- Rule 39
Form No. 26 & 27
Administrator's Oath - Form No. 46.

Sole Administrator - Form No. 47

Bond - Security.
Form 48
Form 49

Certificate as to financial status.

Consent

Affidavit of domicile

Affidavit to accompany Petition for grant by sole Administrator - Form 17
Rule 32.

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Customize all the forms

Life interest arises in probate means - a person is entitled to receive income or benefits from a trust or estate assets for their lifetime, but the actual ownership (capital) of the asset passes to others upon their death ~~This is~~.

Rule 36 and Section 25

If probate a 'Letters granted and Miraths closed and later found that there was a WILL

REMEDY IF CLOSED:
REVIEW
REASON: Discovery of new fact

IF NOT CLOSED
Apply for Revocation - Section 49

Also you may SEEK DIRECTION TO COURT Section 65 of PAEA

Presumption of death
- Lifting the presumption of death.

The Liability follow the property

WOSIA not disclosed all the properties
- Probate
- Letters of Administration.

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⇒ If the will does not include heirs then the WILL is invalid if no reasons were disclosed.

⇒ Say you write the WILL in 2017 and in 2024 got other child and in 2034 died without amending the will, it means the will was revoked by birth of NEW daughter & sons hence Invalid.

If the Executor died before the ~~Executor~~ Deceased and deceased Later on died. and one petitioned for letters and ~~Lal~~ granted and Later on discovers that there is codicil the provisions of

{Section 26, 32
Rule 38, 41
Shall apply

grant of codicil ~~x~~.

Form 24 & 25

PRIVELEDGED & UNPRIVELEDGED WILL

-Military not necessary to be signed.
armed men, Sea (Marines) and those hired on Expedition.

Customize the form.

Distant kindred - can inherit under some other circumstances.

NB: The application is annexed with Death certificate & Minute of the family Meeting.

PROBATE – PETITION FOR LETTERS

Rule 33
Form No. 18, 20, 21, 22

18 – Pure will
20 – Oral will
21 – Lost will
22 – Draft or copy

Read Rule 33

Rule 34 – Affidavit verifying the petition
Form No. 19
– Rule 57(2)

Adopt Form No. 1

CONTENTIOUS PROCEEDINGS

What can turn the matter into contentious.
– There are many reasons.
(i) Going contrary to the wishes of the deceased.
(ii) Your property has been included

Caveat is raised before the grant of Probate

If you wait then, you will use that ground to revoke appointments.

REVOCATION (iii) Where the grant has become useless and inoperative
–

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TRANSMISSION
- Upon death
- Other means

Land
S. 68 - 71 Registration Act
Form No. 20 - Changing of the ownership from the deceased to the Administrator of Estates

Form No. 21 - From Administrator to heirs.

Under Companies - COMPANIES ACT

Transfer of shares
Part II of Companies
"Transmission by the Law".

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SEMINARS DAY ONE 28/04/2025

Qn.1 - Will

Basically there is no format of a will
But there are contents of a valid will.

It should be the last will
To avoid ambiguities, there should be only one WILL.

Read RITA's Form page No. 2

Date should also be there. Date of the WILL.

Beneficiaries should not be witnesses of the will.

A will should not be written and deleted to avoid ambiguities.

Item No. 9
Know the practicability
E.g Is it practicable to store/deposit a will before the High Court?
- Will may be left to Advocate, but it is danger.
- Will may also be deposited with RITA
- Will may also be deposited with Banks.

The standard form of filling the Form is Kiswahili.
Because in Interpretation you bring some other facts.

(c) Clause to ensure no disposition of the property.

(d) Ethical consideration
- Confidentiality
- Competence & due diligence
- Disclosure of Information to testator

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Most of the things to consider goes to the other subjects Ethics and professional Conducts.

- Bequests
To a son of Unsound mind
What could be done?
If the facts are lacking then comment that you should choose GUARDIAN to administer the estate of the son until he recovers.

Question No. 2.

Best estate planning approach
- Living trust

- Name of the Trust
- Name of Beneficiaries
- Trustees Power and duties
-

Not x trust x alone. TRUST GO AND READ

What are the basic Clauses in Trust Deed.

1. Appointment of Trustee
2. Specification of properties
3. Powers of the Trustee
4. Registered office, Meeting, Resolution
5. Dispute Clause & Governing Law

What are the essentials of a Valid Trust Know all these.
Depending on the nature and type of Trust.

Trustee Incorporation Rules/Regulations

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PROBATE -

Section ~~23~~, 24, 55
Section 25

Rule 33
18, 20, 21, 22, 23, ~~19~~, for.
Form No. 1 & Form 19

FORM NO. 18

IN THE HIGH COURT OF UNITED REPUBLIC OF T
(DAR ES SALAAM SUB-REGISTRY).
PROBATE AND ADM. OF ESTATE No. ___ OF 2025

IN THE MATTER OF THE ESTATE OF THE LATE _____

AND

IN THE MATTER OF ~~THE~~ APPLICATION OF PROBATE BY THERESIA KANTI

PETITION FOR PROBATE
(Made under section 55 Rule 33(1) of the Rules)

1. I THERESIA KANTI of P.O. Box 6, Njiro Arusha do hereby Petition for Probate of will of JUMA ISSA (deceased) who died at Arusha on the 5th day of May, 2022

2. The writing hereunto annexed and marked "A" is the Last will and testament of the said Juma Issa and was duly executed by him.

3. This Petition is made by me as the person named in the said will as the executor thereof and I believe that the gross assets which are likely to come to

my hands will be 400,000,000/=

4. The said deceased at the time of his death had a fixed place of abode at Dar es salaam - Tanzania and or property within the jurisdiction of this Honourable Court.

5. The said deceased was a Tanzanian professed Christianity religion

6. That, no proceedings for the grant of probate or letters of administration, or otherwise for the administration of the estate of the said deceased have been commenced before any court or authority, whether inside Tanzania or outside it.

Dated at ___ this day of April 2025

Signature of Advocate

Signature of Petitioner

VERIFICATION

I, THERESIA KANTI, above-named declare that what is stated above is true to the best of my knowledge and belief.

Verified at Dar es salaam ___ this day of ___ 2025

Petitioner

Presented for filing this ___ day of ___ 2025

DRAWN AND FILED BY

X

TO BE SERVED UPON

Y.

FORM No. 19

FORM No. 45

Contentious Proceedings

Section 58 & Rule 82 - 83 of the Rules

Forms

No. 62 - Caveat

Form 63 - Application for citation to caveator

Section 59(2) and Rule 82(2)

2022

UDSM - 2023

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TASK ONE - RECAP - TAITSAMO

Just write Counter affidavit responds the Affidavit in the appearance

A person attesting a document and who draw and lodged should be differently.

No prayer should be in the Affidavit

SECOND TASK. - RECAP

Caveat stages.

Hear Petition for Probate
→ Challenge appointment

Hearing of Inventory
→ Challenge the assets listed

Inclusion of other properties
→ This will be heard at the earliest opportunity so as the appointed Administrator not to administer properties which are not of the deceased.

The objection filed prematurely.

TASK 3 - CLOSURE OF THE PROBATE AND DISCHARGE OF THE ADMINISTRATOR

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REVOCATION, RENOUNCIATION & RE-SEALING

Renunciation;
Section 18 and Rule 26-27
- Form No. 9

If renounced, precluded from Applying again
S. 20 of PAEA

EXCEPTION;
You may apply to withdraw renunciation

ESTATE PLANNING

Trust ← Wakf Trust - Living Trust
Testamentary Trust
Wakf ← Gift
Trust
Will ← Islamic
Customary
Christianity
Gift Inter vivos - Living
Gift in contemplation of death
Testamentary Trust

TRUST

One among of the ways of estate Planning - aim to prevent and Manage properties to infinite;

Have control of estate before or event after death;
Control is to the Settlor however the properties are held under Trust plus trustee.

- Public trust
- Private trust

- Charitable trust
- Religious trust.

In our subject we study all about Trust under succession.

- Testamentary Trust } Under succession
- Living Trust
  - Private trust
  - Will
  - Trust Deed (Deed of Trust).

Public trust - MEMART - for social benefit.
Investment purpose - this should be Incorporated at RITA.

Education, Health etc

Incorporation

Form No. T.I.1

Have a copy of a Deed of Trust in English.
Passport & CV's of Trustee (attatchments).

- Recommendation letter from District Council
- Recommendation letter from any government Authority.

- For Private you will register the Deed ~~to~~ the with RITA

- For Public have the Minutes of the Meeting.

- Number of Trustees from 2 ~~to~~ not exceeding 10 trustees.

WAYS WHERE TRUST COME TO AND END

- Section 23 of Trustees Incorporation Act
→

Eligibility to be appointed as Trustee
Section 4 of The Trustees Incorporation Act.

TESTAMENTARY TRUST

It is a clause in a will.

5.1 "That, I direct that my properties specified under paragraph 2.4 and 2.5 be transferred/bestowed upon CHUMA KIKKA for the benefits of my children and their offsprings."

5.2 That, the proceeds from the trust shall be distributed equally among all the beneficiaries (my children and their offsprings).

5.3 The Trustees shall be at liberty to

generate other income from the profits/proceeds of Trust through re-Investment of any legal nature.

5.4 That, the trust shall exist in perpetuity unless and until all beneficiaries die or all beneficiaries die.

→

LIVING TRUST

1. Title - DEED OF TRUST
2. Date of Trust
3. Parties to the Trust ← In particular
   And their addresses

   A child of 16 - Minor - guardian Mama Chuma
   Beneficiaries

4. Recitals / INTRODUCTION / PRELIMINARIES

5 DEFINITIONS (Article 1) ← Interpretation
- Trust
- Beneficiaries
- Trustees
- Assets
- Settlor
- Parties

6 Now witnesseth as follows
- Appointment of Trustees
- Name and Registered office Acronyms, address
- Assets - willingly transfer properties
- Beneficiaries

} Clauses

- Applicable Laws
- Dispute settlement and Termination
- Powers and duties of Trustee
- Time of Trust
- Structure or composition of Trust
- Meetings
- Account, Returns and feedback
- Dissolution or Termination
  - How to end
- ~~Relocation~~

- Cessation of Trusteeship

- Purpose of Trust

- Interpretation
- Name & registered
- Objects
- Structure
- Assets
- Power & Duties of Trustee
- Meeting
- Composition of Board of Trustees
- Finances
- Amendment of Trust Deed
- Dissolution of Trust
- Applicable Laws
- Taxation
- Common Seal
- Dispute Resolution
- Residuals

Signed by Lord
of HFs

Before us

Bo

WAKF

~~WAQF~~

- WAKIF - Founder/Dedicator

Validity of the WAKIF

1. Wakif should have capacity Profess Muslim faith, age of Majority, Soundness of Mind.
2. ~~Subject of~~ dedication must be permanent.
3. Subject
- ~~of~~ object must be clear

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MODES OF CREATING WAKF

- LIFETIME WAQF
  Document: Permanent Deed (WAQF DEED)

  Section 8 (4) of Land Registration Act
- Recd →
  Properties dedicated should be transferred to MUTAWALLI (Trustee).

- TESTAMENTARY WAQF
  To operate upon death
- Found in the WILL

PARTIES
- WAKIF - Founder
- MUTAWALLI - Administrator
- MANQUF or ALAYH - Beneficiaries

- DONOR - DONEE
  GRANTOR — GRANTEE

LAWS APPLICABLE
Section 140 → 168 of PAEA

RESEALING -
Section 94 & 95 of PAEA

K← RE- SEALING →

K← SEAL →
K← SEAL →

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GROUNDS FOR CHALLENGING

⇒ Benefit for the community not personal benefit.
⇒ He is the Trustee of his own property
⇒ Not for public utility.
⇒ It was not complete

- Other Estate Planning tools.
- Deed of gift of Land

Gift Intervivos Vs Gift in contemplation death (Donation Mortis causa)

Section 178 — Gift in Contemplation of Death - Indian Succession Act, 1865

Gift Intervivos / Living / Lifetime Gift.
Out of LOVE and AFFECTION

Tool of Estate Planning where DONOR transfer his properties to the DONEE without consideration but out of LOVE and AFFECTION

- There should be transfer - Complete transfer
- It is absolute
- Must be accepted

You receive while he is still alive.

→ Power of Attorney
Durable Power of Attorney
Medical Power of Attorney
Specific Power of Attorney
General Power of Attorney

Joint ownership

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RESEALING.

- Chamber Summons & Affidavit
- Chamber Summons
  should disclose the prayer
  To grant for an order

PROVISIONS:

Cite enabling provisions of the section 95 of PAEA and Rule 98 of Rules (Proper provision) only two.

We are asking the Laws to move the court and not for cosmetic purpose.

AFFIDAVIT

- Reasons for grant
  - The gist is affidavit
  - Affidant is an art - It is an engine
  - The grant is because of the weight of the Affidavit.

POINTS

→ Include material showing number of heirs left by the deceased. Any affidant should state all these facts.
→ The deceased domizile - If there is proof annex.
→ Attach copy of death Certificate. It should be there.
→ Explain when was letters granted, by which Court.
→ Explain the properties left by the deceased
→ Explain the Law governing probate in the instant matter < Which granted / ~~which want to reseal~~
→ We are issuing/praying for an order for resealing as per the Laws of Tanzania.

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Omission of either may render the application insufficient or may attract objection.

Now, DURING HEARING

⟹ There are conditions to be satisfied;-
There conditions are very useful:-

1. → Disclose if the General citation has been issued under Rule 99 - Form 79
→ ~~Disclose~~ Citation to be done in the Government Gazette, Gradating one, or other circulating newspaper.

During hearing you should say that you have complied with the order of General Citation.

2. → Show that you have managed to filed Inventory seven days before the date of hearing.
Rule 101 of the PAEA Rules.

List of Inventory should form part of an affidavit.

3 → Submit the value of the property sought to be administered in Reseal ing (SECURITY).

The above are paramount if there no objection.

4 → If there is Affidavit or Caveator
~~Say we have~~ Say there is a caveat brought by way of Counter affidavit.

The Counter-affidavit supplement the caveat.

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Counter-affidavit ▯ a rule of PRACTICE.

The above are very important things.

Affidavit ▯ evidence, Submission ▯ elaboration of the affidavit.

REGISTERED TRUSTEES ROMAN CATHOLIC, CAT MWARIJA, J.A

Affidavit ▯ purely evidence, Submission ▯ something else.

PURPOSE OF RESEALING

⇒ Just ▯ give mandate to Administratix to administer Estate in a certain country (Foreign Country).

Because the Law are operational within the jurisdiction.

The Law which grant resealing ▯ of Tanzania

If the court ▯ satisfied, then shall direct the Deputy to endorse a certificate.

OBJECTION

⇒ Does the application discloses the facts or the conditions?

⇒ Celebrate the contents of your affidavit not dispute the submission.

⇒ Shake the application.

Anita not included, It cannot be determined when the Court ▯ dealing with resealing, It was raised

prematurely.

It is supported to be challenged in the later stage after filing the Inventory & Accounts.

Because the property and heirs will be dealt there

Explain that the conditions have not been met.

Even during the grant of letters that cannot be granted or entertained.

Let the Language of legislature speak for itself.

Any question of whether the heir is listed or not cannot be determined during:-

→ Resealing

– Probate or Letters.

The Court has a power to grant or not.

→ AUGUSTINO MREMA, Mwandamba, J.A go and read:-

Rwizile said that some ~~properties~~ children are heirs

The Court cannot step into the shoes of Executor

An aggrieved party may SEEK DIRECTION - Section Section 63 of PAEA.

The Closure of letters is upon satisfaction of heirs.

Section 108 - Give power to Executor & Administrator to collect and distribute

KISWAGAS CASE CAT CASE
It was wrong for the Court to distribute. That is the duty of Administrator.

ANITA SHOULD WAIT UNTIL WHEN THE APPLICANT FILE INVENTORY & ACCOUNT FOR PROPERTIES IN TANZANIA
- Judge will call all creditors and heirs.

Anita will raise her concern herein.

NOTE When ~~Should the Administrator~~ after revealing close the letters of Administration? IT IS A COURT OF THE HIGH COURT OF PAKISTAN

PAEA is not exhaustive. These things are filled by case Laws.

The Court which granted the letters is the one to close the administration of Estate.

BARTH J decision

The Question on ownership of property.
⇒ A probate Court has no jurisdiction to hear and determine the question on ownership b'se we have

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Courts to deal with matter of jurisdiction e.g

DLHT

High Court

Court of Appeal.

CLOSURE OF PROBATE

DTE Probate has been closed?

Court become FUNCTUS OFFICIO

You released the Administrator,

Surrender the letters

After closure, what are the necessary orders.

→ Release & discharge of Administrator
No longer an Administrator

→ Kindly surrender the letters

NO DOCUMENTS TO PREPARE.

CAN A FOREIGNER INHERIT LANDED PROPERTIES IN TANZANIA

- Can inherit and administer

CAN A PERSON (FOREIGNER)

PETITION FOR LETTERS OF ADMINISTRATION

Yes, the Law says any person.

Does Lemelca One-stop centre oust the jurisdiction for other Courts to determine probate & letters of administration.

One stop - Judicial centre is there to expedite and not ousting the jurisdiction of other Courts.

Administrator pay himself.

If it is Attorney General, there is an amount of fees, then he

ADMINISTRATOR GENERAL

Can not appear before the Primary Court.

Because it is a Government.

POSSIBLE.

→ Applicability of Laws governing trusts in Tanzania
→ Opinion
→

→ Revocation of grant of letters of Administration

ESTATE PLANNING

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Focus

Gift
- Intervivos
- Donation Mortis Causa

} PARTIES
- DONOR
- DONEE

Will-
→ Appointing Executor
→ Not appointing Executor
→ Executor is a Minor
→ Executor predeceased the testator
→ Containing Trust

} - TESTOR
- EXECUTOR(S)
- BENEFICIARIES
testator
Trustee
Beneficiaries

Trust
- Intervivos — All properties / Some properties
- Testamentary trust — Minor

1. Testator / Donor / Settler
2. Trustee
3. Beneficiaries

By reason of wanting to control properties even after death.

Waqf
- Living / Intervivos
- Testamentary Waqf

} vesting properties to God
- Islamic faith
- Waqif
- Mtawalii
- Alayh/Mawqf

CONTENTS IN WAQF OR TRUST

1. Title 2. Dated 3. Parties 4. Preliminaries 5. Definitions 6. Appointment of Mtawalii/Trustee 7. Name of Trustee 8. Registered offices & Address 9. Beneficiaries 10. Powers and duties of Trustee 11. Incorporation 12. Date of commencement 13. Trust properties 14. Filing of Annual returns & Taxes 15. Removal from the office/Termination of Trustee 16. Termination of Trust/End of Trust 17. Law Applicable and Dispute Resolution 18. Confidentiality Clause 19. TESTIMONIUM & EXECUTION

CONTENTS OF DEED OF GIFT

1. Title "DEED OF GIFT OF ___"
2. Dated "This Deed of Gifts Made on this ---"
3. By & Between (parties) — DONOR & DONEE

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4. Parties. Description and address
5. Preliminaries
6. Terms or Bequath by DONOR TO DONEE
   "Condition should be OUT OF LOVE AND AFFECTION"
7. Acceptance by DONEE OF SUCH Bequath
8. TESTIMONIUM & EXECUTION
   (signature in the presence of witnesses)
9. Drawn by

MY OWN SCENARIO:

Mtambuzi Kaitaba is a businessman in Kagera Region located at P. O. Box 676, Kagera. He is married to one Theresia Rugemanila of the same address and they have been blessed with two issues namely Kiteto Balaa and Atohakuma Si Matusi. Mtambuzi bought a car mark Toyota Prado Registration No T. 595 EEF, with chasis No. 70707 New Model Black in Colour. He wishes to give the same to his wife only to find he is not aware of what he can do as the property has been registered under his name. Advice Mtambuzi by drafting the necessary document(s)

Advice:

Mr. Mtambuzi Kaitaba should prepare a Deed of Gift of his Car.

By that Deed, the car will initially be given to his wife as he so wishes.

The Deed should be signed by him and the wife should sign to accept the content of the Deed.

The transfer should be out of LOVE and AFFECTIONS

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DEED OF GIFT OF A CAR

This Deed of gift is made on this 03rd day of May, 2025

BY AND BETWEEN

MTAMBUZI KAITABA of P.O. Box 676, Kagera [Hereinafter be referred to as "DONOR"] on the one party;

AND;

THERESIA RUGEMARILA of P. O. Box 676, Kagera [Hereinafter be referred to as "DONEE] on the second party.

WHEREAS, the DONOR is the registered owner of a car mark Toyota Plado with registration No. T545 EEF, Chasis No. 70707 New Model Black in Colour, ("the property")

1. AND; WHEREAS the said DONOR is the legal husband of the DONEE and OUT OF LOVE AND AFFECTION the DONOR permanently bequeth the property to the DONEE

2. AND WHEREAS the DONEE has accepted such bequeth unconditionally, voluntarily and without any influence.

NOW WITNESSETH AS FOLLOWS:-

~~1. That, By this Deed the DONOR~~

TESTIMONIUM & EXECUTION

In witness whereof, the parties herein have duly executed this Deed on the date and year and in the manner appearing hereunder:-

SIGNED and DELIVERED
in my presence by the said
MTAMBUZI KAITABA who

ACADEMY
PAGE NO.
DATE

D known to me personally/
~~has been identified to me~~ by _____ the latter being known to me personally this 03rd day of May, 2025

DONOR

SIGNED & DELIVERED in my presence at Dar es salaam by the said THERESIA RUGEMARILA who D known to me personally ~~identified to me~~ by _____ the latter being known to me personally this 03rd day of May, 2025

DONEE

WITNESSED BY:
NAME: AZALIA SANGA APOLLO
SIGNATURE: ~~A. ARIS~~
ADDRESS: P.O. BOX 1 DAR ES SALAAM
QUALIFICATION: NOTARY PUBLIC

DRAWN BY:
MASOKO JOHN, Advocate
C/o Masoko & Co. Advocates,
of PSSSF Tower Building,
12th Floor, Room No. 102, Left Wing,
P.O. BOX 6767,
Dar es salaam

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WILL

Wishes of the deceased (testator) of how he/she wants his properties to be administered upon his death.

DOCUMENT: WILL

CONTENT OF THE WILL:

1. Title: "THE LAST TESTAMENTARY WILL OF KELVIN SMILNA GERVAS MWANDAGANE"
2. Dated: This my Will is made on this _ day of _ 2025
3. BACKGROUND OF THE TESTATOR
   - Marriage
   - Issues blessed
   - Properties acquired
   - Physical & permanent address
4. APPOINTMENT OF EXECUTOR
5. BENEFICIARIES
6. BEQUESTS & TESTAMENTARY TRUST
7. DISPOSITION OF BODY
8. TESTIMONIUM & EXECUTION