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GRANT OF LETTERS OF

**ADMINISTRATION AND
A FORMAL PROCEDURE**

**FOR THE GRANT OF
PROBATE IN TANZANIA.**

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Death is not the end, for in the aftermath of death following property succession rights take centre stage and for this very reason, we deliberate on what it means by the concept of grant of letters of administration and the formal procedure for the grant of probate in Tanzania.

The Probate and Administration of Estates Act, Cap 352 defines an Administrator or administratrix in case it is a female, to be a person appointed by the court to administer the estate of a deceased person when there is no executor or no executor is able and willing to act. The same law defines an Executor to be a person to whom the execution of the last will of a deceased person is, by the testator's (a person who prepares and signs a Will) appointment, confided.

Therefore, the administrator of the estate is appointed by Court when there is no Will or there is a Will which has not appointed an executor.

2 | APPOINTMENT OF AN EXECUTOR/EXECUTRIX

Where the deceased had died testate and had appointed an executor, then the executor named in the Will should ordinarily apply for a probate of a Will unless there are other circumstances such as renunciation or where the executor has predeceased the testator.

The term "executor" as used in this context, means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided.

3 | MEANING AND GRANT OF LETTERS OF ADMINISTRATION

The Probate and Administration of Estates Act does not define the term letter of Administration. However, the Black Law Dictionary defines the word administration to mean:

The management and settlement of the estate of an intestate deceased or of a testator who has no executor by a person legally appointed and supervised by the court. In the event that a person dies intestate, the family of the deceased is required to convene a clan meeting and appoint a personal representative of the deceased person as an Administrator. The Administrator will have to make an application for the grant of letters of administration attached with the minutes of the meeting after the expiry of fourteen days from the date of the testator's death.

The effect of the letters of Administration is that it entitles the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death.

3.1 | Manner and Practical Details on Administration of Estate

The clan meeting mentioned above normally prepares minutes and among other practical details that take place in relation to the appointment of an Administrator are the following:

- i. Actual Appointment of the Administrator and confirmation of the appointment.
- ii. Identification of assets and liabilities of the deceased or an inventory account.
- iii. Processing of payments of all valid debts of creditors and giving notice of those whose claims are being allowed or disallowed.
- iv. Distributing the Estate to the heirs of the deceased
- v. To prioritize claims especially where the Estate is insolvent.
- vi. Meeting key obligations as to taxation payment, allowances and distributions.
- vii. Upon completion of the Administration of the estate the Administrator is duty-bound to report to the court that he has discharged his mandate faithfully

in distributing the Estate of the deceased, after which the file will be closed.

NB: A so-appointed Administrator may apply to the court by way of chamber summons and an Affidavit seeking to be allowed to undertake actions such as disposal of perishable goods even before the grant of letters of Administration.

3.2 | Grant of Letters of Administration for Intestacy and Procedure for the Grant of Probate

Where the deceased had died intestate, letters of administration may be granted to the personal representative appointed by the family meeting. Where more than one person applies for the letters of administration, the court will have the discretion to make a grant to any one or more of them, by taking into account the immediate interests in the deceased's estate in priority to lesser or more remote interests. If no person applies, letters of administration may be granted to a creditor of the deceased or any other person as the court may think fit.

Application for letters of administration is made by a petition stating the following:

i. The date and place of death of the deceased

- ii. The family or other relatives of the deceased, and their respective residences
- iii. The right in which the petitioner claims
- iv. The amount and nature of assets which are likely to come to the petitioner's hands
- v. That diligent search has been made and no valid Will has been discovered, and
- vi. Whether any proceedings for the grant of letters of administration, or otherwise for the administration of estate have been commenced before any other court or authority whether within Tanzania or outside it.

In addition to the above-listed particulars, if the application is made to the District Delegate, the petition must state further that, the deceased at the time of his death had a fixed place of abode within the jurisdiction of the delegate.

A petition for letters of administration is made in the form prescribed in Form 27 per the First Schedule of the Probate Rules and accompanied by the following documents:

- (a) A certificate of death signed by a competent authority
- (b) An affidavit as to the domicile of the deceased
- (c) An Administrator's oath
- (d) An Administrator's bond
- (e) A certificate of financial position of the sureties
- (f) Consent of the heirs; and
- (g) In case of an application for a grant of sole administrator, an affidavit as required by rule 32

At this point, it is a settled fact that a Will is ambulatory that is to say that it only takes effect upon the death of the maker previously called testator in our publications. Before the death of the testator, a Will merely operates as a declaration of one's intention which may of course change from time to time which is one of its key hallmarks compared to other dispositions.

Suze Orrman memorably stated that "Estate planning is an important and everlasting gift you can give your family. And setting up a smooth inheritance isn't as hard as you might think."

Once all procedures have been followed by the petitioner for the grant of probate, other than a small estate, the grant of probate is in the appropriate forms prescribed in Form 66 as set out in the First Schedule of the Probate Rules and it must be signed by the registrar and sealed.

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