

## THE SUCCESSION (AMENDMENT) DECREE, 1972.

### **A Decree To Amend The Succession Act To Provide For Succession To The Estates Of Persons Dying Intestate, Restriction On Disposal Of Property By Will And For Certain Other Matters Connected Therewith.**

1. The Succession Act is hereby amended,

(a) By submitting for section 3 thereof, the following,

2. (1) In this Act unless the context other wise requires,

‘Administrator’ means a person appointed by a court to administer the estate of a deceased person when there is no executor;

‘Child’, ‘children’, ‘issue’ and ‘lineal descendant’ include legitimate, illegitimate and adopted children;

‘Codicil’ means an instrument explaining, altering or adding to a will and which is considered as being part of the will;

‘Court’ means the High Court or a magistrates’ court other than a magistrates’ court presided over by a magistrate grade II;

‘Customary heir’ means the person recognized by the rites and customs of the tribe or community of a deceased person as being the customary heir of that person;

‘Daughter’ includes a stepdaughter, an illegitimate daughter and a daughter adopted in any manner-recognized ad lawful by the law of Uganda;

‘Dependent relative’ includes,

(a) A wife, a husband, a son or daughter under eighteen years of age or a son or daughter of or above eighteen years of age who is wholly or substantially dependent on the deceased;

(b) A parent, a brother or sister, a grandparent or grandchild who, on the date of the deceased’s death, was wholly or substantially dependant on the deceased for the provision of the ordinary necessities of life suitable to a person of his station;

‘Executor’ means a person appointed in the last will of a deceased person to execute the terms of the will;

‘Grandchild’ means a son or daughter of a son or daughter;

‘Grandparent’ means a parent of a parent;

‘Husband’ means a person, who, at the time of the intestate’s death was,

- (a) Validly married to the deceased according to the laws of Uganda; or
- (b) Married to the deceased in another country by a marriage recognized as valid by any foreign law under which the marriage was celebrated;

‘Illegitimate child’ mean an illegitimate child recognized or accepted by the deceased as a child of his own;

‘Immovable property’ includes land, incorporeal tenements and things attached to the earth or permanently fastened to things attached to the earth;

‘Legal heir’ means the living relative nearest in degree to an intestate under the provisions set out in part III to this Act together with and as varied by the following provisions,

- (a) Between kindred of the same degree a lineal descendant shall be preferred to a lineal ancestor and a lineal ancestor shall be preferred to a collateral relative and a paternal ancestor shall be preferred to a maternal ancestor;
- (b) Where there is equality under the foregoing paragraph, a male shall be preferred to a female
- (c) Where there is equality under the foregoing paragraph, the elder shall be preferred to the younger;
- (d) If no legal heir is existing and reasonably ascertainable under the foregoing paragraphs the husband or the senior wife of the intestate, as the case may be, shall be the legal heir;

‘Minor’ means any person who has not attained the age of twenty-one years and ‘minority’ means the status of such person;

‘Movable property’ means property of every description except ‘immovable property’;

‘Parent’ includes a stepparent and an adoptive parent;

‘Personal representative’ means the person appointed by law to administer the estate or any part thereof of a deceased person;

‘Probate’ means the grant by a court of competent jurisdiction authorizing the executor named in testator’s last will to administer the testator’s estate;

‘Residential holding’ has the meaning assigned to it by section 27 of this Act;

‘Senior wife’, in the case of a polygamous marriage, means the wife who was married first in time to the deceased intestate;

‘Son’ includes a stepson, an illegitimate son and a son adopted in a manner recognized as lawful by the law of Uganda;

‘Wife’ means a person, who, at the time of the intestate’s death was,  
(a) Validly married to the deceased according to the laws of Uganda;  
(b) Married to the deceased in an other country by a marriage recognized as valid by any foreign law under which the marriage was celebrated”;

(b) In section 5, by adding thereto the following new subsection,

“(3) For the purposes of subsection (2) of this section, a person dying intestate shall be deemed to have had his domicile in Uganda if,

- (a) For a period of not less than two years preceding his death he was ordinarily resident in Uganda; and
- (b) He was survived by a spouse or child who were, at the time of his death, ordinarily resident in Uganda”;
- (c) By substituting for section 23 thereof, the following,

**23.** For the purposes of succession, there is no distinction between those who are,

- (a) Related to the deceased by the full blood and those who are related to him by the half-blood; or
- (b) Born during his lifetime and those who are conceived in the womb at the date of death and subsequently born alive.”;
- (c) In section 24, by substituting the expression “scheduled 1” for the expression “Schedule” occurring in subsection (1) thereof;
- (d) By substituting for Parts IV and V thereof, the following,

#### “PART IV-INTESTACY.”

**25.** A person dies intestate in respect of all property, which has not been disposed of by a valid testamentary disposition.

**26.** All property in an intestate estate devolves upon the personal representative of the deceased upon trust for those persons entitled to such property under this Act.

#### PART V-DISTRIBUTION OF AN INTESTATE’S PROPERTY.

**27.** (1) The residential holding normally occupied by a person dying intestate prior to his death as his principal residence or owned by him as a principal residential holding, including the household chattels therein, shall be held by his personal representative upon trust for his legal heir subject to such rights of occupation and terms and conditions set out in Schedule 2 to this Act.

(2) Any other residential holding possessed by the intestate at his death shall be held by his personal representative upon trust and subject to such rights of occupation and

terms and conditions set out in Schedule 2 to this Act, shall be dealt with in accordance with the remaining provisions of this part.

(3) Any dispute arising as to the exact area of any portion of land subject to the provisions of this section or as to what person has the right to occupy the same or any part thereof shall be settled by the personal representative.

(4) Any person who is aggrieved by any decision of the personal representative under subsection (3) of this section may appeal there from to a magistrate.

**28.** (1) Subject to the provisions of section 30 and 31 of this Act, the estate of a person dying intestate, excepting his principal residential holding, shall be divided among the following classes in the following manner,

- (a) Where the intestate is survived by a customary heir, a wife, a lineal descendant and a dependent relative,
  - (i) The customary heir shall receive 1 per cent;
  - (ii) The wives shall receive 15 per cent;
  - (iii) The dependent relative shall receive 9 per cent;
  - (iv) The lineal descendants shall receive 75 per cent of the whole of the property of the intestate: Provided that where the intestate leaves no person surviving him capable of taking a proportion of his property under subparagraphs (ii) or (iii), such proportion shall go to the lineal; descendants;
- (b) Where the intestate is survived by a customary heir, a wife and a dependent relative but no lineal descendant,
  - (i) The customary heir shall receive 1 per cent;
  - (ii) The wife shall receive 50 per cent; and
  - (iii) The dependent relative shall receive 49 per cent, of the whole of the property of the intestate;
- (c) Where the intestate is survived by a customary heir, a wife or a dependent relative but no lineal descendent relative but no lineal descendant,
  - (i) The customary heir shall receive 1 per cent; and
  - (ii) The wife or the dependent relative as the case may be shall receive 99 per cent, of the whole of the property of intestate;
- (d) Where the intestate leaves no person surviving him, other than a son surviving him, other than a customary heir, capable of taking a proportion of his property under paragraph (a), (b) or (c) of this section, the estate shall be divided equally between those relatives in the nearest degree of kinship to the intestate;
- (e) If no person takes any proportion of the property of the intestate under paragraph (a), (b), (c) or (d) of this section, the whole of the property shall belong to the customary heir;
- (f) Where there is no customary heir of an intestate, the customary heir's share shall belong to the legal heir.

(2) Nothing contained in this section shall prevent the customary heir from taking a further share in the capacity of a lineal descendant if entitled thereto in such capacity.

(3) Nothing in this or any other section of this Act shall prevent the dependent relatives from making any other arrangement relating to the distribution or preservation of the property of the intestate provided that the court sanctions such arrangement.

**29.** (1) All lineal descendants, wives and dependent relatives shall be entitled to share their proportion of a deceased intestate's property in equal shares.

(2) Any child of a deceased lineal descendant, whose descent is not traced through any living lineal descendant and who survives the intestate, shall take the share which the deceased lineal descendant would have taken under subsection (1) of this section had he survived the intestate.

**30.** (1) No wife or child of an intestate occupying a residential holding under the provisions of section 27 and schedule 2 to this Act shall be required to bring such occupation into account in assessing any share in the property of an intestate to which such wife or child may be entitled under section 28 of this Act.

(2) No person entitled to any interest in a residential holding under subsection (1) of section 27 of this Act shall be required to bring such interest into account in assessing any share in the property of an intestate to which such person may be entitled under section 28 of this Act.

**31.** (1) No wife or husband of an intestate shall take any interest in the estate of an intestate if, at the death of the intestate, he or she was separated from the intestate as a member of the same household:

Provided that this section shall not apply where such wife or husband has been absent on an approved course of study in an educational institution.

(2) Notwithstanding the provisions of subsection (1) of this section, a court may, on application by or on behalf of such husband or wife, whether during the life or within six months after the death of the other party to the marriage, declare that the provisions of subsection (1) of this section shall not apply to such applicant.

(3) The provisions of subsection (5) of section 46B of this Act shall apply *mutates mutandis* to an application made under subsection (2) of this section in determining whether a declaration under this section should be made.

(4) A declaration made under subsection (2) of this section shall authorize the applicant to take no more than a proportion of the intestate's property entitled to him under section 28 of this Act.

**32.** (1) Upon the appointment of a customary heir of an intestate, such heir shall give or cause to be given notice of his appointment in the form set out in Schedule 3 to this Act to the personal representative and to the Administrator-General.

(2) All signatures on the notice shall be attested by any one of the following,

- (i) Any agent appointed by the minister under the provisions of the Administrator-General's Act;
- (ii) A justice of the peace;
- (iii) An advocate;
- (iv) A notary public;
- (v) A bank manager;
- (vi) A minister of religion authorized to celebrate marriages within Uganda;
- (vii) A medical practitioner;
- (viii) Any other person authorized in that behalf by the minister by statutory order;

(3) If no notice has been received by the personal representative or by the Administrator-General within one year from the date of death of the intestate, the personal representative shall proceed to distribute the estate of the intestate on the basis that there is no customary heir.

**33.** (1) If, under the provisions of sections 27 to 32 inclusive of this Act, there is no person existing or reasonably ascertainable entitled to take any part of the property of an intestate such part or the whole, as the case may be, shall belong to the state.

(2) If, at any time after such property or part thereof has been made over to the State, a person entitled to take it as his share pursuant to the provisions of section 28 of this Act is ascertained, it shall be lawful for the Minister to return that property or the proceeds thereof to such person in such manner as he may think fit.

**34.** Where a share in the property of an intestate is due to a child or any lineal descendant of a child of such intestate, no money or other property which such intestate may, during his life, have paid, given or settled to, or for the advancement of, the child to whom or to whose descendant such share is due shall be taken into account in estimating such share.”

(e) By inserting immediately after section 46 thereof, the following,

**46A.** Notwithstanding the provisions of section 46 of this Act, where a person, by his will, disposes of all his property without making reasonable provision for the maintenance of his dependent relatives, the following provisions of section 46B shall apply.

**46B.** (1) Where a person dies domiciled in Uganda leaving a dependent relative then if the court, on application by or on behalf of the dependent relative of the deceased, is of opinion that the disposition of the deceased's estate effected by his will, is not such as to make reasonable provision for the maintenance of that dependent relative,

the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restriction, if any as the court may impose, be made out of the deceased's estate for the maintenance of that dependent relative.

(2) The provision for maintenance to be made by an order under subsection (1) of this section shall,

- (a) Subject to the provisions of subsection (3) of this section, be where the deceased's estate produces an income, by way of periodical payments and such order shall provide for their termination not later,
  - (i) In the case of a wife or husband, her or his re-marriage;
  - (ii) in the case of a daughter who has not been married, or who is by reason of some mental or physical disability, incapable of maintaining herself, her marriage or the cessation of her disability, whichever is the later.
  - (iii) In the case of an infant son or a son who is, by reason of some mental or physical disability, incapable of maintaining himself, his attaining the age of twenty-one or the cessation of his disability, whichever is the later;
  - (iv) In the case of the other dependent relative, his attaining the age of twenty-one, or in any case his or her death; or
- (b) Where the deceased's estate does not produce any income or sufficient income, authorize the applicant to receive such share, as the applicant would be entitled to in the distribution of the estate of an intestate under section 28 of this Act.

(3) The court may, if it sees fit, make an order providing for maintenance, in whole or in part, by way of a lump sum payment.

(4) In determining whether and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the nature of the property representing the deceased's estate and shall not order any such provision to be made as would necessitate a realization that would be improvident having regard to the interests of the deceased's dependants and of the persons who, apart from the order, would be entitled to that property.

(5) The court shall, on any application made under this section,

- (a) Have regard,
  - (i) The any past, present or future capital or income from any source of the dependant of the deceased to whom the application relates;
  - (ii) To the conduct of that dependant in relation to the deceased and otherwise; and
  - (iii) To any other matter or thing which in the circumstances of the case the court may consider relevant or material

in relation to that dependant to persons interested in the estate of the deceased or otherwise;

- (b) To the deceased's reasons so far as ascertainable,
  - (i) For making the dispositions made by his will (if any); or
  - (ii) For refraining from disposing by will of his estate; or
  - (iii) For not making any provision, or any further provision, as the case may be, for a dependant, and the court may accept such evidenced of those reasons as it considers sufficient including any statement in writing signed by the deceased and dated, so, however that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

46C. (1) Except as provided by section 46F of this Act, an application under section 46A of this Act shall not, without the permission of the court, be made after the end of the period of six months from the date on which representation in regard to the estate of the deceased is first taken out:

Provided that where letters of administration are revoked and probate is granted, time begins to run from the date of the grant of probate.

(2) The provisions of sections 46B and 46F of this Act shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiration of the said period of six months on the ground that they ought to have taken into account the possibility that the court might permit an application under this Act after the end of that period, but this subsection shall be without prejudice to any power to recover any part of the estate so distributed arising by virtue of the making of an order under this Act.

46D. (1) Where an order is made under section 46B of this Act, then, for all purposes, the will shall have effect and shall be deemed to have had effect as from the deceased's death, subject to such variations as may be specified in the order for the purpose of giving effect to the provision for maintenance thereby made.

(2) Any order under section 46B of this Act, providing for maintenance by way of periodical payments may provide for payments of a specified amount or for payments equal to the whole or part of the income of the net estate or of the income of any party to be set aside or appropriated under this Act of the net estate or may provided for the amount of the payments or any of them to be determined in any other way the court thinks fit.

(3) The court may give such consequential directions as it thinks fit for the purpose of giving effect to an order made under this Act, but no larger part of the net estate shall be set aside or appropriated to answer by the income thereof the



provision for maintenance thereby made than such a part as, at the date of the order, is sufficient to produce by the income thereof the amount of the said provision. 46E. (1) On an application made at a date after the expiration of the period specified in subsection (1) of section 46C of this Act, the court may make such an order as is hereinafter mentioned, but only as respects property the income of which is at the date applicable for the maintenance of a dependant of the deceased, that is to say,

- (a) An order for varying the previous order on the ground that any material fact was not disclosed to the court when the order was made, or that any substantial change has taken place in the circumstances of the dependant or of a person beneficially interested in the property under the will; or
- (b) An order for making provision for the maintenance of another dependant of the deceased.

(2) An application to the court for an order under paragraph (a) of the preceding subsection may be made by or on behalf of a dependant of the deceased or by the trustees of the property or by or on behalf of a person beneficially interested therein under the will.

46F. (1) Where, on application for maintenance under this Act, it appears to the court,

- (a) That the applicant is in immediate need of financial assistance, but it is not yet possible to determine what order (If any) should be made on the application for the provision of maintenance for the applicant; and
- (b) That property forming part of the estate of the deceased is or can be made available to meet the need of the applicant, the court may order that, subject to such conditions or restrictions, if any, as the court may impose and any further order of the court, there shall be paid to or for the benefit of the applicant out of the deceased's estate such sum or sums and (if more than one) at such intervals as the court thinks reasonable.

(2) In determining what order should be made under this section, the court shall, so far as the urgency of the case admits, take account of the same considerations as would be relevant in determining what order should be made on the application for the provision of maintenance for the applicant and any subsequent order for the provision of maintenance may provide that sums paid to or for the benefit of the applicant by virtue of this section, shall be treated to such extent, if any, and in such manner as may be provided by that order as having been paid on account of the maintenance provided for by that order.

(3) Subject to the provisions of subsection (2) of this section, section 46D of this Act shall apply in relation to an order under this section as it applies in relation to an order providing for maintenance.

(4) Where the deceased's personal representative pays any sum directed by an order under this section to be paid out of the deceased's net estate, he shall be under any liability by reason of that estate not being sufficient to make the payment, unless, at the time of making the payment, he has reasonable cause to believe that the estate is not sufficient."

47A. (1) On the death of a father of an infant where no guardian has been appointed by the will of the father of the infant or if the guardian appointed by the will of the father is dead or refuses to act, the following persons shall, in order of priority specified hereunder, be the guardian or guardians of the infant child of deceased, that to say,

- (a) The father or mother of the deceased;
  - (b) If the father and mother of the deceased are dead, the brothers and sisters of the deceased; or
  - (c) If the brothers and sisters of the deceased are dead, the brothers and sisters of the deceased's father; or
  - (d) If the brothers and sisters of the deceased's father are dead, the mother's brothers;
  - (e) If there are no mother's brothers, the mother's father.
- (2) If there is no person willing or entitled to be a guardian under paragraphs (a) to (e) of subsection (1) of this section, the court may, on the application of any person interested in the welfare of the infant, appoint a guardian.

47B. Any court, other than a court presided over by a magistrate grade III, may, if it is satisfied that it is for the welfare of the infant,

- (a) Remove from his office any testamentary guardian or any guardian appointed or acting by virtue of section 47A of this Act;
- (b) Appoint another guardian in place of the guardian so removed;
- (c) Vary the order of priority specified under section 47A of this Act.

47C. (1) Every guardian acting by virtue of section 47A or appointed under section 47B of this Act, shall, subject to the provisions of the law relating to trusts, have all such powers over the estate and the person of an infant as a testamentary guardian has under the law for the time being in force in Uganda.

(2) Any guardian acting by virtue of section 47A or appointed under section 47B of this Act shall act jointly with the mother of the infant, unless the court otherwise directs."

(h) By inserting immediately after section 49 thereof, the following new section,

49A. A testator may, at his discretion, adopt for use the form of the will set out in Schedule 4 to this Act."

- (i) By repealing section 43 thereof;
- (j) By repealing subsection (2) of section 50 thereof;
- (k) By substituting for section 87 thereof, the following,

87. In the absence of any intimation to the contrary in the will, ‘child’, ‘son’ or ‘daughter’ or any word which expresses relationship is to be understood as including an illegitimate child and an adopted child.”

(l) In section 190, by inserting the words “but subject to the provisions of section 5 of the Administrator-General’s Act” immediately after the words “hereinafter provided” occurring therein;

(m) In section 194, by substituting the words “magistrate, commissioner for oaths or justice of the peace” for the words “a judge” occurring therein;

(n) In section 196, by substituting the expression “Subject to the provisions of section 5 of the Administrator-General’s Act, when the deceased has made a will” for the words “when the deceased has made a will” occurring at the beginning of that section;

(o) In section 198, by substituting the words “the Administrator-General” for the words “a creditor” occurring therein;

(p) By substituting for sections 201 to 203 inclusive the following sections,

201. Subject to the provisions of section 5 of the Administrator-General’s Act, administration shall be granted to the person entitled to the greatest proportion of the estate under section 28 of this Act.

202. Administration shall not be granted to any relative if there is some other relative or an appointed customary heir entitled to a greater proportion of the estate until a citation has been issued and published in the manner hereinafter provided calling on such other relative or heir to accept or refuse letters of administration.

203. If there are two or more persons who are entitled to the same proportion of the estate, such persons are equally entitled to administration and a grant may be made to any one or some of them without any citation of the others.”

(q) By repealing section 205 thereof;

(r) By inserting immediately after section 226 thereof, the following new section,

226A. (1) Where any part of an estate in respect of which a person applied for a grant of probate or letters of administration consists of land which could not have been transferred to such person by the deceased during his life time without first obtaining the consent of some person or body under any written law for the

time being in force, such person may only be granted probate or letters of administration subject to the exception of such land there from.

(2) Letters of administration limited to land excepted under the foregoing subsection shall, on the application of the Administrator-General or any person beneficially interested, or his guardian, be granted to the Administrator-General and no consent under any written law shall be required to such grant.”

(s) For section 232 thereof, by substituting the following,

234. (1) Jurisdiction to grant probate and letters of administration under this Act shall be exercised by the High Court and a magistrate’s court in accordance with the provisions of the Administration of Estates (Small Estates) (Special Provisions) Decree, 1972.

(2) Any reference in this or any other part of this Act to the expression ‘a district delegate’ shall be construed as a reference to a magistrate’s court.”

(t) By repealing section 241 thereof;

(u) By inserting immediately after section 250 thereof, the following,

250A. Nothing in this part of this Act shall be deemed to preclude,

(a) The Administrator-General from applying to the court for letters of administration;

(b) The court from granting letters of administration to the Administrator-General, in any case where the court is empowered under this or any other part of this Act to grant letters of administration to any person other than an executor appointed under the will of the testator.”

(u) By repealing section 255 thereof;

(w) In section 260, by substituting for the words “Every person to whom any grant of letters of administration is committed shall” occurring therein the words “The court may before committing a grant of letters of administration to any person require such to”

(x) In section 272, by inserting immediately before the full stop the words “subject to the provisions of section 27 of and schedule 2 to this Act”

(y) In section 280, by renumbering the existing section as subsection (1) of section 280 thereof, and by adding thereto the following,

“(2) On the completion of the administration of an estate, other than an estate administered under the Administration of Estates (Small Estates) (Special Provisions) Decree, 1972, an executor or an administrator shall file in court the final accounts relating to the estate verified by an affidavit two copies of which shall be transmitted by the court to the Administrator-General.”

(z) By inserting immediately after section 300 thereof, the following new section,

300A. (1) Any person beneficially interested in any immovable property vested in a personal representative may apply by petition to the court for a partition thereof and the court, if satisfied that such partition would be beneficial to all persons interested and would not be economically undesirable, may appoint one or more arbitrators to effect the same.

(2) The report and final award of such arbitrators, setting forth the particulars of the immovable property allotted to each of the parties interested, shall, subject to any law or laws for the time being in force, when signed by them and confirmed by order of the court, be effectual to vest in each allottee the immovable property so allotted; and, if such allotment be made subject to the charge of any money payable to any other party interested for equalizing the partition, such charge shall take effect according to the terms and conditions in regard to time mode of payment and otherwise which shall be expressed in such award.”

(aa) In section 304, by substituting the words “or authorized by law” for the words “the High Court may, by special order, or by any general rule to be made from time to time, authorize or direct” occurring therein;

(bb) In section 306, by substituting the words “are authorized by law” for the expression “the High Court may, by special order, or by any general rule to be made from time to time authorize or direct”

(cc) In section 308, by substituting the words “are authorized by law” for the words “the High Court may for the time being regard as good securities” occurring therein;

(dd) By inserting immediately after section 311 thereof, the following new section,

311A. Where any person entitled to a share in the distribution of the estate of an intestate is a minor, the personal representative shall pay or deliver the same into the court by which probate or letters of administration were granted to the account of such minor and the same may be invested in such securities as are authorized by law:

Provided that the court may, on its own motion or on the application of the personal representative or any other person, appoint the parent or guardian of such minor or the personal representative or the public trustee or some other suitable person to receive the share of such minor on his behalf and in such case payment to such person so appointed shall be a sufficient discharge of the personal representative:

Provided further that the provisions of this section shall not apply to the Administrator-General.”

(ee) In section 338, by deleting there-from the words “of section 337”

(ff) In the schedule, by inserting the numeral “1” immediately after the word “Schedule” and by adding at the end thereof, the schedules contained in the schedule to this Decree.

2. (1) The amendments effected to the Act by this Decree,

(a) Shall not affect the law of succession to the estate of any person dying before the coming into force of this Decree, the administration of which has been completed;

(b) May, by leave of the court, be applied to the administration of such part of the estate of any person dying before the coming into force of this Decree as remains to be administered, on the date of the coming into force of this Decree.

(2) The provisions of sections 46A to 47D inclusive, shall apply to every will made on or after the 26<sup>th</sup> day of January 1971.

(3) The provisions of sections 47A to 47D inclusive shall be deemed to have come into force on the 26<sup>th</sup> day of January 1971.

3. Section 3 of the probate (Re-sealing) Act is hereby amended by inserting the words “in any foreign country” immediately after the expression, “Commonwealth” occurring therein.

4. The Administration of Estates (Small Estates) (Special Provisions) Decree is here by amended,

(a) By repealing sections 3 and 4 thereof;

(b) By adding thereto the following new section,

14. Nothing in this Decree shall be deemed to preclude,

(a) The Administrator-General from applying to the court for letters of administration;

(b) The court from granting letters of administration to the Administrator-General, in any case where the court is empowered under this or any other part of this Decree to grant letters of administration to any person other than an executor appointed under the will of the testator.”

MADE under my hand and the Public Seal, this 30<sup>th</sup> day of August 1972.

GENERAL IDI AMIN DADA

*President*

**SCHEDULES.**  
**SCHEDULE 2**

s. 27

**RULES RELATING TO THE OCCUPATION  
OF RESIDENTIAL HOLDINGS.**

1. (1) In the case of a residential holding occupied by the intestate prior to his death as his principal residence any wife or husband as the case may be and any children eighteen years of age if male, or under twenty one years of age and unmarried if female who were normally resident in such residential holding shall be entitled to occupy the same.

(2) In the case of a residential holding owned by the intestate as a principal residential holding but not occupied by him because he was living in premises owned by another person, any wife or husband, as the case may be and any children, under eighteen years of age if male, or under twenty-one years of age and unmarried if female, who were normally resident with the intestate prior to his death, shall be entitled to occupy the same.

(3) In the case of any other residential holding owned by the intestate any wife or children under eighteen years of age if male, or under twenty one years of age and unmarried if female who were normally resident in the residential holding shall be entitled to occupy the same.

(4) Any other premises owned by the intestate and not falling under subparagraph (1), (2) or (3) of this paragraph, shall form part of the estate of the intestate and shall be distributed in accordance with the provisions of section 28 of this Act.

2. Any wife, husband or child who normally cultivated, farmed or tilled any land adjoining a residential holding owned by an intestate prior to his death shall have the right to cultivate, farm and till such land as long as he continues to be resident.
3. Where a child or children are entitled to occupation under paragraph 1 hereof and in fact occupy a residential holding the person legally entitled to the custody of such child or of the majority of such children shall either himself occupy or adapt some other suitable adult person or persons to occupy the residential holding for so long as any such child or any such children continue to do so and such person so occupying shall be subject to the duties and liabilities of an occupier here under;

Provided that in default of occupation by such person entitled to custody or his appointee, a magistrate may, on application of the personal representative or any person interested or on his own motion, appoints a person or persons to occupy as aforesaid.

4. Upon being satisfied by affidavit or otherwise that the person (if any) properly entitled to occupation hereunder has taken occupation of the residential holding with a bona fide intention to continue such occupation or that there is no person entitled to such occupation, the court shall issue a certificate in Form B of Schedule 3 to this Act to the personal representative and a duplicate thereof to the occupant (if any)
5. The personal representative may assent in writing to the vesting of the residential holding or part thereof in such person or persons as may be entitled thereto under the provisions of this Act subject if appropriate to occupancy thereof in accordance with these Rules but any such writing purporting to effect such assent shall be void unless the certificate issued under paragraph 4 of this Schedule is recited therein and the certificate or a certified copy thereof annexed thereto:

Provided that a purchaser for value from the personal representative without notice shall not be concerned to see whether such certificate has been issued or not.

6. Occupancy of a residential holding hereunder shall be deemed to be an interest in land capable of protection by a caveat under the Registration of Titles Act and the interest of any other person in the said residential holding shall be subject thereto and shall be incapable of alteration subject thereto but such occupancy shall not be a tenancy:

Provided that such occupancy shall not prevail against a mortgage under a mortgage created before the death of the intestate.

7. The occupant of a residential holding shall be bound by all covenants, conditions and encumbrances to which the said residential holding or any part thereof was subject at the death of the intestate and in addition shall perform and observe the following stipulations and conditions,
  - (a) The occupant shall pay and discharge all existing and future rates, taxes, charges, duties, assessments and outgoings whatsoever rated, charged, imposed or assessed upon the residential holding or upon the owner or occupier thereof and shall pay the rent and other payments reserved by the lease (if any) under which the same is held;
  - (b) The occupant shall keep all buildings at any time situated on the residential holding and all sewers and drains and the hedges, fences and walls thereof in good and tenantable repair and condition and decoration, fair wear and tear only excepted;
  - (c) The occupant shall not assign, let, charge or part with or shared possession of the residential holding or any part thereof;
  - (d) The occupant shall permit the person entitled to the legal estate in the residential holding subject to the occupancy or his duly authorized agent with or without workmen and others at



reasonable times to enter upon and examine the condition of the residential holding and thereupon such person may serve upon the occupant notice in writing specifying any repairs necessary to be done and require the occupant forthwith to execute the same and if the occupant shall not within two months after service of such notice proceed diligently with the execution of such repairs then the occupant shall permit such person to enter upon the residential holding and execute such repairs and the cost thereof shall, if the occupant continues to occupy the residential holding be a debt due from the occupant to such person and be forthwith recoverable by action:

- (e) The occupant shall farm any land on the residential holding which is usually so farmed in a good and husband like manner and so as not to impoverish or deteriorate such land and shall keep and leave such land in good heart and condition;
- (f) The occupant shall not cut or fell any timber on the residential holding without the consent of the person entitled to the legal estate subject to the occupancy except such as may be reasonably required for domestic purposes by the occupant;
- (g) The occupant shall not build or permit or suffer to be built or erected any building on the residential holding nor make any additions or alterations to any buildings on the residential holding without the consent of the person entitled thereto subject to the occupancy;
- (h) Upon the receipt of any notice, order, direction or other thing from any competent authority effecting or likely to effect the residential holding or any part thereof whether the same shall be served directly on the occupant or the original or a copy thereof be received from any other person, the occupant will so far as such notice, order, direction or other thing or the Act, regulations or other instrument under or by virtue of which it is issued or the provisions hereof require him so to do, comply therewith at his own expense and will forthwith deliver to the person entitled to the legal estate subject to the occupancy a copy of such notice, order, direction or other thing;
- (i) The occupant shall not do or permit or suffer to be done anything in or upon the residential holding or any part thereof which may be or become a nuisance or annoyance or cause damaged or inconvenience to the person entitled to the legal estate subject to the occupancy or to the neighborhood or whereby any insurance for the time being effected on the said residential holding may be rendered void or voidable or whereby the rate of premium thereon may be increased;
- (j) The occupant shall not without consent of the person entitled to the legal estate subject to the occupancy uses the residential holding or any part thereof for any other purposes than the

purpose for which the same was used immediately prior to the death of the intestate;

- (k) Upon the termination of the occupancy the occupant shall yield up the residential holding and all additions thereto and all fittings and fixtures thereon in good and tenantable repair in accordance with the stipulation in that behalf hereinbefore contained.

8. The occupancy of a residential holding hereunder shall be terminated automatically on the happening of any of the following events,

- (a) Upon the remarriage of the occupant where such occupant is a wife;
- (b) Upon the death of the occupant or all the occupants;
- (c) Upon the occupant, being a child, or all the occupants, being children, attaining the age of 18 in the case of males and attaining the age of 21 or marrying in the case of females;
- (d) Upon the occupant or occupants ceasing to occupy the residential holding for a continuous period of six months;
- (e) Upon surrender in writing signed by the occupant if adult or endorsed by the court if the occupancy is by a minor or minors:

Provided that where any child or children of the description contained in paragraph 1 of this Schedule were resident with and dependent upon the occupant at the residential holding immediately before such event, the occupancy shall not terminate but such child or children shall succeed thereto.

9. (1) Any court having jurisdiction over the residential holding, having regard to its value upon application by the registered proprietor for the time being of the said holding or any part thereof, may order the termination of the occupancy of the residential holding or any part thereof upon proof of existence of any one or more of the following grounds,

- (a) That the occupant has persistently failed to comply with one or more of the provisions of paragraph 7 of this Schedule;
- (b) That suitable alternative accommodation is available for the occupant and any persons resident with and dependent on the occupant who would suffer no hardship by occupying such alternative accommodation instead of the residential holding;
- (c) That no hardship would be occasioned to the occupant or any person resident with and dependent upon the occupant if the occupant is paid a sum of money to be assessed by the court instead of being permitted to occupy the residential holding or such part as the case may be and the applicant will immediately pay such sum to the occupant:

Provided that,

- (i) The court shall not be bound to order such termination even where someone or more grounds as above exists;

(ii) Where such application is made within one year from the death of the intestate and where there is any other person or persons who would have been entitled to occupancy but for the existence of the occupant, such person or persons shall be made party to the suit and the court may, after hearing such evidence in the matter as may be presented, order that the occupancy shall pass from the occupant to such person or one or more of such persons.

(2) Any person entitled to occupancy under this paragraph who is aggrieved by the decision of the court may within thirty days appeal against the court's order.

10. It shall be an offence punishable with imprisonment not exceeding six months or a fine not exceeding one thousand shillings or both for any person to evict or attempt to evict from a residential holding prior to the issue of a certificate under paragraph 4 hereof any wife or child of an intestate who normally resided there at the date of death of the intestate or to do any act calculated to persuade or force any such wife or child to quit such holding prior to the issue of such certificate.

**SCHEDULE 3.**

s.32.

**FORMS.**

**FORM A.**

**FORM OF NOTIFICATION OF APPOINTMENT OF CUSTOMARY HEIR.**

To: Personal Representative  
Of .....

And

To: The Administrator-General,  
Estate of ....., deceased.  
PROBATE AND ADMINISTRATION CAUSE NO. .... of 19 .....

We .....(appointing authority under customary law) of .....

And I, .....(customary heir) of ....., hereby give you notice pursuant to section 32 of the Succession Act that on the..... day of ..... at ..... in the District/Area of ..... the said .....(heir) was duly appointed to be the heir and successor of the said ..... deceased in accordance with the customary law of the.....Clan/Tribe of which the said ..... deceased was a member and I, the said, ..... (heir) hereby claim the interest in the property of the said..... deceased due to me as such customary heir.

Signatures .....

.....  
*Witness to signatures.*

.....  
*(State office).*

FORM B.

**CERTIFICATE OF OCCUPANCY.**

In the High Court of Uganda at.....

PROBATE AND ADMINISTRATION CAUSE NO. ....

OF ..... (DECEASED).

Be it known that ..... of .....

In the District/Area of ..... is hereby certified/there is no person entitled to be lawful occupant(s) under the provisions of section 27 of, and Schedule 2 to, the Succession Act of the land known as..... and at the Registry of Titles under Title Nos. ....delineated in the plan annexed hereto and edged red.

(Court Seal).

**SCHEDULE 4.  
STATUTORY WILL FORM.**

s. 49A

1. Name of person making will	Name .....	
	Address .....	
2. Names of executors		
3. Appointment of heir		
4. Name of Guardian or or Guardian of young children		
5. Names of persons who are given specific gifts in this will (which can be money, land or other property)	Names	Property given
6. Names of persons who are given a share in the will maker's property or if gifts have been given in paragraph 5 above the property left after the gifts have been given	Names	Share given
7. Signature or mark of will maker		
8. Signatures or marks of two witnesses and their names, addresses and occupations.	Witness 1	
	Signature or mark	
	Name	
	Address	
	Occupation	
	Witness 2	
	Name	
	Address	
	Occupation	
<i>Date of publication: 1<sup>st</sup> September 1972.</i>		