

REPUBLIC OF ZAMBIA

THE PROBATES (RESEALING) ACT

CHAPTER 61 OF THE LAWS OF ZAMBIA

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CHAPTER 61

PROBATES (RESEALING)

An Act to provide for the recognition in Zambia of probate and letters of administration granted in Her Britannic Majesty's dominions or by British courts in foreign countries; and to provide for matters incidental thereto.

22 of 1936
41 of 1960
Government Notice
497 of 1964
Statutory Instrument
152 of 1965

[13th November, 1936]

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1. This Act may be cited as the Probates (Resealing) Act.

Short title

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

Interpretation

"British court in a foreign country" means any British court having jurisdiction out of Her Britannic Majesty's dominions in pursuance of an Order in Council, whether made under any British Act or otherwise;

"court of probate" means any court or authority, by whatever name designated, having jurisdiction in matters of probate;

"Her Britannic Majesty's dominions" includes any British protectorate or protected state and any territory in respect of which a mandate on behalf of the League of Nations has been accepted by Her Britannic Majesty;

"probate" and "letters of administration" include confirmation in Scotland, and any instrument having in any other part of Her Britannic Majesty's dominions the same effect which under English law is given to probate and letters of administration respectively;

"probate duty" includes any duty payable on the value of the estate and effects for which probate or letters of administration is or are granted.

(As amended by S.I. No. 152 of 1965)

3. Where a court of probate in any part of Her Britannic Majesty's dominions, or a British court in a foreign country, has, either before or after the commencement of this Act, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters so granted may, on being produced to, and a copy thereof deposited with, the High Court, be sealed with the seal of that Court, and thereupon shall be of the like force and effect, and have the same operation in Zambia as if granted by that Court.

Sealing of probates and letters of administration granted outside Zambia

(As amended by S.I. No. 152 of 1965)

4. The High Court shall, before sealing a probate or letters of administration under this Act, be satisfied-

Conditions to be fulfilled before sealing

(a) that probate duty has been paid in respect of so much, if any, of the estate as is liable to probate duty in Zambia; and

(b) in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in the territory to which the letters of administration relate;

and may require such evidence, if any, as it thinks fit, as to the domicile of the deceased person:

Provided that the security need not be given when application for the sealing of a probate or of letters of administration is made to the High Court by or on behalf of the Administrator-General.

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5. The High Court may also, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Zambia:

Security for payment of debts

Provided that the security need not be given when application for the sealing of a probate or of letters of administration is made to the High Court by or on behalf of the Administrator-General.

6. For the purposes of this Act, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

Duplicate or copy admissible

7. The High Court may, by statutory instrument, make rules of court for regulating the procedure and practice, including fees and costs, in the High Court, on and incidental to an application for sealing a probate or letters of administration under this Act.

Rules of court

(As amended by No. 41 of 1960)

8. The British and Colonial Probates Act, Chapter 17 of the 1930 Edition of the Laws, is hereby repealed:

Repeal and saving

Provided that all rules made by the High Court under the Act hereby repealed and in force at the commencement of this Act shall be deemed to have been made under this Act and shall continue in force until other rules shall be made by virtue of this Act.

SUBSIDIARY LEGISLATION

PROBATES (RESEALING)

CAP. 61

SECTIONS 7 AND 8-THE PROBATES (RESEALING) RULES OF COURT

Rules by the High Court

Government Notices
12 of 1920
180 of 1933
Statutory Instrument
152 of 1965

1. These Rules may be cited as the Probates (Resealing) Rules of Court.

Title

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- 2.** Application to seal a grant of probate or letters of administration under the Act shall be made to the Registrar by the executor or administrator or the attorney (lawfully authorised for the purpose) of such executor or administrator, either in person or through a solicitor. Application for sealing
- 3.** Such application must be accompanied by an oath of the executor, administrator or attorney in the form in the First Schedule, or as nearly thereto as the circumstances of the case will allow. Oath
- 4.** Notice of the sealing of the grant of probate or letters of administration shall be advertised by the Registrar at the expense of the applicant in the form set out in the Second Schedule. Advertisement of sealing
- 5.** Application by a creditor under section *five* of the Act shall be made by motion before the Registrar, supported by an affidavit setting out particulars of his claim. Application by creditor
- 6.** In every case, and especially when the domicile of the deceased at the time of death as sworn to in the affidavit differs from that suggested by the description in the grant, the Registrar may require further evidence as to domicile. Evidence of domicile
- 7.** If it should appear that the deceased was not at the time of death domiciled within the jurisdiction of the court from which the grant issued, the seal shall not be affixed unless the grant is such as would have been granted by the High Court. Domicile outside jurisdiction
- 8.** Where application is made to reseal a grant of "Letters of Administration Executor Testamentary", the Registrar shall require that a copy of the will deposited with the court from which the grant issues, duly certified as a true copy by such court, shall be filed in the Registry. Letters of Administration
Executor
Testamentary
- 9.** When application to seal a grant of probate or letters of administration is made after the lapse of three years from the death of deceased, the reason of delay must be certified to the Registrar. Should the certificate be unsatisfactory, the Registrar shall require such proof of the alleged cause of delay as he may think fit. Delay in application to seal
- 10.** Notice of the sealing of a grant by the High Court shall be sent by the Registrar to the court from which the grant issued. Notice of sealing
- 11.** When intimation has been received of the resealing of a grant issued from the High Court, notice of any revocation of, or any alteration in, such grant shall be sent by the Registrar to the court by whose authority such grant was resealed. Notice of alteration in grant

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12. The fees set forth in the High Court Rules shall be paid before any grant of probate or administration is resealed, unless the High Court otherwise directs. Fees. Cap. 27

(As amended by No. 180 of 1933)

FIRST SCHEDULE

(Rule 3)

FORM OF OATH OF EXECUTOR, ADMINISTRATOR OR ATTORNEY IN THE HIGH COURT FOR ZAMBIA

In the estate of _____, deceased.
I, C.D. (or E. F.), of _____, make oath and say:

1. That a grant of probate of the will (or letters of administration of the estate) of A. B., late of _____, deceased, was granted to me (or C. D.) by the _____ court at _____ on the _____ day of _____, 19____. Adapt to suit circumstances. This paragraph to be struck out if inapplicable

2. That the said deceased was at the time of his death domiciled at _____.

3. That I am the attorney lawfully appointed of C. D. under his hand and seal, and am duly authorised to apply to this court for the sealing of the said grant.

4. That the value of the estate within the jurisdiction of this court amounts to the sum of K _____ and no more, to the best of my knowledge, information and belief.

Sworn at _____
(As amended by No. 152 of 1965)

SECOND SCHEDULE

(Rule 4)

FORM OF ADVERTISEMENT OF SEALING

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A. B., deceased.

NOTICE IS HEREBY GIVEN that probate of the will (or letters of administration) of A. B., deceased, late of , granted by the court at
on the day of , 19 , has been
resealed in the High Court for Zambia.

Registrar of the High Court

(As amended by No. 152 of 1965)