

**1.1 Introduction**

Intestate succession arises when either a person dies without a will or the will left by the deceased is invalidated by the Court. In such a case, the surviving persons (subject to the degree of consanguinity) are required to petition the Court for a Grant of Letters of Administration (Intestate). The Court could either be the High Court or Magistrates Court subject to weighing the gross value of the estate against the pecuniary jurisdiction. (*see section 48 of the Law of Succession Act and Rule 7(3) of the Probate & Administration Rules*)

**1.2 The Law**

The guiding law for succession proceedings is the **Law of Succession Act (LSA) and the Probate & Administration Rules (P&A Rules)**. The specific sections and their respective requirements are discussed below:

**a. Section 34 LSA- meaning of Intestacy**

A person is deemed to die intestate in respect of all his free property of which he has not made a will which is capable of taking effect.

**b. Section 38 LSA- Where intestate has left a surviving child or children but no spouse**

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

**c. Section 45 LSA- No intermeddling with property of deceased person**

Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person. Any person who contravenes the provisions of this section shall –

- (a) be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment; and
- (b) be answerable to the rightful executor or administrator, to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.

**d. Section 51 LSA & Rule 7 P&A Rules- Application for grant**

Every application for a grant of representation shall be made in such form as may be prescribed, signed by the applicant and witnessed in the prescribed manner.

**e. Section 55- No distribution of capital before confirmation of grant**

No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets, or to make any division of property, unless and until the grant has been confirmed as provided in section 71.

**f. Section 56 LSA & Rule 7(8) of the P&A Rules- No grant of representation shall be made to more than 4 persons in respect of the same estate/property.****1.3 Requisite P&A Forms for Grant of Letters of Administration Intestate**

1. **P&A Form 80-** Petition for Letters of Administration Intestate
2. **P&A Form 5-** Affidavit in support of Petition for Letters of Administration Intestate

3. **P&A Form 11-** Affidavit of Justification of Proposed Sureties
4. **P&A Form 12-** Affidavit of Justification of Proposed Administrator
5. **P&A Form 38-** Consent to the making of a Grant of Administration Intestate to Person of Equal or Lesser Priority
6. **P&A Form 57-** Guarantee by Personal Sureties

**1.3.1 Requisite documentation to accompany the Petition**

In the absence of a will, the Court appoints a Personal Representative to administer the estate. This may prove undesirable, as you may want a specific person or corporate entity that you have come to trust to be the administrator of your property. Persons who may be appointed Administrators include the surviving spouses, father and mother of the deceased, brothers and sisters of the deceased, among other persons.

**1.4 Process simplified**

Preparing the Petition for Letters of Administration Intestate

Filing the Document in Court, having the same assessed and paying the filing fees

Gazettement (at the Applicant's cost)- done for a period of 30 days to allow any person who feels aggrieved for any reason by the Petition ample time to lodge any objections

Issuance of the Letters of Administration if there are no objections and where there are the Court should hear and determine them before said issuance- the purpose is to collect and preserve the estate of the deceased, not distribute it

Confirmation of Grant- Done after the lapse of 6 months from the date of issuance of the Letters of Administration and signifies that the Estate can now be distributed among the beneficiaries

We encourage you to get in touch with us for your further guidance and general legal needs.

Prepared by:

Lynn Owano- Senior Associate

Email: [lnyangweso@mumakanjama.com](mailto:lnyangweso@mumakanjama.com)



Email: [info@mumakanjama.com](mailto:info@mumakanjama.com)  
Tel: +254-20-2216889/2211437