

eSwatini

Administration of Estates Act, 1908

Act 28 of 1902

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Administration of Estates Act, 1908

Act 28 of 1902

Commenced on 1 June 1902

[This is the version of this document at 1 December 1998.]

An Act for regulating the administration of the estates of deceased persons, minors, and of persons of unsound mind, and of derelict estates.

Part I – Estates of deceased persons

Death notices

1. Short title

This Act may be cited as the Administration of Estates Act, 1908.

2. Death notices to Regional Administrator or Master

- (1) Whenever a person dies leaving any property in possession, reversion or expectancy, or leaving a will, the nearest relative or connection of the deceased who is at or near the place of death, and in default of any such near relative or connection the person who at or immediately after the death has the chief charge of the house in or of the place on which the death occurs, shall within fourteen days thereafter cause a notice of death to be framed in the form set out in Schedule “A” and shall cause such notice signed by himself to be delivered or transmitted—
 - (a) to the Master if the death occurs in the region of Hhohho;
 - (b) to the Regional Administrator of the region if the death occurs elsewhere, in which case such notice shall be accompanied by a duplicate, or a fair and true copy thereof.
- (2) Every Regional Administrator to whom such notice is given, shall cause the duplicate or copy thereof to be examined and compared with the original and if need be corrected and shall authenticate such duplicate or copy with his signature, and shall file and register the same and forthwith transmit the original notice to the Master.
- (3) If it appears that the person signing the death notice was not present at the death the Master may call upon such person for proof of death.

3. If death notice defective executor to furnish further information

In case the information in any death notice is defective or insufficient, the Master may call upon any executor after his appointment to furnish such further information as may be required, and every executor so called upon shall without delay return his written answers to such questions as the Master may put to him for that purpose.

4. Penalty clause

Any person who fails to comply with sections 2 or 3 shall be guilty of an offence and liable on conviction, to a fine not exceeding forty emalangeni, or in default of payment thereof to imprisonment for a period not exceeding three months.

Wills

5. Deposit of wills, etc., with Master

- (1) Any person may deposit with the Master, either open or enclosed under a sealed cover, any will, codicil, or testamentary instrument executed by him; and the Master shall keep, or cause to be kept, a register of the names and descriptions of the persons depositing every such deed and the date of depositing the same.
- (2) Every such deed shall be accompanied by a duplicate or fair and true copy thereof, which, together with the original, shall be kept under the charge and custody of the Master until the death of the maker thereof, unless redelivery of the same be demanded by the maker, or in his lifetime by his lawful attorney specially authorised for that purpose, and when any such deed shall be redelivered in such manner, the maker or his attorney as the case may be shall sign a receipt for it.

6. Persons in possession of wills, etc., on testator's death bound to transmit them

- (1) Every person other than the Master, who at the time of the death of the maker thereof has in his possession any deed purporting to be, or entitled the last will, codicil, or other testamentary instrument of any other person, or into whose possession any such deed shall come after the death of the maker, shall forthwith by the first opportunity deliver or transmit every such deed to the Master, when such person resides in Mbabane or the Hhohho region, and when such possessor resides in any other region then to the Regional Administrator of the region in which he resides or is at the time.
- (2) Where such person delivers or transmits any such deed or instrument to a Regional Administrator, he shall also deliver or transmit to him a duplicate or fair and true copy thereof.
- (3) Every such Regional Administrator shall cause such duplicate or copy to be examined and compared with the original, and if need be corrected, and shall authenticate such duplicate or copy with his signature, and shall file and register the same, and shall forthwith transmit the original deed to the Master:

Provided, however, that if such Regional Administrator is not the Regional Administrator of the region in which the deceased person ordinarily resided at the time of his death, he shall transmit the duplicate or copy of such will, codicil, or other testamentary instrument authenticated as aforesaid to the Regional Administrator of such last mentioned region, who shall file and register the same.

- (4) Every notary public shall, when called upon by the Master to do so, transmit the original minute of any will, codicil, or testamentary instrument passed before him to the Master.
- (5) Any person failing to comply with this section shall be guilty of an offence and on conviction liable to a fine not exceeding forty emalangeni, or in default of payment thereof to imprisonment for a period not exceeding three months.

7. Penalty for theft, destruction or concealment of wills, etc.

- (1) If any person either during the life of the testator or after his death, steals or wilfully destroys or conceals any will, codicil, or other testamentary instrument, the offender shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding seven years, or to a fine not exceeding one thousand emalangeni, or to both.
- (2) It shall not in any indictment for such offence be necessary to allege that such will, codicil, or other instrument is the property of any person or is of any value.
- (3) Nothing in this section contained relating to the said offences nor to any proceeding, conviction, acquittal, or judgment to be had or taken thereupon, shall prevent, lessen, or impeach any remedy

which any person aggrieved by any such offence might or would by law have had by means of any civil action, suit, or proceeding if this Act had not been passed; but nevertheless the conviction of any such offender shall not be received as evidence against him, nor his acquittal as evidence for him in any such civil action, suit, or proceeding against him.

8. Warrants to search for stolen or concealed wills etc.

The Chief Justice and every other judge of the High Court, and every magistrate or justice of the peace, upon information taken on oath being transmitted to him by the Attorney-General or any public prosecutor, or the Master, or upon the information of any person made on oath before any such judge, magistrate, or justice of the peace, that there is reason to suspect that a will, codicil, or other testamentary instrument is concealed in any place within the jurisdiction of such judge, magistrate, or justice of the peace may by warrant under his hand cause such place to be searched.

9. Applications by Master to the court where persons refuse to give up wills

If a person who is reasonably believed to be in possession of, or to have under his, control any will, codicil, or other testamentary instrument, after the death of the testator refuses or fails to deliver or transmit it as provided in [section 4](#), the Master shall forthwith apply to the High Court for an order of such court directing such person forthwith to deliver such will, codicil, or other instrument.

10. Enregisterment of wills, etc., at testator's death

Every deed being or purporting to be the will, codicil, or other testamentary instrument of any person which has been deposited with, or transmitted to the Master as provided, in [section 4](#) shall after the death of the maker thereof, be enregistered by the Master in the register of estates, for which purpose the Master shall open or cause to be opened, every such deed which is sealed.

Provided that notwithstanding any such registration, all questions as to the validity and legal effect of every such deed shall be reserved for the decision of the High Court; and

Provided further that where such deed has been deposited with the Master previous to the death of the maker, the Master shall cause the duplicate or copy deposited with the said deed to be examined and compared with the original, and if need be corrected, and shall authenticate such duplicate or copy with his signature and shall transmit it to the Regional Administrator of the region in which the deceased ordinarily resided at the time of his death, if such region is not the Hhohho region, and the said Regional Administrator shall cause it to be filed and registered.

Inventories

11. Inventory of estate in community by surviving spouse

When one of two spouses who have been married in community of property dies, the survivor shall within thirty days after the death of the deceased, cause an inventory of all property, goods and effects, movable and immovable of whatever kind, which at the time of the death formed part of or belonged to, the estate possessed in community between the deceased and surviving spouse, to be made in the presence of two impartial witnesses of good credit and repute, and of such persons having an interest in the distribution of the joint estate as heirs or legatees of the deceased spouse present at the making of such inventory; and every such inventory shall be subscribed by the surviving spouse, the said witnesses, and such heirs and legatees as are so present.

12. Penalties on omission of inventory

- (1) Every surviving spouse who wilfully neglects to cause an inventory of the joint estate to be made in manner and within the period provided as in [section 9](#), who or knowingly omit to enter in such inventory, any article of property of any kind whatever, shall in the distribution of such estate,

forfeit all right to and share in anything which may accrue to the joint estate after the death of the predeceasing spouse, and in and to such property so omitted in the inventory.

- (2) Every loss which has been caused by the destruction or deterioration of any such property so omitted from the inventory, or which has accrued to the joint estate after the death of the predeceasing spouse by the loss or deterioration of any part thereof, shall in the distribution of the estate fall upon and be borne by such surviving spouse solely and exclusively.
- (3) Nothing in this section contained shall free or exempt any person who wilfully or for any fraudulent purpose makes or causes to be made any false inventory of any such joint estate from any penalty or punishment prescribed in this Act or any other law with respect to the offence of making false inventories.

13. Inventory of the death of persons not married in community

- (1) On the death of a person not being one of two spouses married in community of property, the wife or husband of the deceased, or in default or absence of the wife or husband, a child of the deceased, or in default, absence or minority of a child, the next of kin of the deceased, or in default, absence or minority of the next of kin, the person who at or immediately after the death has the chief charge of the house in, or of the place on which the death occurred, shall within fourteen days after the death, make or cause to be made in the presence of two impartial witnesses, of good credit and repute, an inventory of all goods and effects belonging to the deceased and being in the house or upon the premises at the time of the death, and of all other goods and effects known to have belonged to the deceased by the person making or causing such inventory to be made.
- (2) Every such inventory shall be subscribed by the person making or causing it to be made and by the witnesses referred to in sub-section (1).

14. Transmission of inventory to Master or Regional Administrator

Every person required or directed to make or cause to be made any inventory under this Act, shall as soon as it has been made, deliver or transmit it to—

- (a) the Master, if such person resides in the Hhohho region;
- (b) the Regional Administrator when such person resides in any other region in which case such inventory shall be accompanied by a duplicate or fair and true copy thereof;

and such Regional Administrator shall cause the duplicate or copy of the inventory so delivered or transmitted to him to be examined, and if need be corrected, and shall authenticate such duplicate or copy with his signature and file it of record in his office, and transmit the original to the Master.

15. Inventory, by High Court, or Master

Notwithstanding anything in this Act contained, the High Court, or the Master may order that an inventory of any property belonging to a deceased person or to the joint estate of a deceased person, and the surviving spouse be taken by any person named in such order.

16. Particulars required as to immovable property

Every person who is required by sections [11](#), and [13](#) and [15](#) to make any inventory, shall include therein a specified list of all immovable property in which to his knowledge the deceased had an interest at the date of his death, and if possible a reference to the title under which the deceased held such interest and the date of such title.

17. Penalty

Every person who fails to comply with sections [11](#), [13](#) and [14](#) shall be guilty of an offence and on conviction liable in addition to any penalty provided by this Act or any other law, to a fine not exceeding

forty emalangeni, or in default of payment thereof to imprisonment for any period not exceeding three months.

18. Penalty for false inventory

If any person required by sections [11](#), [13](#) and [15](#) to make, or cause to be made, an inventory of any estate, goods, or effects wilfully makes a false inventory thereof, he shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years, or a fine not exceeding one thousand emalangeni, or to both.

Custody of estate pending issue of letters of administration

19. Possession by survivor of estate in community of property

When one of two spouses who have been married in community of property dies; the joint estate shall remain under the charge of the survivor, until the executor of the deceased, or the tutor testamentary or dative of the minor children of the marriage, or the Master or *curator bonis*, lawfully appointed to such minor children, takes proceedings for the administration, distribution, and final settlement of the said joint estate:

Provided that nothing in this section shall prevent any such joint estate from being placed under sequestration as insolvent.

20. Custody of estate of persons not married in community

On the death of a person, not being one of two spouses, married in community of property, the husband or wife of the deceased, or in default or absence of the husband or wife a child of the deceased, or in default, absence or minority of a child the next of kin of the deceased, or in default, absence or minority of the next of kin, the person who at or immediately after the death has the chief charge of the house in, or of the place at which the death occurred shall secure and take charge of all goods and effects of whatever description belonging to the deceased, and in the house or upon the premises at the time of death, and shall retain them in his custody or possession until delivery thereof is demanded by the executor of the deceased or by any other person lawfully appointed by the High Court, or the Master to receive delivery thereof.

21. Appointment of *curator bonis* until issue of letters of administration

- (1) In all cases where it may be necessary or expedient to do so, the Master may appoint a *curator bonis* to take custody and charge of any estate, until letters of administration are granted to executors, testamentary or dative, for the due administration and distribution thereof; and every such *curator bonis* may collect such debts and sell or dispose of such perishable property belonging to the estate as the Master shall specially authorise.
- (2) Every appointment made by the Master of any *curator bonis* shall, on the application of any person having an interest in such estate, be confirmed or set aside by the High Court which if it sets such appointment aside may appoint some other fit and proper person to be *curator bonis*.

Letters of administration

22. Letters of administration

The estates of all persons dying either testate or intestate shall be administered and distributed according to law under letters of administration to be granted in the form contained in Schedule "B", by the Master to the testamentary executors duly appointed by such deceased persons, or to such persons who are in default of testamentary executors appointed executors dative in terms of this Act.

23. Letters of administration to executor appointed by will

If a deceased person has by will or codicil duly appointed any person to be his executor, the Master shall, upon the written application of such executor, forthwith grant him letters of administration as soon as such will or codicil has been registered in the office of the Master:

Provided that if it appears to the Master, or if any person by writing, lodged with the Master objects that any will or codicil by virtue whereof any person claims to be the testamentary executor to the estate of any deceased person is not in law sufficient to warrant and support such claim, letters of administration may be refused by the Master until the validity and legal effect of such will or codicil has been determined by some competent court, or until such objection, has been withdrawn by the person by whom it was made or until such person has had sufficient time to apply to such court, for an order restraining the issue of letters of administration:

Provided further that letters of administration shall not be granted to any such executor who at the time of making such written application, avers or resides outside Swaziland, and that, if the Master has reason to believe that such executor, although he may at the time of making such application be within Swaziland, will not remain within Swaziland until he has finally liquidated and settled the estate to be administered by him, the Master may refuse to grant letters of administration to him until he finds sufficient security for the due and faithful administration by him of such estate.

24. Proceedings on failure of appointment of executors, death, etc.

- (1) When any person has died without having by a valid will or codicil appointed a person to be his executor, or where a person duly appointed to be the executor has predeceased him, or refuses or becomes incapacitated to act as such, or within such reasonable time as the Master deems sufficient, neglects or fails to obtain letters of administration, the Master shall cause to be published in the *Gazette* and in such other manner as to him seems fit, a notice, calling the surviving spouse, (if any), the next of kin, legatees and creditors of the deceased to attend at his office at the time therein specified to see letters of administration granted to such person as shall then be appointed by him, executor to the estate of such deceased person:

Provided that when it appears to the Master necessary or expedient so to do, he may in such notice call such persons to attend before any Regional Administrator at such time and place as may be appointed for the purpose of proposing a person to be recommended by the Regional Administrator to the Master as fit and proper to be appointed executor.

- (2) The Master shall, at the meeting at his office, or upon receiving the report of the Regional Administrator, appoint such person as to him seems fit and proper to be executor of the estate of the deceased and shall grant letters of administration accordingly, unless it appears to him necessary or expedient to postpone such appointment and to call any other such meeting.

Provided that when it appears to the Master that the estate of such deceased person is manifestly insolvent, it shall not be necessary for him to take any proceeding for the appointment of an executor or executors.

25. Competition for the office of *executor dative*

In every case in which a competition shall take place for the office of *executor dative*, the surviving spouse failing whom the next of kin and failing whom a creditor, and failing whom a legatee shall be referred by the Master for such office:

Provided that nothing in this section contained shall prevent any one or more of the above-mentioned classes of persons from being conjoined in the said office with one or more of any of the other such classes and:

Provided further that if it appears to the Master or the High Court on reviewing the appointment made by the Master that any good reason exists against the appointment of all or any of the above-mentioned

persons or classes of persons as executor or executors, any such person or class of persons may be passed by, and some other fit and proper person or persons may be, appointed and by the Master, or such court:

Provided further that every such appointment so made by the Master, shall, on the application of any person having an interest in such estate, be reviewed, and confirmed or set aside by the High Court, and such court by whom such appointment is set aside, may appoint some fit and proper person.

26. Appointment of tutors of minors where minors would have been entitled to appointment

If any of the next of kin or creditors or legatees of a deceased person are minors, under the guardianship of a tutor duly appointed, such tutor shall be entitled to be preferred to the office of *executor dative* under [section 23](#) in like manner as the minor whose tutor he is, would, if of full age, have been entitled to be preferred to that office under the said section.

27. Assumption of executors under power contained in will

- (1) Nothing in this Act shall prevent any testamentary executor from assuming any other person or persons as executor or executors under and by virtue of any power to him in a will or codicil:

Provided that no person shall be entitled or qualified to act as an assumed executor unless letters of administration have been granted to him as such during the lifetime of the executor testamentary, by the Master, who shall grant them on production to him of the will or codicil in which the assumption of such executor is authorised and of the deed by which such testamentary executor has assumed such person as executor.

- (2) This Act and every other law applicable or relating to or affecting executors shall be deemed to apply and relate to and affect every such executor so assumed.

28. Proceedings in case of death, etc., of testamentary or assumed executors

If a testamentary or assumed executor to whom letters of administration have been granted has died or become incapacitated to act as such or has been removed from his office by the decree of any competent court and there does not remain for the administration of the estate any executor whatever, or so many executors, either testamentary or assumed as by the provisions of the will or codicil by which such executors were appointed or permitted to be assumed, shall be required to form a quorum of executors, and when it shall happen that any *executor dative*, shall, after letters of administration have been granted to him, die, or become incapacitated, or be removed in manner aforesaid, then, proceedings to appoint an executor in place of such executor so dying, or becoming incapacitated, or removed, shall be taken by the Master in like manner in all respects as provided by [sections 24, 25 and 26](#).

29. Revocation of letters of administration by decree of court, or Master

Letters of administration granted to a person as testamentary executor, may be revoked and annulled by the decree of the High Court, on proof to the satisfaction of such court, that the will or codicil, in respect of which such letters have been granted, is null; or has been revoked, either wholly or in so far as it relates to the nomination of such executor; and letters of administration granted to any person as *executor dative*, may be revoked and annulled by the Master, on production to him of any will or codicil by which any other person who then is legally capable and qualified and who consents to act as executor, has been legally nominated testamentary executor to the estate which such *executor dative* has been appointed to administer:

Provided that if the non-production of such will or codicil, prior to the granting of letters of administration to the *executor dative*, was due to the fault or negligence of the person therein nominated testamentary executor, such person shall be personally liable for, and may be compelled at the instance of the Master, or any person interested, to make good to the estate all expenses which have been incurred in respect of, and with reference to, the appointment of the *executor dative*.

30. Security for due administration

Every *executor dative*, assumed executor or *curator bonis* shall, before being permitted to enter up on the administration of an estate, find security to the satisfaction of the Master for the due and faithful administration of the estate to which he has been appointed in such amount as in the circumstances are reasonable.

31. Appointment by Master of executors to estates under E200

If a person die whose estate is unrepresented and in so far as it is situated within Swaziland, appears to the Master to be under the value of two hundred emalangenis, the Master may cause such estate to be administered and distributed in accordance with the provisions of sections 64 and 65 by an *executor dative*, to be summarily appointed by him for that purpose.

Foreign letters of administration

32. Operation of this part with regard to letters granted in declared State

Sections 33, 34 and 35 shall come into force with regard to all letters of administration at any time granted in any country or territory, as and from the date of, and during the period (if any) limited by a notice, which it shall be lawful for the Prime Minister to publish in the *Gazette*, declaring such country or territory to fall under the provisions of the said sections, and thereupon the said provisions shall continue in force, either until any period so limited, or any extension thereof by notice in the *Gazette* has expired, or until a further notice shall be similarly published by the Prime Minister declaring that the said provisions no longer apply to letters of administration granted in such country or territory.

33. Letters granted in other country or territory may be sealed and signed for use in Swaziland

Whenever letters of administration, granted in any country or territory, are produced to, and a copy thereof deposited with, the Master by the person in whose favour such letters of administration have been granted, or his duly authorised attorney, such letters may be signed by the Master, and sealed with his seal of office, and shall thereupon be of like force and effect and have as full operation in Swaziland with respect to, and the Master shall have the same control over the administration of the entire estate of the deceased here situate, as though the said letters had been letters of administration granted by the Master:

Provided however that

- (a) the Master shall not sign and seal any such letters where any letters of administration have already been granted by him in respect of the estate of any deceased person which is situated in Swaziland;
- (b) before any such letters are signed and sealed, a certificate of death, and a duly certified copy of the will (if any) of the deceased, and an inventory of all property within Swaziland known to belong to him, shall be lodged with the Master, and the same stamp fees of office, duties and security shall be paid and given as would be required if the said letters had been letters dative granted by the Master;
- (c) if the Master refuses to sign and seal any such letters of administration the person thereby authorised and empowered to act after notice to the Master, may make application to the High Court for relief, and thereupon the court shall make such order as may be just.
- (d) the person in whose favour such letters of administration have been granted may insert in the *Gazette* and in a newspaper published and circulating in Swaziland an advertisement calling upon all creditors and persons interested *ab intestato*, or otherwise, to lodge with the Master the particulars of their claims and of their objections to the signing and sealing of such letters of administration within a period of three weeks and if within the said period no such claim or objection has been lodged or if such claim has been paid and proof of such payment is produced to the Master and it further appears that there are no minors resident in Swaziland who are interested

in the distribution of the estate then such letters of administration may be signed and sealed by the Master without observance of the usual and customary forms and without his requiring security to be given; but if the Master then refuses to sign and seal such letters of administration the provisions of paragraph (c) shall apply.

- (e) the Master shall notify the proper officer of the court granting such letters of administration that he has signed and sealed them without security being given and shall forward with such notification a certified copy of the inventory required to be lodged under paragraph.

34. Letters granted by British Consular Courts recognised

Letters of administration lawfully granted by any British Consular Court shall be deemed and taken to be granted in a country or territory to which the provisions of [section 31](#) apply.

35. Evidence by copy of letters certified by Master, etc.

- (1) A copy certified by the Master of the copy of any letters of administration deposited with him under the provisions of [section 33](#) of this Act shall be admitted in evidence in all legal proceedings in Swaziland as if such certified copy were the original letters.
- (2) A certificate under the hand of the Master that he has in accordance with the said provisions signed and sealed any letters of administration authorising and empowering any person to act thereunder, shall be admitted in all legal proceedings within Swaziland as *prima facie* proof of the legal right and title of such person to administer so much of the estate of the deceased person named in such certificate as is situated in Swaziland.

36. Definition of terms

In sections [32](#), [33](#), [34](#) and [35](#) unless the context otherwise requires—

“**letters of administration**” includes every document issued, or a copy of every such document, duly certified by any lawful and competent judicial or other public authority in any country or territory, under and by which any person is authorised and empowered to act as the personal representative of any deceased person, or as executor or administrator, either testamentary or dative, either of the whole estate of any deceased person which is legally situate in such country or territory, or so much of such estate so situate as consists of immovable, movable, real or personal property as the case may be;

“**British Consular Court**” means any British Court having jurisdiction under an Order in Council, made in pursuance of the Foreign Jurisdiction Acts, 1843 to 1878, or any of them, or any amendment thereof.

Duties of executors

37. Inventory by executors

- (1) Every executor shall, as soon as letters of administration shall have been granted to him, make an inventory showing the value of all property, goods and effects, movable and immovable, of whatever kind, belonging to the estate which he has been appointed to administer, and shall in like manner from time to time thereafter, and as soon as he finds or knows of any other such property, goods or effects belonging to such estate, not contained in such first-mentioned inventory, make an additional inventory showing the value of all such last-mentioned property, goods and effects.
- (2) Every such executor shall forthwith cause every such inventory, and additional inventory to be transmitted to the Master.
- (3) When any such additional inventory shall be so transmitted by any executor, dative, or assumed, he shall find such further security as the Master may require of him.

38. Penalty for false inventory

If any person required by [section 37](#) to make, or cause to be made an inventory of any estate, goods, or effects wilfully makes a false inventory thereof, he shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding five years, or to a fine not exceeding one thousand emalangeni, or to both.

39. Master may appoint appraiser to value assets

If an executor fails to place any value upon the assets or any portion thereof, or places a value thereon which does not meet with the approval of the Master, the Master may cause the value of such assets to be appraised by any impartial person, and the value so ascertained shall be taken to be the true value of such assets for the purposes of this Act.

40. Liability for debts and legacies by persons who, have inter-meddled with estates, etc.

- (1) If previous to letters of administration being granted by the Master to any executor for the administration of any estate, any person shall take it upon himself to administer, distribute or in anyway dispose of such estate, or any part thereof, except in so far as may be authorised by a competent court, or by the Master, or may be absolutely necessary for the safe custody or preservation thereof, or for providing a suitable funeral for the deceased, or for the subsistence of the family or household or livestock left by the deceased; or if any person to whom letters of administration have been granted administers, distributes, or in any way disposes, of any property or effects belonging to the estate of which he is the executor, and which have not been contained in the inventory of such estate lodged with the Master previous to the granting of the said letters of administration, or are not contained in any inventory or additional inventory made by him and transmitted by him to the Master in terms of the provisions of [section 37](#), he shall thereupon become personally liable to pay to the creditors and legatees of the deceased all debts due by the deceased at the time of his death, or which have thereafter become due by his estate, and all legacies left by the deceased in so far as the proceeds and assets of such estate are insufficient for the full payment of such debts or legacies.
- (2) If any person is sued for the payment of any debt or legacy which he has rendered himself personally liable to pay under sub-section (1) proves to the satisfaction of the court before which he is sued that the true amount and value of the property which has actually been unduly administered, distributed, or disposed of by him did not exceed a certain sum, and that his administration, distribution, or disposal of it was not fraudulent, he shall only be personally liable for so much of such sum as he fails to prove has been distributed or disposed of in such manner and for such purposes as by law it ought to have been distributed or disposed of and for the amount of the costs incurred by him in and concerning such suit as well as for the amount of the taxed costs incurred in and concerning such suit by the plaintiff, notwithstanding that by reason of such person's personal liability having been restricted in such manner the plaintiff has not recovered from him any part of the debt or legacy sued for.

41. Duty of person in possession of assets of deceased estate

Every person who is not the executor of the estate of a deceased person duly appointed in Swaziland who at the promulgation of this Act or thereafter has or comes into possession or custody of any property or asset belonging to such estate, shall forthwith either deliver such property or asset to the duly appointed executor (if any) then being in Swaziland, or report the particulars thereof to the Master; and if such first mentioned person shall fail to do so or shall part with any such property or asset to any person not authorised by the Master by letters of administration or other direction to receive it he shall, apart from any other liability he may incur thereby, be liable for all dues payable to the Government in respect of such property or asset.

42. Notice by executors to creditors, etc., to lodge claims

- (1) Every executor shall as soon as he has entered on the administration of the estate forthwith cause a notice to be published in the *Gazette* and in a newspaper published or circulating in the region in which the deceased ordinarily resided, calling upon all persons having claims due or not yet due as creditors against the deceased or his estate, to lodge the same with such executor within such period from the date of the publication thereof as is therein specified, not being less (save and except as in the 65th section provided) than thirty days or more than three months as in the particular circumstances of each case shall be deemed proper by the executor.
- (2) All claims which would be capable of proof in case of the insolvency of the estate shall be deemed to be claims of creditors for the purposes of this Act.

43. Suspension of execution of judgments against deceased until expiry of notice

No person who has obtained the judgment of any court against any deceased person in his lifetime, or against his executor, shall in any suit or action commenced against such executor, or which was pending against the deceased at the time of his death, and thereafter as continued against such executor, to sue out or obtain any process in execution of any such judgment before the expiration of the period notified in the *Gazette* in manner provided in [section 42](#); and no such person shall sue out or obtain any process in execution of any such judgment within six months from the time when letters of administration were granted to the executor against whom execution of such judgment is sought, without first obtaining an order from the High Court, for the issue of such process.

44. Insolvent deceased estates

[Replaced by K.O.I-C. 24/1976]

- (1) On the expiry of the period specified in the notice referred to in [section 42](#)(1), the executor shall satisfy himself as to the solvency of the estate and, if the estate is insolvent, forthwith report its position to the Master.
- (2) If the Master is satisfied that the value of the assets in the insolvent estate does not exceed two thousand emalangeni the estate shall, subject to the rights of creditors, be liquidated and distributed in such manner as he may direct.
- (3) If the Master is not so satisfied he shall notify the executor accordingly.
- (4) On receipt of the notification from the Master referred to in subsection (3), the executor shall without delay by written notice (a copy of which he shall lodge with the Master) report the position of the estate to the creditors, informing them that unless a majority in number and value of all the creditors known to the executor instruct him in writing within a period (not being less than fourteen days) specified in such notice to surrender the estate under the Insolvency Act [No. 81 of 1955](#), he will proceed to realise the assets in the estate and distribute the proceeds in accordance with subsection (5):

Provided that—

- (a) no creditor whose claim amounts to less than sixty emalangeni shall be reckoned in number;
- (b) any creditor holding any security which a trustee would under section 84 of such Act have been authorised to take over if the estate had been sequestrated shall, if called upon to do so by the executor in writing, place a value thereon within the period specified by the executor, and shall be reckoned in respect of the balance of his claim which is, according to such valuation, unsecured; and
- (c) if any creditor fails to place a value on such security within such period, he shall not be reckoned as a creditor for the purpose of this subsection.

- (5) If after the expiry of the period specified in the notice under subsection (4) the executor has not in accordance with such notice been instructed to surrender the estate he shall—
- (a) realise the assets of the estate, on such conditions as the Master may approve, by public auction or public tender or in such other manner as the Master may approve;
 - (b) frame a distribution account providing for the distribution of the proceeds in the order of preference prescribed under the Insolvency Act [No. 81 of 1955](#) in the case of a sequestrated estate but subject to [section 45](#); and
 - (c) subject to subsection (8) distribute the proceeds in accordance with such account.
- (6) In so far as a date of sequestration is relevant for the purpose of the distribution of an estate under subsection (5), such date shall be deemed to be the date immediately following the date on which the period specified in the notice given in respect of the estate in question under subsection (4) has expired.
- (7) If any creditor has under paragraph (b) of the proviso to subsection (4) placed a value on any security, the executor may at any time within six weeks thereafter deal therewith *mutatis mutandis* in the manner provided for in section 84 of the Insolvency Act [No. 81 of 1955](#).
- (8) The account of an executor liquidating or realising and distributing an estate under this section shall be advertised by the executor and confirmed by the Master in like manner and with like effect as an account framed by a trustee if an insolvent estate is advertised and confirmed.
- (9) This section shall not prevent the sequestration of any estate under the Insolvency Act [No. 81 of 1955](#).

[Amended K.O-I-C. 24/1976]

45. Preference on estate for funeral expenses

Every person by whom the funeral of any deceased person is performed, or caused to be performed, shall, for the amount of the expenses of such funeral, in so far as the same were suitable to the condition of the deceased, have a preference on the property and assets of the estate of the deceased, before any other debt or claim which may have been owing by the deceased at the time of his death, or which may arise against his estate after his death.

46. Executor may require affidavit in support of claim

- (1) Any executor may, if he thinks fit, require any person preferring any claim as a creditor against the estate of which he is the executor, to substantiate such claim by an affidavit setting forth the details of such claim, with such particularity as the executor may reasonably require, and may refuse to recognise such claim until such affidavit has been delivered to him.
- (2) Any court by which any such claim is adjudged in favour of any claimant, may decline to grant such claimant his costs against the estate, if such court shall deem that the information given by the claimant to the executor was insufficient; and that the executor acted with prudence and discretion in contesting such claim.

47. If estate insolvent

If an executor, after enquiry, finds that the estate is insolvent, he shall immediately take the necessary proceedings for having such estate placed under sequestration as insolvent, unless the creditors consent to receive a dividend in full satisfaction of their claims, and proof of such consent is produced to the Master.

48. Master may permit surviving spouse to take over estate at appraisalment

If one of two spouses married in community of property dies intestate, or dies testate and has made no provision to the contrary in the will, the Master may, if it appears to him that it will be for the benefit of

the minor children, if any, of the deceased spouse to do so, permit the share of the joint estate belonging to such deceased spouse to be taken over by the survivor, at a valuation to be made by a sworn appraiser instead of being realised according to law:

Provided that no person having any lawful claim against the estate of such deceased spouse shall be delayed or defeated in obtaining payment of such claim by virtue of anything contained in this section.

49. Executor to transmit claims of minors, etc., to Master

If any executor in administering and distributing any estate finds that any minor not having a lawful guardian, or tutor, or any person of unsound mind not having a lawful curator, or any person absent from Swaziland and not having a lawful representative within Swaziland, has any valid right or claim to such estate, or any part thereof, he shall forthwith transmit to the Master a statement in writing, containing the name of such minor, person of unsound mind or absent person, and specifying the nature and value of the property to which such minor, person of unsound mind or absent person has such right or claim.

50. Executors to pay to Master money devolving upon minors, etc.

- (1) If any executor, in administering and distributing any testate estate, finds that any sum of money has devolved upon or become due from such estate to any minor, person of unsound mind or person absent from Swaziland not having a guardian, tutor, curator or lawful representative within Swaziland he shall forthwith pay such money into the hands of the Master:

Provided that—

- (a) if the person from whose estate such money has devolved or become due, by will or deed has directed that the same shall be otherwise dealt with, nothing in this section shall be taken to prevent such executor from carrying into effect the provisions of such will or deed;
 - (b) the term “executor” shall include administrator, unless a contrary intention shall appear in the will or deed wherein the word executor occurs.
- (2) Every executor administering and distributing any intestate estate shall forthwith pay into the hands of the Master any sum of money which has devolved upon or become due from such estate to any minor or person of unsound mind, and any sum of money which has devolved upon or, become due from such estate to any person absent from Swaziland, and not having a lawful representative within Swaziland:

Provided that nothing in this section shall limit any power possessed by the High Court to order any such money to be paid by the executor, or by the Master to any person for any purpose.

51. Administration and distribution accounts

- (1) Every executor shall administer and distribute the estate to which he is appointed executor according to law, and the provisions of any valid will, codicil or other testamentary instrument relating to such estate.
- (2) As soon as may be after the expiry of the period notified in the *Gazette* in manner provided by this Act, and not later than six months from the day on which the letters of administration were issued to him (unless upon application to the Master upon sufficient cause shown to the satisfaction of the Master, further time be given from time to time for that purpose), frame and lodge with the Master a full and true account supported by vouchers of the administration and distribution of the said estate, and also a duplicate or fair and true copy of such account.
- (3) If any such account be not the final account, it shall set forth all debts due to the estate and still outstanding, and all property and effects still unsold and unrealised, and the reasons why the same have not been collected or realised, as the case may be.

- (4) The executor shall, from time to time, as the Master may direct, render periodical accounts of his administration and distribution until the estate be finally liquidated, and should he fail to do so, he shall be liable to be summoned in terms of [section 52](#).

51bis Advertising accounts and objections thereto, etc.

[Added K.O-I-C. 24/1976]

- (1) Every executor's account lodged with the Master in terms of [section 51](#) shall, after the Master has examined it and approved of it, lie open at the office of the Master, and if the deceased was ordinarily resident in any region other than the region of Hhohho region, a duplicate thereof shall lie open at the office of the Regional Administrator of such other region for not less than twenty-one days, for inspection by any person interested in the estate.
- (2) The executor shall give notice that the account will be so open for inspection by advertisement in the *Gazette* and in a newspaper circulating in Swaziland and approved of generally or specifically, by the Master.
- (3) The notice referred to in subsection (2) shall state the period during which, and the place at which the account will lie for inspection.
- (4) Every Regional Administrator shall cause to be affixed in some public place in or about his office, a list of all such accounts lodged in his office, showing the date on which each such account will be transmitted to the Master, and, upon the period allowed for inspection, shall endorse on each account his certificate that the account has lain open in his office for inspection in accordance with this section and transmit the account to the Master.
- (5) Any person interested in the estate may at any time before the expiry of the period allowed for inspection lodge with the Master in duplicate any objection, with the reasons stated therefor, to any such account and the Master shall deliver or transmit by registered post to the executor a copy of any such objection together with copies of any documents which such person may have submitted to the Master in support thereof.
- (6) The executor shall, within fourteen days after receipt by him of the copy of any objection transmit two copies of his comments thereon to the Master.
- (7) If, after consideration of such objection the comments of the executor and such further particulars as the Master may require, the Master is of the opinion that such objection is well founded or if, apart from any objection, is of the opinion that the account is in any respect incorrect and should be amended, he may direct the executor to amend the account or may give such other direction in connection therewith as he may think fit.
- (8) Any person (including the executor) aggrieved by any such direction by the Master or by a refusal of the Master to sustain an objection so lodged, may apply by motion to the High Court within thirty days after such direction or refusal, or within such further period as the Master may on request allow, or within such further period as the High Court may allow, for an order to set aside the Master's decision and the Court may make such order as it may think fit.
- (9) If any such direction may affect the interests of a person who has not lodged an objection to the account and the account is amended, the account so amended shall, unless such person consents in writing to the account being acted upon again lie open for inspection in the manner and with the notice and subject to the remedies provided for in this section.
- (10) If an account has lain for inspection as provided for in this section and—
 - (a) no objection thereto has been lodged; or
 - (b) an objection has been lodged and the account has been amended in accordance with the Master's direction and has again lain open for inspection, if necessary as provided for in subsection (9), and no application has been made to the High Court within the period referred to in subsection (8) to set aside the Master's decision; or

- (c) an objection has been lodged or withdrawn, or has not been sustained and no such application has been made to the High Court in such period,

the executor shall forthwith pay the creditors and distribute the assets among the heirs in accordance with the account, lodged with the Master the receipts and acquittances of such creditors and heirs and produce to the Master the deeds of registration relating to such distribution, or lodge with the Master a certificate by the registrar of deeds or a conveyancer specifying the registrations which have been effected by the executor:

Provided that proof of payment by way of cheque purporting to be drawn payable to a creditor or heir in respect of any claim or share due to him and paid by the banker on whom it is drawn or other documentary proof, may be accepted by the Master in lieu of any such receipt or acquittance.

- (11) The executor shall not later than two months after the estate has become distributable in terms of subsection (10) pay to the Master for deposit in the Guardians Fund Special Fund on behalf of the person entitled thereto all moneys which the executor has for any reason been unable to distribute in accordance with the account.

52. Summons if account has not been lodged within six months

When any executor fails to lodge with the Master the account mentioned in the last section (51(2)) the Master or any person having an interest in such estate, may, at any time after the expiry of six months, from the day on which the letters of administration were granted to such executor, summon him to show cause before the High Court why such account has not been so lodged:

Provided that the Master or such other person shall, not later than one month before suing out any such summons, apply by letter to the executor in default, requiring him to lodge his account on pain of being summoned to do so under this section; and,

Provided further, that any executor receiving any such application from the Master or such other person, may lay before the Master such grounds and reasons as he may be able to advance why he has not lodged his account and the Master, should such grounds and reasons seem to him sufficient, may grant to such executor such an extension of time for the lodging of such account as he shall in the circumstances deem reasonable; reserving always the right of any person having an interest in such estate to bring in review before the High Court by motion, the decision of the Master under which any such extension is granted and:

Provided also, that any such executor so in default, if he fails to satisfy the Master that he ought to receive an extension of time may apply to the High Court, by motion of which the Master and such other person receives notice, for an order granting to such executor an extension of time within which to lodge his account.

53. Master entitled to costs in certain cases

- (1) Although the court is of opinion that the grounds and reasons laid before the Master by any executor who is summoned to lodge his account aforesaid were such as would have warranted the Master in granting an extension of time, the Master or other person at whose instance summons is issued shall nevertheless be entitled to his costs if before summoning the executor whose grounds and reasons the Master has overruled and declared insufficient he has allowed such executor sufficient time for enabling him to apply to the High Court for such an order granting to such executor an extension of time.
- (2) The costs adjudged to the Master or such other person upon any summons sued out by him or on his behalf, shall be payable by the executor in default in his individual capacity, and he shall not be at liberty to charge them to the estate under his administration unless authorised to do so by the High Court.

54. Remuneration of executors

Every executor shall, in respect of his administration, distribution and final settlement of any estate, be entitled to claim, receive or retain out of the assets of such estate, or from any person who as heir, legatee or creditor is entitled to the whole or any part of such estate, such remuneration as may have been fixed by the deceased, by will or deed, or otherwise a fair and reasonable compensation, to be assessed and taxed by the Master, subject to the review of the High Court, upon the petition of such executor or of any person having an interest in such estate:

Provided, that if any executor fails to lodge the account of his administration and distribution of the estate within six months from the date on which letters of administration were granted to him, and has no lawful and sufficient excuse for such failure, the Master may disallow the whole or any portion of the fees which such executor might otherwise have been entitled to receive in respect of his administration of such estate.

55. Surviving spouse married in community may transfer etc., land registered in his name

The survivor of two spouses who were married in community of property, shall not transfer any land belonging to the joint estate and enregistered in the name of such survivor, unless and until an account of the administration of such estate has been lodged with and accepted by the Master; nor shall the survivor, unless and until such account has been so filed and accepted, mortgage any such land, except for the purpose of—

- (a) securing to the minor heirs of such deceased spouse the inheritance due to them in terms of [section 59](#); or
- (b) raising money in order to pay such inheritance into the hands of the Master:

Provided that no transfer or bond allowed by this section shall be passed without the consent in writing of the Master.

56. Registration of immovable property from deceased estate

- (1) An executor shall, subject to the Deeds Registry Act ([No. 37 of 1968](#)) cause immovable property (including, in the case of a massed estate, any such property forming part of the share of the survivor of that estate) to which an heir is entitled according to a distribution account, to be registered in the name of the heir, subject to any rights and conditions affecting such property.
- (2) If a usufructuary or other like limited interest in any immovable property has been bequeathed to any person with a direction that after the expiry of such interest the property shall devolve upon some person uncertain or the proceeds of the property shall devolve upon any person, whether certain or uncertain, the executor shall, subject to the Deeds Registry Act ([No. 37 of 1968](#)) cause the terms of the will or a reference thereto to be endorsed against the title deeds of the property, and lodge with the Master a certificate by the registration officer concerned or a conveyancer that the title deeds have been so endorsed.
- (3) If any heir is unable or could not without hardship be required to pay the costs involved in having any immovable property to which he is entitled according to a distribution account, registered in his name, the Master may authorise the executor to cause a note that the property has been bequeathed or inherited, as the case may be, to be endorsed against the title deeds of the property.

[Original Section 56 replaced by A.6/1973]

57. Penalty for refusing to deliver title deed to executor

- (1) Any person in possession of a title deed required by an executor in order to comply with [section 56](#) who refuses to deliver or unreasonably delays the delivery of such deed to such executor shall be guilty of an offence and on conviction liable to a fine not exceeding twenty emalangen.

- (2) In addition to the penalty prescribed by sub-section (1) he shall be liable to pay all reasonable costs to which the executor may be put in obtaining possession of such deed.
- (3) The legal rights or position of such persons shall not be affected by his delivery of such deed in terms of this section.
- (4) Every executor shall as soon as such deed is no longer required for the purposes of complying with [section 56](#) return it to the person from whom it was received, if but for this section such person would be entitled to possession thereof.

58. ***

[Repealed by A.6/1973]

59. Duties of surviving spouse appointed executor testamentary

Every surviving spouse who has been appointed executor testamentary of the estate of the deceased spouse shall, so soon as such estate has been administered and an account thereof framed according to law —

- (a) secure the inheritances ascertained by the said account to be due to the minor children or descendants of the deceased spouse by a bond duly registered in the Deeds Office made in favour of the Master and deposited with him; or
- (b) pay the said inheritance into the hands of the Master:

Provided that if the deceased spouse has by will or deed directed that the said inheritances shall be otherwise dealt with, nothing in this section shall prevent the surviving spouse from carrying into effect the provisions of such will or deed.

60. Requisites of bond and how paid off

- (1) Every bond passed in terms of [section 59](#) shall be conditioned to secure payment of the said inheritances as and when the same become due, and shall hypothecate specially the immovable property (if any) of such surviving spouse or such of the said property as in the opinion of the Master is of sufficient value to secure the amount of the said inheritances, and generally all his goods and effects, or if there is no immovable property, or not sufficient in the opinion of the Master to secure payment of the said inheritances, such surviving spouse shall find two sureties to the satisfaction of the Master, who shall bind themselves as joint principal debtors for the due payment of the said inheritances renouncing the usual exceptions.
- (2) Should any one or more of the said inheritances be duly paid, the Master shall on proof of the fact of due payment release from the operation of the said bond, such portion of the landed property as he may see fit:

Provided that there remains under the operation of the said bond sufficient property in the opinion of the Master to secure the inheritances still unpaid.

61. Executor's account not to be accepted until sections [56](#) and [59](#) complied with

The Master shall not accept any administration and distribution account tendered, by any executor if the provisions of [section 59](#) have not been duly complied with nor shall the transmission of any account to the Master by any executor before such compliance be taken to be such lodging of the said account (Amended A.6/1973.)

62. Master to furnish Registrar of Deeds with certain returns

- (1) The Master shall from time to time furnish the Registrar of Deeds with a return, giving the name of every person married in community of property with regard to whom, or to whose estate an

inventory has been filed showing that such person had at the time of his or her death an interest in any immovable property registered in the name of his or her surviving spouse.

- (2) Such return shall embody all material information respecting such property, and the interest therein of the deceased which is contained in the inventory lodged with the Master, and in the will, if any, of the deceased.

63. Government, the Master and Registrar exempt from liability in certain cases

No omission to render any such return as is required by [section 61](#) or the rendering of an incomplete return, or a transfer or mortgage bond *bona fide* passed by the Registrar of Deeds against [section 55](#) or any error or omission in or bond accepted by the Master to secure the inheritances of minor children, or any release from or cancellation of any such bond *bona fide* made by the Master shall subject the Government, the Master, or the Registrar to any liability in respect of damage sustained by any person in consequence of such omission, return, transfer, mortgage, acceptance, release or cancellation.

Estates under four hundred emalangeneni

64. When Master may summarily appoint *executor dative*

In all cases in which it appears from the death notice or inventory, filed in respect of the estate of any deceased person, and from such other information as the Master may call for, that the value of the assets of such estate does not exceed four hundred emalangeneni, the Master may, in the case of an intestate estate (or in the case of a testate estate, in which the executor testamentary may be unable or unwilling to act), summarily, and without observance of the usual and customary forms, appoint an *executor dative* to administer the estate of such deceased person.

65. Master may fix time for filing claims and account

Any executor appointed in terms of [section 64](#) shall administer such estate in terms of this Act:

Provided that the Master may direct—

- (a) that such estate is to be administered within a less time than six months;
- (b) that the advertisement calling upon creditors to file their claims, is to be inserted once only in the *Gazette*, and in any newspaper published and circulating in Swaziland, and that all claims are to be filed within a period (not being less than fourteen days, or more than three months) fixed by the Master, and notified in such advertisement;
- (c) that the administration and distribution account in such estate is to be filed within a period (not being less than fourteen days) after the last date fixed for the sending in of claims.

66. Master may authorise sale out of hand

If the Master, after due enquiry, is of opinion that it would be to the advantage of persons interested in an estate to sell any property belonging to such estate out of hand instead of by public auction, he may grant the necessary authority to the executor to do so if no provision has been made in the deceased's will to the contrary.

67. Sub-division of immovable property

If it should become necessary to sub-divide any immovable property in which any minor is interested, and the Master after due enquiry, and after inspection of the property, if necessary, by himself or by some suitable person appointed by him, is satisfied that the proposed division is a fair one, he may consent to such division on behalf of the minor or minors interested.

Estates of Africans

68. African law and custom to govern certain estates

- (1) If any African who during his lifetime has not contracted a lawful marriage, or who, being unmarried is not the offspring of parents lawfully married, dies intestate, his estate shall be administered and distributed according to the customs and usages of the tribe or people to which he belonged; and if any controversies or questions shall arise among his relatives, or reputed relatives, regarding the distribution of the property left by him, such controversies or questions shall be determined by a Swazi Court having jurisdiction.
- (2) The Master may not be called upon to interfere in the administration and distribution of the estate of any such African.
- (3) For the purpose of this section, “African” shall mean any person belonging to any of the aboriginal races or tribes of Africa south of the Equator, or any person one of whose parents belongs to any such race or tribe.

Part II – Estates of minors and absent persons

Tutors and curators

69. Appointment by father or mother only of tutors to minors

No person, other than—

- (a) the father of any minor, or
- (b) the mother of any minor whose father is dead or has abandoned the minor, shall by any will or other deed nominate and appoint any tutor or tutors to administer and manage the estate, or to take care of the person of such minor:

Provided this section shall not prevent any person who gives or bequeaths any property to any person, from appointing a curator to administer and manage such property during the minority, or during the continuance of the mental disorder of the person to whom the same shall be given or bequeathed, in like manner and as fully in all respects, as the same might lawfully have been done prior to the commencement of this Act; and all curators so appointed shall be called curators nominate.

70. Tutors testamentary

- (1) A tutor nominated and appointed by a father or mother in manner aforesaid to a minor child shall be called a tutor testamentary, whether such tutor has been nominated and appointed by will, or by any other deed duly executed by such father or mother.
- (2) No tutor testamentary shall assume or enter upon the administration or management of the estate or property of any minor, (except in so far as it may be necessary for the preservation and safe custody thereof) until letters of confirmation shall have been granted to him by the Master in the form contained in the Schedule “C”.

71. Mode of granting letters of confirmation

- (1) The Master shall on application in writing being made to him for that purpose, grant letters of confirmation as tutor testamentary to every person who has by any valid will or deed been lawfully nominated and appointed tutor testamentary to any minor.

- (2) Whenever it comes to the knowledge of the Master that any person who has been nominated tutor testamentary by any valid will or deed to any minor possessed of property has not applied for letters of confirmation, the shall, by writing, require such person to inform him whether he is willing to act as such tutor testamentary, and if he consents so to do, grant him letters of confirmation accordingly.

Provided that letters of confirmation as tutor testamentary shall not in any case be granted to any person who is at the time incapacitated or disqualified by law from holding the office of tutor; and that the further proviso to [section 23](#) shall *mutatis mutandis* apply to the appointment of tutors testamentary.

72. Letters of confirmation to curators nominate

- (1) No curator nominate shall assume or enter upon the administration or management of any estate or property, except in so far as may be necessary for the preservation and safe custody thereof until letters of confirmation shall have been granted to him by the Master.
- (2) To obtain the grant of such letters of confirmation, proceedings shall be taken by any such person and by the Master in like manner in all respects, as is provided by [section 71](#), as to the granting of letters of confirmation to tutors testamentary.
- (3) Such letters shall be in the form contained in Schedule “D”.

73. Security *rem pupilli salvam fore*

The High Court, may, on the application of the Master, or of any relation, or of any person having an interest in the due administration of the estate or property of any minor make an order in every case in which prior to the commencement of this Act, any tutor testamentary might by law have been required to give security *rem pupilli salvam fore*, that letters of confirmation shall not be granted to any tutor testamentary or curator nominate as aforesaid, until he has found security to the satisfaction of the Master to such an amount as in the circumstances of each particular case is reasonable for the due and faithful administration and management of such estate or property.

74. Appointment of tutors dative by Master

- (1) Whenever it comes to the knowledge of the Master that any estate or property within Swaziland has devolved upon, or come to any minor within Swaziland, who is not at the time under the natural guardianship of his father or mother or of a tutor testamentary duly confirmed, the Master shall, except when it is known to him that a tutor testamentary has been duly nominated and appointed to such minor by any valid will or deed (in which case he shall proceed in manner provided in [section 71](#)) cause to be published in the *Gazette* and in such other manner as he deems fit, a notice calling on the relations of the minor, both paternal and maternal, to attend at his office at the time therein specified, to see letters of confirmation granted to such person appointed by him *tutor dative* of such minor:

Provided that when it appears to the Master expedient so to do, he may in such notice to call on the relatives of such minor, both paternal and maternal, to attend before any Regional Administrator at such time and place as he may appoint for the purpose of stating any objections which may exist to any of the next of kin or other person being appointed *tutor dative*, or of proposing some person whom the Regional Administrator may report to the Master as fit and proper, to be appointed by him *tutor dative*.

- (2) The Master shall at the meeting, hold at his office, or upon receiving the report of such Regional Administrator, appoint such person as he thinks fit and proper to be the *tutor dative* of such minor, and shall grant to him, letters of confirmation as such, unless it appears to him necessary or expedient to postpone such appointment and to call another meeting:

Provided that when any such minor is not possessed of, or has no claim to any other estate or property, except such as has been given or bequeathed to him, by some person who has duly appointed a curator or curators nominate, to administer and manage it during his minority, or

except some estate or property paid over to, and in the hands of, the Master under [section 50](#), the Master need not but may take any such proceedings for the appointment of a *tutor dative*.

75. Review of Master's appointment

Every such appointment made by the Master, shall, on the application of any of the relations of, or of the curator nominate of any estate or property belonging to, such minor, be subject to review and may be confirmed, or set aside by the High Court, and if it sets any such appointment aside, it may appoint some other fit and proper person to be the *tutor dative* of such minor.

76. Assumption under power in will or deed of other persons

- (1) Nothing in this Act shall prevent any tutor testamentary of any minor, or curator nominate of any estate, from assuming respectively any other person as tutor of such minor or curator of such estate, under and by virtue of any power for that purpose to him committed by the will of, or any other deed duly executed by the person by whom such tutor testamentary or curator nominate was appointed:

Provided that no person shall be entitled or qualified to act as assumed tutor or curator unless letters of confirmation shall have been granted to him, as such during the lifetime of the tutor testamentary or curator nominate, by the Master.

- (2) The Master shall grant such letters on production to him of the will or other deed, by which the assumption of such tutor or curator is authorised, and of the deed by which such tutor testamentary or curator nominate has assumed such person as tutor or curator.
- (3) Every provision of this Act, and of every other law applicable, or relating to, or affecting tutors or curators dative, shall apply to every such tutor or curator so assumed respectively.

77. Proceedings in case of death, etc., of tutors or curators

If the tutor of any minor, either testamentary or assumed, or the curator of any estate, either nominate or assumed, to whom letters of confirmation have been granted, has died or become incapacitated to act as such, or has been removed from his office by any competent court, and there does not remain for the guardianship of such minor, or for the administration or management of such estate as the case may be, any tutor or curator whatever, or so many tutors, either testamentary or assumed, or curators nominate or assumed, as by the provisions of the will or deed, by which such tutors or curators were respectively appointed, or permitted to be assumed, necessary to form a quorum of tutors, or curators, for the guardianship of such minor, or for the administration and management of such estate as the case may be, and if it happens that any *tutor dative*, after letters of confirmation have been granted to him, dies, or becomes incapacitated, or is removed as aforesaid, then, and in every such case, proceedings for the appointment of a *tutor dative*, in place of the person so dying, or becoming incapacitated, or removed, shall be taken by the Master, in the manner, provided by section 74.

78. Revocation of letters of confirmation by High Court; and Master

Letters of confirmation granted to any person as tutor testamentary, or as curator nominate of the estate of any minor, may at any time be revoked and annulled by the High Court, on proof to the satisfaction of the Court, that the will or deed in respect of which such letters have been granted to such person is null, or has been revoked either wholly, or in so far as relates to the appointment of such tutor or curator; and letters of confirmation granted to any person as *tutor dative*, may at any time be revoked and annulled by the Master, on production to him of any valid will or deed, by which any other person who shall then be legally capable and qualified, and who shall consent to act as tutor, has been legally appointed tutor testamentary of the minor, to whom such *tutor dative* had been appointed:

Provided, that if the non-production of such will or deed, prior to letters of confirmation having been granted to the *tutor dative*, has been owing to the fault or negligence of the person therein appointed tutor testamentary, such person shall be personally liable for, and may be compelled by the Master, or any

person related to the minor, to pay to the minor's estate, and account for all expenses, which have been incurred in respect of, and with reference to, the appointment of the *tutor dative*.

79. Appointment of *curator dative* of property belonging to absent persons

If it comes to the knowledge of the Master, that in consequence of the death of any person, any estate or property has devolved on, or come to belong to any person absent from Swaziland, and not having a legal representative within Swaziland, the Master shall cause to be published in the *Gazette*, and in such other manner as to him shall seem fit, a notice calling on all whom it may concern to attend before him at the time therein specified, to see letters of confirmation granted to such person, who will be appointed by him *curator dative* of the estate or property of such absent person; and the Master shall at the meeting held before him appoint some fit and proper person to be such *curator dative*:

Provided that when the only property known by the Master to belong to any such absent person, consists of a sum of money due and payable to him by the executor of any deceased person, or by the trustee of any insolvent estate, it shall not be necessary for the Master to take any such proceedings as aforesaid; but the Master may, pursuant to [section 50](#), demand, recover, and receive payment of all such sums of money, to be disposed of in manner provided in this Act.

80. Appointment of *curator ad litem* by High Court and *curator bonis* by Master

- (1) Nothing in this Act shall prevent the High Court from appointing a *curator ad litem* to any person in every case and in the same manner in all respects in which such appointment might by law have been made by such Court if this Act had not been passed.
- (2) Whenever necessary or expedient the Master may appoint a *curator bonis* to take the custody and charge of any estate or property for the due administration and management of the estate until letters of confirmation have been granted to some person as tutor, testamentary or dative, or as curator, nominate or dative, as.
- (3) Every appointment as *curator bonis* made by the Master under sub-section (2) shall on the application of any person having an interest in such estate be subject to be reviewed and may be confirmed, or set aside, by the High Court; and if the court sets aside any such appointment it may appoint some other fit and proper person to be *curator bonis*.

81. Security for due administration by tutors and curators

Every *tutor dative* or assumed, and every *curator dative*, and *curator bonis*, who is appointed by the Master or the court to administer the estate or property of any minor or absent person, shall, before he enters upon the administration of such estate or property, find security to the satisfaction of the Master in such amount as in the circumstances of each particular case is reasonable for the due and faithful administration and management of such estate and property.

82. Disqualifications of persons as tutors or curators

Every person shall be deemed incapacitated and disqualified to hold, and incapable of holding, the office of tutor, whether testamentary or dative, or of curator whether nominate or dative, where any person appointed tutor testamentary, would previous to the Commencement of this Act have been incapable of holding the office of tutor testamentary.

83. Removal of insolvent tutors and curators

Every tutor, whether testamentary or dative, and every curator, whether nominate or dative, whose estate has been sequestered as insolvent, shall cease to exercise or hold, and shall, *ipso facto*, be removed from his said office as soon as the final order of sequestration has been made, but the removal of such tutor or curator shall not relieve him from any liability or responsibility attaching to him at the time of his removal.

84. Removal and suspension of executors, tutors and curators

Every executor, tutor or curator shall be liable to be suspended or removed from his office by order of the High Court, if such court is satisfied on motion, that by reason of absence from Swaziland, other avocations, failing health, or other sufficient cause, the interests of the estate under his care would be furthered by such suspension or removal:

Provided that in every case of suspension the court may substitute some fit and proper person to act during such suspension, in his place subject to such conditions as to the giving of security and the conduct and administration of the estate as the said court may deem just.

Duties of tutors and curators

85. Inventory by tutors and curators

- (1) Every tutor whether testamentary or dative, and every curator, whether nominate or dative, shall within thirty days after entering upon the administration of his office, make, or cause to be made, and shall subscribe an inventory of all property, goods, effects movable and immovable forming part of or belonging to the estate or person under his guardianship.
- (2) Every such tutor and curator shall thereafter from time to time, as soon as any such property, goods or effects come into his possession or to his knowledge make in like manner and form an additional inventory thereof.
- (3) Every such tutor or curator shall forthwith transmit all such inventories to the Master.

86. Penalties for failure of tutors and curators to make and transmit inventory

Every tutor or curator who fails to make and transmit any such inventory as required by [section 85](#), and who has no lawful and sufficient excuse for such failure, shall, in addition to any other liability, consequence, and penalty, which he is by law subject to, be guilty of an offence and on conviction liable to a fine not exceeding fifty emalangen.

87. Penalty on conviction of tutor or curator for making false inventory

If any tutor or curator, required and directed under and by virtue of [section 85](#) to make or cause to be made an inventory of any estate, goods, or effects wilfully makes a false inventory thereof, he shall be guilty of an offence and on conviction liable to imprisonment for a period not exceeding five years, or a fine not exceeding one thousand emalangen or both.

88. Duties and liabilities of tutors and curators after confirmation

- (1) Every tutor, whether testamentary or dative, and every curator whether nominate or dative to whom letters of confirmation have been granted shall in all respects and for all intents and purposes, and every such curator shall, in so far as relates to the particular estate or property which has been placed under his guardianship, have every power, right and privilege, and shall do and cause to be done every act, matter and thing touching and concerning the making and transmitting of an inventory and the administration and management of the estate or property under his guardianship.
- (2) Every tutor or curator and his estate, shall by reason of every act, matter or thing done or omitted to be done by him incur and be subject to every liability, obligation and penalty, which by any law in force prior to the taking effect of this Act, any tutor testamentary would have had or been directed or required to do, and which he and his estate would by reason of any such act, matter or thing done or omitted to be done by him, have incurred, or been subject to.

- (3) This section shall not give any curator, nominate or dative, any power or authority as to the maintenance, education or custody of the person of any minor, except in so far as that may have been specially given and committed to him by the decree or order of any competent court.
- (4) Every tutor testamentary and curator nominate shall in the discharge of his office and in the administration of the estate and property under his guardianship, conform to and obey every lawful direction concerning the same which has been given by the person whom such tutor or curator has been appointed, in the will or deed by which such appointment was made, or in any other writing duly executed by such person.

89. Prohibition of remarriage of surviving parent until minors' shares have been secured

- (1) Whenever any person who is a widower or widow and the parent of a minor child entitled to claim from such person any inheritance from the estate of such person's deceased spouse intends to marry again such person shall (whether the marriage be by special licence or after publication of banns) obtain a certificate from and under the band of the Master to the following effect:
 - (a) if the estate of the deceased spouse or the joint estate of the deceased spouse and the surviving spouse if of the value of two hundred emalangeni or more a certificate that the amount of inheritance due to such minor child from the estate has been paid into the Guardian's Fund or otherwise secured;
 - (b) if any estate is of less value than two hundred emalangeni a certificate stating such fact.
- (2) Every such certificate shall be delivered to the marriage officer or minister of religion before whom such marriage is intended to be solemnised.
- (3) Any such widower or widow who marries again without obtaining the certificate required by subsection (1) shall forfeit at the instance of the Master or of such child aforesaid when he or she attains the age of twenty-one years a sum equal to one-fourth of such widower or widow's share in the joint estate of such person and the deceased spouse for the benefit of any such child and shall in addition be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni.
- (4) Every marriage officer or minister of religion who solemnises any such marriage unless there has been first delivered to him a certificate mentioned in this section shall in addition to any other liability be guilty of an offence and liable on conviction to a fine not exceeding one thousand emalangeni.

90. Prohibition of alienation of immovable property by tutor or curator

No tutor, whether testamentary or dative, and no curator whether nominate or dative, or *curator bonis*, shall sell, alienate or mortgage any immovable property belonging to any minor or forming part of any estate under the guardianship of such tutor or curator, unless the High Court has authorised such sale, alienation or mortgage, or unless the person by whom any such tutor testamentary or curator nominate has been appointed has directed such sale, alienation or mortgage to be made.

91. Payment to Master by certain tutors and curators

- (1) Every *tutor dative* and every *curator dative* or *curator bonis* shall forthwith pay over to the Master all moneys belonging to the person or estate under his guardianship as soon as they are received by or come into his possession, except in so far as they may be required for the instant payment of debts due by such estate or for the immediate maintenance of such person.
- (2) If such tutor or curator without any lawful and sufficient excuse retains and fails to pay over to the Master any such moneys as directed herein he shall be liable to pay to, and for the benefit of, the person or estate to whom or to which such money belongs, interest thereon at the rate of twelve *per centum* per annum for the whole period during which such money has been improperly retained and

not paid over to the Master; and he shall also be liable to be removed from such office by decree of any competent court if it appears expedient to such court to do so.

- (3) Whenever it comes to the knowledge of the Master that any such money has been so retained, and not paid over to him by any such tutor or curator, he may forthwith institute an action against such tutor or curator in order to recover payment thereof, and of the interest referred to in sub-section (2).
- (4) This section shall be applicable to every *curator bonis* appointed under the provisions of the Mental Health Order, No. 20 of 1978, or the Leprosy Act, [No. 23 of 1904](#).

92. Certain tutors and curators may pay moneys in their possession to Master

Any tutor testamentary or curator nominate if it seems to him expedient to do so (except where the person by whom such tutor or curator has been appointed has directed that it shall not be done), may pay over to the Master any money belonging to the person or estate under his guardianship which by law might lend out at interest.

93. Accounts of administration by tutors and curators

- (1) Every tutor, whether testamentary or dative, and curator, whether nominate or dative, and every *curator bonis* shall on or before the fifteenth day of February in each year lodge with the Master a just, true and exact account of his administration of the estate or property under his guardianship up to the thirty-first day of December last preceding, together with a duplicate, or otherwise a fair and true copy of such account.
- (2) If he fails to lodge such account in the manner aforesaid and has no lawful and sufficient excuse for such failure, the Master may disallow the whole or any portion of the fees which such tutor or curator would otherwise have been entitled to receive in respect of his administration of such estate during the year ending on the said thirty-first day of December.
- (3) Notwithstanding anything in this section the survivor of two spouses to whom the predeceased spouse has by will or other lawful instrument, appointed the tutor of his or her minor children, and the administrator of the joint estate of such spouse during the minority of such children shall not in any case be required to lodge any such annual account in the aforesaid manner.

94. Master may sue tutors and curators who fail to lodge account in time

The Master may summon any tutor, whether testamentary or dative, and any curator, whether nominate or dative, and any *curator bonis*, to show why any account which ought to have been lodged with him under [section 93](#) has not been lodged, and the provisions of sections [52](#), [53](#) and [54](#) shall *mutatis mutandis* apply to all proceedings taken by him in pursuance of this section.

95. Remuneration of tutors and curators

Every tutor, either testamentary or dative, and every curator, whether nominate or dative, shall in respect of his administration and management of any estate be entitled to claim, receive, or retain out of the assets of such estate a reasonable remuneration for his care and diligence in the said administration, to be assessed and taxed by the Master, subject to the review of the High Court, upon the petition of any such tutor or curator, or of any person having an interest in the said estate.

The Guardian's Fund

96. The Guardian's Fund

- (1) A fund to be known as the Guardian's Fund is hereby established and shall consist of—
 - (a) any moneys paid to the Master which, if this Act had not been passed, would have been payable into that Fund; and
 - (b) any moneys paid to the Master under this or any other law or in pursuance of an order of court, or accepted by the Master in trust for any person or persons unknown.
- (2) Whenever any such money is received by the Master, he shall open an account in the books of the Guardians Fund with the person to whom or the estate to which such money belongs:

Provided that, if it is not known to whom any such money belongs, or if in the case of minor heirs it is more convenient, the account may be opened in the name of the estate from which such money is derived.

97. Interest

Interest shall be allowed on every sum of money so received by the Master for account of any minor or person of unsound mind, from the first day of the second month after such money has been received and until the date on which such minor or person of unsound mind shall become entitled by law to draw the capital and no longer:

Provided that on the 31st day of March in each year the interest that has become due on any such moneys shall be added to the capital in the books of the Guardian's Fund, and in case such interest is not drawn by the person entitled thereto previous to the 31st day of March following, interest shall be allowed on the accumulated sum.

[Amended A.6/1973]

98. Rate of interest

The rate of interest for the purpose of [section 97](#) shall be not less than six and one half per cent per annum, but may be increased by the Minister for Finance by notice in the *Gazette* from time to time.

[Amended A.6/1973]

99. Guardian's Fund deposit account

All moneys paid to the Master under the provisions of any law for the purpose of being placed to the credit of the Guardian's Fund shall be paid into the Consolidated Fund to the credit of the Guardian's Fund "Special Fund", and the Master may from time to time withdraw any part of such moneys through the Accountant-General, in accordance with such financial regulations as the Minister for Finance may approve.

[Amended A.6/1973]

100. Payments out of Guardian's Fund

- (1) The Master may authorise payment of any sum of money which is placed to the credit of any person, or of any estate to the person by law entitled to demand and receive it, and may also authorise payment to any tutor or curator of any minor, person of unsound mind or absent person, or of any estate, the whole or any part of such sum of money as is at the time placed to the credit of such minor, person of unsound mind or absent person or such estate in the books referred to in

section 96, and which such tutor or curator is by law authorised or required to expend or dispose of for any purpose concerning the person or estate under the guardianship of such tutor or curator.

- (2) When it appears to the Master that it is either unnecessary or illegal for such tutor or curator to expend or dispose of any such sum of money for the purpose for which it is alleged that the sum is to be appropriated, the Master may refuse, or suspend authorisation of such payment until the High Court has made an order directing such payment to be made.
- (3) The Master may, in consultation with the tutor or natural guardian of any minor, invest the whole or any portion of any moneys paid into the Guardian's Fund to the credit of such minor under the provisions of sections 50, 59, 91 and 92, in the purchase of immovable property in Swaziland to be transferred into the name of such minor.

101. Payments for maintenance

When the total amount standing to the credit of any minor or person of unsound mind in the Guardian's Fund does not exceed two hundred emalangeni, the Master may, if after careful enquiry it appears to him to be for the interest of such minor or person of unsound mind to do to, authorise the payment and application of the whole, or any part, of such amount, for the maintenance or other benefit of such minor or person of unsound mind:

Provided that nothing in this section or section 97 shall authorise the Master to disregard or act contrary to the terms of any will or other deed under the provisions of which such amount has been received.

102. List of unclaimed moneys to be published annually

The Master shall, in the month of April in each year, cause to be drawn up a list of all amounts standing in the books of the Guardian's Fund to the credit of any person unknown or not residing, and not having any known legal representative in Swaziland, and shall cause it to be inserted in the *Gazette*, and shall forthwith transmit two or more copies thereof to the Attorney-General, who may cause the said list, or any portion thereof, to be published in such manner as may be deemed most expedient, in any country to which any person interested may be supposed to belong; and in the said advertisements all persons shall be invited to submit their claims to the Master:

Provided that no amount of less than twenty emalangeni need be advertised more than twice.

103. Unclaimed moneys

When any money which has been placed to the credit of any person or estate in the Guardian's Fund remains unclaimed by any person having a just and lawful right thereto for a period of forty years from the date when it was paid into the Guardians' Fund, such money shall lapse and be forfeited to the Government, and shall be transferred from the Guardian's Fund Special Fund to the Consolidated Fund.

[Amended A.6/1973]

104. Investment of moneys in Guardian's Fund

[Repealed A.6/1973]

105. Bonds to be payable to the Guardian's Fund

All bonds for money invested on mortgage shall be made payable to the Master of the High Court administering the Guardian's Fund, and the Master may cede and assign, and demand, enforce and receive, payment of any such bond and of the interest due thereon.

106. Valuation of securities

[Repealed A.6/1973]

107. Payment of interest from public funds

The interest allowed on moneys of minors and persons of unsound mind, paid into the Guardian's Fund Special Fund, shall be charged to the Consolidated Fund.

(Amended A.6/1973.)

108. Interest on investments

[Repealed A.6/1973]

109. Procedure in case of irrevocable investments

[Repealed A.6/1973]

Part III – General**110. Invalidity of appointment of Master as executor, tutor or curator**

If any person by will, or other deed, has appointed the Master in his official capacity to be the executor of his estate, or tutor testamentary of any minor, or curator nominate of any estate or property given or bequeathed by him to any minor or person of unsound mind, such appointment shall be null and void; and proceedings shall be taken for the appointment of an *executor dative*, *tutor dative*, or *curator dative*, as the case may be, as if no such appointment had been made.

111. Registers of executors, etc., and sureties

The Master shall cause a register to be kept containing the names of every executor to whom letters of administration have been granted and of every surety for any *executor dative*, and also a register containing the names of every tutor and curator to whom any letters of confirmation have been granted, and of every surety for any such tutor or curator.

112. Proceedings on insolvency of executors, etc.

When any order for sequestration, under the Insolvency Act, [No. 81 of 1955](#), is lodged with the Master he shall cause the said registers to be examined, and—

- (a) if the insolvent is the executor, or the surety of an executor of an estate which has not been administered, distributed and finally settled, the Master shall notify the fact in the *Gazette*;
- (b) if the insolvent is a tutor or curator of any minor person of unsound mind or absent person, the Master may take steps for the appointment of a tutor or a *curator dative* in the place of such insolvent;
- (c) if the insolvent is a surety for any tutor or curator the Master may require such tutor or curator to give additional security to his satisfaction, and if such additional security is not furnished within a reasonable time the Master, or any person interested, may move any competent court for the removal of such tutor or curator without in any way affecting the liability of such tutor or curator up to the time of his removal, or impairing the validity of any security, or releasing any surety or his estate.

113. Records of Master's office, etc.

The Master shall preserve of record in his office all original wills, codicils, testamenary instruments, death notices, inventories, and liquidation, administration and distribution accounts lodged with him under the provisions of this Act, and any person may, at any time during office hours, inspect any such document and obtain a copy thereof, or an extract therefrom, on payment of the fees specified in the Schedule "E":

Provided that any person holding office under the Government shall be entitled, without the payment of any fee, to inspect any such deed or document, and to take a copy thereof or extract therefrom whenever it is necessary or expedient to do so in the discharge of the duties of his office.

114. Master to forward duplicates to Regional Administrators

The Master shall, as soon as may be after the expiration of each month, forward the duplicates or copies certified by him, of all accounts lodged with and accepted and filed by him, to the Regional Administrators of the respective regions in which the persons to whose estates such accounts relate ordinarily resided at the time of their decease, or in any case in which any such person resided abroad to the Regional Administrator of Hhohho; and every such Regional Administrator shall file such duplicates or copies in his office, and any person may at any time during office hours inspect or obtain a copy of or extract from any such duplicate or copy or any other document filed by the Regional Administrator under the provisions of this Act on payment of the fee which would be payable to the Master for such inspection, copy or extract.

115. Liability of Master for costs of actions by or against him

When the Master is the plaintiff or defendant in any action instituted by him or against him in his official capacity, and with reference to any matter or thing placed under his guardianship, control or superintendence, or which he is required to do or cause to be done, by virtue of the provisions of this Act, and the party against whom such action has been instituted by the Master, or by whom it has been instituted against him, shall have his costs of and relating to such action awarded to him by the court before which such action was heard, the Master may draw the amount of such costs from and pay them out of the credit balance of the Guardian's Fund, unless the said. court shall order that the said costs be paid by the Master out of his private funds:

Provided that nothing herein contained shall be deemed to limit the power of the Minister for Finance to specially authorise that any costs incurred or paid by the Master shall be defrayed out of the Guardian's Fund.

116. Property exempt from operation of this Act

This Act shall not extend or apply to the estate or effects (except immovable property) of any person belonging to any regular regiment of Her Britannic Majesty's army who shall die within Swaziland, unless it is shown to the High Court or to the Master that for the preservation or due administration and distribution of such property it is necessary or expedient that it should be dealt with under this Act.

117. All executors, etc., appointed here after to observe Act

Every person to whom letters of administration or letters of confirmation are granted after the date of commencement of this Act for the administration of the estate of any person who has died prior to that date, shall be subject to and conform with the provisions of this Act, and shall administer the estate in accordance therewith.

118. Appointment of appraisers

The Master may appoint such and so many persons as to him shall seem fit to act as appraisers for the valuation of all estates and property, the appraisalment of which shall become necessary for his official purposes, and revoke any appointment so made; and every such appraiser, shall in respect of every such appraisalment by him, be entitled to receive a reasonable remuneration to be assessed and taxed by the Master:

Provided that any person who acts as such appraiser in any case in which he or any person whom he represents as agent, or any person to whom he is married or related within the third degree of consanguinity or affinity and who has an interest in the estate to be appraised, shall be liable to forfeit the said remuneration in addition shall be guilty of an offence, and on conviction liable to pay a fine not exceeding two hundred emalangeni.

119. Oath of appraisers

Every person appointed by the Master to act generally as an appraiser of estates or properties, or to appraise any particular property or estate, shall take an oath before any judge of the High Court, magistrate or justice of the peace, that he will appraise all such estates or properties as may be submitted to his valuation, according to the just, proper and true valuation thereof to the best of his skill and knowledge, and shall transmit the said oath so taken by him and certified by the person before whom it was taken, to the Master.

120. Master's fees

The Master shall charge, and may recover in respect of the acts, matters and things done or caused to be done by him or in his office all such fees as are specified in the tariff contained in Schedule "E", and shall collect these fees by means of revenue stamps to be affixed to the relevant documents:

Provided that the fees for searches shall be affixed opposite to entries in a book kept for the purpose: and

Provided further that nothing herein contained shall affect any law requiring any stamp to be used for any purpose, or any stamp duty to be paid in respect of any proceeding, except in so far as any provision shall be expressly made in Schedule "E".

121. Meetings before authorised official

Any meeting advertised to be held before any Regional Administrator under sections [24](#) and [74](#) may, in the absence of such Regional Administrator on leave or duty, or through indisposition, be held before an official authorised by the Master.

122. Minister for Finance may make regulations

The Minister for Finance may, by notice in the *Gazette*, from time to time make and revoke rules and regulations for the better carrying into effect of the provisions of this Act, the custody and preservation of the records, securities and valuable effects of the Master's office, the payment of money into and out of the Guardian's Fund, and generally for the management and good conduct of the business of the Master's office.

123. Repeal of Falcidian and Trebellianic laws

In no case shall any heir of anyone dying after the commencement of this Act be entitled to claim out of the estate of the person so dying, any portion under or by virtue of the laws known respectively as the Falcidian and the Trebellianic laws which, but for such laws he would not be entitled to claim.

124. "Lex Hac Edictali" repealed

The law known as the "Lex Hac Edictali" is hereby repealed.

125. No legitimate portion claimable as of right

No legitimate portion shall be claimable as of right by anyone out of the estate of any person who dies after the commencement of this Act.

126. Testators may disinherit without assigning reasons

Every person competent to make a will who dies after the commencement of this Act may disinherit or omit to mention in his will any child, parent, relative or descendant without assigning any reason for such disinheritance or omission not in the standing any law, usage or custom now or heretofore in force; and no such will shall be liable to be set aside as invalid, either wholly or in part, by reason of such disinheritance or omission.

127. Certain tacit hypothecations abolished

- (1) The following tacit hypothecations are hereby abolished namely those possessed:
- (a) by—
 - (i) minors upon the estates of their pro-tutors or guardians, and upon the estates of agents or others intermeddling with the property or affairs of such minors, and
 - (ii) mentally disordered persons, adjudged prodigals and interdicted persons upon the estates of their curators;in security for debts due and owing by such guardians, pro-tutors, agents or curators in their said capacity;
 - (b) by legatees in security of their legacies upon the estates of the testators by whom the legacies were bequeathed;
 - (c) by *fidei-commissary* heirs or legatees upon the estates of the fiduciary heirs or legatees having a limited interest in the inheritances or legacies in question;
 - (d) by women married out of community of property upon the estates of their husbands in respect of assets belonging to such women administered by their husbands;
 - (e) by children upon the estate of their surviving parent in respect of property coming from their deceased parent;
 - (f) by the Government in respect of over-due taxes upon the estates of persons liable to pay them or upon property affected by such taxes;
 - (g) by the Government upon the estates of auctioneers and deputy-postmasters, considered as collectors or receivers of the public revenue in security for any debts or demands due by them in their said capacities to the said Government;
 - (h) by the Government upon the estates of persons who have entered into contracts with the Government in security for the performance of such contracts, or for any damages sustained by the non-performance thereof;
 - (i) by municipalities, churches and generally any public body or institution whatsoever upon the estates of persons entrusted with the collection, custody or administration of their revenues in security for the revenues not accounted for by such persons;
 - (j) by persons by whom ships and houses have been built or repaired for the costs and charges thereby incurred:

Provided that this paragraph shall not be construed so as to deprive any person of any right which he may by law possess to retain any property whatsoever, which is in his actual possession until his costs and charges incurred thereon have been paid;
 - (k) by persons who have lent money for the purpose of being expended in the repair of houses and other property in security for the money so lent.
- (2) The provisions of sub-section (1) shall not affect the estate of any person who died before the commencement of this Act, or any right or tacit hypothecation acquired before that date.
- (3) All rights of tacit hypothecation which are of the classes described in sub-section (1)(c) and (e), and which have been acquired before the commencement of this Act shall not operate—
- (a) if the persons entitled to such rights are majors at commencement of this act, upon any immovable property for a longer period than one year from the said date, unless the existence of the said rights are duly recorded in the Deeds Office against the title of such property;

- (b) if the persons entitled are minors at the commencement of this Act, upon or in respect of any immovable property for a longer period than two years from the date of the majority of such persons, unless the existence thereof is recorded as required in paragraph (a).

128. Power of substitution and surrogation abolished

After the commencement of this Act no person appointed executor in any estate, or tutor to any minor, may substitute or surrogate any other person to act in his place.

129. Statement of unclaimed moneys to be published by banks, etc.

- (1) Every banking or other company, and every firm, partnership or other person trading or carrying on business within Swaziland shall, in the month of January of each year, publish in the *Gazette* a detailed statement of all moneys which were in its hands, or in the hands of any branch or agents in Swaziland of such company, firm or partnership or individual, on the thirty-first day of December last preceding, and which were not the property of such company, firm, partnership or individual, and on which no valid lien existed, and which moneys at date of publication have remained unclaimed by the respective owners thereof for a period of five years or more.
- (2) Such statement shall as far as practicable set forth the full names and last known addresses of such owners, and shall be subscribed by the person publishing the same.
- (3) Such person shall make an affidavit in the form contained in Schedule "F", and shall forward the same to the Master not later than the date of publication of such statement, and in default thereof he shall be deemed not to have published such statement.
- (4) After the expiry of three months from the date of such publication all such sums of money still remaining unclaimed shall be deposited in the Guardian's Fund, to be administered by the Master in terms of the provisions of this Act relating to the Guardian's Fund, so far as the same are applicable.

130. Penalty on failure to publish statement

- (1) If any such company, firm, partnership or individual fails to publish the return mentioned in the last preceding section, or to pay such moneys into the Guardian's Fund, then, in the case of a company the secretary and every director thereof in Swaziland, and every agent or officer thereof having the custody or control of such unclaimed moneys, and in the case of a firm or partnership, every member thereof in Swaziland, and every agent or officer having such custody and control, and in the case of an individual such individual, shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand emalangeni, or, in default of payment thereof to imprisonment for a period not exceeding twelve months.
- (2) If the person so convicted fails to publish such statement or to pay in such money within a period to be fixed by the court by which he has been convicted, he shall be liable to be imprisoned until such statement is published, or such moneys is paid in.

Schedule "A"

Death notice

Pursuant to the provisions contained in the Administration of Estates Act

- 1. Name of the deceased _____
- 2. Birthplace and nationality of the deceased _____
- 3. Names and addresses of the parents of the deceased _____

- Father _____
- Mother _____
4. Age of the deceased _____ years _____ months _____
 5. Occupation in life of the deceased _____
 6. Married or unmarried, widower or widow
 - (a) Name of surviving spouse (if any), and whether married in community of property or not _____
 - (b) Name or names and approximate date of death of predeceased spouse or spouses _____
 - (c) Place of last marriage _____
 7. The day of the decease _____ on _____ 20 _____.
 8. Where the person died _____

Town or place _____

Region _____

House _____
 9. Names of children of deceased, and whether majors or minors

State separately the children born of different marriages, and give the date of birth of each minor. Names must be written out in full. If there are no children, and either or both parents be dead, then give the names and addresses of the brothers and sisters of deceased.
 10. Has the deceased left any movable property?
 11. Has the deceased left any immovable property?
 12. Is it estimated that the estate exceeds E200 in value?
 13. Has the deceased left a will?
- Dated at _____ the _____ day of _____ 20_____.

[State in what capacity.]

This notice must be filled up and signed by the nearest relative or connection of the deceased, who shall at the time be at, or near, the place of death— or, in the absence of such near relative or connection, by the person who at, or immediately after, the death shall have the chief charge of the house in, or the place, on, which the death shall occur, and must be sent either to the Master of the High Court in Mbabane, or, if the death occurred in a region other than the Hhohho Region, the Regional Administrator of the region in duplicate within fourteen days of the death.

Schedule “B”

Form of letters of administration

These are to certify that A. B. of, has been duly appointed the executor testamentary (or dative as the case may be), and is hereby authorised as such, to administer the estate of the late C. D. of.

Master of the High Court.

Mbabane, this _____ day of _____, 20.

Schedule “C”**Letters of confirmation of tutors**

These are to certify that A. B. of _____, has been duly appointed, and is hereby authorised as such, to act as the tutor testamentary (or dative as the case may be) of C. D. minor, child of the late E. F. of _____.

Master of the High Court.

Mbabane, this _____ day of _____, 20_____.

Schedule “D”**Letters of confirmation of curators**

These are to certify that A. B. of _____, has been duly appointed, and is hereby authorised, to act as the curator nominate of the estate given (or bequeathed as the case may be) to C. D. by G. H. [Here describe the deed of gift or bequest by its date or otherwise] or, as the case may be, as the *curator dative* of the estate of C. D. of _____.

Master of the High Court.

Mbabane, this _____ day of _____, 20_____.

Schedule “E”

Tariff of fees

	E.	c.
For registering any death notice _____	0	25
For registering any will, codicil, or testamentary writing _____	1	00
Inspection of any document, each estate _____	0	50
Copy of any document of 100 words or less _____	0	50
For every additional 100 words or portion thereof _____	0	25
For letters of administration as executor, testamentary, assumed or dative, or certificates of appointment as <i>curator bonis</i> each: Where the value of the estate does not exceed E200 _____	1	00
Where the value of the estate exceeds E200 _____	2	00
For letters of confirmation of the appointment of tutors, testamentary, assumed or dative, or curators nominate, assumed or dative, each _____	1	00
For every notice in the <i>Gazette</i> , including cost of publication _____	2	00
Attending meeting of next of kin, or creditors, before Master	1	00

or Regional Administrator _____		
Approving of sureties given by executors, tutors and curators _____	0	50
Registering accounts of executors, tutors and curators, each _____	0	50
Registering any inventory act, repudiating an inheritance, deed of assumption, or any other deed, each _____	0	50
Registering an Order of Court _____	0	50
Registering any bond securing minor's portions _____	0	50
For every report at the discretion of the Master, subject to taxation, before the Court or a Judge thereof, not less than _____	1	00
For every certificate under the hand of the Master _____	0	50
For taxing the remuneration of executors, tutors, curators or appraisers, on every lilangeni or fraction of a lilangeni of the taxed amount _____	0	10

Schedule "F"

I, _____ of _____ [state capacity of deponent] make oath and say that the return of unclaimed moneys in the hands of _____, subscribed by me and published under the provisions of the Administration of Estates Act, 1902, in the *Gazette* of the _____, is to the best of my knowledge and belief a true and complete return as required by the said Act; and that during the year ending the thirty-first day of December now last past no unclaimed moneys have been transferred by or on behalf of the said... _____, from Swaziland to any other country or placed to any suspense or other account with a view to evading the provisions of the Act and that all amounts which ought to be included in the said return are duly included therein.