

THE DEVOLUTION OF ESTATES ACT, 2007

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PART 1 - PRELIMINARY

Application. **1.** (1) This Act shall apply to every person who dies leaving property in Sierra Leone irrespective of religion or ethnic origin.

(2) Subject to subsection (3), the distribution of estates of persons dying testate or intestate on or after the coming into operation of this Act shall be in accordance with this Act.

(3) This Act shall not apply to family property, chieftaincy property or community property held under customary law.

Act No. 51 of 1961. (4) For the avoidance of doubt, this Act shall not apply to any claim that is statute-barred by virtue of the Limitation Act, 1961.

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

“brother or sister” includes a half-brother or half-sister and a brother or sister adopted under any enactment or under customary law;

“child” includes-

- (a) any child born to the deceased while the deceased was unmarried and recognized by the deceased as his child;
- (b) any child born to the deceased while the deceased was married and the other parent of the child was or is the lawful spouse of the deceased;
- (c) any child born to the deceased while the deceased was married and the child in question was recognized by the deceased and his spouse as the child of the deceased; and
- (d) any child adopted by the deceased under any applicable law;

“cohabiting person” means a person of the opposite sex who, while not married to the testator or intestate

continuously cohabited with the testator or intestator for a period of not less than five years immediately preceding the death of that person;

“community property” means any property, whether moveable or immoveable, which belongs to the members collectively of a particular community or is held for the benefit of such members and any receipts or proceeds from such property;

“court” means the High Court;

“dependant” includes a spouse, child, parent or any person who before the death of the testator or intestate was by law required to be maintained by the testator or intestate;

“estate” means all interest in land and chattels real and personal, choses in action and other property whatsoever of which the intestate was legally competent to dispose during his lifetime and in respect of which his interest has not been terminated by or on his death;

“family” includes parents, grandparents, uncles, aunts, nephews, nieces and other such relations;

“family property” means any immovable property which belongs to the members collectively of a particular family or is held for the benefit of such members and any receipts or proceeds from such property;

“intestate” means a person who dies without having made a will and includes a person who leaves a will but dies intestate regarding some beneficial interest in his real or personal estate;

“issue” includes children, grandchildren and the descendants of deceased children according to their stock;

“letters of administration” means any letters of administration granted under customary law or by

the court either generally or with a copy of the will annexed or limited in time or otherwise;

“marriage” includes marriage under the Civil Marriage Act, Christian Marriage Act, the Mohammedan Marriage Act or any customary law;

“natural child” means any biological or adopted child;

“next-of-kin” includes any person other than a surviving spouse of a deceased person who by law would be entitled to letters of administration in preference to a creditor;

“parent” includes a natural mother and father and any person recognised by law to be the mother or father of the deceased;

“personal chattels” includes jewellery, clothes, furniture and furnishings, refrigerators, televisions, radiograms, other electrical and electronic appliances, kitchen and laundry equipment, simple agricultural equipment, hunting equipment, books, motor vehicles but does not include vehicles used wholly for commercial purposes, live stock, money or securities for money;

“residue” all that part of the deceased’s estate that does not devolve according to section 9 or section 22;

“spouse” means -

- (a) a person married to the intestate or the testator;
- (b) an unmarried woman who has cohabited with an unmarried man as if she were in law his wife for a period of not less than five years immediately preceding the death of the intestate or testate;

- (c) an unmarried man who has cohabited with an unmarried woman as if he were in law her husband for a period of not less than five years immediately preceding the death of the intestate or testate;

“testator” means a person who dies leaving a valid will;

“will” includes any will recognized or made under Muslim law or customary law and a codicil.

PART II—INTESTATE SUCCESSION

3. (1) For the purposes of this Act -

- (a) a person dies intestate if at the time of his death he had not made a will disposing of his estate;
- (b) any person who is survived by a will disposing of part of his estate, dies intestate in respect of that part of his estate which is not disposed of in the will and the relevant provisions of this Act shall apply to such part of his estate, accordingly.

Intestacy and partial intestacy.

(2) The spouse of an intestate and in the absence of a spouse, the next-of-kin of the intestate, shall be entitled to apply for letters of administration in respect of the intestate’s estate.

(3) Where the intestate had more than one spouse, the first spouse who got married to the intestate shall be entitled to apply for letters of administration and where he or she refuses or is unable, for any reason to apply, the other spouse next in line shall apply.

4. The estate in respect of which a person dies intestate shall, after payment of debts, duties and other lawful expenses, be distributed as provided in this Act.

Distribution of intestate’s estates.

Maintenance and education of natural child.

5. (1) Any natural child of the intestate shall be entitled to be maintained and educated from the residue of the estate of the deceased until such child attains eighteen years or upon leaving secondary school or completion of an undergraduate university or college course whichever is the later.

(2) The amount of any maintenance provided shall be determined, taking into account, any surviving parents's duty to provide guidance, care, assistance and maintenance for the child and the welfare of other beneficiaries or dependants.

Intestate survived by spouse only.

6. (1) Subject to subsection (2) and section 15, where an intestate is survived a spouse but no children or issue, the whole of the estate shall devolve to the surviving spouse.

(2) Where an intestate is survived by more than one spouse but no children or issue, the estate shall be distributed among the surviving spouse in proportion to the duration of their respective marriages to the intestate and other factors such as their respective contributions, if any, to the estate.

Intestate survived by child only.

7. (1) Subject to subsection (2) and section 15, where an intestate is survived by one child and no spouse, parent or grandchild, the whole of the estate shall devolve to the surviving child.

(2) Where an intestate is survived by two or more children and no spouse, parent or grandchild, the estate shall devolve to the children in equal shares.

Intestate survived by spouse, child and parent.

8. Where the intestate is survived by a spouse, child and parent, the estate shall devolve in the following manner:-

- (a) thirty five percent to the surviving spouse;
- (b) thirty five percent to the surviving child;
- (c) fifteen percent to the surviving parent;
- (d) fifteen percent in accordance with customary law or Muslim law, as applicable.

9. (1) Without prejudice to sections 7 and 8 and subject to subsection (2)-

- (a) where the estate includes one house only, the surviving spouse or child or both, as the case may be, shall be entitled to that house and where it devolves to both spouse and child, they shall hold it as tenants-in-common;
- (b) where the intestate is survived by a spouse and two or more children, the surviving spouse and children shall be entitled to the house as tenants-in-common.

Surviving spouse and child to be entitled to house or houses.

(2) Notwithstanding the provisions of subsection (1), where there are two or more surviving spouses and children, the surviving spouses and children shall be entitled to the house as tenants-in-common.

(3) Where the estate includes more than one house, the surviving spouse or child or both of them, as the case may be, shall determine which of those houses shall devolve to such spouse or child or both of them and where it devolves to both spouse and child, they shall hold such house as tenants-in-common.

(4) Where the estate is devolved pursuant to subsection (3) the surviving spouse shall have the right to make the first choice as to which of the houses shall devolve to that spouse, and the child will make a choice thereafter.

(5) Where there is more than one surviving spouse all such spouses and the children shall agree among themselves as to the allocation of the houses but if, for any reason, they are unwilling or unable to agree, the court having jurisdiction in relation to such estate, shall upon application, determine which of those houses shall devolve to the surviving spouse or child or both of them.

(6) Where the estate is not survived by a spouse and the intestate's estate includes only one house, the surviving child shall be entitled to the house absolutely, but any surviving parent shall have a right to reside in that house for his lifetime.

(7) Where the estate includes only one house, the surviving spouse shall have a right to reside in that house during his lifetime.

(8) Where there is more than one house, the surviving spouse's right to reside for his or her lifetime shall apply to any one of the houses, but where there is disagreement as to the houses to which the right shall apply, the surviving spouse shall have a right to choose in which of the houses he shall reside.

Intestate survived by parent, brother or sister.

10. Where the intestate is not survived by a spouse, child or grandchild but is survived by a parent or brother or sister, 75% of the estate shall devolve to the parents and brother and sister in equal shares and the remaining 25% shall be distributed in accordance with customary or Muslim law, as applicable.

Grandchild of intestate.

11. Where a child of the intestate who has predeceased him is survived by a child (being the grandchild of the intestate), the grandchild shall be entitled to the whole or a portion of the estate which would otherwise have devolved to his parent if he had not predeceased the intestate.

Posthumous births.

12. Any child or grandchild of the intestate conceived before the intestate's death, but born afterwards, shall inherit as if he had been born in the lifetime of the intestate and had survived the intestate.

Intestate survived by parent only.

13. Where the intestate is not survived by a spouse, child, or grandchild but is survived by a brother or sister, 75% of the estate shall devolve to the brother and sister in equal shares and the remaining 25% shall be distributed in accordance with customary or Muslim law, as applicable.

Intestate survived by parent only.

14. Where the intestate is not survived by a spouse, child, grandchild, brother or sister, but is survived by a parent, 75% of the estate shall devolve to the surviving parent and the remaining 25% shall be distributed in accordance with customary or Muslim law, as applicable.

Family property, etc. not part of intestate estate.

15. (1) For the avoidance of doubt, but subject to subsection (2), where under customary law, family property, chieftaincy property or community property or any part thereof is vested in the intestate under customary law, such property shall not form part of his estate and notwithstanding any other provision of this Act, the rules of succession under customary law in respect of such property shall prevail.

(2) A surviving spouse shall have the right to reside during his lifetime in any family property, chieftaincy property or community property in which he cohabited with the deceased as their matrimonial home.

16. Where an intestate is not survived by a spouse, children, next-of-kin or other persons to whom his estate may devolve under this Act, his estate shall be *bona vacantia* and shall devolve to the State.

17. Where the intestate is survived by a spouse or child or both, the surviving spouse or child or both of them, as the case may be, shall be entitled equally to the personal chattel of the intestate.

18. Where the total value of the estate of the intestate does not exceed Le15,000,000, it shall –

- (a) devolve to the surviving spouse or child of the intestate and where the intestate is survived by a spouse and a child, the estate shall devolve to both spouse and child;
- (b) where there is no surviving spouse or child, devolve to the surviving parent;
- (c) where there is no surviving spouse, child or parent, devolve to the surviving brother or sister; or
- (d) where there is no surviving spouse, child, parent, brother or sister, devolve to the next-of-kin.

19. A court may appoint any person it considers fit to be a receiver of the property of an intestate pending the grant of letters of administration, if it appears on the application of any person –

- (a) claiming to be interested in the property; or
- (b) having possession, custody or control of the property at the time of the death of the deceased,

that there is danger that the property may be wasted, damaged or destroyed.

Bona vacantia.

Personal chattel.

Small estates.

Appointment of receiver pending grant of letters of administration.

Sale by order of court.

20. A court may, on application by a receiver appointed under section 19, or any other person interested in the estate, order the sale of the whole or any part of the property, where it considers that the sale will be beneficial to those entitled to the estate.

Protection of receiver from liability.

21. (1) Subject to subsection (2), no action shall be brought against a receiver in relation to anything done by him in respect of the property of the deceased in the intended, purported or actual exercise of the powers vested in him.

(2) A person aggrieved by anything done or intended to be done by a receiver may apply to the court which appointed the receiver for directions in the matter, and the court may make such order as it may consider just.

PART III—TESTATE SUCCESSION

Unreasonable provisions in will.

22. (1) An aggrieved dependant may by application to the court, contest the dispositions made in a will.

(2) An application made pursuant to subsection (1) shall, notwithstanding the provisions of the will, be determined in accordance with equitable principles.

(3) Where the court is of the opinion that the testator has not made any provision or any reasonable provision, whether during his lifetime or by his will, for the maintenance of the dependant and that hardship has been caused or will thereby be caused, the court may order that such provision or reasonable provision as it thinks fit be made out of the testator's estate for the maintenance of the dependant.

(4) An order of the court may be subject to such conditions and restrictions as the court may impose.

(5) An order for the provision of maintenance may include-

(a) payment of a lump sum, whether immediate or deferred;

(b) grant of an annuity or a series of payments;

(c) grant of an interest in immoveable property for life or any lesser period.

23. (1) The court shall, on an application made under section 22, have regard to the testator's reasons for making the dispositions by his will or for not making any provision or any further provision, as the case may be, for a dependant. Matters to be considered by court when varying will.

(2) For the purposes of subsection (1), the court may receive such evidence as it considers sufficient, including any statement in writing signed and dated by the testator, but in assessing the weight, if any, to be attached to such statement, the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement.

(3) The court shall also, for the purposes of subsection (1), have regard to -

(a) any past, present or future capital or income from any source, of the dependant to whom the application relates;

(b) the conduct of the dependant in relation to the testator; and

(c) any other applications for an order;

(d) any beneficiary of the estate;

(e) any obligations and responsibilities which the deceased had towards the beneficiaries and applicants;

(f) any physical or mental disability from which any of them suffer;

(g) the size and nature of the estate;

(h) the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family of the deceased or the deceased; and

- (i) any other matter or thing which in the circumstances of the case, the court may consider relevant or material in relation to that dependant and to the beneficiaries under the will.

(4) If the testator's estate consists of only one house that has been devised to the surviving spouse and child, the applicants who would have otherwise been entitled to apply under this section are precluded from making the application

Conditions for periodic payments.

24. (1) Where an order provides for periodic payments, it shall also provide that such payments be terminated not later than –

- (a) in the case of a surviving spouse, his remarriage;
- (b) in the case of a child, his attaining the age of eighteen years or upon leaving secondary school or under-graduate university or college, whichever is later;
- (c) in the case of a child under disability, the cesser of the disability; and
- (d) the death of the dependant.

(2) In determining whether and in what manner and as from what date provision for maintenance ought to be made, the court shall have regard to the nature of the testator's estate and shall not order any provision to be made as would necessitate a realization that would be unwise having regard to the interests of the testator's dependants and of any person who, apart from the order, would be entitled to that property.

Time within which application must be made.

25. (1) Subject to section 27, an application under section 22 shall be made not later than six months after the grant of probate in respect of the estate of the testator.

(2) The court may, on an application extend the period specified in subsection (1).

26. (1) Where an order is made under section 22, the will shall for all purposes, including the purposes of any enactment relating to death duties, be deemed to have had effect, as from the testator's death, as if it had been executed with such variation as specified in the order for the purposes of giving effect to the provision for maintenance made by it. Effect and form of order.

(2) The court may give such consequential directions as it thinks fit for the purposes of giving effect to an order made under this Part, but no larger part of the estate shall be set aside or appropriate, to answer by its income the provision for maintenance made by the order than such part as, at the date of the order, is sufficient to produce by its income the amount of that provision.

(3) A certified copy of every order made under this Part shall be sent to the Probate Registry for entry and filing and shall be endorsed on or permanently annexed to, the probate of the will of the testator.

27. (1) On an application made after the expiration of the period specified in section 25, the court may make, only in respect of property the income of which is applicable for the maintenance of a dependant of the testator, an order – Variation of orders.

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

(2) An application to the court for an order under subsection (1) may be made by or on behalf of a dependant of the testator by the trustee of the property or by or on behalf of a person beneficially interested in it under the will.

PART IV—MISCELLANEOUS

Devolution of residue where customary law or Muslim law inapplicable.

28. Where no customary law or Muslim law is applicable to the devolution of that part of the residue which by virtue of this Act shall devolve in accordance with customary law or Muslim law, such part of the residue shall devolve in equal shares to those beneficiaries otherwise entitled to share the residue under the relevant provision of this Act.

Challenge of will not to debar beneficiary.

29. (1) On application by an interested person, a court shall have jurisdiction, in relation to a deceased person's estate to determine whether a document purporting to be a will is a valid will or, as the case may be, whether or not the deceased died intestate.

(2) Where the court determines that a document purporting to be a will is not a valid will, the testator shall be treated as an intestate and his estate disposed of in accordance with Part II.

(3) A person who successfully challenges the validity of a will or the dispositions made under the will of the deceased person shall not because of the challenge be debarred as a beneficiary under the estate.

Beneficiary causing death of testator or intestate.

30. A person who intentionally causes the death of a testator or an intestate shall forfeit the right to inherit any part of the estate of the deceased person.

Presumption regarding survivorship.

31. Where two or more persons die in circumstances rendering it uncertain which of them survived the other or others, the deaths shall, for the purposes of this Act, be presumed to have occurred in order of seniority, and accordingly, the younger shall be presumed to have survived the older.

Intermeddling with estate.

32. (1) When a person dies, whether testate or intestate, leaving property in Sierra Leone, any person who, without lawful authority, takes possession of, causes to be moved or otherwise intermeddles with any property belonging to the estate, commits an offence and is liable on conviction to a fine not exceeding Le5,000,000 or to a term of imprisonment not exceeding one year or to both the fine and imprisonment.

(2) It shall be a defence to a charge under subsection (1) if the person proves that his action was necessary for the preservation of the property.

33. (1) The administrator or executor of an estate shall administer and distribute the estate not later than three years after obtaining a grant, unless the administration of the estate or any part thereof must be continued to ensure that there is adequate maintenance for any natural child under eighteen or vulnerable parent of the intestate. Offence against entitled person.

(2) No person shall before the distribution of the estate of a deceased person whether testate or intestate eject a surviving spouse or child from the matrimonial home-

- (a) where the matrimonial home is the property of the deceased;
- (b) where the matrimonial home is rented property, unless the ejection is pursuant to a court order;
- (c) where the matrimonial home is family house of the deceased, unless a period of one year has expired from the date of the death of the deceased;
- (d) where the matrimonial home is public property unless a period of six months has expired from the date of death of deceased.

(3) For the purpose of this section "matrimonial home" means-

- (a) the house or premises occupied by the deceased and the surviving spouse, of the deceased and a surviving child or all as the case may be, at the time of death of the deceased; or
- (b) any other house of the deceased occupied by the surviving spouse or child or both at the time of death of the deceased.

(4) Any person who before the distribution of the estate of a deceased person whether testate or intestate,

- (a) unlawfully ejects a surviving spouse or child from the matrimonial home contrary to subsection (2);

- (b) unlawfully deprives the entitled person of the use of-
- (i) any part of the property of the entitled person;
 - (ii) any property shared by the entitled person with the deceased to which this Act applies;
- (c) removes, destroys or otherwise unlawfully interferes with the property of the deceased person,

commits an offence and is liable on summary conviction to a fine not exceeding Le5,000,000.00 or to a term of imprisonment not exceeding two years and the court shall make such orders as it considers necessary for the re-instatement of or reimbursement to the person thus ejected or deprived.

Additional order of court.

34. (1) When a person is convicted of an offence under section 32 the court may, in addition to any penalty which may be imposed –

- (a) order the property restored to the person of the property or the share in the property; or
- (b) if the property cannot be restored or cannot be found, order the convicted person to pay compensation to the person of an amount which shall not exceed twice the value of the property.

(2) A court shall have jurisdiction to try an offence under section 33 notwithstanding that it had previously dealt with an application relating to the property in question.

Obtaining letters of administration by fraud.

35. Any person who fraudulently obtains letters of administration commits an offence and is liable on conviction to a fine not exceeding Le10,000,000 or to a term of imprisonment not exceeding five years or to both the fine and imprisonment.

36. (1) Except as is otherwise expressly provided, nothing in this Act shall affect– Savings.

- (a) any rights, duties or obligations of an executor or administrator under any enactment relating to the administration and distribution of estates existing immediately before the commencement of this Act;
- (b) the rights, duties or obligations of beneficiaries in respect of any person who died testate or intestate before the commencement of this Act; or
- (c) the validity of any act or thing done under any enactment in force in Sierra Leone immediately before the commencement of this Act, relating to the administration and distribution of estates.

(2) All legal proceedings and claims which immediately before the commencement of this Act were pending in respect of the administration and distribution of estates shall be continued or enforced by or against any person in the same manner as they would have been continued or enforced if this Act had not been enacted.

37. The Minister responsible for social welfare may, by statutory instrument, make regulations for giving effect to this Act. Regulations.

38. The following enactments are hereby repealed:- Repeals.

- (a) section 26 of the Christian Marriage Act;
- (b) subsection (1) of section 9 of the Muslim Marriage Act;
- (c) the Second Schedule to the Administration of Estate Act.

(2) Paragraph (d) of section 1 of the Administration of Estates Act is hereby amended by the deletion and replacement of the words “Second Schedule” appearing therein by the words “the Devolution of Estates Act, 2007”.