

Probate & Administration of Estates

STAY ALIVE AFTER DEATH!

SIMON O. SWAI

PRINCIPAL RESIDENT MAGISTRATE

**DISTRICT COURT OF TEMEKE –
ONE STOP JUDICIAL CENTRE**

MAY 2025



Posts



mira_legal_consultants



HABARI

AGOSTI 25, 2024

**'NIKIFA MKE WANGU ASIOLEWE,
WOSIA UHESHIMIWE'**

DSM



[/habarileo.co.tz](https://habarileo.co.tz)



NEWS
FULL

DAILY NEWS Digital
SUBSCRIBE LIKE & SHARE



@habarileo_tz



habarileo



habarileo



TRUE FACT OF LIFE

- **Death is inevitable.** 100 years to come, none of us will be alive (save for miracles of God, of course!) That is a pure fact of LIFE!
- Because Death is a fact of life, issues of **inheritance** and **succession** may arise, specifically regarding the collection and distribution of your estate (property), if you have one, of course!
- Generally, petitions for **a grant of probate** or **letters of administration** result from the death of a living person.
 - **Petition for Probate** – when the deceased left a will (died testate). A petitioner must be a named executor.
 - **Petition for Letters of Administration** – when the deceased died intestate, without leaving a will.
- Petition for letters of administration with **will be annexed** – when the deceased left a will but did not appoint an executor, or the petitioner is a person other than the executor.



COURT PROCESS

- The right to inherit is intertwined with the right to own property, which is guaranteed by article 24(1) of the Constitution of the United Republic of Tanzania, 1977.
 - You cannot, therefore, deny heir's right without justifiable reasons.
- Inheritance is the right by which a person is entitled to receive a deceased's property based on their legal relationship.
 - The relationship is pegged on **bloodline** (children from parents), **marital** (husband and wife or wives), and **adoption**.
 - Exceptions – Siblings and close relatives when 1st, Inheritance under Will.
- Traditionally, after death, relatives convene a family or clan meeting to discuss, among other things, who is fit to administer the **deceased's estate**. If the deceased left a Will, it is normally disclosed to family members in the meeting. Family/ Clan **meeting minutes** are obtained.
- Acquire **a certificate of death from the** relevant authority.
 - The original **death certificate** remains attached in the court file until the matter is marked **closed**.
- A necessary document to be attached in a petition for probate or letters of administration is a **death certificate**. Family meeting minutes are important, but **not a legal requirement**.



COMPETENT COURT

- **Primary courts** exercise jurisdiction where the law applicable is either **Islamic law** or **Customary law**.
 - **Form No. IV** is issued by the court to the administrator upon appointment.
- **The District Court** is vested with jurisdiction in the administration of **small estates**, with power to appoint and revoke administrators, whereas the law applicable is neither Islamic nor Customary.
- **The Court of District Delegate** exercises jurisdiction in matters that are not small estates.
 - On appointment (among others), **Form Nos. 66** and **68** are issued in probate and Letters of Administration, respectively.
- **The High Court** has unlimited jurisdiction.
 - On appointment (among others), **Form Nos. 66** and **68** are issued in probate and Letters of Administration, respectively.



WILL

- When a person dies intestate, his estate will be administered in accordance with the applicable law. For **Muslims**, Islamic laws will apply. **Customary laws** apply to those who lived following their **customs** and **traditions**. On the other hand, those who lived neither under Islamic nor Customary laws will have their estates administered under the Indian Succession Act, Hindu Wills Act, etc.
- **Will** means a legal declaration of the **intentions of a testator** with respect to his property, which he desires **to be carried into effect after his death**.
 - Will becomes meaningful upon the death of the **testator**. Otherwise, it is a normal piece of paper which we should **not be afraid of** or relate it to **a curse**.
- There are two types of a Will;
 - (i) Oral Will and
 - (ii) Written Will
- The executor or administrator has no choice but to distribute the estate according to the will.



FEATURES OF A VALID WILL

- Being a legal declaration, a Will must contain the following features to maintain **its validity**;
 - i. Proper and full names of the testator
 - ii. Names of heirs and beneficiaries,
 - iii. Name(s) of executor(s). **Not mandatory**
 - iv. List and description of properties
 - v. Division of properties to heirs and or beneficiaries
 - vi. Date
 - vii. Signature of testator and
 - viii. Names and signatures of witnesses. There must be at **least two witnesses**, one of whom must be **a relative of the testator**.
- The law does not mandate a place to store a will. However, **RITA** is a special government agency that, among other things, deals with **drawing and storing wills**.



COLLECTION & DISTRIBUTION OF DECEASED'S PROPERTIES

- The law requires the administrator or executor to collect the deceased's estate, pay his debts (if any), and distribute the estate to heirs. Having collected the estate, the administrator is required to file an **Inventory** and later **an account estate**.
 - Inventory must be filed within **four months** for the Primary court and **six months** in the High Court and District Court.
- Accounts of estate for the High Court, District Delegate, and District Court must be filed **within twelve months**.
- Relevant Forms are;
 - **Form No. V (inventory)** and **No. VI (accounts)** in Primary Court
 - **Form No. 80 (inventory)** and **No. 81 (accounts)** in the High Court and District Court.
- **Shares** (stocks) and soft money (in mobile phones) are part and parcel of the deceased's estate, which the **administrator** or **executor** must list **in the inventory form**.
- Registration of shares in **proper names** is **vital** since it affects the transfer of title from the deceased.
- **Registration of shares in other names** implies that the property belongs to someone other than the deceased, and therefore, **the court cannot issue a transfer order**.
 - Administrator is duty-bound to ensure all properties have been transferred to the beneficiaries.



SECRECY & REGISTRATION OF PROPERTY IN OTHER OR IMPROPER NAMES

- Probate or Letters of Administration are granted on the deceased person's estate as **spelled in the death certificate**.
- It is significant, therefore, to obtain the certificate in the full and proper name of a deceased person.
 - Daudi John Mussa – **David Yohana** Mussa
 - Christina John Mussa – **Tina** John Mussa
- Keeping shares, electronic money, or any other property secret is not healthy in your absence. **Consider it as a vanished property.** All of your efforts to acquire the property are as good as nothing.
- Use a **WILL** to **safeguard** all your secret property and maintain your furtive.



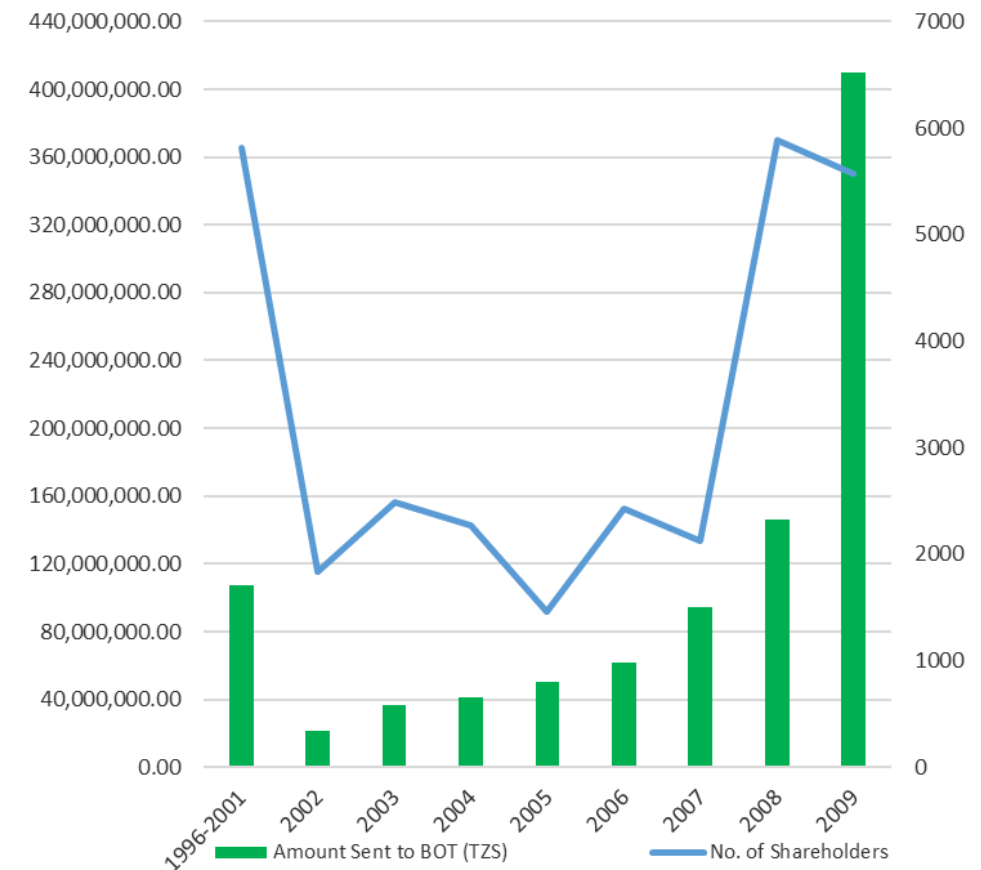
MARITAL PROPERTY STATUS IN ADMINISTRATION OF DECEASED'S ESTATE

- Marriage **ceases to exist upon the death** of one of the couple.
 - That being the case, there is **no room to discuss marriage matters**.
 - At that time the law of Probate and Administration of Estate shall apply.
- A property is therefore **termed to be owned by a person whose name is registered**.
 - The surviving couple **shall enjoy inheritance rights** in accordance with applicable law, such as **customary, Islamic, or State law**.
 - If you claim contribution in the property as a spouse, you ought to file a claim in the Probate Court. The problem, however, is how you will prove it and whether proving the same against the administrator will be viable and fair.
- Think of **Joint Tenancy** (upon the death of one partner, the surviving partner owns the property to the exclusion of the world. The property will not be subject to inheritance) and
- **Tenancy in Common** where **only the shares** of parting partner will be included in inheritance.

EXAMPLE OF ABANDONED PROPERTY

- A total sum of **TZS 970,011,736.51** was uncollected by heirs for **13 years**. Making an average of **TZS 74,616,287.42 annually**.
- Manage your estate today, let not your sweat vanish away.
- **Draw your WILL today, tomorrow is not guaranteed!**

Summary of CRDB Uncollected Dividends amount sent to BOT from the year 1996-2009



"The earth belongs in usufruct to the living; the dead have neither powers nor rights over it." "If one generation could bind another, the dead and not the living would rule."

Letter from James Madison Thomas Jefferson (4th and 3rd US President respectively), 1789



Thank You