

79. Persons who may appoint tutors to minors

(1) It shall not be lawful for any person except-

- (a) the father of a minor;
- (b) the mother of a minor whose father is dead or has abandoned the minor; or
- (c) the mother of a minor to whom the custody of such minor has been given by a competent court,

by any will or other deed to nominate any tutor or tutors to administer and manage the estate or to take care of the person of that minor:

Provided that nothing in this section shall prevent any person who gives or bequeaths any property to any person from nominating a curator or curators to administer and manage that property during the minority or during the insanity of the donee or legatee, in like manner and as fully in all respects as the same might lawfully have been done prior to the commencement of this Act.

(2) All curators referred to in the preceding provisions of this section shall be called curators nominate.

80. Tutors testamentary

(1) A tutor nominated by a father or a mother in manner aforesaid to a minor child shall be called a tutor testamentary, whether that tutor has been nominated by will or by any other deed duly executed by the 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 of the same) until letters of confirmation have been granted to him by the Master in Form C set out in the First Schedule.

(3) Letters of confirmation granted to a tutor testamentary shall authorize him to administer the property of the minor wherever situate within Botswana.

81. Mode of granting letters of confirmation

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

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

Provided that-

- (i) a father or mother shall not require letters of confirmation;
- (ii) letters of confirmation as tutor testamentary shall not in any case be granted to a person who is at the time incapacitated or disqualified by law from holding the office of tutor.

(3) The final proviso to section 29 shall mutatis mutandis apply to the appointment of a tutor testamentary.

82. Letters of confirmation to curators nominate

(1) No curator nominate shall assume or enter up the administration or management of any estate or property except in so far as may be necessary for the preservation and safe custody of the same until letters of confirmation 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 the last preceding section as to the granting of letters of confirmation to tutors testamentary.

(3) Letters of confirmation to a curator nominate shall be in Form D set out in the First Schedule.

(4) Letters of confirmation granted to a curator nominate shall authorize him to administer all property included in the deed pursuant to which he is appointed and therein committed to his care, wherever within Botswana any such property is situate.

83. Security rem pupilli salvam fore by curators nominate and tutors testamentary

(1) The court may, on the application of the Master or of any relative or of any person having an interest in the administration of the 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.

(2) The Master shall allow the reasonable costs of finding security to be charged out of the estate unless otherwise ordered by the court.

#### 84. Appointment of tutors dative by Master

(1) Whenever it comes to the knowledge of the Master that any estate or property within Botswana has devolved upon or come to any minor within Botswana, who is not at the time under the natural guardianship of his father or mother or under the guardianship of a tutor testamentary duly confirmed, or whose property is not under the care of a curator nominate or dative duly appointed, the Master shall, unless he grants letters of confirmation as provided by section 81(2), cause to be published in the Gazette and in such other manner (if any) as he thinks fit, a notice calling upon the relatives of the minor to attend at his office at a time therein specified to see letters of confirmation granted to the person or persons appointed by him tutors or tutors dative of the minor:

Provided that-

(i) the Master may, if he deems it expedient, call upon the relatives of the minor to attend before a magistrate at a time and place appointed and state the objections (if any) to any of the next of kin or other person being appointed tutor dative or to propose some person or persons to be recommended by the magistrate to the Master as fit and proper, for appointment by him as tutor or tutors dative. The Master shall in either event, or, if there is no attendance, appoint such person or persons as he thinks fit and proper to be the tutor or tutors dative of the minor and shall grant to the person or persons appointed letters of confirmation in Form C set out in the First Schedule unless he deems it necessary or expedient to postpone the appointment and call another meeting;

(ii) if any such minor is not possessed of or has no claim to any property whatever or to any property, except such as has been given or bequeathed to him by a person who has duly appointed a curator or curators nominate to administer and manage it during his minority or except money paid over to and in the hands of the Master under section 50(6), the Master need not, but may, take proceedings as aforesaid for the appointment of a tutor dative.

(2) If the property of a minor which is not already being administered by a person having authority in that behalf does not exceed P2000 the Master may appoint a tutor summarily and without observing the formalities prescribed by this section.

(3) Letters of confirmation granted to a tutor dative shall authorize him to administer the property of the minor wherever situate within Botswana.

#### 85. Assumption by tutors testamentary and curators nominate

(1) Nothing contained in this Part shall prevent any tutor testamentary of any minor or curator nominate of any estate from assuming any other person as tutor of that minor or curator of that estate (as the case may be) by virtue of any power for that purpose committed to him by the will of, or any other deed duly executed by, the person by whom the tutor testamentary or curator nominate was appointed:

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

(2) Subject to the provisions of this Act as to security the Master shall grant such letters on production to him of the will or other deed by which the assumption of that tutor or curator is authorized and of the deed by which such tutor testamentary or curator nominate has assumed that person as tutor or curator, and, wherever possible, the original letters of confirmation granted to that 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, as the case may be.

#### 86. Proceedings in case of death, incapacity or removal of tutors or curators

If-

(a) 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 for the guardianship of that minor or for the administration or management of that estate, as the case may be, no tutor or curator remains;

(b) there are not as many tutors, either testamentary or assumed, or curators nominate or assumed, as by the provisions of the will or deed by which they were appointed or permitted to be assumed are necessary to form a quorum of tutors or curators for the guardianship of that minor or for the administration and management of that estate; or

(c) any tutor dative, after letters of confirmation have been granted to him, dies or becomes incapacitated or be removed in manner 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 manner provided by section 84.

#### 87. Revocation of letters of confirmation

(1) Letters of confirmation granted to any person as tutor testamentary or as curator nominate may at any time be

revoked and annulled-

(a) by the court on proof to its satisfaction that the will or deed in respect of which those letters have been granted to that person is null or has been revoked either wholly or in so far as relates to the appointment of such person as tutor or curator or that such person was not legally qualified for the appointment;

(b) by the Master upon production to him of a will or deed of later date than the will or deed in respect of which those letters were granted, if application is made by a tutor or curator nominated in that later will or deed who is capable and qualified so to act.

(2) 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 is then legally capable and qualified and who consents to act as tutor has been legally nominated tutor testamentary of the minor concerned:

Provided that if the will or deed has not been produced prior to letters of confirmation having been granted to the tutor dative owing to the fault or negligence of the person therein appointed tutor testamentary, that 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 all expenses which have been incurred in respect of and with reference to the appointment of the tutor dative.

#### 88. Appointment of curator dative of property belonging to absent person

(1) If it comes to the knowledge of the Master that there is within Botswana any estate or property belonging to any person whose whereabouts are unknown and whom he believes to be permanently absent from Botswana without having a legal representative therein, the Master may cause to be published in the Gazette and in such other manner (if any) as he may think fit a notice calling on all whom it may concern to attend before him at the time and place therein specified to see letters of confirmation granted to some person to be appointed by him curator dative of the property of such absent person and the Master shall at the time and place so specified appoint by letters of appointment in Form D set out in the First Schedule a fit and proper person to be such curator dative as aforesaid:

Provided that if the only property known by the Master to belong to the person believed to be absent consists of money payable to him by the executor of a deceased person or by the trustee of an insolvent estate the Master shall not take any such proceedings as aforesaid.

(2) Letters of appointment granted under this section to a curator dative shall authorize him to take custody and charge of all the said person's property wherever situate within Botswana.

#### 89 Appointment of curator ad litem by the court and of curator bonis by Master

(1) Nothing contained in this Part shall prevent the court from appointing a curator ad litem to any person whenever and in the same manner in all respects as such an appointment might by law have been made by the court if this Act had not been promulgated.

(2) Whenever expedient the Master may appoint a curator bonis to take the custody and charge of any property wherever situate within Botswana until, for the due administration and management of the same, letters of confirmation have been granted to some person as tutor testamentary or dative, or as curator nominate or dative, in manner hereinbefore provided.

#### 90. Security for due administration by tutors and curators

(1) Every tutor dative or assumed tutor and every curator dative and curator bonis shall, before he enters upon the administration of the estate or property concerned and thereafter as the Master may require, find security for the due and faithful administration and management of the estate or property, to the satisfaction of the Master and to such an amount as in the circumstances of each particular case appears to him reasonable.

(2) Every tutor testamentary and curator nominate shall be under the like obligation of finding security unless-

(a) he is the parent of the minor;

(b) he has been nominated by will executed before 7th July, 1933, and has not been directed by the will to find security;

(c) he has been nominated by will executed on or after the said date, and the testator has in such will directed the Master to dispense with such security; or

(d) the court otherwise directs.

(3) The provisions of subsections (3), (4), (5) and (6) of section 35 shall be deemed to be incorporated in this section.

#### 91. Circumstances under which women may be tutors or curators

(1) The provisions of this Act in regard to the election and appointment of tutors and curators shall apply to males and females.

(2) Letters of confirmation shall not, without the consent in writing of her husband, be granted to a woman married in community of property or to a woman married out of community of property when the marital power of the husband is not excluded.

#### 92. Removal of insolvent tutors and curators

Every tutor, either testamentary or dative, and every curator, either nominate or dative, whose estate has been sequestrated as insolvent or assigned under any law, shall cease to exercise or hold office as tutor or curator unless,

before the final sequestration or the assignment of such estate, such tutor or curator has found security to the satisfaction of the Master for the due and faithful performance of his duties and if no such security has been found such tutor or curator shall, as soon as the final order for the sequestration or assignment has been made, ipso facto be removed from office.

### 93. Inventories by tutors and curators

Every tutor and every curator shall make, sign and transmit to the Master-

(a) within 30 days after entering upon his office, an inventory of all property within Botswana belonging to the person under his guardianship or subject to his administration; and

(b) as soon as he has knowledge that there is any other property so owned or subject to his administration, an additional inventory of such other property, and the Master may direct him to find further security under section 90.

### 94. Duties and liabilities of curators

Every tutor and, in respect of the property which he has been appointed to administer but not otherwise, every curator nominate or dative, whose appointment has been duly confirmed shall, in addition to and in so far as is consistent with the powers conferred and the duties and penalties imposed on him by this Act, possess all such powers and be subject to all such duties and penalties as before the commencement of the Proclamation repealed by this Act a tutor testamentary would by the common law of Botswana have possessed and been subject to:

Provided that-

(i) nothing contained in this section shall be construed as conferring upon any curator nominate or dative any power or authority in respect of the maintenance, education, or custody of the person of any minor, except in so far as the same has been specially conferred upon him by order of a competent court:

(ii) every tutor testamentary and curator nominate shall in the discharge of his duties as such or in the administration of the estate and property under his guardianship (as the case may be) conform to and obey every lawful direction concerning the same which has been given in the will or deed by which the appointment was made or in any other document duly executed by the person who made that will or executed that deed.

### 95. Restriction on alienation or mortgage of immovable property by natural guardian, tutor or curator

(1) No natural guardian shall alienate or mortgage any immovable property belonging to his minor child, and no tutor or curator shall alienate or mortgage any immovable property which he has been appointed to administer, unless he is authorized thereto by the court or by the Master under this section, in the case of a tutor or curator, by any will or written instrument by which he has been nominated.

(2) The Master may at any time authorize-

(a) any alienation of immovable property belonging to a minor or to a person for the administration of whose property a tutor or curator has been appointed, if the value of the particular property to be alienated does not exceed P4000 and the alienation would be in the interest of the minor or of such person, as the case may be; and

(b) any mortgage of any such immovable property to an amount not exceeding, in the case of any one such minor or person, P4000, if the mortgage is necessary for the preservation or improvement of the property or for the maintenance, education or other benefit of such minor or person, as the case may be.

### 96. Restriction on purchase by tutor or curator of property administered

If any tutor or curator or the spouse, parent, child, partner, employer, employee or agent of any tutor or curator, purchases any property which such tutor or curator has been appointed to administer, the purchase shall, subject to the terms of any will or written instrument by which he has been nominated, be void, unless it has been consented to or is confirmed by the court or the Master.

### 97. Payment to Master of moneys not immediately required

Every tutor dative, every curator dative, and every curator bonis and, subject to the terms of the will or deed by which he was appointed, every tutor testamentary and every curator nominate shall forthwith pay over to the Master all moneys subject to his administration and not required for the immediate payment of the debts of the estate or the immediate maintenance of the person to whom the money belongs.

### 98. Accounts of administration by tutors and curators

Every tutor and every curator shall, on or before 15th February in every year, lodge with the Master a just, true, and exact account of his administration up to 31st December last preceding, supported by vouchers, together with a true copy of that account:

Provided that the survivor of two spouses to whom the pre-deceasing spouse has by will or other lawful instrument entrusted the administration of their joint estate during the minority of their children shall not in any case be required to lodge any such annual account, notwithstanding anything to the contrary in this section.

99. Remuneration of tutors and curators

(1) Every tutor, either testamentary or dative, and every curator, either 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 that estate a reasonable remuneration for his care and diligence in that administration and management.

(2) All such remuneration shall be assessed according to a tariff fixed by regulation, and shall be taxed by the Master.

100. Application of certain sections to tutors and curators

Sections 28(5), 34, 57(3) and 64 shall mutatis mutandis apply with reference to tutors and curators:

Provided that-

(i) any reference in any of the said sections to a will shall for the purposes of its application under this section, include a reference to any written instrument by which the tutor or curator concerned has been nominated; and

(ii) notwithstanding the provisions of section 28(5) as so applied, letters of curatorship may be granted to a married woman as curatrix of her husband or his property, without his consent.