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STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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GOVERNMENT GAZETTE

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[No. 2827.

DEPARTEMENT VAN DIE EERSTE MINISTER.

DEPARTMENT OF THE PRIME MINISTER.

No. 1561. 23 September 1970.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 54 van 1970: Boedelwysigingswet, 1970.

No. 1561. 23rd September, 1970.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 54 of 1970: Administration of Estates Amendment Act, 1970.

ADMINISTRATION OF ESTATES AMENDMENT ACT, 1970. Act No. 54, 1970

ACT

To amend the Administration of Estates Act, 1965, so as to apply that Act to the territory of South-West Africa; and to provide for incidental matters.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 15 September 1970.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. Section 1 of the Administration of Estates Act, 1965 (hereinafter referred to as the principal Act), is hereby amended—
 - (a) by the insertion after the definition of "property" of the following definition:
" 'Republic' includes the territory;"; and
 - (b) by the insertion after the definition of "State" of the following definition:
" 'territory' means the territory of South-West Africa;".

Amendment of section 1 of Act 66 of 1965.
2. Section 5 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 5 of Act 66 of 1965.

"(1) Each Master shall, subject to the provisions of regulations made under section 103, preserve of record in his office all original wills, copies of wills certified in terms of section 14 (2), written instruments, death notices, inventories and accounts lodged at his office under the provisions of this Act or any prior law under which any such documents were lodged at the office of the Master, Orphan Master or registrar of deeds in the province concerned or in the territory, and such other documents lodged at his office as the Master may determine."
3. Section 12 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

Amendment of section 12 of Act 66 of 1965.

"(5) The reference in section 47 (1) of the Liquor Act, 1928 (Act No. 30 of 1928), and in section 156 (1) of the Liquor Ordinance, 1969 (Ordinance No. 2 of 1969), of the territory, to a curator, shall include a reference to an interim curator appointed under subsection (1), who has under subsection (3) been authorized to carry on the business of the licensee or person referred to in the said sections."
4. Section 39 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

Amendment of section 39 of Act 66 of 1965.

"(1) An executor shall, subject to the provisions of subsections (2) and (3), the Deeds Registries Act, 1937 (Act No. 47 of 1937), and the Deeds Registries Pro-

ADMINISTRATION OF ESTATES AMENDMENT ACT, 1970. Act No. 54, 1970

clamation, 1939 (Proclamation No. 37 of 1939), of the territory, cause immovable property (including, in the case of a massed estate, any such property forming part of the share of the survivor or survivors 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 that the proceeds of the property shall devolve upon any person, whether certain or uncertain, the executor shall, subject to the provisions of section 25 of the said Act and section 25 of the said Proclamation, 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.”

5. Section 40 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of section 40 of Act 66 of 1965.

“(2) The provisions of section 23 (2), (3), (4) and (5) shall apply *mutatis mutandis*, in the case of the territory, to an administrator appointed by will or written instrument operating *inter vivos* and, in the case of the Republic, excluding the territory, to an administrator appointed by will or written instrument operating *inter vivos* executed prior to the commencement of the Trust Moneys Protection Act, 1934 (Act No. 34 of 1934).”

6. Section 44 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: Amendment of section 44 of Act 66 of 1965.

“(3) The provisions of subsection (1) shall not apply in relation to any disposition in a will executed in the Republic, excluding the territory, prior to a date twelve months after the date of commencement of this Act or in the territory prior to a date twelve months after the date of commencement of the Administration of Estates Amendment Act, 1970.”

7. Section 72 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 72 of Act 66 of 1965.

“(1) The Master shall, subject to the provisions of subsection (3) and to any applicable provision of section 5 of the Matrimonial Affairs Act, 1953 (Act No. 37 of 1953), and section 4 of the Matrimonial Affairs Ordinance, 1955 (Ordinance No. 25 of 1955), of the territory, or any order of court made under any such provision, on the written application of any person—

(a) who has been nominated by will or written instrument—

(i) by the father of a legitimate minor, who has not been deprived, as a result of an order under subsection (1) of the said section 5 or subsection (1) of the said section 4, of the guardianship of such minor, or under section 60 of the Children's Act, 1960 (Act No. 33 of 1960), or section 58 of the Children's Ordinance, 1961 (Ordinance No. 31 of 1961), of the territory, of his parental powers over him; or

ADMINISTRATION OF ESTATES AMENDMENT ACT, 1970. Act No. 54, 1970

- (ii) by the mother of an illegitimate minor or of a legitimate minor whose father is dead, who has not been so deprived of the guardianship of such minor or of her parental powers over him; or
 - (iii) by the parent to whom the sole guardianship of a minor has been granted under subsection (1) of the said section 5 or under subsection (1) of the said section 4 or on whom the exclusive right to exercise parental powers in regard to a minor has been conferred under the said section 60 or the said section 58,
- to administer the property of such minor and to take care of his person as tutor, or to take care of or administer his property as curator; or
- (b) who has been nominated by will or written instrument by any parent of a minor to administer as curator any property which the minor has inherited from such parent; or
 - (c) who has been nominated by will or written instrument by any deceased person who has given or bequeathed any property to any other person, to administer that property as curator; or
 - (d) who has been appointed by the Court or a judge to administer the property of any minor or other person as tutor or curator and to take care of his person or, as the case may be, to perform any act in respect of such property or to take care thereof or to administer it; and
 - (e) who is not incapacitated from being the tutor or curator of the minor or other person concerned or of his property, as the case may be, and has complied with the provisions of this Act,
- grant letters of tutorship or curatorship, as the case may be, to such person."

8. The following section is hereby substituted for section 94 of the principal Act: Substitution of section 94 of Act 66 of 1965.

Consent of Master to sub-division of immovable property on behalf of minor or unborn heir. 94. If the Master is satisfied that it is expedient to partition any immovable property which is registered in the name of any minor or in which any minor has or any unborn heir may acquire any interest, and that the proposed sub-division is fair and equitable, he may, upon such terms as to costs or otherwise as he thinks fit, and subject to the provisions of section 30 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or section 30 of the Deeds Registries Proclamation, 1939 (Proclamation No. 37 of 1939), of the territory, consent, on behalf of such minor or heir, to the sub-division and to any exchange of property, payment of money or mortgage incidental to the sub-division."

9. Section 105 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: Amendment of section 105 of Act 66 of 1965.

- "(3) If the surviving spouse of any person—
- (a) who died in the Republic, excluding the territory, before the commencement of this Act; or
 - (b) who died in the territory before the commencement of the Administration of Estates Amendment Act, 1970; or
 - (c) who died or dies after the commencement referred to in paragraph (a) or (b) but before the relevant date referred to in section 44 (3) leaving a will in terms of which any minor child of the deceased and such spouse is or will when born be entitled to any movable

ADMINISTRATION OF ESTATES AMENDMENT ACT, 1970. Act No. 54, 1970

property subject to usufructuary or fiduciary rights or any other like interest in favour of such spouse, intends to marry under circumstances where a certificate under section 56 of the Administration of Estates Act, 1913 (Act No. 24 of 1913), would, but for the repeal of that Act, have been required before the intended marriage could be solemnized, the provisions of the said section 56 shall apply in relation to the intended marriage as if this Act had not been passed.”.

10. The principal Act is hereby amended by the insertion after section 108 of the following section: Insertion of section 108A in Act 66 of 1965.

“Applica- 108A. This Act and any amendment thereof shall tion of this Act to South-West Africa. apply also in the territory, including the Eastern Caprivi Zipfel, but shall, in the territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to the agreement referred to in the Schedule to Proclamation No. 28 of 1923, of the territory, not apply to the estate of any person to whom Proclamation No. 36 of 1941, of the territory, applies.”.

11. (1) Subject to the provisions of subsection (2), the laws of the territory of South-West Africa set out in the Schedule are hereby repealed to the extent specified in the third column thereof. Repeal of laws.

(2) The estate of any person who died before the commencement of this Act shall be liquidated and distributed, and any matter relating to the liquidation and distribution of such estate shall be dealt with as if this Act had not been passed.

(3) This section shall apply also in the Eastern Caprivi Zipfel.

12. This Act shall be called the Administration of Estates Amendment Act, 1970, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*. Short title and commencement.

Schedule.

LAWS REPEALED.

No. and year of Law.	Short title.	Extent of repeal.
Proclamation No. 52 of 1921.	Better Administration of Justice Proclamation, 1921.	The whole, except in so far as it relates to section 115bis of the Administration of Estates Act, 1913 (Act No. 24 of 1913), as applied to the territory.
Ordinance No. 22 of 1958.	General Law Amendment Ordinance, 1958.	Sections 3, 4, 5, 6, 7, 8 and 9.