

CURATELLE ACT

Act 12 of 1973 – 1 October 1973

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CURATELLE ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Curatelle Act.

2. Interpretation

In this Act—

“absentee” has the meaning assigned to it in section 11;

“creditor” means a person who holds an executory title in respect of a debt due to him;

“debtor” means a person who owes a debt to a creditor;

“divesting order” means an order made under section 29;

“executory title” means an instrument by virtue of which a creditor may cause execution to issue against the property of his debtor for the recovery of a debt which is certain and determined;

“Fund” means the Curatelle Fund;

“prisoner” means any person who is detained in prison under an order issued by a Court;

“property” includes movable and immovable property and any undivided share of any movable or immovable property;

“unclaimed property” has the meaning assigned to it in section 10;

“vacant estate” includes any vacant succession, unclaimed property or property belonging to an absentee;

“vacant succession” has the meaning assigned to it in section 9;

“vesting order” means an order made under section 12 or 13.

PART II — THE CURATOR

3. Office of Curator

There shall be appointed a fit and proper person to hold the office of Curator.

4. Curator to administer certain estates

(1) (a) The Curator shall, in accordance with such directions as the Attorney-General may give, administer all vacant estates and exercise all the powers vested in him as he thinks best in the interests of the persons entitled to the estates.

(b) The Curator shall also administer the estates of minors or persons of age as may be vested in him by the Judge in Chambers in accordance with the Code Civil Mauricien.

(2) Where any immovable property is vested in the Curator, he may require the Conservator of Forests to administer the property on his behalf and any expenses incurred in the administration of that property shall be borne by the vacant estate comprising the property.

(3) The Conservator of Forests shall keep separate accounts in respect of every property administered by him under this section.

5. Vacant estates outside Island of Mauritius

(1) Where any property comprised in a vacant estate is situated on any island, other than the Island of Mauritius, under the jurisdiction of the State of Mauritius, the Curator may, with the approval of the Attorney-General, appoint a fit and proper person to act on his behalf subject to such directions as he may give.

(2) A person appointed under subsection (1) shall, in relation to the vacant estate, have the powers and duties of the Curator under this Act.

6. Curator *ad litem*

Where the Curator is a plaintiff in legal proceedings in relation to any vacant estate and he is required to be a defendant in those proceedings in relation to another vacant estate, the Attorney-General may appoint a curator *ad litem* for the other vacant estate.

7. Attorney or barrister

Where the Curator requires the services of an attorney or barrister in relation to the exercise of his duties, he may instruct an attorney and retain a barrister designated by the Attorney-General and the attorney or barrister shall, notwithstanding any other enactment, receive such fees as may be approved by the Attorney-General.

8. Accounts and returns

(1) The Curator shall keep books and accounts in such manner and for such purposes as the Attorney-General may direct and shall make such returns as the Attorney-General may require.

(2) The Curator shall have the custody of all records relating to vacant estates.

(3) The accounts kept by the Curator shall at all times be open to examination and audit by the Director of Audit.

PART III – VACANT ESTATES

9. Vacant successions

(1) Where a person dies and there is reason to believe that he died possessed of property in Mauritius and that he has died intestate without leaving any heir in Mauritius, his succession shall, for the purposes of this Act, be deemed to be a vacant succession.

(2) Where a person has disposed of part of his property by will and dies without leaving any heir in Mauritius to succeed to the undisposed part of his property, he shall, in relation to the undisposed part, be deemed to have left a vacant succession.

10. Unclaimed property

(1) Where the owner of any property in Mauritius cannot be ascertained, that property shall, for the purposes of this Act, be deemed to be unclaimed property.

(2) Where a debtor cannot trace his creditor, the debtor may publish a notice in 2 daily newspapers—

- (a) setting out—
 - (i) the nature and amount of the debt; and
 - (ii) the name of the creditor; and
- (b) requiring the creditor to notify him of his place of residence, not later than one month from the date of the last publication of the notice.

(3) Where no notice is given by a creditor to a debtor who has published a notice under subsection (2), the amount of the debt shall be deemed to be unclaimed property.

11. Absentees

(1) Where there is reason to believe that a person who is entitled to property in Mauritius is not lawfully represented or has a legal representative who is not empowered to exercise any right in relation to that property, he shall, for the purposes of this Act, be deemed to be an absentee.

(2) Where the Judge in Chambers has made an order under article 113 or 122 of the Code Civil Mauricien in respect of an absent person, the Curator shall not be vested with the property and rights of such absent person.

[S. 11 amended by Act 8 of 1983.]

PART IV — VESTING ORDERS

12. Applications for vesting orders

(1) Where the Curator has reason to believe that a vacant estate exists in Mauritius, he shall, subject to section 14, apply to a Judge for an order vesting the estate in him.

(2) The order shall be granted on the production of an affidavit that diligent inquiries have been made to ascertain that the estate is vacant.

(3) Where an absentee is entitled to a share in any succession, the share accruing to him shall be specified in the affidavit referred to in subsection (2).

(4) Where the Curator proposes to apply for a vesting order and the affidavit in support of the application is sworn by a person other than the Curator, the Curator may, before making the application, require that person to deposit with him the amount of expenses likely to be incurred in connection with the vesting in him of the vacant estate specified in the affidavit.

(5) Any amount deposited under subsection (4) shall be refunded to the person making the deposit from the first available funds accruing to the vacant estate.

13. Vesting orders other than by Curator

(1) Where a person, other than the Curator, has reason to believe that a vacant estate exists in Mauritius, he may, by written notice, call upon the Curator to apply, not later than 21 days from the date of the notice, for a vesting order in relation to that estate.

(2) The Curator may, on receipt of a notice under subsection (1), apply for a vesting order in relation to the estate specified in the notice.

(3) Where the Curator fails to apply for a vesting order upon being called upon to do so by a notice under subsection (1), the person giving the notice may apply to a Judge for a summons calling the Curator to show cause why a vesting order should not be made and the Judge may, after hearing the parties, make an order, subject to such conditions as he thinks fit to impose, vesting the estate in the Curator.

14. Unclaimed immovable property

(1) Where the Curator has reason to believe that any immovable property is unclaimed, he shall publish a notice in 2 daily newspapers setting out a description of the property and requiring any person having a claim therein to notify him of the claim not later than one month from the date of the last publication of the notice.

(2) No application for a vesting order shall be made in relation to any property in relation to which a notice has been published under subsection (1) until after the expiry of the time limit specified in that subsection.

(3) Where a person notifies the Curator of his claim to any property following the publication of a notice under subsection (1) and the Curator is satisfied that the claim is valid, the Curator shall not apply for a vesting order in relation to that property.

(4) Where the Curator does not admit any claim notified to him under subsection (1), he shall, on applying for a vesting order in relation to the property, make the person notifying the claim a defendant to the application, and where issue is joined before the Judge on the hearing of the application, the Judge shall refer the matter to the competent Court to determine the issue of ownership of the property.

15. Property of less than 1,000 rupees

Notwithstanding this Part, the Curator may, without a vesting order or compliance with any other formality, but with the written authority of the Attorney-General, take possession of any property which is comprised in a vacant estate and which does not exceed 1,000 rupees in value, and that property shall be dealt with in the same manner as if a vesting order had been made in relation to it.

16. Property affected by vesting orders

A vesting order shall vest in the Curator—

- (a) in the case of a vacant succession, all property and rights in Mauritius of that succession to the same extent as if the Curator were the sole heir in the succession;
- (b) in the case of unclaimed property, ownership in the property;
- (c) in the case of an absentee, all property and rights of the absentee.

17. Duration of vesting orders

A vesting order shall remain in force until a divesting order is made or until the Curator has given up the vacant estate in accordance with this Act.

PART V — ADMINISTRATION OF VACANT ESTATES

18. Power of Curator

(1) Where a vesting order is made, the Curator shall immediately—

- (a) take possession of any property comprised in the vacant estate;
- (b) take such steps as may be necessary, including the publication of notices, to ascertain whether there is any person interested in the property;
- (c) make an inventory of any movable property comprised in the vacant estate;
- (d) take such steps as may be necessary to ascertain whether there is any outstanding claim against the vacant estate and determine whether the claim is valid.

(2) An inventory under subsection (1) shall be made in the presence of 2 witnesses and shall be signed by the Curator and the witnesses and shall, thereupon, have the same effect as if it had been made by a notary public.

(3) Where a claim is made against a vacant estate and the Curator is satisfied that the claim is valid and that the estate has adequate assets, he may settle the claim.

(4) Where a claim is settled under subsection (3), the Curator and Government shall not be liable to any person by reason of the settlement of the claim having been made.

(5) Nothing in this section shall be construed so as to affect the right of any person who claims to be entitled in any property in relation to which a settlement has been made by the Curator under subsection (3) to enter any proceedings against the person to whom the settlement has been made.

19. Money vested in Curator

(1) Any money vested in the Curator shall be paid by him to the Accountant-General to be credited to a fund to be known as the Curatelle Fund.

(2) No money shall be paid out of the Fund except by order of the Curator.

(3) The Minister of Finance may, on the recommendation of the Attorney-General, authorise the Accountant-General to advance to the Curator such sum as may be reasonably required to meet the necessary expenses of the administration of a vacant estate to be repaid from the first available funds accruing to that estate.

(4) No money due by a vacant estate shall be paid, by way of advance or otherwise, from any money in the Fund belonging to any other vacant estate.

20. Stay of proceedings by Curator

(1) Any Court may, on the application of the Curator, stay any legal proceedings commenced in that court, any sale of immovable property, the execution of any will, or generally any proceedings, judicial or extra-judicial, by which the rights of any person represented by the Curator may be affected, for such time and upon such terms as the Court may determine.

(2) Where a vacant estate belonging or accruing to an absentee is vested in the Curator and legal proceedings are instituted against the Curator in relation to that estate, the Curator may apply to the Court before which the proceedings are instituted for an order to stay the proceedings to enable him to communicate with the absentee and on such application the Court may order a stay on such terms as the Court may determine.

(3) Notwithstanding subsection (2), no proceedings shall be instituted against the Curator as representing an absentee in relation to any tort committed before the date of the vesting order.

21. Power to sell movable property

The Curator may, in such manner as the Attorney-General may direct, sell any movable property vested in him—

- (a) where the sale is necessary to pay the debts of the vacant estate or the charges on any property comprised in the vacant estate;

- (b) where the property is of a perishable nature;
- (c) where the property is likely to diminish in value;
- (d) where the custody of the property will entail expenses;
- (e) where the Attorney-General is of opinion that it is desirable that the property be sold.

22. Power to sell immovable property

The Curator may sell any immovable property vested in him—

- (a) where the movable property comprised in a vacant estate is insufficient to pay the debts of the estate;
- (b) where the annual revenue of the property is insufficient to pay the annual charges on it;
- (c) where, for the due preservation of the property, it is necessary to repair or construct buildings on the property at a cost exceeding 2 years' revenue from that property;
- (d) in such other cases as the Attorney-General may determine.

23. Mode of sale of immovable property

(1) Where the value of any immovable property vested in the Curator, as determined by an appraiser appointed by the Attorney-General, does not exceed the prescribed amount, the Curator may sell the property by notarial deed at a price which shall not be less than the value determined by the appraiser.

(2) Where the value of any property vested in the Curator, as determined by an appraiser appointed by the Attorney-General, exceeds the prescribed amount, it shall be sold in accordance with Sub-Part VIII of Part I of the Sale of Immovable Property Act.

(3) Notwithstanding subsections (1) and (2), the Curator may, by notarial deed, sell any immovable property vested in him to Government or to any statutory body at a price to be determined by an appraiser appointed by the Attorney-General.

(4) In this section—

“prescribed amount” means such sum as the Attorney-General may, by regulations, determine.

[S. 23 amended by Act 7 of 1989.]

24. Power to grant leases

The Curator may grant a lease of any immovable property vested in him for a term not exceeding 9 years.

25. Power to stay execution of wills

(1) Where the Curator has reason to believe that a will in relation to any vacant succession is invalid or contains a provision infringing the rights of an

absentee, the Curator may move the Supreme Court for a rule calling upon the executors of the will and all interested parties to show cause why the execution of the will should not be stayed, in whole or in part, for such time as may be reasonably necessary to enable the Curator to obtain appropriate instructions from the absentee.

(2) The Court, on making an order under subsection (1), may authorise the taking of such measures as may be necessary to prevent loss or injury to any property.

26. Power to refer to arbitration and to compromise

(1) The Curator may consent to any claim to which he is a party being referred to arbitration.

(2) (a) The Curator may compromise any claim, debt or right, either before or after judicial proceedings have been brought by or against him.

(b) No compromise shall take effect unless it is homologated by a Judge.

(3) Any reference to arbitration or compromise under this section shall be binding on any person having an interest in the vacant estate vested in the Curator and all the creditors of the estate.

27. Power to purchase or borrow

(1) Where any property, a co-owner of which is represented by the Curator, is sold by licitation, the Curator may purchase the property for the benefit of the co-owner he represents.

(2) The Curator may borrow money and mortgage any immovable property comprised in a vacant estate vested in him as security for the loan to that estate.

28. Power to control executors

(1) The Curator shall supervise the administration by testamentary executors of any property to the extent necessary to protect the interests of any person represented by him.

(2) Where any person represented by the Curator is interested in a succession, the Curator may, by written notice, require any executor or other person who is in possession of the succession to furnish to him a summary statement of the administration of the succession and where the executor or that person, as the case may be, fails to do so, a Judge may, on the application of the Curator, order the executor or that person, as the case may be, to furnish the statement within such time as may be determined by the Judge.

(3) Any executor or the person against whom an order is made under subsection (2) who fails to furnish the statement to the Curator within the time fixed by the Judge shall commit an offence and shall, on conviction, be liable to a fine not exceeding 2,000 rupees and to imprisonment for a term not exceeding 6 months.

PART VI – DIVESTING ORDERS

29. Applications for divesting orders

(1) Any person who claims to be entitled to administer any property comprised in a vacant estate vested in the Curator may apply to a Judge for an order divesting the Curator of the administration of that property.

(2) An application for a divesting order shall be made by summons calling upon the Curator to show cause why the order should not be made.

(3) No divesting order shall be made unless the Judge is satisfied that all charges due to Government have been paid.

(4) A Judge may, on the hearing of a summons for a divesting order, refer the matter to the competent Court to determine the issue of the ownership of any property comprised in the vacant estate.

30. Power to hand over property

(1) Notwithstanding section 29, where any person claims to be the owner or the representative of the owner of any property comprised in a vacant estate and the Curator is so satisfied, he may hand over the property to that person on payment of the charges due to Government.

(2) Where the Curator hands over property under subsection (1), Government and the Curator shall not be liable to any other person claiming to be entitled to the property.

(3) Nothing in this section shall be construed so as to affect the right of any person who claims to be entitled to any property handed over under subsection (1) to enter any proceedings against the person to whom the property has been so handed over.

(4) Notwithstanding any other enactment but subject to this Act, where a minor or interdicted person is entitled to recover from the Curator property the value of which does not exceed 500 rupees, the Curator may deliver the property to the legal administrator or guardian of the minor or interdicted person, as the case may be, without the need to take an inscription of legal mortgage or to comply with any other formality.

PART VII – RIGHTS OF GOVERNMENT

31. Commission to Government

(1) A commission of 3 per cent on the value of any property, other than money which becomes vested in the Curator, shall be paid to Government.

(2) Subject to subsection (3), a commission of 5 per cent on any money which accrues to any estate vested in the Curator shall be paid to Government.

(3) No commission under subsection (2) shall be paid on the sale price of any property in relation to which a commission has been paid under subsection (1).

(4) The Minister of Finance may, on the recommendation of the Attorney-General, exempt, in whole or in part, any vacant estate vested in the Curator from payment of the commission payable under this section.

32. Fixing value of property

(1) For the purpose of determining the commission payable under section 31—

- (a) the value of any immovable property shall be determined by an appraiser appointed by the Attorney-General;
- (b) the value of any movable property, other than shares, shall be—
 - (i) where the value is specified in a notary's inventory, the value so specified;
 - (ii) where no inventory has been drawn up, the value as determined by a sworn auctioneer appointed by the Attorney-General;
- (c) the value of any shares shall be determined by a sworn broker appointed by the Attorney-General.

(2) The cost of a valuation made under subsection (1) shall be borne by the vacant estate.

33. Privilege of Government

(1) Government shall, in relation to any commission payable under section 31, have a privilege on the property comprised in the vacant estate and the privilege shall rank immediately after the privilege for judicial costs.

(2) Where any immovable property is vested in the Curator, he shall forthwith require the Conservator of Mortgages to take a general inscription on the property in favour of Government to secure the payment of any commission which may be payable thereon.

(3) The inscription shall only be erased by the Conservator of Mortgages on receipt of a written notice by the Curator certifying that the commission payable to Government has been paid or that no commission is payable.

(4) No notarial deed shall be required for the taking or erasure of any inscription under this section.

(5) Notwithstanding any other enactment, the inscription and erasure shall be exempt from stamp duty, registration dues or any other fee.

34. Prescription

(1) Subject to subsection (2), a vacant estate vested in the Curator, whether before or after the commencement of this Act, shall become the

property of Government by prescription if no divesting order is made in relation to it within 20 years of the date of the vesting order.

(2) (a) Subject to paragraph (b), the prescription made in favour of Government under subsection (1) may be interrupted or suspended in any manner in which, under the Code Civil Mauricien, prescription may be interrupted or suspended.

(b) Where the prescription is suspended by the operation of articles 2252 and 2256 of the Code Civil Mauricien, the time required for prescription in favour of Government shall never exceed 30 years, inclusive of the period of suspension.

PART VIII – MISCELLANEOUS

35. Costs of legal proceedings

No costs shall be awarded against the Curator personally or against Government in any legal proceedings to which the Curator is a party, but the Court may award costs against the vacant estate involved in the proceedings.

36. Power of Curator to represent prisoners

(1) Where a prisoner is unable to protect his property, the Commissioner of Prisons shall so inform the Attorney-General who may direct the Curator to take such measures as may be necessary to protect the property of the prisoner and, if need be, to represent him before a Court.

(2) Notwithstanding any other enactment but subject to subsection (3), no legal process affecting the property of a prisoner shall be valid unless it is served on the prisoner and on the Curator.

(3) Service of process on the Commissioner of Prisons shall be sufficient authority for him to cause the prisoner to be taken to the Court where the action is pending.

37. Deceased person's debts

(1) A creditor may, at any time after the expiry of 2 months from the death of his debtor, cause a notice to be personally served on any of the heirs of the debtor, calling upon him to supply, in the form of an affidavit and not later than 2 months from the date of the service of the notice, such information as the creditor may require regarding the heirs left by the debtor or the guardian, sub-guardian, or other legal representative of any of the heirs.

(2) The creditor may, after the expiry of the period specified in subsection (1)–

(a) where the notice has not been complied with; or

(b) where the debtor has left an heir who is not known or not provided with a guardian, sub-guardian, or other legal representative, apply to a Judge for an order vesting the Curator with the succession of the debtor.

(3) The order shall be granted on the production of an affidavit that—

- (a) the applicant is the holder of an executory title;
- (b) his debtor has died;
- (c) the debtor has left property; and
- (d) one of the conditions specified in subsection (2) exists.

(4) An order made under subsection (3) shall vest in the Curator all the property and rights of the succession of the debtor to the same extent as if the Curator were the sole heir and representative of that succession and this Act shall apply to that succession as it applies to a vacant estate vested in the Curator.

(5) Notwithstanding any other enactment, no person claiming to be an heir of the deceased debtor shall challenge—

- (a) an order made under subsection (3), or any action, proceedings, or act taken or done by a creditor on the strength of information supplied to him under subsection (1) for the recovery of a debt due from the deceased debtor;
- (b) a sale by levy, licitation or otherwise of any property of the deceased debtor.

(6) Nothing in subsection (5) shall be construed so as to affect the rights of any person claiming to be an heir of the deceased debtor against any co-heir.

(7) In this section, “heir” includes a surviving spouse, a legatee and a donee.

37A. Deceased party in civil proceedings

(1) Where in any civil proceedings—

- (a) the suit has been started jointly by 2 or more persons and one of them dies; or
- (b) any other party to the suit dies,

a party to the suit may, by notice served personally on any of the heirs of the deceased, call upon him to supply, in the form of an affidavit sworn not later than 6 months from the date of the service of the notice, such information as the party may require regarding the heirs of the deceased or their legal representative.

(2) Where the information required by a notice under subsection (1) is not supplied within the period of 6 months, or is insufficient to enable the party who served the notice to join the necessary parties to the suit, he may

apply to the Court before which the proceedings are pending for an order vesting the Curator with the succession of the deceased.

(3) Where the Court grants an application made pursuant to subsection (2), this Act shall apply to the succession of the deceased party as it applies to a vacant estate vested in the Curator.

(4) In this section, "heir" has the same meaning as in section 37.

[S. 37A inserted by Act 15 of 1994.]

38. Curatelle lands

Where the Curator has been vested with immovable property of 50 acres or more, he shall give notice of the fact to the Conservator of Forests.

39. Regulations

The Attorney-General may make such regulations as he thinks necessary for the purposes of this Act.
