

No. 447. THE WILLS AND SUCCESSION LAW.
CAP. 220 AND LAW 5 OF 1951.

RULES OF COURT MADE UNDER SECTION 86.

J. FLETCHER-COOKE,
Acting Governor.

Cap. 220.
5 of 1951. In exercise of the powers vested in me by section 86 of the Wills and Succession Law, I, the Acting Governor, with the advice and assistance of the Acting Chief Justice, do hereby make the following Rules of Court :—

PART I.—PRELIMINARY.

1.—(1) These Rules of Court may be cited as the Wills and Succession Rules, 1953.
Cap. 1. (2) The Interpretation Law shall apply to the interpretation of these rules as it applies to the interpretation of a Law.
(3) In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

Gazettes :
Suppl. No. 3 :
1.6.1938
to
3.9.1953.
“ Civil Procedure Rules ” means the Rules of Court, 1938 to (No.4) 1938, as amended by any subsequent rules ;

Cap. 220.
5 of 1951. “ the Law ” means the Wills and Succession Law ;
“ Office Copy ” means a sealed copy or translation of any document lodged, filed or kept in, or issued out of a court registry, certified to be a true copy or translation by the Registrar of that registry ;
“ Registrar ” means the registrar of the court and includes a Senior Registrar and an Assistant Registrar attached to such court.

Appendix. 2. The forms in the Appendix to these Rules shall, where applicable, be used with such variations as may be necessary to suit the case, and where not applicable, forms of the like character may be used.

PART II.—PROCEEDINGS FOR DECLARATION OF DEATH.

3. Proceedings for a declaration of death under section 14 of the Law shall be commenced by originating summons.

4.—(1) The Court or Judge may direct such persons to be served with the summons, and such public advertisements to be made, as they or he may think fit.

(2) If the person who has disappeared or is missing was insured with any insurance company, the summons shall also be served on the duly authorized representative in the Colony of such insurance company.

5. The application shall be supported by evidence on affidavit, as required by rules 6 and 7 of these Rules, and by such other evidence as the Court or Judge may require.

6. In the case of an application under sub-section (4) of section 14 of the Law :—

(1) the affidavit or affidavits in support shall state—

- (a) that the missing person was on board when the ship or aircraft sailed or left her last port. The latest letter, if any, written on board by such person shall be annexed to the affidavit ;
- (b) the date and place when and where the ship or aircraft was last seen ;
- (c) the non-arrival of the ship or aircraft, within reasonable time, at the port for which she was bound ;

- (d) the absence of tidings of the ship or aircraft from the date when she was last seen ;
 - (e) whether the ship or aircraft and cargo were insured or uninsured, and, if insured, whether the underwriters have paid on the policies as for a total loss. A certificate, if any, granted under the provisions of the Merchant Shipping Act, 1894, sections 255, 256, 257, 695 shall be annexed to the affidavit ;
 - (f) whether the missing person was insured in any office ; if so, giving the name of the insurance office ;
 - (g) whether the missing person was testate or intestate, and stating who are the persons, if any, entitled to a share of his estate in the event of an intestacy ; if such person was testate, the will or an office copy thereof shall be annexed to the affidavit ; and
 - (h) the value and particulars of the estate of the missing person.
- (2) Such application shall also be supported by an affidavit of the owner, managing owner, or agent, of the ship or aircraft, deposing to all the material facts bearing on the case within his knowledge, as well as by that of the applicant.

7. In the case of an application other than an application under subsection (4) of section 14 of the Law :—

(1) The application shall be supported by an affidavit, sworn by the applicant, stating—

- (a) when the person who has disappeared or is missing was last heard of ;
- (b) the belief of the applicant that the missing person is now dead ;
- (c) whether any advertisements for the missing person have been inserted in any newspaper ; if so, with what success ; if inserted, the newspapers shall be annexed to the affidavit ;
- (d) whether any letters have been received from the missing person ; if so, they shall be annexed to the affidavit ;
- (e) whether the missing person was insured in any office ; if so, giving the name of the insurance office ;
- (f) whether the missing person was testate or intestate, and stating who are the persons, if any, entitled to a share of his estate in the event of an intestacy ; if such person was testate, the will or an office copy thereof shall be annexed to the affidavit ; and
- (g) the value and particulars of the estate of the missing person ;

(2) The applicant's affidavit shall be corroborated in some material points by an affidavit by a member of the family of the deceased, and, if possible, by a friend of the deceased or of his family, who is not interested in the estate.

PART III.—LEGITIMATION PROCEEDINGS.

8. An application under section 54 of the Law shall be by petition.

9. The petition may be filed—

- (a) in the court for the district in which the mother resides if the person who is alleged to be the father of an illegitimate child is absent from the Colony ; or
- (b) in the court for the district in which the alleged father had his ordinary or last place of residence in the Colony if both the mother and alleged father are absent from the Colony.

10.—(1) The petition shall be in Form 1 or Form 2 (as the case may be) in the Appendix hereto and shall contain the information required thereby.

(2) The petition shall include an undertaking by the petitioner to pay any costs of the respondents which he may be ordered by the court to pay.

(3) The notice of hearing of the petition shall be in Form 3 in the Appendix hereto.

11. The petition shall state the petitioner's address for service within the municipal limits of the town in which is situated the registry of the court in which the petition is filed.

12. The respondents to a petition shall be the Attorney-General and all persons whose interests may be affected by the order of legitimation asked for, and the court may at any time direct any persons not made respondents to be made respondents, and to be served with the petition, affidavit, and consents, if any.

13. An Affidavit in Form 4 in the Appendix hereto made by the petitioner, or, if the mother of the child is a person under disability or an incapable person, by her guardian, shall be filed with the petition.

14. Where required, the consent of the mother and child in Form 5 in the Appendix hereto shall be attested by a Registrar or Certifying Officer and filed with the petition.

15. Every birth certificate intended to be relied on at the hearing shall be lodged with the petition.

16.—(1) A copy of the petition and a copy of the affidavit and consents, if any, shall be delivered or sent by registered post by the petitioner to the Attorney-General not less than one month before the petition is filed.

(2) Any document or notice required to be delivered or sent to the Attorney-General shall be addressed to him at his office.

17.—(1) An office copy of the petition, affidavit and consents, if any, and a notice in Form 3 in the Appendix hereto shall, unless the court otherwise directs, be served not less than 28 clear days before the hearing on every respondent (other than the Attorney-General) personally :

Provided that the court may in its discretion dispense with service on any respondent who the court is satisfied cannot after reasonable effort be found.

(2) The registrar shall give to the Attorney-General not less than 28 clear days' notice of the day fixed for the hearing which shall be in Form 6 in the Appendix hereto.

18.—(1) A respondent may, within 14 days of the service of the petition on him, file in the court registry an answer to the petition which shall be in Form 7 in the Appendix hereto.

(2) Every answer which contains matter other than a simple denial of the facts stated in the petition shall be accompanied by an affidavit made by the respondent verifying such other matter, as far as he has personal knowledge thereof, and deposing to his belief in the truth of the rest of such other matter.

(3) The respondent shall deliver a copy of the answer and of the affidavit, if any, to the petitioner, the Attorney-General and any other respondents, within 14 days after service of the petition on him.

19. Evidence on the hearing of the petition shall be given orally :

Provided that the court may, on application made to it before or at the hearing, direct that any particular fact alleged in the petition or answer may be proved by affidavit.

20. If on the hearing of the petition an order of legitimation is made, the order shall be in Form 8 in the Appendix hereto.

PART IV.—GENERAL.

21. In respect of originating summonses and petitions under these Rules there shall be charged a fee of one pound, and in respect of other proceedings or matters there shall be charged the fees payable in actions relating to claims exceeding twenty-five pounds.

22. Subject to the provisions of these Rules and of any Law in force for the time being, the Civil Procedure Rules shall apply, with necessary modifications, to the practice and procedure in any proceeding or matter to which these Rules apply.

23. These Rules shall apply to any proceeding which is pending at the date on which these Rules come into operation subject to such directions as the court may think fit to give.

APPENDIX—FORMS.

FORM I.

LEGITIMATION PETITION BY FATHER (Sec. 54 (2) (a).)

(Rule 10 (1).)

In the District Court of

IN THE MATTER OF SECTION 54 OF THE WILLS AND SUCCESSION LAW,
CAP. 220,

and

IN THE MATTER OF (1)
of

The petition of (2) , of
Sheweth:—

1. Your Petitioner claims to be the father of (3)
who was born on the day of , 19 , at
in the District of

The birth of the said child is recorded by an entry numbered
and made on the day of , 19 , in the Register of
Births for the District of

2. The said child is the natural child of
(4) , of , in the
District of , by your Petitioner.

3. The consent of the mother of the said child is attached to this
petition (or the mother of the said child is dead or is a person under
disability or an incapable person, as the case may be).

4. The consent of the said child is attached to this petition (or the said
child is under eighteen years of age or a person under disability or an
incapable person, as the case may be).

5. At the time of the conception of the said child a marriage between
your Petitioner, and the mother of the said child was not forbidden, on
account of relationship by blood or by marriage, by the family law of the
(5) to which your Petitioner belongs.

6. The following persons are affected by the legitimation as aforesaid
of the said child. (6)

7. The value of the property involved by the legitimation of the said child,
so far as is known to your Petitioner, is £ .

(1) State name and address of the person whose legitimation the Court is asked
to order.

(2) State Petitioner's name, address and occupation.

(3) State child's name.

(4) State mother's name and address.

(5) State religious community to which the Petitioner belongs.

(6) State names and addresses and occupations and relationship.

8. Your Petitioner is not acting in collusion with or with the connivance of any person for the purpose of obtaining an order and declaration of legitimation contrary to the justice of the case.

9. No previous proceedings under the Wills and Succession Law, Cap. 220; or otherwise, with reference to the paternity of the said child have been taken in any Court. (7)

10. Your Petitioner undertakes to pay the costs of the respondents to this petition if the Court so directs.

Your Petitioner therefore prays—

That the said (child) may be declared legitimate under the provisions of section 54 of the Wills and Succession Law, Cap. 220.

Dated this day of , 19 .

(Signed)

NOTE.—It is intended to deliver a copy of this petition to the Attorney-General and to serve this petition on

(7) or as may be.

FORM 2.

LEGITIMATION PETITION BY MOTHER.—(SEC. 54 (2) (b).)

(Rule 10 (1).)

In the District of

IN THE MATTER OF SECTION 54 OF THE WILLS AND SUCCESSION LAW,
CAP. 220

and

IN THE MATTER OF (1)

of

The Petition of (2)

of

Sheweth:—

1. Your Petitioner is the mother of (3)
who was born on the day of , 19 , at
in the District of . The birth of the said child
is recorded by an entry numbered and made on
the day of , 19 , in the Register
of Births for the District of

2. The said (3) is the natural child
of your Petitioner by (4) , of
in the District of

3. At the time of the conception of the said child a marriage between
your Petitioner and the alleged father of the said child was not forbidden
on account of relationship by blood or by marriage, by the family law of the
(5) to which the said (4) belongs.

4. Both the said (4) and the said
child are alive.

(1) State name and address of the person whose legitimation the Court is asked to order.

(2) State Petitioner's name, address and occupation.

(3) State child's name.

(4) State name of alleged father.

(5) State religious community to which alleged father belongs.

5. The following persons are affected by the legitimation as aforesaid of the said child (6)

6. The value of the property involved by the legitimation of the said child, so far as is known to your Petitioner, is £

7. Your Petitioner is not acting in collusion with or with the connivance of any person for the purpose of obtaining an order and declaration of legitimation contrary to the justice of the case.

8. No previous proceedings under the Wills and Succession Law, Cap. 220, or otherwise, with reference to the paternity of the said child have been taken in any Court. (7)

9. Your Petitioner undertakes to pay the costs of the Respondents to this petition if the Court so directs. (8)

10. Your Petitioner therefore prays—

That the said (child) may be declared legitimate under the provisions of section 54 of the Wills and Succession Law, Cap. 220.

Dated this day of , 19 .

(Signed)

NOTE.—It is intended to deliver a copy of this petition to the Attorney-General and to serve this petition on

(6) State names and addresses and occupations and relationship.

(7) or as may be.

(8) Where the Petitioner is a person under disability or an incapable person this paragraph should be struck out and the undertaking of the guardian lodged with the petition.

FORM 3.

NOTICE OF HEARING OF LEGITIMATION PETITION.

(Rule 10 (3).)

(Title as in Form 1.)

TAKE NOTICE that the petition hereto annexed will be heard in the District Court of on the day of , 19 , at the hour of noon and in default of your then appearing the Court will proceed to hear the said petition and pronounce judgment, your absence notwithstanding.

If you desire to make answer to the petition, you must file your answer in the Court registry within fourteen days after service of the petition upon you.

If your answer contains matter other than a simple denial of the facts stated in the petition, the answer must be accompanied by an affidavit made by you verifying such other matter as far as you have personal knowledge thereof and deposing to your belief in the truth of the rest of such other matter.

You must deliver a copy of the answer and affidavit (if any) to the other parties to the petition, within fourteen days after service of the petition on you.

Dated the day of , 19 .

[SEAL]

Registrar.

FORM 4.
AFFIDAVIT IN SUPPORT OF PETITION.

(Rule 13.)

(Title as in Petition.)

I, _____, of _____, the Petitioner (or the guardian of the Petitioner) in the above matter, make Oath and say as follows:—

1. That the statements contained in paragraphs _____ of my petition dated the _____ day of _____, 19____, are true.

2. That the statements contained in paragraphs _____ of my said petition are true to the best of my knowledge, information and belief.

(Signature)

Sworn and signed before me on the _____ day of _____, 19____, at _____

Registrar.

This affidavit is filed on behalf of the Petitioner.

FORM 5.

CONSENT TO LEGITIMATION ORDER.—(SEC. 54 (2) (a).)

(Rule 14.)

In the District Court of _____

IN THE MATTER OF SECTION 54 OF THE WILLS AND SUCCESSION LAW,
CAP. 220

and

IN THE MATTER of a petition by (1) _____ for
an order of legitimation of (2) _____

I, the undersigned _____, of _____, in the District of _____, being—the mother of the said child (3) the child whose legitimation the Court is asked to order (3) hereby state that I understand the nature and effect of the legitimation order for which application is made, and I hereby consent to the making of the legitimation order in pursuance of the said application.

(Signature)

Signed at _____ on the _____ day of _____, 19____, by the said _____ who satisfied me that she/he fully understood the nature of the foregoing statement and was prepared to consent.

Before me

(Signature)

Registrar/Certifying Officer.

(1) Petitioner's name.

(2) Child's name.

(3) Strike out if inapplicable.

FORM 6.

NOTICE TO ATTORNEY-GENERAL OF HEARING OF
LEGITIMATION PETITION.

(Rule 17 (2).)

(Title as in Petition.)

TAKE NOTICE that the petition in the above matter will be heard in the District Court of _____ on the _____ day of _____, 19____, at the hour of _____ in the

noon.

Dated this _____ day of _____, 19____.

[SEAL]

Registrar.

TO THE HON. ATTORNEY-GENERAL,
NICOSIA.

FORM 7.

ANSWER TO LEGITIMATION PETITION.

(Rule 18 (1).)

(Title as in Form 1.)

The Respondent by
his advocate (or in person), in answer to the petition filed in the above matter
says :

(1) That the said _____ is not the natural child
of _____ as alleged in the petition ;

(2) That at the time of the conception of the child a marriage between
the parents would be forbidden, on account of relationship by blood,
namely _____ (or as may be).

WHEREFORE THIS RESPONDENT HUMBLY PRAYS that the prayer of the petition
may be rejected.

Dated this _____ day of _____, 19 _____ .

FORM 8.

LEGITIMATION ORDER.

(Rule 20.)

(Title as in Form 1.)

UPON READING the petition of _____,
of _____, presented to this Court in the above matter
and upon reading the affidavit(s) of _____ and
several the exhibits thereto.

AND UPON HEARING

AND the Court being satisfied that the allegations contained in the said
petition are true and that a copy of the said petition was duly delivered to the
Attorney-General and that all proper persons have been served with the
said petition.

This Court Doth Hereby Declare the said _____ (1)
legitimate.

And This Court Doth Further Declare that as from the date of his birth,
the said _____ (1) has the legal status of a legitimate (1) State
child in respect of his father, _____ and mother _____, child's name.
in the said petition mentioned, and their relatives by blood.

Dated this _____ day of _____, 19 _____ .

Given under the hand and official seal of the Acting Governor and the hand
of the Acting Chief Justice at Troodos, this 7th day of September,
1953.