



## DRAFTING OF A LAST WILL IN TANZANIA

First we should understand the meaning of a will before looking on the key point of a will.

### A WILL

A Will is a document which provides who is to receive your property at death, who will administer your estate, the appointment of trustees and guardians, if applicable, and other provisions.

Under Section 2 of the Probate and Administration of Estates Act states that “means the legal declaration of the intentions of a testator with respect to his property, which he desires to be carried into effect after his death.

Who can make a will?

A will can be made by a person who is above the age of majority with sound mind.

They following are the key element on drafting a will.

Identify your assets.

This is the key aspect when making a will. In this case the person making a will shall outline all of his property when making a will. Therefore by outlining the property it helps for a testator to know which property shall be administer to which trustee.

Knowing the executor of a will.

When making a will the testator should choose the person who will hold his properties as an executor. In this case having an executor of your property makes easy in administering the will. When making a Will you need to consider who will be named as your personal representative or executor to administer your estate, who you will name as guardian and trustee of minor children if your spouse does not survive you and who will receive your property. You should also consider tax issues.

Be careful in selecting guardians and trustees.

In this case it is very important to choose legal guardian who are loyal because they're the ones who will administer the will. If your children are older and don't require a trustee, it may be wise to suggest they seek out a financial planner.

Joint property with a spouse falls outside the will.

One type of ownership is joint property, often real estate and bank accounts shared by spouses. These wouldn't be distributed by the terms of one person's will; rather, they are passed to the surviving owner by operation of the law, High says. However, if an account is just under one person's name, it's passed through a will.

The laws applying to inheritance in Tanzania are the Magistrate Court Act, Cap 11 (5th schedule), the Probate and Administration of Estates Act (Cap 352) (“PAE”), The Local Customary Law (Declaration) (no.4) Order of 1963 (“LCL”), and the Islamic Law Restatement Act (Cap 375) (“ILR”).

The law applicable to foreigners is normally the PAE, based on the principle of “lex situs” i.e. the applicable law is that where the inherited property is located. This law cuts across religions and nationalities provided that the property to be administered is located in



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Tanzania. (The ILR applies only if the deceased was of the Islamic faith). If the spouse of a foreigner is a Tanzanian citizen who owns real estate in Tanzania, then his/her succession is governed by Tanzania law, and not by the law of the foreign spouse.

There are two types of wills in Tanzania oral and written.

### Written Wills

Written will must be witnessed by two people who know to read and write. One must be a close relative and the other a non relative. Should have a date and be in ink or typed. It should have the signature of the maker as well as the signatures of witnesses who must sign in the presence of each other and at the same time.

### Oral Will

Oral will must have not less than four witnesses two of which must be relatives. This will should be done by those who can't read and write.

If there is no will, an administrator must be appointed.

In the absence of a will, an administrator must be appointed by the heirs of the deceased at a clan meeting. It is the duty of the administrator to petition the Court. The petition must be accompanied by a number of documents:

- Minutes of the clan meeting, to show that the heirs have consented to and entrusted the administrator to administer the estate;
- The death certificate of the deceased;
- An affidavit as to the domicile of the deceased person, sworn by the administrator, or one of the heirs;
- Surety bonds executed in favour of the elected administrator, confirming that he will administer the estate honestly.

On hearing the petition, the Court normally grants the letters of administration, unless fraud or foul play is discovered surrounding the preliminary procedures (for example, fabrication of the minutes of the clan meeting, or impropriety in conduct or reputation of the elected administrator).

If there are no heirs, the estate falls to the Tanzanian government, under the appointed Administrator General.

If there is a will, an executor is needed to petition the Court.

If the will does not name an executor, it only serves to define the wishes of the deceased on how the estate should be devolved, and the procedure followed is the same as if there was no will, as described above.

If the will names an executor, it is the duty of the executor to petition the Court to probate the will. This Petition is accompanied by

- a copy of the will;
- an affidavit to prove the domicile of the deceased;



□surety bonds, to be executed if the will is contested.

The estate of the deceased is then placed by a Court order under the charge of the executor, and the estate must be distributed according to the will.

The administrator of the estate, or the executor of the will, only becomes the legal personal representative of the deceased after registration with the registrar of titles at the land registry. The legal personal representative has powers to sell or lease the landed property for the interests of the heirs. Therefore a foreigner (e.g. the spouse of a Tanzanian citizen) who inherits an estate in Tanzania and who is also appointed as an administrator/executor and registered as legal personal representative can sell the property in that capacity and realize the proceeds.

It is advisable for a foreigner with assets in Tanzania to make a local will. This ensures that the High Court has the necessary guidance to carry out his/her wishes, and it minimizes the time required to administer the estate. In the absence of a local will, the administration of the estate may take a long time, and the wishes of the deceased may not be followed.

A local will can be made under Common Law, before a notary public. The testator can choose to have other witnesses, instead of the notary public. To have the force of law, such a will must be registered

Language on making the will.

When making a will the language to be used should be simple known to the guardian and the executor of the will. Therefore ambiguous word should not being used when making a will.

CONCLUSION.

It is very important to have a will. ABC Attorneys can assist in drafting one for you and registering it.