



PROCEDURES OF MAKING A WILL

The procedures of making a will in Tanzania is governed by the Indian Succession Act of 1865, The Probate and Administration of Estate Act (PAEA) CAP 352 and its rules.

Section 2 of the PAEA defines a will as, *“the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death.”* From that definition, section 74 of the Indian Succession Act provides that, *“the intention of the testator is not to be set aside because it cannot take effect to the full extent, but the effect is to be given to it as far as possible”*.

From the above definitions, we learn that the testator declares his intentions on how he wants his property to be divided upon his death. The person whom the testator will appoint to execute his declaration is called an executor. An executor has been defined under section 2 of the PAEA as *“a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided”*.

Procedures for making a will first require the testator to:

1. Be of sound mind
2. Have attained the age of majority
3. Dispose of or bequeath his property to his beneficiaries

As provided for under section 46 of the Indian Succession Act.

Once the testator has fulfilled the above set of requirements, what follows is the actual drafting of the will. A will has a number of clauses that have to be addressed in order for the will to be valid so the testator can die testate.

PARTS OF A WILL

1. Preliminary Clause

This clause includes the name of the maker of the will, general information of the make, for example, domicile, whether it’s the first will, if it’s a will that is revoking another will, age, soundness of mind, and that the will was made without undue influence or duress.

2. Dispositive Clause

This clause specifies the beneficiaries and what they’ll get out of the testator’s property. The clause should also state the relationship of the beneficiaries to the testator. If the beneficiary or beneficiaries are minors, the clause should state that they’ll get their share once they attain the age of majority and the property will be held in trust for them.



3. Appointment Clause

The clause provides for the executors and trustees, as the case may be, and their responsibilities when they act in that capacity. The clause can also vest powers to the executors to carry on any business ventures that the testator may have. In addition, the testator may give the executor power to ensure, repair, improve, or sell any assets of the testator's estate as long as it will be for the best interest of the beneficiaries.

4. Concluding Clause

This clause includes execution and attestation. The testator must first affix his or her signature so as to appear that it was intended to give effect to what was stated in the will. Moreover, the will shall be attested by two or more witnesses each of whom must have seen the testator sign or affix mark to the will. This is provided for under section 50 of the Indian Succession Act.

Once all the above requirements are adhered to, the procedures of making a will be finalised. It should be noted that the will can only be enforceable upon the death of the testator and at any time before his death, the testator has the liberty of making amendments to his will by using a codicil. According to the PAEA, a codicil has been defined under section 2 to mean, "*...an instrument made in relation to a will, and explaining, altering or adding to its disposition*".