CUSTODY OF A WILL

Custody of a will is very important. A testator may after making a will keep it himself or entrust its custody on a trusted friend, leave it with his lawyer or even keep it with his bankers. It is important therefore that the original copy of the will be kept in safe custody. If the original will is not found after death, it is assumed you destroyed it with the intention of changing it.

DELIVERY OF A WILL TO THE MASTER

Section 8 (1) of the Administration of Estates Act requires the master to preserve a record in his office of all original wills.

CONCLUSION

Any person who is capable of making a will can dispose of any type of property that has accumulated during his lifetime. It is important to do so to safe-guard your property and the interests of your beneficiaries in life and in death. If you are a tribesman and you die without a will, your property will devolve according to customary law. You may opt out of the application of customary law by making a will to regulate distribution of your property.

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MAKING A WILL

INTRODUCTION

A will is simply the last wish of a person on how he desires his assets to be disposed of after his / her death. It gives directives on the disposal of the total assets of the deceased, which are available for distribution. Some of the advantages of making a will are the following:

- The deceased is able to direct how his property must devolve and also give directions on where he wants to be buried and the manner in which that should be done.
- There is certainty as to the identity of the property the deceased is leaving behind;
- An Executor is identified to immediately step into the shoes of the deceased following death to avoid a vacuum that may result in the dissipation of property;
- The beneficiaries are identified in the will i,e. You choose your beneficiaries.
- You are also able to protect beneficiaries particularly those under age.
- The will also direct whether distribution of property is immediate or a trust is created.

WHO CAN MAKE A WILL?

Anyone aged 16 years or more can make a will provided at the time of making that will he/she appreciates what he/she is doing and the effect of his actions.

WHY MAKE A WILL?

You make a will to direct how your property must be dealt with after your death. This gives you an opportunity to direct how your assets are to be distributed after your death, you also direct who right can be exercised in a will.

DOES A WILL REQUIRE A LAWYER TO DRAFT?

A will contains a final wish for the testator. It is for that reason that a testator must make his/her own will. Power to testate is power that cannot be delegated. Thus, a testator cannot delegate his/her will making power to anyone.

What is important is that the wishes of the testator must be clear and leave no doubt in anybody's mind what the testator wanted to say or to distribute. For that reason it is not always necessary that a will be drafted by a lawyer.

The advantage however, of using a lawyer is that lawyers are trained in this field and are equipped with the necessary knowledge to frame your wishes in exactly the manner in which you want them to appear and convey the correct information.

FORMALITIES OF MAKING A WILL

To be valid a Will must follow certain formalities prescribed in the Wills Act [Cap 31:04] . The law requires a will to be signed at the end by the testator or by some other person in his/her presence and by his/her direction.

The witnesses must attest and sign a will in the presence of the testator and of each other. Failure to sign a will in the manner prescribed renders the will invalid. If the will contains more than one page, each page must be signed in a similar manner i.e by the testator or by such other person and witnesses in the presence of each other.

SIGNATURE

Signature includes the making of a mark by the testator. Witnesses however, cannot sign by making a mark but must append their usual signatures. Where the testator signs by making a mark, such a mark must be certified by an administrative officer justice of the peace, commissioner of oaths or notary publicat the end. The Officer must sign each page if the will has many pages and make the same declaration.

WITNESSES TO A WILL

A Witness to a will must be a person who is 16 years and above competent to give evidence in court. Witnesses must have no direct or indirect interest in the will. To note is that a person who attests the execution of a will or his/her spouse or any person who can claim under such a person or his/her spouse is disqualified from taking a benefit under a will.

It is therefore critical that when you look for witnesses it must not be people you have given any benefit under the will e.g. spouse, children and close relatives. Note further that you cannot appoint a witness to your will as executor, administrator, trustee or guardian.

EXECUTOR

It is important to consider appointing someone neutral as an executor of your will. Failure to appoint an executor will result in the calling of a meeting of next of kin for the appointment of an executor called executor dative. The advantage of nominating an executor is that you nominate someone you trust to collect and distribute your assets.