

CHAPTER 31:04
WILLS
ARRANGEMENT OF SECTIONS

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Proc. 19, 1957,
Cap. 87, 1959,
L.N. 84, 1966,
Act 26, 1967,
Act 42, 1971,
Act 13, 1977.

An Act to amend and consolidate the law relating to the execution of wills.

[Date of Commencement: 1st May, 1957]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Wills Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"**competent witness**" means a person of the age of 14 years or over who at the time he witnesses a will is not incompetent to give evidence in a court of law;

"**court**" means the High Court of Botswana or any judge thereof;

"**Master**" means the Master of the High Court of Botswana;

"**sign**" includes in the case of testator the making of a mark but does not include the making of a mark in the case of a witness, and "signature" has a corresponding meaning;

"**will**" includes a codicil and any other testamentary writing.

PART II
Wills Executed in Botswana (ss 3-7)

3. Formalities required in the execution of a will

(1) Subject to the provisions of section 4-

(a) no will executed on or after the commencement of this Act shall be valid unless-

(i) the will is signed at the end thereof by the testator or by some other person in his

- presence and by his direction;
 - (ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time;
 - (iii) such witnesses attest and sign the will in the presence of the testator and of each other and, if the will is signed by such other person, in the presence also of such other person;
 - (iv) if the will consists of more than one page, each page is so signed by the testator or by such other person and by such witnesses; and
 - (v) if the will is signed by the testator by the making of a mark or by some other person in the presence and by the direction of the testator, an administrative officer, justice of the peace, commissioner of oaths or notary public certifies at the end thereof that the testator is known to him and that he has satisfied himself that the will so signed is the will of the testator, and if the will consists of more than one page, each page is signed by the administrative officer, justice of the peace, commissioner of oaths or notary public who so certifies;
- (b) no deletion, addition, alteration or interlineation made in a will executed on or after the said date and made after the execution thereof shall be valid unless-
- (i) the deletion, addition, alteration or interlineation is identified by the signature of the testator or by the signature of some other person made in his presence and by his direction;
 - (ii) such signature is made by the testator or by such other person or is acknowledged by the testator and, if made by such other person, also by such other person, in the presence of two or more competent witnesses present at the same time;
 - (iii) the deletion, addition, alteration or interlineation is further identified by the signatures of such witnesses made in the presence of the testator and of each other and if the deletion, addition, alteration or interlineation has been identified by the signature of such other person, in the presence also of such other person; and
 - (iv) if the deletion, addition, alteration or interlineation is identified by the mark of the testator or the signature of some other person made in his presence and by his direction, an administrative officer, justice of the peace, commissioner of oaths or notary public certifies on the will that the testator is known to him and that he has satisfied himself that the deletion, addition, alteration or interlineation has been made by or at the request of the testator.

(2) Any deletion, addition, alteration or interlineation made in a will executed after the said date shall for the purposes of subsection (1) be presumed, unless the contrary is proved, to have been made after the will was executed.

4. Wills made on active service

(1) Any member of the Botswana Police Force or the Botswana Defence Force while on active service and any member of the land, air or naval forces of any country allied to or associated with Botswana in any war, may make a will without complying with the formalities prescribed by section 3 or with any formalities whatsoever except that the will shall be in writing.

(2) Such a will (hereinafter called an "active service will") shall be valid if the maker thereof dies while he is, or within one year after he has ceased to be, on active service with the Botswana Police Force, the Botswana Defence Force or with the armed forces of any country described in subsection (1).

(3) An active service will, signed by the maker thereof, may on application to the Master, be accepted by the Master without an order of court, provided he is satisfied by evidence on affidavit that it is a valid will in terms of subsection (1) and (2).

(4) Any person aggrieved by the Master's acceptance of a will may, within 30 days after the date of such acceptance, or within such further period as the court may on good cause

allow, and after service of notice upon any person affected by such acceptance, make application to the court for an order setting aside such acceptance and the court may confirm or set aside such acceptance or make such other order as it may deem fit.

(5) If an active service will is not signed by the maker thereof, or if an active service will is signed by the maker thereof but the Master has refused to accept it, the court may on application, if it is satisfied that the will is a valid will in terms of subsections (1) and (2), direct the Master to accept the will and may make such further or such other order as to it seems fit.

(6) Notice of any application under subsection (3) or (4) shall, unless the court otherwise directs, be served on the spouse and intestate heirs of the deceased and also on any person who may be entitled to claim under any previous will made by the deceased if such previous will is known to exist.

5. Competency to make a will

Every person of the age of 16 years or more may make a will unless at the time of making the will he is mentally incapable of appreciating the nature and effect of his act, and the burden of proof that he was mentally incapable at that time shall rest on the person alleging the same.

6. Witnesses cannot benefit under a will

A person who attests the execution of any will or who signs a will in the presence and by direction of the testator or the person who is the spouse of such person at the time of attestation or signing of the will or any person claiming under such person or his spouse, shall be incapable of taking any benefit whatsoever under that will.

7. Witnesses cannot be nominated as executor, etc.

If any person attests the execution of a will or signs a will in the presence and by direction of the testator under which that person or his spouse is nominated as executor, administrator, trustee or guardian, such nomination shall be null and void.

PART III

Wills Executed outside Botswana (ss 8-11)

8. Interpretation

(1) In this Part, unless the context otherwise requires-
"internal law" in relation to any territory or state means the law which would apply in a case where no question of the law in force in any other territory or state arose;

"state" means a territory or group of territories having its own law of nationality.

(2) In determining for the purposes of this Part whether or not the execution of a will conformed to a particular law, regard shall be had to the formal requirements of that law at the time of execution, but this shall not prevent account being taken of an alteration of law affecting wills executed at the time if the alteration enables the will to be treated as properly executed.

9. Application

This Part shall not apply to a will of a testator who died before 22nd September, 1967, and shall apply to a will of a testator who dies after that date whether the will was executed before or after that date.

10. General rule as to validity

A will shall be treated as properly executed if its execution conformed to the internal law in force in the territory where it was executed, or in the territory where, at the time of its execution or of the testator's death, he was domiciled or had his habitual residence, or in a state of which, at either of those times, he was a national.

11. Additional rules

Without prejudice to section 10, the following shall be treated as properly executed-

- (a) a will executed on board a vessel or aircraft of any description, if the execution of the will conformed to the internal law in force in the territory with which, having regard to its registration, if any, and other relevant circumstances, the vessel or aircraft may be taken to have been most closely connected;

- (b) a will so far as it disposes of immovable property, if its execution conformed to the internal law in force in the territory where the property was situated; or
- (c) a will so far as it revokes a will which under this Part would be treated as properly executed or revokes a provision which under this Part would be treated as comprised in a properly executed will, if the execution of the later will conformed to any law by reference to which the revoked will or provision would be so treated.