

A written will and its contents

What is a written will?

A will is written if the intentions of the testator have been reduced into some form of writing. There is no specification about the material onto which the will should be written. It is only universal that the material is likely to be a paper but that is not a requirement.

Contents of a written will

For a will to be valid, it must bear some elements. The following are some of the contents of a will:

1. Name of the Testator

A testator is the maker of the will. A will must bear the name of the testator in such a way that it identifies the maker of the will with utmost certainty and clarity. This must be the name on official identity documents, that is a National Identity Card or Passport and where applicable, the Death Certificate.

2. The Declaration by the testator

The maker of a will has to make a declaration in certain terms that that is their last will and testament. The reason for this is because the last will invalidates the previous legally. Where we have two wills written by the same testator and they are in conflict, the latest will prevails over the previous and therefore the conflict shall be resolved by upholding the wishes in the latest will.

3. Gifts

A gift is an asset within the estate of the testator that is capable of being disposed or devolved through the will. A will must therefore contain gifts. Besides bearing gifts, the will must state the beneficiary of beneficiaries of each gift. Assets that have not been disposed of through the will for

whatever reasons shall be subjected to rules of intestacy.

It is also important to remember that a testator cannot pass or gift what he does not have. You can only gift a bequest that belongs to you.

4. The name of the executor/executrix

An executor is the person named in the will to implement the wishes of the testator. An executrix is a female person playing the same role in implementing the will as an executor. A will must not always name an executor but, it is better to name an executor while doing estate planning to avoid confusion and have seamless devolution of the estate at the demise of the estate owner. Where a will has not named an executor, a person who qualifies can approach the court and apply to be an administrator. The condition here is that not everyone qualifies to administer the estate of the deceased and so one must qualify to be one. Among the things a court must examine while interrogating your qualification is your relationship with the estate of the deceased.

5. Execution

Execution refers to the actual signing of the will by the testator, or some other person doing so in the presence of the testator and with the unequivocal permission and direction of the testator. The signing can be in the form of a signature or the affixing of a mark that is unique to the testator. The signature or affixing of a mark must be intentional. Proper execution of the will by the testator is very key that its absence invalidates the will.

6. Attestation to the will

Attestation is the act of witnesses signing the will. Witnesses need not know the content of the will. Their main duty is to witness the execution of the will by the testator. The law in Kenya requires that a written will must be attested to by at least two competent witnesses. Competent witnesses means that they too must meet the rules under capacity.