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Wills Act, 1955

Act 12 of 1955

Legislation as at 1 December 1998

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Wills Act, 1955
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Act 12 of 1955

Commenced on 1 March 1955

[This is the version of this document at 1 December 1998.]

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

1. Short title

This Act may be cited as the Wills Act, 1955.

2. Interpretation

In this Act, unless the context otherwise requires—

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

"**Court**" means the High Court or any judge thereof;

"**internal law**" in relation to a 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;

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

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

"**soldier's will**" means a will executed in accordance with section 9(1);

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

"**will**" includes any testamentary instrument or act, and "testator" shall be construed accordingly.

[Amended L.31/1966]

3. Formalities required in the execution of a will

(1) Subject to this Act no will executed on or after the first day of March, 1955, shall be valid unless—

(a) the will is signed at the end thereof by the testator or by some other person in his presence and by his direction; and

(b) 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; and

(c) 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; and

(d) 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

(e) 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.

(2) Subject to subsection (3) no deletion, addition, alteration or interlineation made in a will executed on or after such date and made after the execution thereof shall be valid unless—

(a) 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; and

(b) 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; and

(c) such 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 such deletion, addition, alteration or interlineation has been identified by the signature of such other person, in the presence of such other person; and

(d) 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, and administrative officer, justice of the peace, commissioner of oaths, or notary public certifies on the will that such testator is known to him and that he has satisfied himself that such deletion, addition, alteration or interlineation has been made by or at the request of such testator.

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

4. General rules as to formal validity

(1) A will shall be treated as properly executed if its execution conformed to the internal law in force in —

(a) the territory where it was executed; or

(b) the territory where, at the time of its execution or of the testator's death he was domiciled, or he had his habitual residence; or

(c) a state of which, at either of those times, he was a national.

(2) If, by virtue of subsection (1), the internal law in force in a territory or state as to the formal validity of a will is to be applied and there are in force in that territory or state two or more systems of internal law relating to the formal validity of wills, and if—

(a) there is in force throughout the territory or state a rule indicating which of those systems can properly be applied in the case in question, such rule shall be followed; or

(b) no such rule exists, the system shall be that with which the testator was most closely connected at the relevant time and, for such purpose, the relevant time shall be—

(i) where the matter is to be determined by reference to circumstances prevailing at his death, the time of the testator's death; and,

(ii) in any other case, the time of execution of the will.

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

[Amended L.31/1966]

5. Additional rules

(1) Without prejudice to section 4 the following shall be treated as properly executed—

(a) a will executed on board a vessel or an 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, such 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;

(c) a will, so far as it revokes—

(i) a will, under this Act, would be treated as properly executed; or

(ii) a provision which, under this Act, 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; and

(d) a will, so far as it exercises a power of appointment, if the execution of the will conformed to the law governing the essential validity of the power.

(2) A will, so far as it exercises a power of appointment, shall not be treated as improperly executed by reason only that its execution was not in accordance with any formal requirements contained in the instrument creating the power.

[Added L.31/1966]

6. Certain requirements to be treated as formal

If, whether in pursuance of this Act or not, a law in force outside Swaziland falls to be applied in relation to a will, any requirement of such law whereby special formalities are to be observed by testators answering a particular description, or witnesses to the execution of a will are to possess certain qualifications, shall be treated notwithstanding such law, as a formal requirement only.

[Added L.31/1966]

7. Construction of wills

The construction of a will shall not be altered by reason of a change in the testator's domicile after the execution of such will.

[Added L.31/1966]

8. Application of sections 4 to 7 inclusive

Sections 4 to 7 inclusive—

(a) shall not apply to a will of a testator who died before 2nd November, 1970; and

(b) shall apply to a will of a testator who dies after such time, whether such will was executed before or after such time.

[Added L.31/1966; G.N.87/1970]

9. Soldiers' wills

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

(2) A soldier's 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 such forces.

(3) A soldier's 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 subsections (1) and (2).

(4) Any person aggrieved by the Master's acceptance of the will may, within thirty 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 such acceptance aside and such Court may confirm or set aside such acceptance or make such other order as it may deem fit.

(5) If a soldier's will is not signed by the maker thereof or if a soldier's 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 valid in terms of subsections (1) and (2), direct the Master to accept it and make such further or such other order as to it seems fit.

(6) Notice of any application under subsection (4) or (5) 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.

10. Competency to make a will

Any person of the age of sixteen 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.

11. 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 such will or any person claiming under such person or his spouse, shall be incapable of taking any benefit whatsoever thereunder.

12. Witnesses cannot be nominated as executors, 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 such person or his spouse is nominated as executor, administrator, trustee, or guardian, such nomination shall be null and void.