

CHAPTER K58 - KWARA STATE WILLS LAW

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
 2.
 3. Interpretation.
 4. Power to dispose property by will.
 5. Provisions for family and dependants.
 6. A will of person under age invalid.
 7. Requirements for the execution of a will.
 8. Execution of appointment by will.
 9. Provision as to wills of seamen, mariners and crew of commercial airlines.
 10. Will not void because of incompetency of attesting witness.
 11. Gifts to attesting witness or wife or husband of attesting witness void.
 12. Creditor attesting a will charging estate with debt.
 13. Executor to be admitted a witness.
 14. Wills revoked by marriage.
 15. No revocation by presumption from altered circumstances.
 16. In what cases wills may be revoked.
 17. Alteration in will after execution.
 18. Revival of revoked will.
 19. Effect of subsequent disposition or other act.
 20. Will to be construed as if examined immediately before death.
 21. Inclusion of property in residuary disposition in event of failure on variance of disposition.
 22. General disposition of land to mean right of occupancy.
 23. General gift to include property under general power of appointment.
 24. How words "die without issue" or "die without leaving issue" etc, to be construed.
 25. Disposition of property to trustee or executor.
 26. Presumption of survivorship.
 27. Gifts to children who leave issue living at testator's death.
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KWARA STATE WILLS LAW

A Law to make provision in respect of wills in the State.

[KWS 35 of 1991, No. 4 of 2006.]

[Date of commencement: 15th August, 1991]

1. Short title

This Law may be cited as the Kwara State Wills Law.

2.

[No. 4 of 2006.]

3. Interpretation

In this Law unless the context otherwise requires—

"**Child**" includes a step-child, a child whose paternity has been acknowledged in accordance with any customary law applicable in Nigeria, a child adopted whether before or after the commencement of this Law in pursuance of an adoption order made under any statute in force in Nigeria or in any other country and a child *en ventre sa mere*;

[No. 4 of 2006.]

"**property**" includes right of occupancy, sublease, sub-und
erlease and funds, securities for monies, share of Government, debts, things in action, rights,

credits, goods and other property whatsoever which by law develops upon the executor or administrator and any share or interest therein;

"State" means Kwara State of Nigeria;

"will" includes a testament, codicil and an appointment by will or by writing in the nature of a will in exercise of a power.

4. Power to dispose property by will

(1) It shall be lawful for every person to bequeath or dispose of, by his will executed in accordance with the provisions of this Law, all property to which he is entitled, either in law or in equity, at the time of his death.

Provided that the provisions of this Law shall not apply—

(a) to any property which the testator had no power to dispose of by will or otherwise under customary law to which he was subject; or

(b) to the will of a person who immediately before his death was subject to Islamic law.

(2) The power hereby given shall extend to—

(a) all contingent, executory or other future interests in any property whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will;

(b) all rights of entry for conditions broken and other rights of entry; and

(c) such property to which the testator may be entitled at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

5. Provisions for family and dependants

(1) Notwithstanding the provisions of section 4 of this Law where a person dies and is survived by any of the following persons—

- (a) the wife or husband of the deceased;
- (b) a child of the deceased; and
- (c) a parent, brother or sister of the deceased who immediately before the death of the deceased was being maintained either wholly or partly, by the deceased,

that person may apply to the court for an order on the ground that disposition of the deceased's estate effected by his will is not such as to make reasonable financial provision for the applicant.

(2) In this section "**reasonable financial provision**"—

- (a) in the case of an application made by virtue of subsection (1) (a) above by the husband or wife of the deceased (except where the marriage with the deceased was subject to a decree of judicial separation or a separation in accord with any customary law and at the date of death the decree was in force and the separation was continuing) means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance; and
- (b) in the case of any other application by virtue of subsection (1) above means such financial provisions as it would be reasonable in all the circumstances of the case for the applicant to receive for his maintenance.

(3) For the purposes of subsection (1) (c) above a person shall be treated as being maintained by the deceased either wholly or partly, if the deceased was making a substantial contribution in money or money's worth towards the reasonable needs of that person.

(4) An application under this section shall be exercisable only within the period of six months from the grant of probate.

6. A will of person under age invalid

Subject to section 9 of this Law no will made by any person under the age of eighteen years shall be valid.

7. Requirements for the execution of a will

(1) No will shall be valid unless—

- (a) it is in writing;
- (b) it is signed by the testator or signed in his name by some other person in his presence and by his direction, in such place on the will so that it is apparent on the face of the will that the testator intended to give effect by the signature to the writing signed as his will;
- (c) the testator makes or acknowledges the signature in the presence of at least two witnesses present at the same time; and
- (d) the witnesses attest and subscribe the will in the presence of the testator but no form of attestation or publication shall be necessary.

(2) No signature under this section or under any other provision of this Law shall be operative to give effect to any disposition or direction which is underneath or follows it nor shall it give effect to any disposition or direction after the signature shall be made.

8. Execution of appointment by will

No appointment made by will in exercise of any power shall be valid unless the same be executed in the manner hereinafter required and every will executed in such

manner shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

9. Provision as to wills of seamen, mariners and crew of commercial airlines

(1) Notwithstanding the foregoing provisions of this Law any seamen, or mariner (not being a member of the Nigerian Navy) or crew of commercial airline being at sea or in the air may dispose of his estate though under the age of eighteen years.

(2) A testamentary disposition made by a person to whom the preceding subsection applies shall, notwithstanding that such disposition has not been made in compliance with the formalities prescribed under the provisions of this Law, be valid if the court is satisfied that the instrument expresses the testamentary intention of the testator.

10. Will not void because of incompetency of attesting witness

If any person who shall attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof such will shall not on that account be invalid.

11. Gifts to attesting witness or wife or husband of attesting witness void

If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial legacy, estate, interest, gift or appointment of or affecting any property (other than and except charges directions for payment of any debt or debts) shall be thereby given or made, such legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution or such will or the wife or husband of such person or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will or to prove the validity or invalidity thereof, notwithstanding such legacy, estate, interest, gift or appointment mentioned in such will.

Provided that the attestation of a will by a person to whom or to whose spouse there is given or made any such disposition as is described in this section shall be disregarded, if the will is duly executed without his attestation and without that of any other such person.

12. Creditor attesting a will charging estate with debt

In case by any will any property shall be charged with any debt, or debts and any creditor, or the wife or husband of any creditor whose debt is so charged, shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the validity or invalidity thereof.

13. Executor to be admitted a witness

No person shall on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will or a witness to prove the validity or invalidity thereof.

14. Wills revoked by marriage

Every will made by a man or woman shall be revoked by his or her marriage (other than a marriage in accordance with customary law or Islamic law) except—

- (a) a will made in exercise of a power of appointment when the property thereby appointed would not in default of such appointment pass to his or her heir, executor or administrator or the person entitled as his or her next of kin under any written law relating to the distribution of the estate of persons dying intestate;
- (b) a will expressed to be made in contemplation of the celebration of that marriage.

Provided that the names of the parties to the marriage contemplated are clearly stated.

15. No revocation by presumption from altered circumstances

No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.

16. In what cases wills may be revoked

No will or codicil, or any part thereof, shall be revoked otherwise than as provided by section 14 or any other will or codicil executed in manner herein before required or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

17. Alteration in will after execution

No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect except insofar as the words or effect shall not be apparent, unless such alteration shall be executed in like manner as is hereinbefore required for the execution of the will.

Provided that the will, with such alteration as part thereof shall be deemed to be only executed if the signature of the testator and the subscription of the witness be made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.

18. Revival of revoked will

No will or codicil, or any part thereof, which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same and when any will or codicil which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

19. Effect of subsequent disposition or other act

No disposition or other act made or done subsequently to the execution of a will of or relating to any property mentioned in the will except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to estate or interest in the property as the testator had power to dispose of by will at the time of his death.

20. Will to be construed as if examined immediately before death

Every will shall be construed, with reference to the property comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention shall appear by the will.

21. Inclusion of property in residuary disposition in event of failure on variance of disposition

Unless a contrary intention shall appear by the will any property comprised or intended to be comprised in any disposition in such will contained, which shall fail or be void by reason of the death of the legatee in the lifetime of the testator or by reason of such disposition being contrary to law or otherwise incapable of taking effect, shall be included in the residuary disposition (if any) contained in such will.

22. General disposition of land to mean right of occupancy

A disposition of land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner and any other general disposition which would describe a right of occupancy, if the testator had no freehold estate which could be described by it, shall be construed to mean the right of occupancy of the testator to which such description shall extend.

23. General gift to include property under general power of appointment

A bequest of property described in a general manner shall be construed to include any property in respect of which he may have a power of appointment and such bequest shall operate as an execution of such power of appointment unless a contrary intention shall appear by the will.

24. How words "die without issue" or "die without leaving issue", etc., to be construed

In any disposition of property the words "die without issue" or "die without leaving issue" or "have no issue" or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of his issue, unless a contrary intention shall appear by the will.

25. Disposition of property to trustee or executor

Where any property shall be disposed of to any trustee or executor such disposition shall be construed to pass the whole interest which the testator had power to dispose of by will in such property unless a contrary intention shall appear.

26. Presumption of survivorship

For the purposes of this Law, where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such death (subject to any order of the Court), shall be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

27. Gifts to children who leave issue living at testator's death

Where any person being a child or other issue of the testator for whose benefit a disposition shall be made for any interest not terminable at or before the death of such person, shall die in the lifetime of the testator leaving issue and any such issue of such person shall be living at the time of the death of the testator, the disposition shall not lapse, but shall take effect as if the death of that person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
