



Republic of Namibia
Annotated Statutes

Wills Act 7 of 1953 (SA)

(SA GG 5018)

came into force in South Africa and South West Africa
on 1 January 1954 (see sections 8 and 9 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: In the original Act, section 8 stated: "This Act shall apply also in the Territory of South-West Africa." Section 8 was substituted, with retrospective effect, by the *General Law Amendment Act 80 of 1964 (RSA GG 829)*; as substituted, it states "This Act and any amendment thereof which may be made from time to time shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)."

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. There were no amendments to the Act in South Africa after that date and prior to Namibian independence.

as amended by

Wills Amendment Act 48 of 1958 (SA) (SA GG 6122)

came into force on date of publication: 3 October 1958;

the wording of section 8 in the original Act did not make amendments to the Act automatically applicable to South West Africa, but this amendment was made expressly applicable to South West Africa by its own terms (section 2 of amending Act)

General Law Amendment Act 80 of 1964 (RSA) (RSA GG 829)

came into force on date of publication: 24 June 1964;

amends section 8 of the Act with retrospective effect to make all amendments to the Act automatically applicable to South West Africa

Wills Amendment Act 41 of 1965 (RSA) (RSA GG 1084)

brought into force on 4 December 1970 by RSA Proc. R.306/1970 (RSA GG 2934)

Walvis Bay and Off-shore Islands Act 1 of 1994 (GG 805)

brought into force on 1 March 1994 by Proc. 6/1994 (GG 806)

ACT

To consolidate and amend the law relating to the execution of wills.

(English text signed by the Governor-General)

(Assented to 25th February, 1953)

Wills Act 7 of 1953 (SA)**ARRANGEMENT OF SECTIONS**

1. Definitions
2. Formalities required in the execution of a will
3. Soldiers' wills
- 3bis. Validity of certain wills executed in accordance with the laws of certain other states
4. Competency to make a will
5. Witnesses cannot benefit under a will
6. Witness cannot be nominated as executor, etc.
7. Repeal of laws
8. Application to South-West Africa
9. Short title and date of commencement

Schedule: LAWS REPEALED

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates -

“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 a court of law;

“Court” means the High Court of Namibia or any judge thereof;

[definition of “Court” substituted by Act 1 of 1994
with respect to Namibia as a whole (see section 2(2) of Act 1 of 1994)]

“Master” means the Master or Deputy Master of the High Court of Namibia;

[definition of “Master” substituted by Act 1 of 1994
with respect to Namibia as a whole (see section 2(2) of Act 1 of 1994)]

“sign” includes in the case of a 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.

Formalities required in the execution of a will

2. (1) Subject to the provisions of section *three* and *three bis* -

[introductory phrase of subsection (1) substituted by Act 41 of 1965]

- (a) no will executed on or after the first day of January, 1954, 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; and
- (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

Wills Act 7 of 1953 (SA)

other person, in the presence of two or more competent witnesses present at the same time; and

- (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; and
- (iv) if the will consists of more than one page, each page other than the page on which it ends, is also so signed by the testator or by such other person and by such witnesses anywhere on the page; and

[paragraph (iv) amended by Act 80 of 1964]

- (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, a magistrate, justice of the peace, commissioner of oaths or notary public, certifies at the end thereof that he has satisfied himself as to the identity of the testator and that the will so signed is the will of the testator, and if the will consists of more than one page, each page other than the page on which it ends, is also signed, anywhere on the page, by the magistrate, justice of the peace, commissioner of oaths or notary public who so certifies;

[paragraph (v) amended by Act 28 of 1958 and substituted by Act 80 of 1964]

- (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; and
 - (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; and
 - (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, a magistrate, justice of the peace, commissioner of oaths or notary public certifies on the will that he has satisfied himself as to the identity of the testator and that the deletion, addition, alteration or interlineation has been made by or at the request of the testator.

[paragraph (iv) amended by Act 28 of 1958]

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

Wills Act 7 of 1953 (SA)**Soldiers' wills**

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

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3(a) that as from 31 May 1961, any reference to the Union of South Africa or the State in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic.]

(2) Such a will, hereinafter called 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 having jurisdiction, be accepted by that 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 having jurisdiction 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 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 having jurisdiction may on application, if the Court is satisfied that the will is a valid will in terms of sub-sections (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 sub-section (3) 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.

Validity of certain wills executed in accordance with the laws of certain other states

3bis. (1) A will, whether executed before or after the commencement of this section, shall -

- (a) not be invalid merely by reason of the form thereof, if such form complies with the law of the state or territory
 - (i) in which the will was executed;
 - (ii) in which the testator was, at the time of the execution of the will or at the time of his death, domiciled or habitually resident; or
 - (iii) of which the testator was, at the time of the execution of the will or at the time of his death, a citizen;
- (b) so far as immovable property is disposed of therein, not be invalid merely by reason of the form thereof, if such form complies with the law of the state or territory in which that property is situate;

Wills Act 7 of 1953 (SA)

- (c) so far as therein a power conferred by any instrument is exercised or a duty imposed by any instrument is performed, not be invalid merely by reason of the form thereof, if such form complies with the law of the state or territory in which such instrument was executed;
- (d) so far as it revokes a will or a portion of a will which by virtue of the provisions of paragraph (a), (b) or (c) is not invalid, not be invalid merely by reason of the form thereof, if such form complies with the law referred to in the paragraph in terms of which the revoked will or portion is not invalid;
- (e) not be invalid merely by reason of the form thereof, if it was executed on board a vessel or aircraft and such form complies with the law of the state or territory in which such vessel or aircraft was registered at the time of such execution, or with which it was otherwise most closely connected at that time.

(2) Any requirement of the law of any other state or territory in terms of which a testator of a particular age or nationality or having any other personal qualification is to observe special formalities in the execution of a will, or a witness to a will is to possess certain qualifications, shall be construed as a requirement relating to form only.

(3) If there are in force in any state or territory two or more systems of law relating to the form of wills, the law to be applied for the purposes of this section shall be the law determined in accordance with any relevant rule in force in the state or territory in question or, if there is no such rule in force therein, the law with which the testator was most closely connected at the time of his death, if the matter is to be determined by reference to the circumstances prevailing at his death, or at the time of the execution of the will in any other case.

(4) The provisions of this section shall not apply in respect of -

- (a) a will made by a South African citizen otherwise than in writing; and
- (b) a will made by a person who died before the commencement of this section.

(5) The provisions of this section shall not affect the validity of a will which but for such provisions would be valid.

[section 3bis inserted by Act 41 of 1965]

Competency to make a will

4. Every 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.

Witnesses cannot benefit under a will

5. 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.

Witness cannot be nominated as executor, etc.

Wills Act 7 of 1953 (SA)

6. 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.

Repeal of laws

7. The laws specified in the Schedule are hereby repealed to the extent set forth in the fourth column of the Schedule: Provided that the laws so repealed shall continue to apply in respect of any will executed before the first day of January, 1954.

Application to South-West Africa

8. This Act and any amendment thereof which may be made from time to time shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel referred to in section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).

[Section 8 is substituted by Act 80 of 1964, with the substitution deemed to have come into force on 1 January 1954 (section 21(2) of Act 80 of 1964).]

Act 1 of 1994, in Item 1 of the Schedule, provides the following transitional provisions relevant to the incorporation of Walvis Bay into Namibia:

(2) Notwithstanding anything to the contrary contained in the Wills Act, 1953 (Act 7 of 1953) of Namibia, any will executed or amended before the effective date by a testator who was domiciled or resident in Walvis Bay immediately before the effective date, shall not be held to be invalid if it was executed or amended in conformity with the requirements of the laws of South Africa relating to wills as they were applied in Walvis Bay immediately before the effective date.

(3) Where a deceased has left a will which immediately before the effective date was governed by the laws of South Africa relating to wills, any question arising in relation to that will shall be determined in accordance with such laws as applied in Walvis Bay immediately prior to the effective date.”]

Short title and date of commencement

9. This Act shall be called the Wills Act, 1953, and shall come into operation on the first day of January, 1954.

Schedule

LAWS REPEALED

[The Schedule is reproduced as it appears in the *Government Gazette*, with inconsistent use of full stops.]

Province or Union.	No. and Year of Law.	Title or Subject of Law.	Extent of Repeal.
Cape of Good Hope	Ordinance No. 15 of 1845.	Execution of Wills	So much as is unrepealed.
Do.	Act No. 22 of 1876	Attesting Witnesses Act, 1876.	The whole, excepting section <i>two</i> insofar as it applies to powers of attorney.
Do.	Act No. 3 of 1878	Wills Attestation Amendment Act, 1878.	The whole.
Natal	Ordinance No. 1 of 1856.	Testamentary dispositions of Natal-born subjects of	The whole.

Wills Act 7 of 1953 (SA)

		Great Britain and Ireland.	
Do.	Law No. 2 of 1868	Execution of Wills and Codicils.	The whole.
Orange Free State	Ordinance No. 11 of 1904.	Execution of Wills and other Testamentary Instruments Ordinance, 1904.	Sections <i>one to five</i> inclusive and sections <i>seven</i> and <i>ten</i> insofar as the two last mentioned sections apply to wills.
South-West Africa	Proclamation No. 23 of 1920.	Wills Proclamation, 1920	The whole.
Transvaal	Ordinance No. 14 of 1903.	Wills Ordinance, 1903	The whole.
Union	Act No. 14 of 1920	Wills Ordinance, 1903 (Transvaal) Amendment Act, 1920.	The whole.