

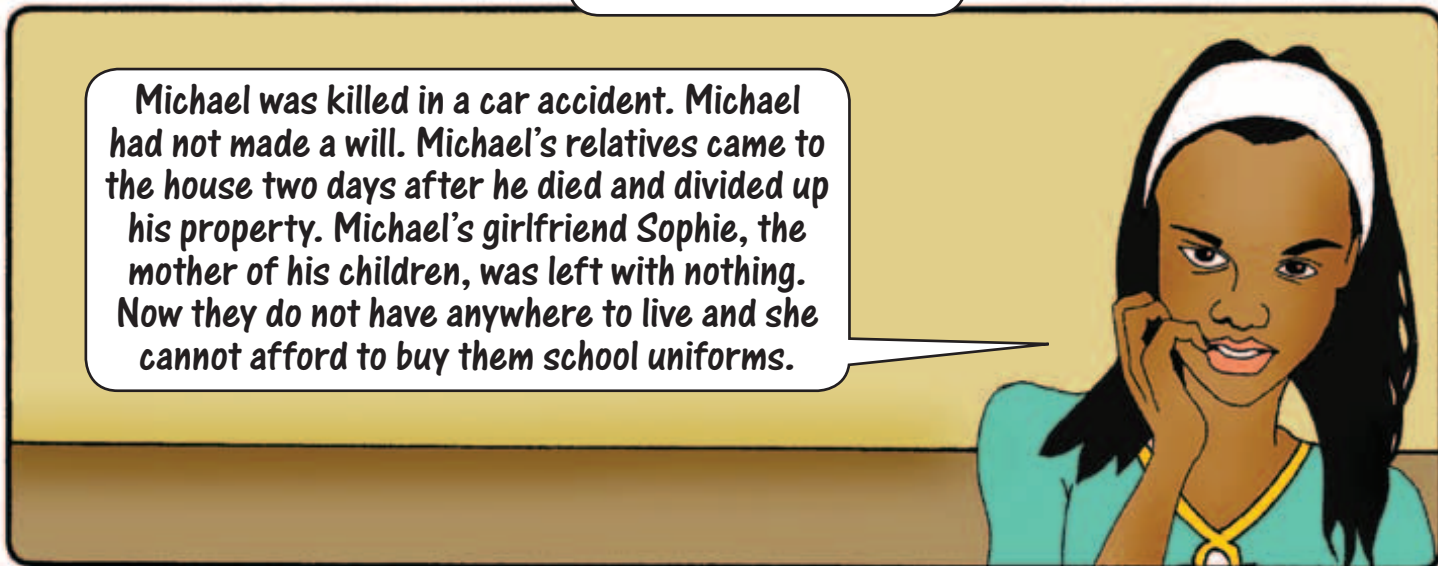
Providing for the people you love after you die: WHY YOU SHOULD MAKE A WRITTEN WILL





I spoke to John about writing a will, but he does not want to. If he does not want to make a joint will, I shall make my own will.

Writing a will is not common in our culture. But it is very important. Do you remember what happened to Sophie when Michael died?



Michael was killed in a car accident. Michael had not made a will. Michael's relatives came to the house two days after he died and divided up his property. Michael's girlfriend Sophie, the mother of his children, was left with nothing. Now they do not have anywhere to live and she cannot afford to buy them school uniforms.

What is a will?

A will is a legal written document, voluntarily made by you, in which you say what should happen to your property, or who should look after your minor children, and who should be the executor to distribute your property after your death.

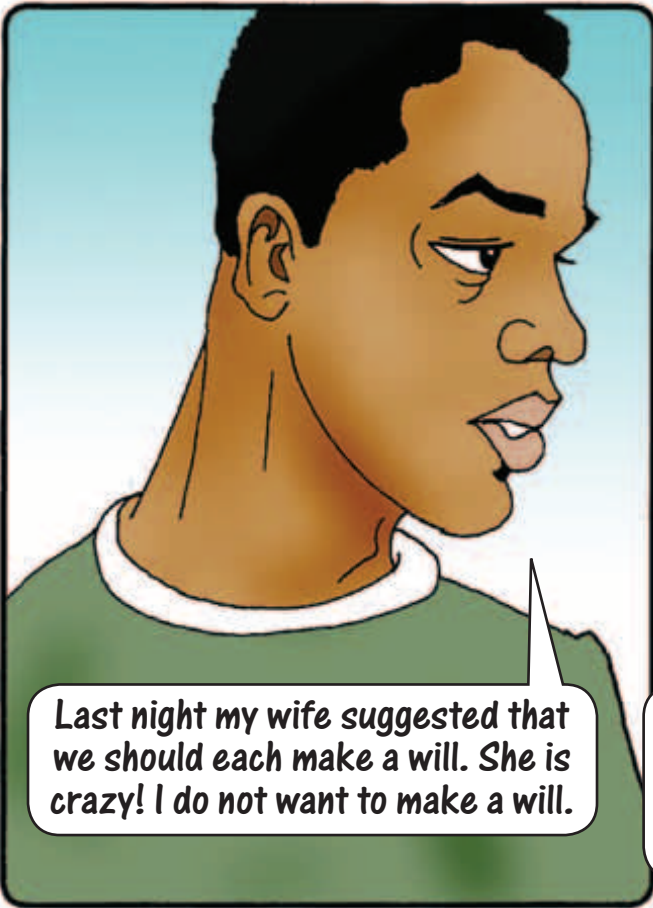
Who can make a will

You can make a will if you are 16 years of age or older. You must know and understand what you are doing. You are not allowed to make a will if, at the time of making the will, you are mentally incapable of making decisions.

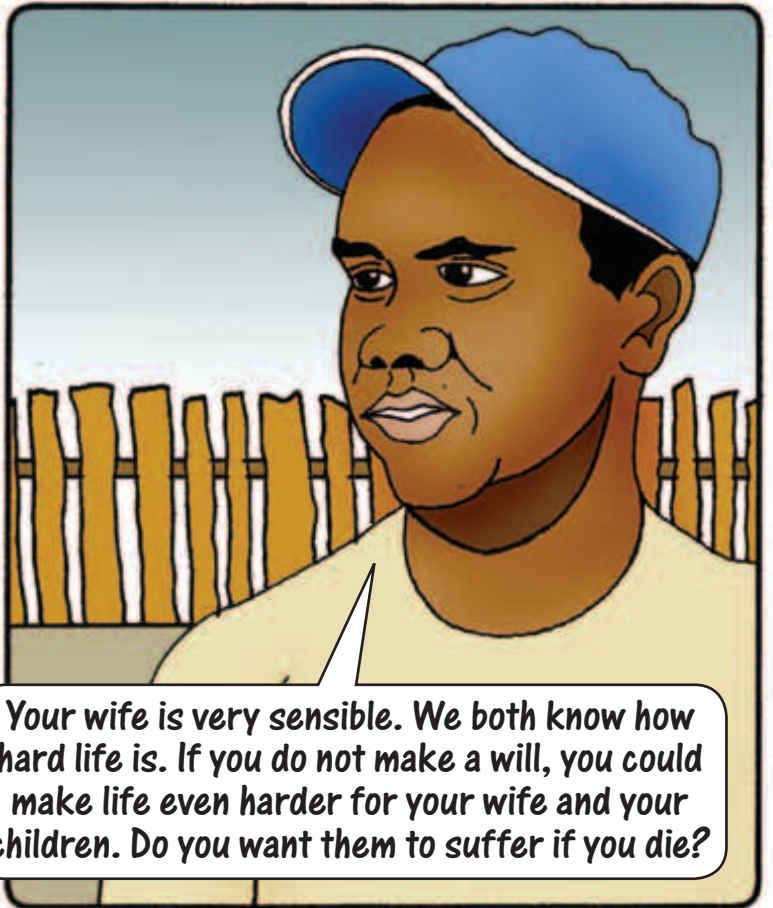
What to do if someone ignores a will after a person has died

Each will should have an executor. The executor is the person who manages the property of the estate and makes sure that the estate is distributed properly according to the will. If you think that the executor is not handling the estate correctly, you should make a complaint to the Master of the High Court.

If someone has died and they did not leave a will, you can apply to the Master of the High Court (if the estate is worth more than N\$100 000,00) or a Magistrate's Court (if the estate is worth N\$100 000,00 or less) for an executor to be assigned to manage the estate.



Last night my wife suggested that we should each make a will. She is crazy! I do not want to make a will.

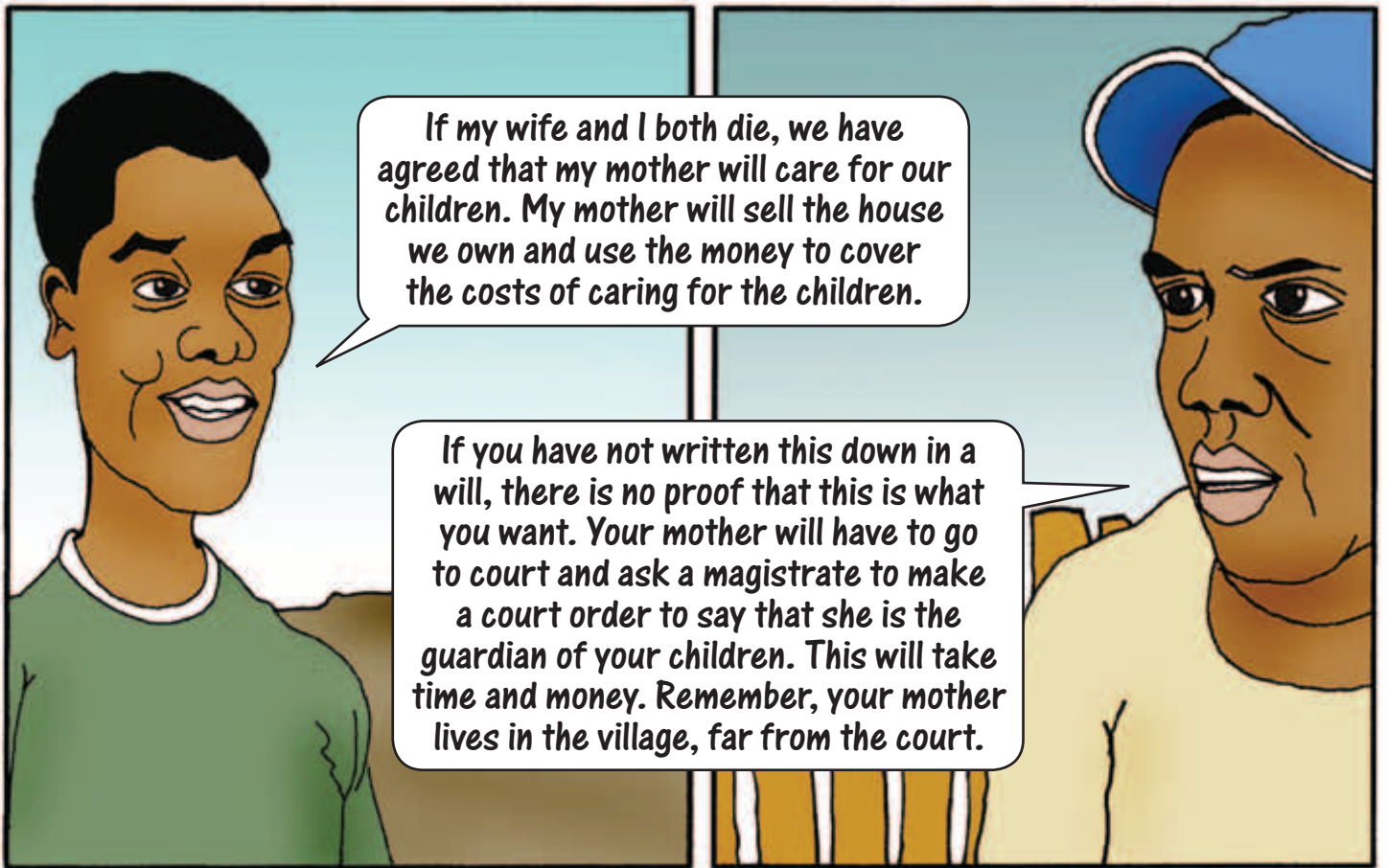


Your wife is very sensible. We both know how hard life is. If you do not make a will, you could make life even harder for your wife and your children. Do you want them to suffer if you die?

Here are 6 reasons why it is important to make a will:

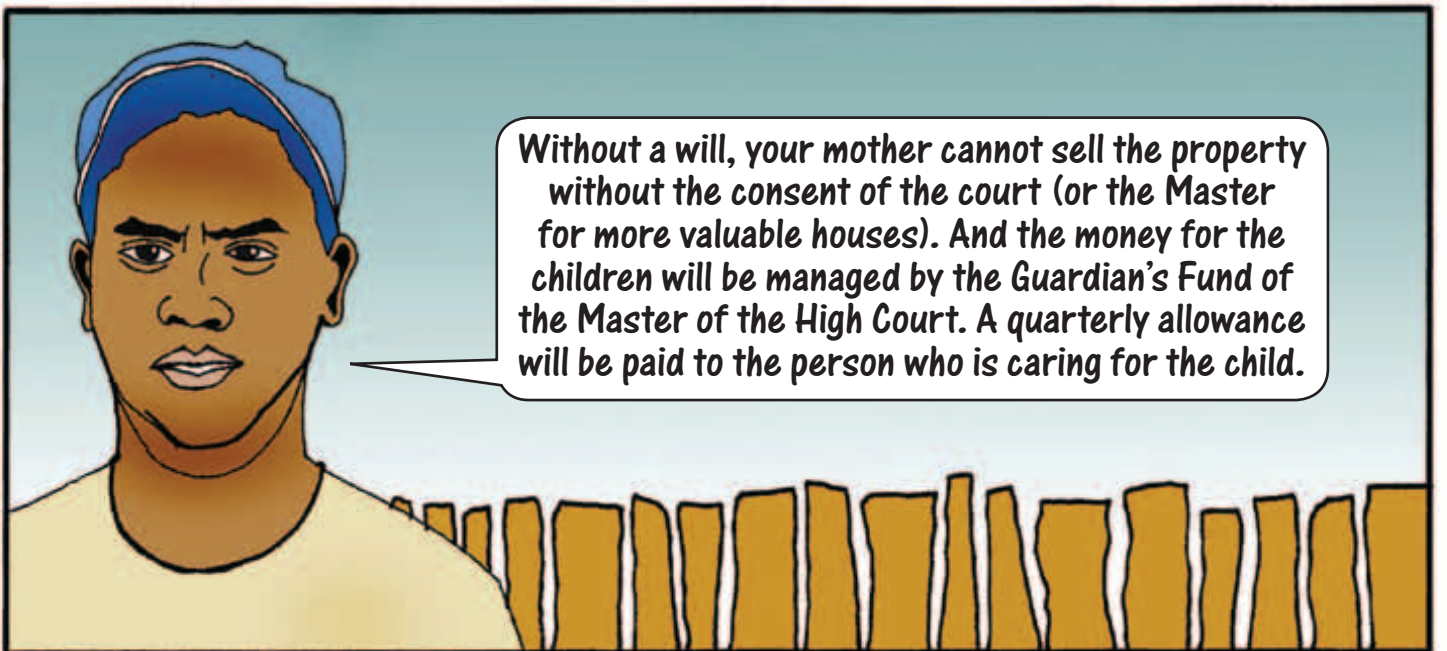
1. If you leave a will, your property is divided according to your wishes. You can make sure that everyone is clear about what **YOU** want to do with **YOUR** property.
2. You can decide who will care for your children. If both parents die without wills, your extended family members or the court will have to decide who will take responsibility for the children.
3. You can leave gifts of your property to the people you love, such as extended family members. If you list **WHO** should receive **WHAT**, there should not be any disputes.
4. If you do not leave a will, it will probably take longer for your property to be divided. This can mean that people who need to use the property may suffer while they are waiting for the property to be divided.
5. If you die without making a will and do not have any relatives, the money will go to the State.
6. Your funeral costs cannot be fully covered by the estate if this is not stated in a will. This would mean that costs such as a tombstone and the tombstone unveiling would then have to be paid for by family members instead of the estate.



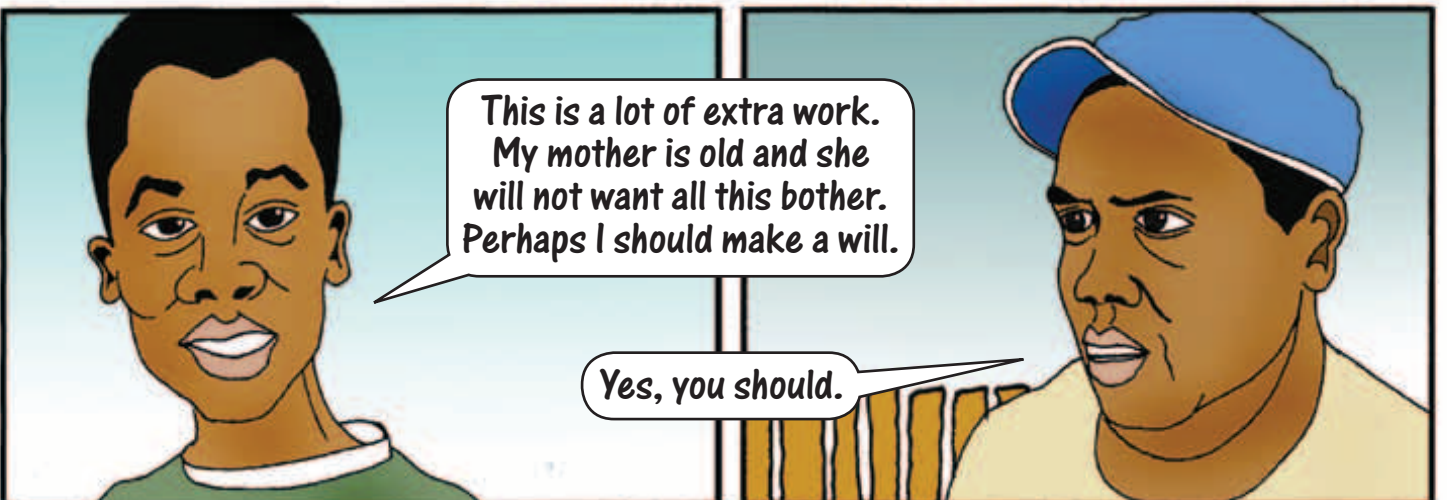


If my wife and I both die, we have agreed that my mother will care for our children. My mother will sell the house we own and use the money to cover the costs of caring for the children.

If you have not written this down in a will, there is no proof that this is what you want. Your mother will have to go to court and ask a magistrate to make a court order to say that she is the guardian of your children. This will take time and money. Remember, your mother lives in the village, far from the court.



Without a will, your mother cannot sell the property without the consent of the court (or the Master for more valuable houses). And the money for the children will be managed by the Guardian's Fund of the Master of the High Court. A quarterly allowance will be paid to the person who is caring for the child.

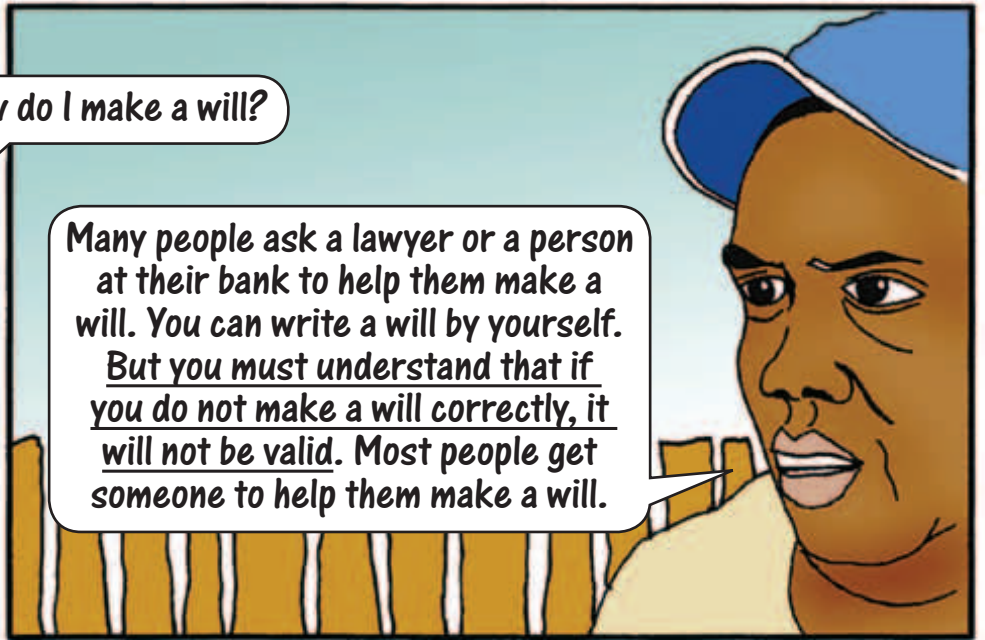


This is a lot of extra work. My mother is old and she will not want all this bother. Perhaps I should make a will.

Yes, you should.



How do I make a will?



Many people ask a lawyer or a person at their bank to help them make a will. You can write a will by yourself. But you must understand that if you do not make a will correctly, it will not be valid. Most people get someone to help them make a will.



What if I change my mind about who I want to leave my property to?



You can change your will at any time. But every time you make a change, you must follow the procedures for making a will - every change must be signed by yourself and witnesses.



Can I cancel my will?



Yes, you can. When you make a new will, you include a statement in it that this will cancels your previous will. If you fail to do this, the court will usually accept the will that you made closest to your death. But it is always best to write on your new will that it cancels all previous wills.

What can be written in a will

You can do any of the following:

- (1) **Say who will get specific items of your property.**
(For example, "I leave my wedding ring to my daughter Ruth.")
- (2) **Name the people who will generally inherit your property.**
(For example, "The rest of my property will be shared equally between my children.")
- (3) **Appoint a guardian to look after any minor children you may have.**
(For example, "I appoint my sister Ellen to look after my children.")
- (4) **Appoint an "executor" to supervise payment out of your property of any debts you owe when you die, and to supervise the distribution of the remaining property.**
(You can state that the executor may be assisted by someone else if necessary. It is a good idea to nominate a second executor in case the first executor dies before you do or is unable to perform his or her duties as an executor.)

Basic details to include in your will

Personal and family details

- (1) Your full name, age, identity number and permanent address.
- (2) Your marital status and whether you are married in or out of community of property, and the name of your spouse and his or her identity number.
- (3) The name, sex and age of each of your children, and whether each child is single or married. Details of who should be the custodian and guardian of your children if they are minors.
- (4) Details of the persons who will inherit. Details of what they will inherit.
- (5) The name and details of the executor (the person who manages the will and who is responsible for winding up the estate and making sure that the property is distributed properly).

Business and financial details

- (1) Your personal financial position (for example, what you own, what money you owe, and any policies you have, such as a life insurance policy).
- (2) You and your spouse's income tax numbers.
- (3) Your employment details, provident or pension fund beneficiaries and employer's address.
- (4) Your business details and duties (for example, the names and addresses of business partners, and instructions on whether a business you own should be sold or carried on).

What to do after a will is made

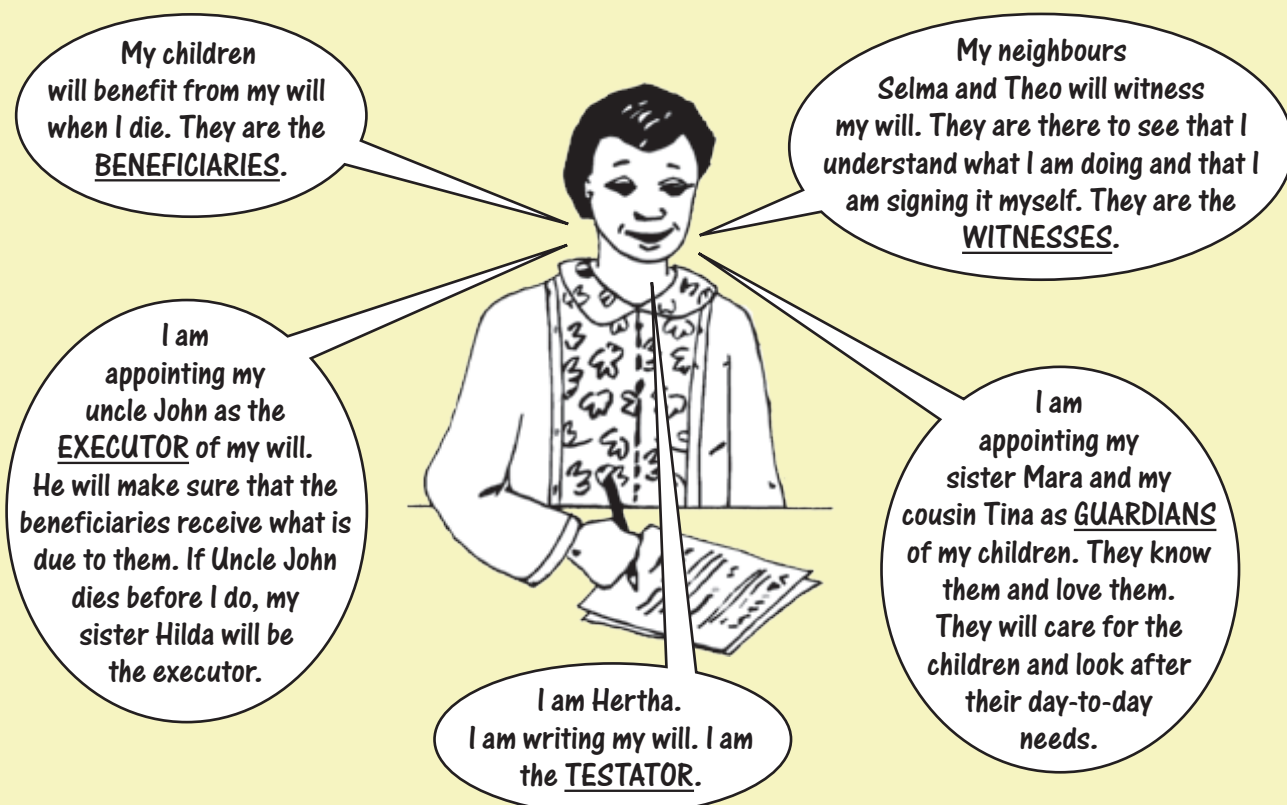
- (1) Give your will to a trusted friend, pastor, church elder, lawyer or bank manager, or keep it in a safe place. Make sure that the people who will benefit from your will know where it is kept. They will need the original signed copy when you die.
- (2) Regularly update the will to provide for changes in circumstances such as marriage, the birth of children, or buying a house or land.

Requirements for a will to be valid

It is very important to follow these instructions carefully, otherwise the will will be invalid:

- (1) The will must be in writing and signed in full at the end by the person making the will.
- (2) The person making the will may sign with a mark, such as a thumbprint, but a Commissioner of Oaths, such as a police officer or bank manager, must certify that he or she is certain of the identity of the person signing the will and that the document is the will of this person.
- (3) Somebody may sign the will on behalf of the person making the will. This will happen when the person making the will is unable to use his or her hands to sign the will (for example, the person may have a disability). The person signing the will and his or her spouse cannot benefit from the will.
- (4) The will must be signed or the mark must be made in the presence of two witnesses.
- (5) The witnesses must be at least 14 years of age and in sound mind. They must not receive anything from the will and must not be the nominated guardians of your children or the executors of your will.
- (6) The witnesses must sign the will after seeing that the person making the will has signed. The witnesses must sign the will in the presence of the person making the will and in the presence of each other. The witnesses must sign in full. They must not use initials or a mark.

If the will is longer than one page, the person making the will and the same witnesses must sign all the pages with their full signature. If the Commissioner of Oaths has certified a will signed with a mark, the same Commissioner must also sign all of the pages.



(Illustration adapted from the LAC Aids Law Unit publication entitled *Will Writing and Inheritance in Namibia*.)



Now I know why it is so important to make a will. I think that we should make one.

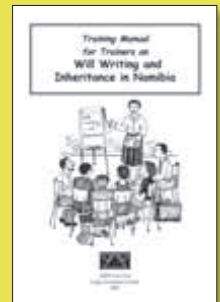
I am so happy. Thank you!



6 REASONS WHY IT IS IMPORTANT TO MAKE A WILL:

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This comic was developed using information from the LAC Aids Law Unit training manual on **Will Writing and Inheritance in Namibia**.



Please refer to this publication for more information.

The Aids Law Unit is able to help some people to make a will. If you would like to apply for assistance with making a will, please contact the Aids Law Unit.

If you would like to make a will, you can contact a lawyer or a bank, or you can make one by yourself, but remember that you must make a will correctly. If you do not make a will correctly, it will not be valid.

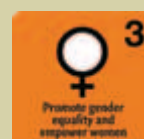
We would like to hear your feedback about this comic.

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Please note that the Legal Assistance Centre may not be able to assist you with specific details about making your own will.

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Electronic versions of this comic and the Aids Law Unit publication **Will Writing and Inheritance in Namibia** are available on the LAC website: www.lac.org.na



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