

No. 7, 1953.]

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.)

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—

- (i) "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; (i)
- (ii) "Court" means a provincial or local division of the Supreme Court of South Africa or the High Court of South-West Africa or any judge thereof; (ii)
- (iii) "Master" means a Master of the Supreme Court of South Africa, the Assistant Master at Kimberley or the Master of the High Court of South-West Africa; (iii)
- (iv) "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; (iv)
- (v) "will" includes a codicil and any other testamentary writing. (v)

Formalities required in the execution of a will.

2. (1) Subject to the provisions of section *three*—

- (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 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 is so signed by the testator or by such other person and by such witnesses; and
 - (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 direction of the testator, a magistrate, 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 magistrate, justice of the peace, commissioner of oaths or notary public who so certifies;
- (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 the testator is known to him and that he has satisfied himself that the deletion, addition, alteration or interlineation has been made by or at the request of the testator.

(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.

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.

(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 sub-sections (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.

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.

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 shall apply also in the Territory of South-West Africa.

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.

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 Great Britain and Ireland.	The whole.
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</i> to <i>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.