

**THE  
MAKING  
OF  
WILLS**

**GLORIA OFORI-BOADU**

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## INTRODUCTION

**The need for providing this information and education handbook.**

According to the committee of constitutional experts, who gave us proposals for a draft constitution of Ghana on July 31<sup>st</sup>, 1991, ***“the democratic order will only be meaningful if the humblest person in the remotest village or hamlet has been made aware of his or her constitutional rights and the prospects for enforcing such rights have been assured. Only then will the ordinary Ghanaian, feel he or she has a vested interest in the preservation of the constitution.”***

The constitutional rights of the Ghanaian are applicable to all and therefore the situation whereby laws are made with knowledge and adherence by a very small percentage of our populace is untenable and does not make for good socio-cultural and economic governance and development of the country.



# **Chapter 1**

## **WHAT IS A WILL ?**

In brief, what is a Will? A will is a written instrument made by a person of sound and sane mind and eighteen years and above, which disposes off any property to which the person making it is entitled to ***at the time of his or her death.***

The will takes effect only after the death of the person making the will. It is of no legal effect until death and can be changed as many times as possible by the person before death.

### **The Law on Wills in Ghana**

In Ghana, the making of a Will is such an important developmental issue that Parliament as far back as 1971, passed a law to direct us on how to make a will.

The number of the law is Act 360 and was signed by the President of Ghana on 3<sup>rd</sup> July, 1971.

## **WHAT IS A VALID WILL ?**

In order for a Will to be accepted as genuine, it must be written by the person freely and voluntarily. There must be no use of threats, force, lies or deceit to influence the person to make a Will. Where the person is illiterate, blind or too weak and frail to write his or her own Will, the person may direct someone to write the Will on the person's behalf.

Despite all the above fuss about writing a Will, Ghana is reported to have a situation whereby 64.5 % of the population are literate and 35.5 % of the total population are illiterate. A higher % of men 70% can read and write compared to that of women 51% who can read and write. So we can safely

write that there are 30% illiterate men as against 49% illiterate women in Ghana. However an illiterate or visually impaired person can also make a Will.

### **AN ILLITERATE OR BLIND PERSON CAN MAKE A WILL**

Where the testator is blind or illiterate he or she may direct another trusted person to write the Will on his or her behalf. However after writing the will, it must be read over, interpreted and explained to the Testator in a language which he or she understands, so that he or she approves before signing, thumb-printing or placing a mark on the Will.

There must be a declaration in the Will that the above procedure took place before the signing of the Will.

## **THE LANGUAGE, SIGNATURE, THUMB-PRINT OR MARK ON A WILL;**

A Will may be written in any language and may consist of any mode of producing words in visible form such as written, typewritten, printed, painted or etc. The person who makes the will is in law known as the "Testator". The person must sign the will with either the normal signature, initials, thumb-print or mark and the person must show that he or she wants the contents of the document to be implemented only after his or her death. However to forestall any doubts after a person dies that he or she made the will, the Testator must sign, thumb-print or make the mark on the Will in the presence of at least two or more witnesses who must be present at the same time to see the Testator signing, thumb-printing or making a mark on the Will.



## ***Chapter 2***

### **WITNESSING A WILL**

The witnesses need not see, read or know the contents of the will. They are only to witness that the Will was indeed made and signed by the Testator. They must all be present at the same time and see the signature, thumb-print or mark at the time it is being made and be made aware that it is the signing of a Will and not any other event which is taking place.

Since the witnesses must be present at the same time to witness the signing of the will, it implies that an illiterate person can be a witness to a will however a blind or visually impaired person cannot be a witness to the signing of the Will. There must be a form of writing in the Will with signature, thumb-

print or mark made by each of the witnesses, their names and addresses so that they can always be identified or contacted if they are still alive at the time of the death of the Testator and there is the need to do so.

### **CAN BENEFICIARIES IN A WILL BE WITNESSES TO THE WILL?**

Beneficiaries who have been named in the Will may be allowed to witness the Will if there are at least two other witnesses to the Will. However to avoid all doubts, it may be advisable that persons who stand to benefit from a Will are not made witnesses to the signing of that Will by the Testator.

## *Chapter 3*

# **WHO CAN BE MADE EXECUTORS TO A WILL**

When a person makes a will, it is important that a few persons are named in the Will and giving the responsibility to ensure that all the directives in the Will are implemented when the Testator dies. These persons who are in law called **Executors** may be trusted friends, relatives or even children of the deceased. However the minimum age that a person can be named as an executor in a Will, as required by the 1971 law on Wills, is twenty-one years. Unlike the position of a witness which has its limitations, a beneficiary in a Will can also be an executor to the Will.

Sometimes, a person may refer or make mention of another document such as a

vehicle ownership form or land title certificate or etc in the Will. To avoid any doubt, the document must be in existence at the time the Will was signed and it must be described with certainty in the Will.

## ***Chapter 4***

# **WHEN DOES A WILL TAKE EFFECT?**

A Will can only take effect after the testator's death so during one's lifetime, one may if he or she wishes or think it is important, change the Will as many times as possible. The testator can write another Will and indicate that the latest will is now the valid will and not the earlier ones. In this regard to avoid any doubt, the testator or a lawyer on behalf of the Testator, can write to the High Court Registrar, to assist in retrieving an earlier will which was deposited at the High court. (Refer to Appendices 1a. and b.)

### **USE OF SIMPLE WORDS IN THE WILL**

Since the testator will not be alive to explain the meaning of all words in the Will, it is important that Wills are written in as simple

a manner as possible using the natural meaning of words with no ambiguities or inconsistencies. When referring in the Will, to sums of monies and numbers, it is safer to write in words instead of figures so that nobody can change the figures.

### **WHERE CAN I KEEP THE WILL SAFE?**

You may deposit your Will in the High Court for safe custody. It currently costs less than ten (10) Ghana cedis to do so. The will can be sealed by yourself or with the seal of the High Court.

### **WHAT MAY I DO IF A PERSON WHOSE WILL I HAVE IN MY POSSESSION DIES?**

A person who has in his or her custody, the Will of a person who dies must within 14 days after having knowledge of the death of a deceased, deposit the Will in the High Court or in a nearby court which is not a High

court for the Will to be transferred to the nearest High court. There is a penalty for failing to do so. The High court will ensure that a date is set for the Will to be read and will ensure that all matters contained in the Will are safely and fairly implemented.

**WHAT MAY I DO IF A DECEASED RELATIVE DEPOSITED A WILL IN THE HIGH COURT AND WE HAVE A COPY OF THE RECEIPT?**

You or a lawyer acting with your instructions, may write a letter to the High Court Registrar to request for a search to be conducted at the High Court Registry for the will, with a copy of the receipt for deposit of the will. (Refer to Appendix 2)

**WHAT MAY I DO IF I BELIEVE A DECEASED RELATIVE DEPOSITED A WILL IN THE HIGH COURT BUT WE DO NOT HAVE A COPY?**

You or a lawyer acting with your instruction, may write a letter to the High Court Registrar to request for a search to be conducted at the High Court Registry, to find the will. (Refer Appendix 3)

### **PROVISION IN A WILL FOR PARENT, SPOUSE OR DEPENDANT-CHILDREN**

A parent, husband, wife or child under 18 years of a deceased person can apply to the High Court not later than three years after the Will is read and probate is granted, for reasonable provision from the estate of the deceased to be made to him or her. The Court may grant the request after determining the circumstances of the person or applicant.

### **LAWYERS CAN HELP YOU TO WRITE YOUR WILL**

Ghana has so many trained lawyers who can



help people to make their Wills and assist Wills to be read and an order or probate granted. The government has also set up the National Legal Aid Scheme in all the regions of the country to assist those who need legal aid services.

**HOW MAY A WILL LOOK LIKE? A SIMPLE  
WILL MAY READ AS FOLLOWS:**

**THE LAST WILL AND TESTAMENT OF  
AMA MANSA**

I, AMA MANSA of Hse. NO. JHS K4 2<sup>nd</sup> Street, Dadiesoaba and also of P.O. Box 5, Dadiesoaba in the Central region of Ghana, declare this document to be my last will and testament which I write on this 19<sup>th</sup> day of February, 2005 as follows:

- I. I appoint my brother Kofi Mensa, my friend Akosua and my daughter Afua

Mansa as the executors of my will

I direct that my funeral expenses and testamentary debts be paid.

- 2 I bequeath all my properties and possessions owned by me at the time of my death to my existing children Afua, Kofi, Adjoa and Mamaa Mansa and direct that the said properties be owned by them in equal shares. The properties and possessions INCLUDE the following;
  1. All my household furniture and furnishings;
  2. All my books, jewels, shoes and bags;
  3. All my cars including my white Nissan Patrol GT 707014R-15 numbered and my Black Opel numbered AS 61450;

4. All my interest in the properties of my father, the late Nana Mensa
5. My house number AMA K4 Okponglo, Accra;
6. My plot with Land registration number.. located at Adenta Lotto Kiosk, Accra and any house developed on it;
7. My plots at Nmaisie, Kusai, Lansie;
8.
  - a. My account number 02004 at the DLC Bank Ltd., British Road Branch Cape Coast, Ghana
  - b. My savings and current accounts numbers 224478 and 225 478 respectively at the CBSS Bank Ltd., Haatso Branch Accra, Ghana
  - c. My savings account no. 101010 in the NBC Bank,

Briggs Road Branch, Newark,  
New Jersey, 21001 USA.

- d. My savings account no. 22222  
in the BBC Bank, Liverpool  
street Brach London, E.1  
ORD, U.K.

All properties, movable and immovable, of  
whatever description, which I shall die  
possessed of or to which I shall be entitled at  
the time of my death but which I have not  
otherwise disposed of in this will shall be  
vested in my spouse who I direct to fairly and  
equitably manage same for himself and all  
my children.

SIGNED, SEALED AND DELIVERED BY THE  
WITHIN-NAMED TESTATOR, AMA MANSA,  
ON THE 19<sup>TH</sup> DAY OF FEBRUARY, 2005

.....  
TESTATOR

In the presence of witnesses, being present at the same time;

Name of witness:

Name of witness:

Address:

Address:

Signature:

Signature:

## **APPENDIX 1 A.**

*ANY LAWYERS CONTACT DETAILS INCLUDING ADDRESS*

*Date:*

*Your Ref:*

*The Registrar*

*High Court*

*Accra*

Dear Sir/Madam

### **APPLICATION TO RETRIEVE THE LAST WILL AND TESTAMENT OF AMA MANSA**

I humbly write to apply for the retrieval of the last will and testament of my client, Ama Mansa which was deposited at the High Court for safe custody on the twenty-fifth day of January, 1999.

A copy of the receipt of deposit of the will and a passport photo of the testator is hereby attached to this letter.

We thank you for your cooperation.

Yours faithfully

SIGNED

BARRISTER AND SOLICITOR

## **APPENDIX 1. B**

*ANY LAWYERS CONTACT DETAILS INCLUDING ADDRESS*

*Date:*

*Your Ref:*

*The Registrar*

*High Court*

*Accra*

Dear Sir/Madam

### **APPLICATION TO RETRIEVE THE LAST WILL AND TESTAMENT OF PATRICK KOJO MENSAH**

I humbly write to apply for the retrieval of the last will and testament of my client Patrick Kojo Mensa which was deposited at the High Court for safe custody on the twenty-first of March, 1996.

A copy of the receipt and a passport photo of the testator is hereby attached to this letter.

We thank you for your co-operation.

Yours faithfully

Signed

Lawyer.



## **APPENDIX 2**

*ANY LAWYERS CONTACT DETAILS INCLUDING  
ADDRESS*

*Date:*

*Your Ref*

*The Registrar*

*High court*

*Accra*

Dear Sir/Madam

### **APPLICATION FOR A SEARCH FOR THE LAST WILL AND TESTAMENT OF AMA MANSA (deceased)**

Please kindly cause a search to be conducted for the last will and testament of my client, Ama Mansa (deceased) who died on 7<sup>th</sup> January, 2016 and whose will was deposited at the High Court for safe custody on the twenty-fifth day of January, 1999.

A copy of the receipt of deposit of the will is hereby attached to this letter.

We thank you for your cooperation.

Yours faithfully

SIGNED

BARRISTER AND SOLICITOR

### **APPENDIX 3**

ANY LAWYERS CONTACT DETAILS INCLUD-ING  
ADDRESS

*Date:*

*Your Ref*

*The Registrar*

*High court*

*Accra*

Dear Sir/Madam

#### **JUDICIAL SEARCH**

Please cause a judicial search to be done on the following request whether or not Madam Mansa deposited a will at the Registry of this court. If so when and whether or not the will has been read? If so when?

Please endorse finding.

Signed

Lawyer.