HOW OFTEN SHOULD YOU UPDATE YOUR WILL?

Making a Will is one of the most important steps you can take to protect your family and your estate. Once it has been signed, witnessed and tucked away safely, it is tempting to assume the job is done for good. The trouble is that life in Kenya, like everywhere else, rarely stands still. Marriages happen, families grow, land is bought and sold, businesses are started and the people you once trusted to administer your estate may no longer be the right choice. A Will drafted several years ago under the **Law of Succession Act (Cap. 160)** may no longer achieve what you would want today and, in some cases, it may not even be valid anymore. So, how often should you review your Will?

While there is no statutory timeline under Kenyan law requiring a Will to be reviewed, amended or updated at a particular interval, it is generally good succession planning practice to get in touch with your Advocate at least every few years to update your Will or sooner whenever a significant change occurs in your circumstances.

A review or update of a Will does not necessarily mean preparing a new Will. In many cases, it simply confirms that your existing wishes and arrangements remain appropriate and continue to reflect your current circumstances and intentions. Regularly reviewing your Will helps ensure that your estate will be distributed in accordance with your wishes and can reduce the risk of uncertainty, disputes and prolonged succession proceedings among your beneficiaries.

You should, however, consider updating or reviewing your Will sooner if any of the following apply:

1. **When you get married;** This is one of the most important triggers to update/review your Will in Kenya as it has a specific legal consequence. Section 19 of the Law of Succession Act provides that a Will is automatically revoked by the marriage of the maker, unless the Will was expressly made "in contemplation of marriage" to a named person. This means that if you made a Will while single and later marry, your earlier Will

is void and your estate could fall under the intestacy rules unless you make a fresh Will.

If you are planning to marry whether under the Marriage Act, 2014 in a civil, Christian, Hindu, customary or Islamic ceremony it is worth having your Will reviewed/updated or expressly drafted in contemplation of that marriage before the wedding rather than afterwards. Where appropriate, the Will should expressly be made in contemplation of that marriage. This is particularly important where the marriage may be potentially polygamous as recognised under the Marriage Act, 2014, since the existence of multiple spouses plus their respective children can significantly affect the distribution and administration of an estate. Taking legal advice before marriage can help ensure that your Will properly reflects your intentions while providing greater certainty for your spouse, children and other intended beneficiaries.

2. **You separate or divorce;** unlike some other jurisdictions, Kenyan law does not automatically cancel gifts to a spouse when a marriage ends in divorce. Consequently, unless you review and amend your Will after separation or divorce, your former spouse may remain entitled to inherit in accordance with the terms of your existing Will.

The position is further complicated by the fact that a former spouse may qualify as a dependant for purposes of a claim for reasonable provision from an estate. Section 29 of the Law of Succession Act includes a spouse or former spouse of the deceased within the definition of a dependant, whether or not that person was being maintained by the deceased immediately before death. Therefore, even where a former spouse has been excluded from your Will, they may in appropriate circumstances seek reasonable provision from your estate under Section 26 of the Act. It is therefore prudent to review your Will as soon as separation occurs and again once the divorce is finalized.

3. **A child is born;** The arrival of a child should prompt an immediate review or update of your Will, both to include the child as a beneficiary and, where appropriate, to appoint a guardian to care for them if you and the other parent die before they attain adulthood. Guardianship arrangements should be made in accordance with the Children Act, 2022 and reviewed periodically as family circumstances change, since the person best placed to care for your child at one stage of their life may not necessarily remain the best choice in the future.

Where a child is to inherit property before attaining adulthood, the Will should also clearly provide how and by whom the inheritance will be held and managed on the child's behalf, and when it should be transferred to them. This should be addressed expressly in the Will to avoid uncertainty and ensure that the child's inheritance is properly protected and managed.

4. **Someone named in your Will dies or a dependant is overlooked;** If a beneficiary, executor, trustee or guardian named in your Will has died, become seriously ill, lost mental capacity, moved abroad or is otherwise no longer an appropriate person to serve in that role, your Will should be reviewed. Where no suitable substitute has been appointed, the administration of your estate may become unnecessarily complicated and could increase the risk of disputes during the succession process.

Kenyan succession law places significant importance on the protection of dependants. In ***Dadhialla v Chaudri (Sued as Executor of the Estate of Gurdip Kaur Sagoo) & 2 others (Civil Appeal E309 of 2021) [2025] KECA 728 (KLR)***, the Court of Appeal reaffirmed that while a testator generally has freedom to determine how their estate should be distributed, that freedom is not absolute. Under Sections 26 and 29 of the Law of Succession Act, the court may intervene where reasonable provision has not been made for a dependant, including a child who may have been excluded from the Will.

The court has also affirmed that each spouse's Will operates independently, even where spouses make similar or identical Wills at the same time. Accordingly, the validity and effect of each Will must be considered separately, including where spouses die in circumstances where the order of death is uncertain.

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If you intend to exclude a dependant from your Will, it is prudent to record the reasons for that decision clearly and carefully in the Will. While this does not prevent a dependant from making a claim for reasonable provision, a clear record of your reasons may assist the court in understanding your intentions should the Will later be challenged.

5. Your relationships change; Not every significant change in a relationship involves marriage or divorce. Long-term cohabiting partners sometimes informally referred to as "come-we-stay" relationships should not assume that they will automatically inherit in the same way as a legally recognised spouse.

Kenyan courts have, in appropriate cases, recognised a presumption of marriage where a couple has lived together for a significant period and held themselves out as husband and wife. However, whether such a relationship amounts to a marriage remains highly fact-specific and can be disputed. A Will therefore provides the clearest way to record your intention to provide for a partner and protect their inheritance.

Polygamous families can present even greater succession complexities. You may wish to provide for a current spouse while protecting the interests of children from a previous marriage or relationship or make specific arrangements for children and beneficiaries across different households. A carefully drafted Will can help make these intentions clear and reduce the risk of disputes. Where customary law, multiple spouses, previous relationships or children from different households are involved, tailored legal advice is particularly important to ensure that your Will properly reflects your wishes while taking into account the Law of Succession Act and any applicable customary law.

6. Your finances change significantly; A Will drafted when your estate was modest may no longer reflect its current value or structure. You should consider reviewing your Will if you buy or sell land, property or other significant assets, receive an inheritance, start, expand or sell a business, acquire assets outside Kenya or experience a significant increase or decrease in your wealth.

Land remains one of the most common sources of disputes in Kenyan succession matters. It is important that your Will accurately identifies each parcel by its correct title or parcel number and reflects the current ownership position, particularly where land is jointly registered, held in trust or has been subdivided.

You should also consider the Matrimonial Property Act, 2013, which governs the rights and interests of spouses in matrimonial property. Significant changes in matrimonial property, such as property registered in joint names or acquired through the contribution of both spouses, may affect what ultimately forms part of your free estate available for distribution under your Will.

7. You start or sell a business; Business owners should review their Wills alongside their broader business succession and ownership arrangements. Your Will may need to address shares in a limited company, partnership interests or an interest in a family business. These provisions should be consistent with the company's articles of association, shareholders' agreement, partnership agreement or other governing documents. Any change in the ownership structure, shareholding, business interests or succession plans should prompt a review of your Will and related business documents.

8. You change your mind about an executor; Executors are responsible for applying for a grant of probate, settling the deceased's debts and taxes, and administering and distributing the estate in accordance with the Will. The people you originally appointed may, however, no longer be willing, able or suitable to act. They may have passed away, relocated, become unable to act or your relationship with them may have changed. It is therefore advisable to review your choice of executors periodically and consider appointing substitute executors.

9. Your Will contains a specific gift; Specific gifts can create difficulties if the asset described in the Will no longer exists when you die. This may happen where a particular plot of land, vehicle, bank account or other property has been sold, subdivided, transferred or replaced.

In such circumstances, the beneficiary may not automatically be entitled to the sale proceeds or the replacement asset. Regularly reviewing your Will helps ensure that specific gifts remain relevant, that the assets still exist, and that the provisions continue to reflect your wishes.

CAN YOU SIMPLY WRITE CHANGES ON THE ORIGINAL WILL?

No. You should never cross out clauses, add handwritten notes or attach informal instructions to a signed Will.

Under Section 18 of the Law of Succession Act, a Will or any part of it, may only be revoked by another Will or codicil that clearly expresses an intention to revoke it or by the testator or someone acting at the testator's direction, deliberately burning, tearing or otherwise destroying the Will with the intention of revoking it. A written Will cannot be revoked by an oral Will. Similarly, Section 20 provides that any obliteration, interlineation or alteration made after a Will has been executed has no legal effect unless the alteration is separately executed and witnessed in the same manner as the Will.

Formal changes should therefore be made through a duly executed codicil where the amendments are minor or through a new Will where the changes are more substantial. Where a new Will is prepared, it should expressly revoke all previous Wills and codicils and comply with the applicable statutory formalities, including those relating to testamentary capacity and execution before at least two competent witnesses.

REVIEWING YOUR WILL DOES NOT HAVE TO BE COMPLICATED

A Will review or update is usually a straightforward conversation with your advocate. They will ask whether anything has changed in your family, relationships, finances, assets, business interests or wider wishes since your Will was last signed. They can then advise whether your existing Will continues to reflect your intentions or whether a codicil or new Will is necessary.

This is particularly important as Kenyan families and estates become more complex. Changes in family structures, cohabiting relationships, blended and polygamous families, matrimonial property arrangements, business interests, and the growing range of digital and financial assets can all affect how your estate should be planned.

It is also important to remember that disputes over an estate can become significantly more difficult once the succession process begins. While the law protects testamentary freedom, it also allows the court to make reasonable provision for dependants in appropriate circumstances. A carefully drafted and regularly reviewed Will can therefore help clarify your wishes, address changes in your circumstances, and reduce the risk of disputes after your death.

IS IT TIME TO LOOK AT YOURS AGAIN? HERE'S HOW WE CAN HELP

If it has been a while since you made, last reviewed or updated your Will or if there has been a significant change in your family, relationships, finances, assets or business interests, it may be time to have it reviewed.

At CM Advocates LLP, we help individuals and families put in place practical estate and succession planning arrangements that reflect their circumstances, protect their interests, and give effect to their long-term wishes.

Our services include:

- Reviewing and updating existing Wills;
- Drafting Wills and codicils;
- Advising on the appointment of executors, trustees and guardians;
- Establishing and registering family trusts and other appropriate trust structures;
- Advising on succession and inter-generational wealth planning;
- Advising on the ownership and transfer of property, business interests and other assets;
- Advising on family business succession and governance; and
- Assisting with probate, estate administration and succession matters.

Through our **Wealth, Estate, Legacy & Lifestyle (WELL) Practice Unit**, we provide integrated advice on family trusts, succession planning, asset protection, family business succession and inter-generational wealth transfer.

Your Will should reflect the life you have today, not the life you had when it was signed. If your circumstances have changed, we can help you review your arrangements and ensure your wishes are properly documented and protected.

This publication is provided for general information purposes only and does not constitute legal advice. Specific legal advice should be obtained for individual matters. should not be construed as a legal opinion or advise. If you need any further clarifications, please do not hesitate to contact ***Kelvin Mwaniki, Senior Associate*** (***kmwaniki@cmadvocates.com***) or your usual contact at our firm, for legal advice.

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