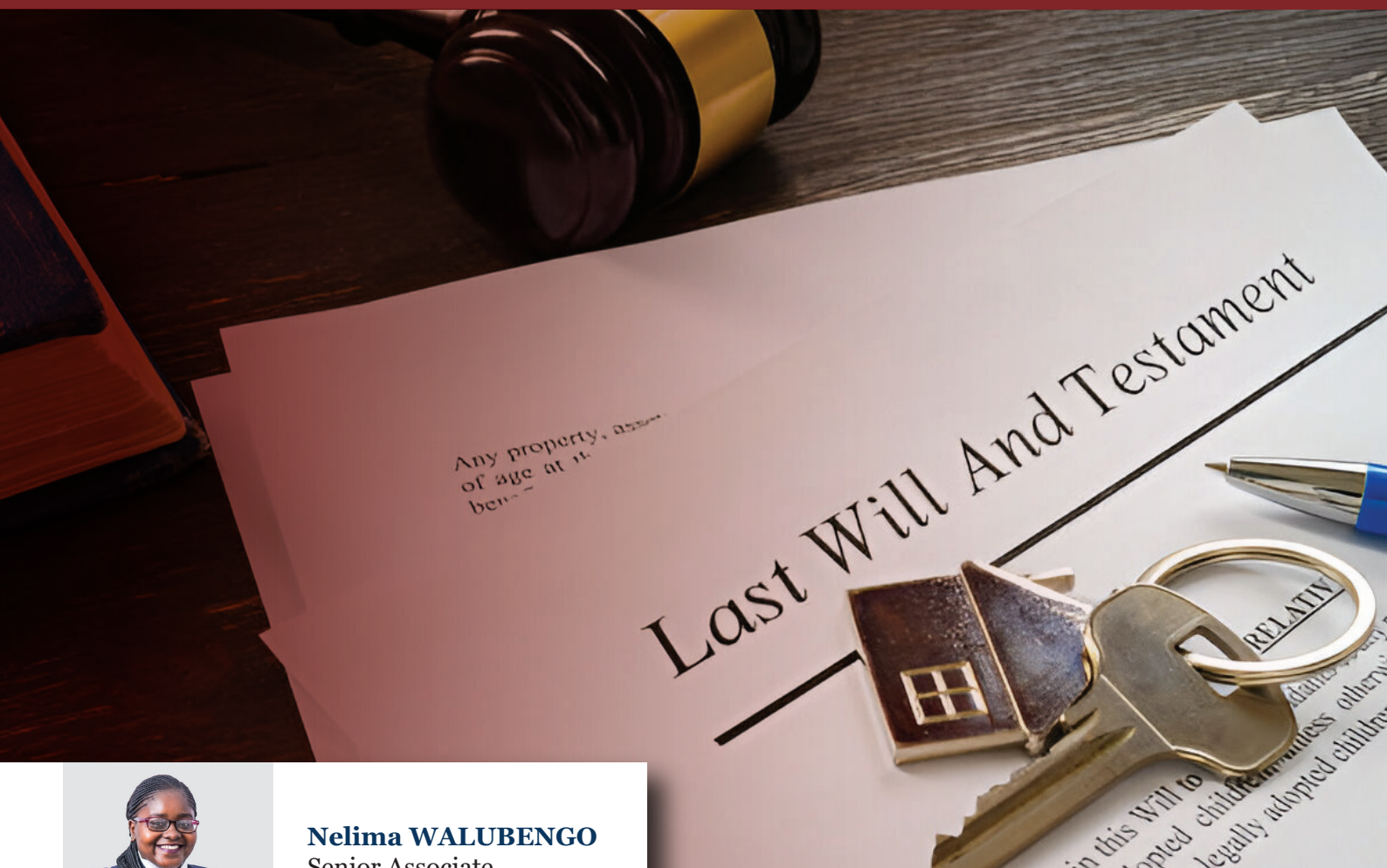




CM ADVOCATES LLP

## LOOPHOLES THAT MAY EXPOSE YOUR WILL TO CONTEST



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### INTRODUCTION

With each passing day, more people are embracing estate planning, with great preference given to the preparation of a will. A will has been defined as a legal declaration by a person of their wishes/intentions regarding the disposition of their property after their death, duly made and executed as required by the law. To this end, various jurisdictions have specific legal requirements for a will to be considered as valid or as one that would be recognized by the law.

The benefits of estate planning by having a will are manifold and have been discussed extensively in our previous articles; key among them is that it allows the testator (will maker) to control the distribution of their assets upon their demise, appoint legal guardians for their children, provide for charities of their choice among other benefits.

With these good intentions in mind, here are a few loopholes to avoid contest of your will.

1. Lack of capacity.
  - a) Age - a person under 18 years does not have the legal capacity to prepare a will. Such a Will is deemed to have no legal effect from its inception.
  - b) Status of mind-where the testator's state of mind is suspected to be affected by mental or physical illness, drunkenness or other cause so as not to know what they were doing when creating the will, such will is open to contest.
  - c) Where the will was prepared and there is suspicion that the making of such will was induced by fraud, undue influence (coercion), mistake or by/in circumstances that take away the free agency of the testator. It is worth noting that these circumstances vary from case to case and need to be proved by whoever is alleging.
2. If the will is not witnessed by two or more independent and competent witnesses.
3. Where the witnesses are beneficiaries, failure to have the same witnessed by two or more other independent and competent witnesses exposes the will to contest.
4. Oral wills made without the testator revoking his written will are open to contest.
5. Failure to update your will upon marriage - A Will is automatically revoked when the testator subsequently gets married, unless the Will was made in express contemplation of the marriage with the specified person.
6. Unattested changes in the will such as amending a title number or beneficiary.
7. Failure to provide for dependants.
8. Failure to cater for liabilities.
9. Failure to bequest assets to all beneficiaries. This raises the questions of testamentary capacity (<https://shorturl.at/kACIV>), versus provision for dependants and beneficiaries.
10. Ambiguous provisions in the will.
11. Making implied dispositions rather than express dispositions. While the law provides that an implication will not override an express disposition, this exposes the will to contests.
12. For Islamic testator fathers, dispositions in the will for a child born out of a legal marriage to the mother of the child.
13. Conditional gifts under the will that require performance of illegal acts as a precursor for the beneficiary to receive their bequest, conditions contrary to law, morality or public policy or uncertain/vague conditions.
14. Where property bequeathed in the will does not belong to the testator e.g. registered owner is a company, or has been converted into property of a different kind e.g. land has been subdivided, the gift will not take effect by reason of the subject having been withdrawn from the operation of the will.

<https://shorturl.at/luBS8>

## Conclusion

Consulting with a family law advocate specialized in estate planning and succession can help one avoid these costly loopholes as they prepare a will. Having a will that is prone to being invalidated does not serve the intention of the testator which is to settle his legacy and beneficiaries in the way they deem best and instead throws the family into long and protracted litigation.

## HOW CAN CM ADVOCATES HELP?

CM Advocates LLP has highly qualified and specialized advocates who are experienced in matters corporate law as debt recovery, corporate restructuring and insolvency matters. In the event that you are experiencing financial difficulties in your company and are concerned about what to do or if you want to explore your options when it comes to restructuring of debt, you can contact one of our team members today to discuss your options. Remember, a stitch in time saves nine.



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