

**TUMEKUTANA 2015**  
**Legal Empowerment for Women**  
**Law of Succession & Inheritance**  
**Issues in Africa**

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**Inheritance in Africa**  
**September 2015**

# Presentation Outline

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4. Consequences
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1. Ensuring Equality in Inheritance: Sharing Ghana's Experience
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7. Way Forward
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9. The Role of the Church

## Part II

### Wills

# 1. Inheritance in Africa

- The Role Patriarchy (male control) plays
  - Lineage and property are passed through males
  - The consequence is that male children are preferred as they are the entry point for access to property.

## 2. Underlying Assumptions

Patriarchy therefore promotes assumptions that affect inheritance.

i.e. women

- are valued for reproduction
- do not/can not own property, especially land
- are not part of their husbands' economic unit (marriage may unite families, but is not seen as not conferring economic rights on women).

# 3. Practical Implications

**Discrimination:** on the basis of

- males and females
  - Quantum: males receive more than females in any situation, and tend to receive real estate items
- Forms of marriage – the effect of plural legal systems
  - Under legal regimes in Africa, those married under Statutory Law tended to receive more than those married under customary law (even here men tend to receive more than women) even though women contribute substantially to marital property, and there is a growing recognition for unpaid care work.



- whether or not children are born in wedlock
  - (– where girls born out of wedlock tend to receive less than boys similarly situated)
- Religion: a mixed bag
  - Under the Marriage of Mohammedans Ordinance: males receive twice as much as females.
  - Role of the Basel Mission: in attempting to ensure fairness in distribution, introduced *Regulation Practices and Procedure Rule 235* (allocating  $\frac{1}{3}$  each to wife, children and family) in the Akim Abuakwa Presbyterian Church of Ghana. However, it was held that this amounted to a domestic arrangement, and that religion does not determine one's personal Law.

- Culture

- Laws have not kept up with practical realities: as today, family finances are co-mingled - with women paying for the “consumables/intangibles” yet not ensuring that the tangibles acquired reflect their contribution.

**Will-making**, which would have provided a less contentious alternative, is not widely embraced for various reasons.

# 4. Consequences

Inheritance is extended to

- Property
  - including the self acquired property of the deceased
- People
  - even the widow is “inherited” (through levirate, sororate marriages, and is subjected to harmful practices such as cleansing etc.)
- Positions
  - businesses that are governed by a separate legal regime (shareholding - Appau v. Ocansey [1992-93] Ghana Bar Law Reports) tend to be appropriated.



# Consequences

- Eviction from (marital) property

- Harassment & Ostracization

Resulting in:

- Health/psychological damage
- Migration (to natal family, urban areas, exposure to humiliation, risks and precarious occupations)
- Cycle of Poverty
- Fragmentation of the Estate

# 5. International and Regional Frameworks

## International:

### A. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW):

Article 1 of the Convention provides that there should be equality between men and women in the enjoyment of rights.

### B. CEDAW General Recommendation 29

Article. 1 provides,

Indeed, women often do not equally enjoy their family's economic wealth and gains, and they usually bear greater cost than men upon the breakdown of the family and may be left destitute upon widowhood, especially if they have children and particularly where the State provides little or no economic safety net.

**CEDAW General Recommendation 29 notes the following**

## **Property rights after death**

Many States by law or custom, **deny** widows *equality* with widowers as to inheritance, leaving them economically vulnerable upon the death of a spouse.

Some legal systems **formally provide** widows with other means of economic security, but in practice these **may not be enforced**.

Where customary forms of landholding limit individual purchase or transfer and only grant the right of use, upon the death of the husband, the spouse may **be made to leave** the land **or marry** a brother of the deceased in order to remain. The **presence of children** may have a bearing on the decisions.

In some instances, **property-grabbing/banishment** of the widow is tolerated.

# General Recommendation 29 (cont.)

States **should ensure** that intestate succession laws comply with the principles of the Convention, i.e.:

- *Equal* treatment of surviving females and males;
- customary succession to use land is not based on forced marriage or on the existence or absence of minor children of the marriage;
- That disinheritance of the surviving spouse is prohibited;
- That “property dispossession/grabbing” is criminalized and that offenders are punished



## B. Regional Frameworks:

### **Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol), Adopted in Maputo, 11 July 2003**

Article 21 on the Right to Inheritance provides,

- (1) A widow shall have the right to an equitable share in the inheritance of the property of her husband. A widow shall have the right to continue to live in the matrimonial house. In case of remarriage, she shall retain this right if the house belongs to her or she has inherited it.
- (2) Women and men shall have the right to inherit, in equitable shares, their parents' properties.



## 6. How do we Ensure Equality in Inheritance? Sharing Ghana's Experience: 6.1 The Intestate Succession Law/Bill & the Domestic Violence Law

### A. The Domestic Violence Law:

#### Economic Abuse:

**deprivation** or threatened deprivation of economic or financial resources which a person is entitled to by law, **disposition** or threatened disposition of moveable or immovable property in which another person has a material interest and

**hiding** or **hindering** the use of property or

**damaging** or **destroying** property in which another person has a material interest;

## **Psychological violence**

emotional, verbal or psychological abuse namely any conduct that makes another person feel constantly unhappy, miserable, humiliated, ridiculed, afraid, jittery or depressed or to feel inadequate or worthless;

## **Sanctions s. 3 (2) & (3):**

a maximum fine of 500 penalty units or two years imprisonment or both. Additionally, the Court may order the offender to pay compensation.

## B. The Intestate Succession Law/Bill

- The Law was intended to prevent members of the extended family taking over the assets of the deceased for their own use to the detriment of the surviving spouse and children of the deceased.
- Prior to the passage of the law, intestate succession was governed by various laws, i.e.
  1. **Customary Law:** which had different application depending on whether one's personal law was matrilineal or patrilineal.

## 2. The Marriage Ordinance, Cap 127

The apportionment of the estate in fractions, however, created insecurity by not identifying any specific items of the estate as definitely going to one particular group or the other.

Also, the rules of succession under the Ordinance were discriminatory. A widower got more of his deceased wife's property than a widow did in respect of her husband's property. The rules applied were archaic and frequently inaccessible and needed reform.



### 3. The Marriage of Mohammedans Ordinance, Cap 129

This was hardly ever enforced. The provisions for registration in the Ordinance were hardly used. The one-week time limit and the process of resort to the courts where the period had lapsed were not user-friendly. The existence and situation of the registers was even less common knowledge either to Muslims or to the legal profession.

- In all these systems, women received less than men or nothing at all.



## 6.2 Sharing Ghana's Experience: Features of a Responsive Inheritance Law

1. A **unified system** of inheritance which does not distinguish between
  - males and females, (i.e. it should be gender-neutral providing equal rights to inherit personal items and landed property)
  - form of marriage
  - religion
  - systems of customary law
2. **Defines the Property**
  - **self-acquired properties** which the Deceased has acquired or owns in his/her own right.

3. **Recognizes contribution**, and increases the share a surviving spouse who has made a contribution is entitled to. Contribution is defined to include:

(a) the payment of money or rendering of service for the acquisition of property;

(b) care of a child, the aged, infirm, a relative or dependant of a spouse;

(c) giving up a higher standard of living than would otherwise have been available;

(d) giving material assistance, support or otherwise by one spouse to the other which

(i) enables the other spouse to acquire a qualification, or

(ii) aids the other spouse to carry on that spouse's occupation or business;

- (e) the management of the household and the discharge of household duties;
- (f) the payment of money or rendering of service to maintain or increase the value of property; and
- (g) work on a farm or business of a spouse;

#### 4. Reserves Exclusive Inheritance

- to the spouse and children of a **house and household chattel** (i.e. personal items, furniture or “movable property” in domestic use)

5. **Specifies Categories of Persons entitled to inherit; e.g.**
  - a. Spouse (married under any of the forms of marriage recognized by law)
  - b. Children (wide definition: to include biological, adopted, so-declared by law, recognized by the deceased)
    - Circumstances in which grandchildren of the estate can inherit
  - c. Parents (adoptive and natural)
  - d. Those entitled to succeed under the deceased's customary law
6. **Provides for Specific Proportions and Permutations**
7. **Outlines Offences and Provides for Sanctions**
  - a. Ejection of spouse
  - b. Interference with Property, including
    - removes, destroys or otherwise unlawfully interferes
    - locking up the property of the deceased
    - taking possession of household property within the matrimonial home
8. **Gives surviving Spouse and children priority in obtaining Letters of Administration**



# 7. Way Forward

- Compliance with international Instruments
- Advocacy
  - for ratification and domestication of international instruments (CEDAW & the Maputo Protocol); making the linkage between human rights and the message of the church
- Test Litigation (and Complaints procedures available under Conventions)



# 8. Challenges

- Awareness of the laws
- Access to Justice
- Influence of families discouraging aggrieved spouses from seeking legal redress

# 9. The Role of the Church

- Empowering education
- Dynamic interpretation of Scripture
- Social Services/Skills Training
- Counseling services
- Will-making

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WILLS

# WILLS

## Definition

**A Will is a declaration by which the person making it (the Testator/Testatrix) provides for the distribution or administration of property after his death.**

Osborn's Concise Law Dictionary, Eighth Edition.



# Features

- It may be changed as often as the Testator wants to until his death which makes it operative and binding.
- The moment the Testator dies, the Will “freezes”; no more changes can be made to it.
- If the Will has been drafted according to the provisions of the law, effect is given to it.
- A Will should be in writing, and signed by the Testator.

# Why should you make a Will?

A Will ensures that

- Your desires for your own property are expressed and carried out.
- There is clarity and order in the management of your affairs after death, since you know your circumstances.
- Your choice in the appointment of Executors and Guardians (for your children) prevails.
- No one arbitrarily decides which of your properties should be distributed to anyone (as in PNDC Law 111) .
- Your property is not fragmented.

## Who may make a Will?

- Adults of Sound Mind

# SAMPLE WILL

## LAST WILL AND TESTAMENT

THIS IS THE LAST WILL AND TESTAMENT OF MADAM ENYO GAKPO OF HO IN THE VOLTA REGION OF THE REPUBLIC OF GHANA.

1. I hereby revoke all previous Wills Codicils and other Testamentary documents Dispositions declarations made by me.
2. I appoint Mr. Kofi Mensah of Halleluiah Stores, Takoradi, and my sister Mrs. Hannah Asare as Executors of my Will.
3. I direct that on my death I be laid in state in Accra, and buried in my hometown, Ho.

# SAMPLE WILL

4. I devise to my husband and all my children, Juliet Ofori born to Mr. Michael Ofori in 1966; Charity, Patience and Angela, John, and Matthew Gakpo my house in Ho Bankoe.

5. I devise to my children, my Estate House, House No. 6/17 A on Mango Street, Tesano Accra. They are to rent the building and share the proceeds in equal shares.

On the death of the last of them, the building should pass on to my Church, The Holy Ones for use as a residence for their pastors.



# SAMPLE WILL

6. I bequeath to my husband Besa Gakpo my Spare Parts Store situated in Kokomlemle, Accra. He is to manage my trading activities jointly with my daughter Juliet and maintain the household from the proceeds.
  
7. I bequeath to my parents, John and Mary Tawiah my corn mill ~~at the~~ market roundabout in Ho.
  
8. I direct that all monies in my Bank accounts at Unibank, Barclays Bank, and Zenith Bank be converted to Treasury Bills or other investment, and the interest applied to the educational expenses of my two sons, John and Matthew Gakpo.
  
9. I direct that any other property I may die possessed of be given to all my daughters, Juliet Charity, Patience and Angela.

# SAMPLE WILL (cont.)

.....  
Testatrix

Date



Signed by the Above-named Testatrix as her Last Will and Testament in the presence of us both being present at the same time and we at her request and in her presence and in the presence of each other have subscribed our names as attesting witnesses to the execution of this Will by the Testatrix.

# SAMPLE WILL

## Blind/Illiterate Testator

.....  
Testatrix  
Date

Signed by the Above-named Testatrix as her Last Will and Testament in the presence of us both present at the same time after the contents herein had been read and explained to her by [NAME OCCUPATION, ADDRESS of the person explaining] in the ...language, and he seemed perfectly to understand and approve of same before his hand was guided by the said ... to the appropriate place on this Will to sign and we at her request and in her presence and in the presence of each other have subscribed our names as attesting witnesses to the execution of this Will by the Testatrix.

# Wills

The person who explained the Will must also make a declaration that he explained the Will, indicate the language, the disability of the Testator, and that the Testator seemed to understand and approve of its contents before executing it.

Where the Testator is blind or illiterate the court will not grant probate of the Will unless it is satisfied that the Will was read over to the Deceased before its execution or that he had knowledge of its contents.

Blindness does not mean total blindness but incapacity of reading the Will.



# SAMPLE WILL

## Witnesses

1. Full Name.....  
Occupation.....  
Signature.....  
Address.....

2. Witness  
Full Name.....  
Occupation.....  
Signature.....  
Address.....

# Points to Note

## Alterations

- Courts scrutinize Wills carefully for any writings in-between the lines (interlineations), alterations, erasures, or cancellations which may imply fraud. Modifications should be executed and attested by the Testator and two witnesses all of whom were present at the same time.
- A will should be free from fraud, undue influence and duress.