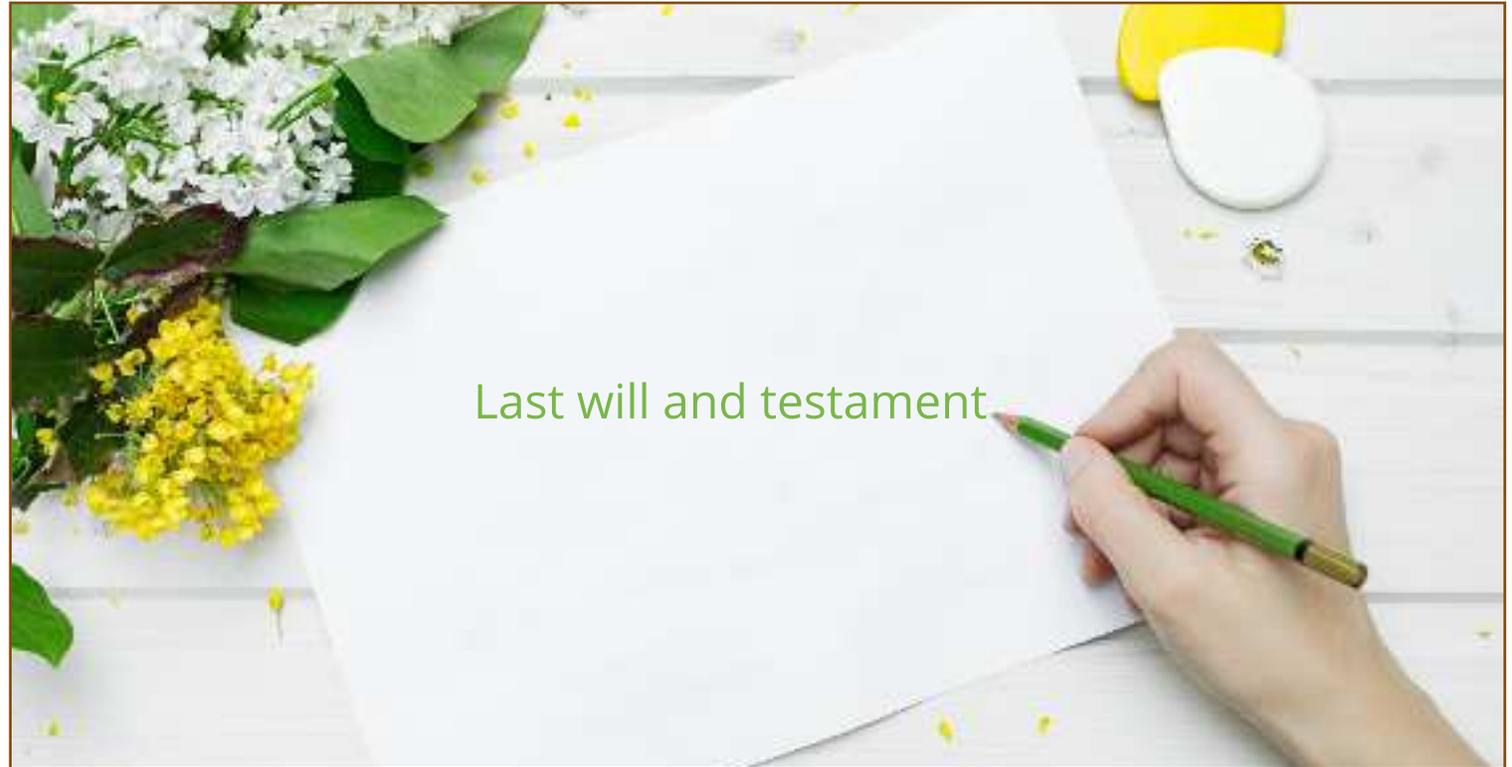




Reasons for Challenging a Will

By Judith A. Kanyoko



Last will and testament

A will is meant to protect the interests of the deceased, his property and the interests of the beneficiaries. When making a will, it is important to involve an attorney to guide you through the formalities. A will that does not conform to the law could be successfully challenged and revoked or have the invalid sections revoked. Here are the common reasons for challenging a will:

1 The will was made and/or executed under undue influence or coercion

The testator (the maker of the will) needs to make the will freely. Undue influence occurs when a testator is coerced into making a will or some part of it that he does not want to make. The person alleging that there is undue influence must show that the testator was induced or coerced into making dispositions that he did not really intend to make.

2 The testator lacked capacity to make the will

The making of a will requires that the testator be an adult of sound mind. The testator must understand the effect of making the will, the value and nature of his estate and know the consequences of excluding or including certain people in his will.

3 A later will has been made by the deceased

Where the deceased made two or more wills, the latest valid will takes precedence. The person alleging that there is a later will must prove its existence and validity. It is therefore important to date a will to enable the executor and the court determine which will takes precedence in the event of multiplicity.



4 The will was incorrectly executed or is invalid due to a failure to follow the correct formalities

A will ought to be executed by the testator in the presence of two witnesses, who must also sign. An unsigned will is invalid.

5 The will has since been revoked

Revocation is the cancellation of a will by the testator. This means that the testator no longer wishes to have the will determine the distribution of his assets. Revocation has to be unequivocal. A later will automatically revokes the previous will.

6 The will was procured via fraud or is a forgery

Fraud or forgery could occur where a person causes a will to be drawn up, either by purporting to be the testator or by falsifying the testator's or witnesses' signatures. A forged will does not express the wishes of the testator and is therefore invalid.

7 The will is unclear

The wording of a will should be such that the intention of the testator can be known from it. Where the testator's intention is not apparent, the will should be interpreted to give it effect so far as is possible.