



Factors the court considers when making an order for reasonable provision

By Judith A. Kanyoko



By making a will, the law allows a person to determine the distribution of his assets posthumously. However, this right is not absolute and the courts may intervene to provide for dependants who the writer of the will has not provide for. This is known as reasonable provision.

Under Section 26 of the Law of Succession Act, the court may on the application of a dependant, order that reasonable provision be made for a dependant out of the deceased's net estate, where the court is of the opinion that the disposition of the deceased's estate effected either by will, gift and/or law, is not such as to make reasonable provision for that dependant.

The court has complete discretion to order a specific share of the estate to be given to the dependants, or to make such other provision for him by way of periodical payment or a lump sum, and to impose such conditions as it thinks fit.

The following are the factors the court considers when making an order for reasonable provision:

- 1** The nature and amount of the deceased's property;
- 2** Any past, present or future capital or income from any source of the dependant;
- 3** The existing and future means and needs of the dependant;
- 4** Whether the deceased had made any advancement or other gift to the dependant during his lifetime;
- 5** The conduct of the dependant in relation to the deceased;
- 6** The situation and circumstances of the deceased's other dependants and the beneficiaries under any will;
- 7** The general circumstances of the case, including, so far as can be ascertained, the testator's reason for not making the provision for the dependant