

## THE TEAM



**Gladys Mboya**  
gmboya@lexgroupafrica.com  
*Managing Partner*



**Cynthia Kagiri**  
ckagiri@lexgroupafrica.com  
*Associate*



**Patience Laki**  
plaki@lexgroupafrica.com  
*Associate*



**Sheila Mutiga**  
smutiga@lexgroupafrica.com  
*Associate*



**Enock Mulongo**  
emulongo@lexgroupafrica.com  
*Legal Assistant/Associate*

**mboya wangong'u & waiyaki**

Lex Chambers  
Maji Mazuri Road, Off James Gichuru Road Lavington, Nairobi, Kenya  
Wireless Lines: +254 (0) 20 2160312 (3) | +254 (0) 20 3860183(4)  
Cell: +254 (0) 714 611 954 | +254 (0) 739 631 261  
Fax: +254 (0) 20 2160312 (3)  
Email: [advocate@lexgroupafrica.com](mailto:advocate@lexgroupafrica.com) | Website: [www.lexgroupafrica.com](http://www.lexgroupafrica.com)

**LexTalks**

# WILLS *and* TRUSTS

*Frequently Asked Questions*

**mboya wangong'u & waiyaki**

## Frequently Asked Questions

### 1. What is a will?

A will is a legal declaration by a person of their intentions or wishes regarding the disposition of their property after death, duly made and executed in accordance with the law.

### 2. Why have a will?

To maintain control of distribution of property even after death, so as to avoid the court making that decision on one's behalf.

### 3. What are the requirements for a valid will?

Generally, it must:

- be made by an adult of sound mind;
- be signed (if written) by the maker or some other person in the presence of and by the direction of the maker; and
- be witnessed by at least 2 competent witnesses in the presence of the maker

### 4. Can a will be changed?

Yes it can be changed provided it is duly signed and witnessed.

### 5. Who can be an executor?

Anyone can be appointed an executor except minors, persons of unsound mind and bankrupts. One can appoint a spouse or spouses, any relative(s), the Public Trustee, a lawyer or a firm of lawyers and a bank to be their executor.

### 6. Who is a dependant?

- Wife or wives.
- Children including children taken into the family.
- Parents, step-parents, grand-parents, grandchildren, step-children, brothers and sisters, and half-brothers and half-sisters, as were being maintained immediately prior to death.
- Husband.

### 7. What happens after death?

The survivor(s) apply to court for a grant in order to be able to distribute the estate.

### 8. If aggrieved, can one object to an application for grant?

Yes. The law gives an objector 30 days within which to file a notice of objection with the court.

### 9. What are the components of a family trust?

- Founder/Settlor - This is the individual that establishes the trust. He/she determines the assets that will be held in trust, the persons who will benefit from the trust and the trustees.
- Beneficiaries - These are persons for whom the trust was created, and who receive the benefits of the trust.
- Trustees - These are persons appointed to manage and hold the property and assets in the exclusive interest of the beneficiaries.
- Assets - This is the Trust Property that the Settlor or owner places in trust for the beneficiaries.

### 10. What are the main types of trusts?

- A family trust - established to hold a family's assets or to conduct family business with beneficiaries being family members.
- Charitable trust - established to promote a specific public purpose or cause rather than to benefit individuals e.g. for the eradication of poverty.
- Testamentary trust - one that is provided for in a last will and testament.

### 11. Can the founder be a trustee and a beneficiary?

A founder can be a trustee of the trust he has created but can only be a beneficiary of the trust alongside other beneficiaries, not alone.

### 12. Why have a trust?

- For succession planning and management of family assets
- Allows for establishment, management and funding of charitable causes
- Ensures provision for dependants especially minors who are unable to handle assets until a certain condition is fulfilled