

Trusts & Estates Law

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In this issue

SOUTH AFRICA

Valid or not valid? Unsigned electronic wills in South Africa



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Valid or not valid? Unsigned electronic wills in South Africa

A will represents an individual's final wishes and their intentions for how their belongings must be handled after their death. The law requires certain formalities to be met in order for a document to be deemed a valid will in terms of the Wills Act 7 of 1953 (Wills Act). The question often asked is: What happens if my will does not meet these requirements? The North Gauteng High Court has provided some guidance for when a document reflecting last wishes is unsigned.

Background

In *Perumal v Janse van Rensburg NO and Others* [2025] ZAGPPHC 145 the applicant lodged an application with the High Court in terms of section 2(3) of the Wills Act to order the Master of the High Court (Master) to accept an unsigned electronic document as a valid will for administration purposes. Prior to his death, the deceased made amendments to his will on his laptop, which he later forwarded to his nominated executor to finalise. According to the executor, the amended version was sent to the deceased. When the deceased later suffered setbacks in his health, he reminded his executor that he had not received his amended will. The deceased passed away 30 days after communicating with his executor. The applicant subsequently lodged an application to the North Gauteng High Court to declare the unsigned document as the deceased's last will and testament in terms of section 2(3) of the Wills Act.

Legal analysis

Section 2 of the Wills Act governs the formalities required in the execution of a will. The main requirements are that the will must be signed by the testator and two competent witnesses in the presence of each other. In the instance where a will does not meet these requirements, section 2(3) of the Wills Act allows a court to declare the document a valid will for the purposes of administration of the estate. In order for the court to grant such an order, it must be satisfied that:

- the document was drafted by an individual;
- that individual has since passed; and
- the individual intended for the document to be their final wishes.



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Judgment

The judgment delivered by Bam J concluded that a document drafted by the deceased must be regarded as a valid will for the purposes of estate administration. The judge found that since there was correspondence between the deceased and his nominated executor regarding the will, it led to the conclusion that it was indeed drafted by the deceased and therefore satisfied the first and second requirements. As to the final requirement, the court considered that the deceased had made an urgent attempt to sign the document 30 days prior to his death. Conclusively, the court ordered the Master to regard the document as the deceased's last will and testament for the purposes of estate administration.

Key takeaways

On one hand, the judgment demonstrates the implications of leaving a will unsigned. On the other hand, it shows the efforts that a court may go to to protect the final intentions and wishes of the deceased. It serves as a reminder that individuals drafting or amending their wills should consult a professional when doing so.

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