

Property and inheritance rights

WOMEN AND LAW IN
SOUTHERN AFRICA
RESEARCH AND EDUCATION
TRUST

SPECIAL POINTS OF INTER- EST:

- **Women whose name do not appear on title deeds face hardships**
- **Cases of property grabbing are on the increase**
- **Protect your family by writing a will**
- **Men can act as agents of change**

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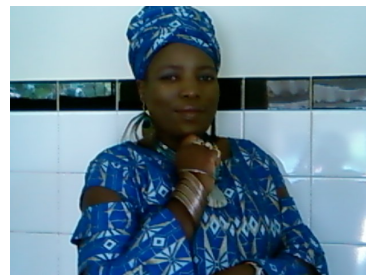
WELCOME TO WOMEN'S PROPERTY AND INHERITANCE RIGHTS NEWSLETTER

Greetings from WLSA Zimbabwe and welcome to our first newsletter on women's property and inheritance rights.

Death is viewed with fear by most sectors of society. For most women and children however, there is also added fear of what happens when a loved one dies. Women have been thrown onto the streets, children drop out of school and turn into street children or indulge in transactional sex due to the fact that greedy relatives take away all the possessions left by a deceased parent. Men and boys too are victims but the majority of victims are women.

Will writing is viewed with suspicion and yet a properly written will can protect families from destruction of assets.

This newsletter will be the first



in a series of many and we hope that we will raise pertinent issues.

Sylvia Chirawa

**National Coordinator
WLSA Zimbabwe**

We welcome your views and comments.

Women whose names do not appear on title deeds face hardships

Women whose names do not appear on title deeds face hardships in Zimbabwe. The legal situation is such that husbands whose names appear on the title deeds can sell the immovable property to the detriment of the wife. The law only "intervenes" at death in terms

of the inheritance laws that state that the immovable property goes to the surviving spouse. Upon divorce, the immovable property is shared equitably using the provisions of the Matrimonial Causes Act. The Honourable Makarau J stated clearly in the case of

Muswere vs Makanza and others HC-16-2005 that clearly the law in place "is unsatisfactory and palpably unjust".

WLSA and the Property and Inheritance Rights Network of Zimbabwe has prepared a position paper for submission to the Law Development Commission.

Links between HIV/Aids and property and inheritance rights

The denial of women's property and inheritance rights, including the right to inherit on the death of a spouse or parent, is of increasing concern in the light of HIV/Aids as more women became heads of households or widows, often in the context of family resources depleted by illness. Protecting the rights of women and girls has both preventative and mitigating impacts in the context of HIV/Aids.

The impact of HIV/Aids on

the income of the family can be devastating. Household incomes, food consumption and school enrolment often falls. Women need secure access to property so that in the event of illness, they are better able to plan for their children.

When women have access to land and housing, their economic circumstances improve. They will not resort to transactional sex to make ends meet.

Women who are economi-

cally empowered are better able to negotiate safer sex.

Some cultural practices such as wife or widow inheritance, virginity testing, dry sex, early marriage and pledging of females as compensation fuel the spread of Aids. In Zimbabwe laws such as the Domestic Violence Act and the Criminal Code outlaw these practices.

The freedom to write one's wishes in a will should not be used to settle scores or disadvantage the surviving spouse and children

Protect your family—Write a responsible will

In Zimbabwe, Will writing is governed by the Wills Act Chapter 6:06. The act gives freedom of testation to anyone over the age of 16 to write a will leaving assets to anyone they chose. The act further states that a will shall not be invalid simply because it has disinherited a child, parent, a descendant among others. For wife or husband, the two instances under

which they cannot be disinherited are when they are married in community of property or if the asset is jointly registered (See the case of Estate Wakapila vs Matongo NO and others HH-71-08).

WLSA has noted a worrying trend in which persons write wills that completely disregard surviving spouses and children. While WLSA appre-

ciates that people should write wills free from influence, will writing should not be used to settle scores. A will should cater for the writer's family and their circumstances. This will result in wills not being contested. Dependants who have been left out of wills can use the Deceased Persons Family Maintenance Act to apply for maintenance from an estate.

WLSA engages men to support women's rights

WLSA as part of efforts to engender property and inheritance rights engaged 65 men from the sites of Norton, Hopley, Ruwa and Epworth on marriage laws and will writing. Most men were surprised to learn that the type of marriage that one has determines the inheritance laws that are used.

WLSA used this opportunity to dispel myths and misconceptions on will writing especially the notion that writing a will is signing one's death warrant. A married couple can even write a joint will or a joint mutual will that will ensure that upon death, the spouse and family left behind will not suffer undue hardship.

Property grabbing is a criminal offence



Mercy Bundo (not real name) was married to Gift Bundo (Not real name). Gift died suddenly in a car accident. At the funeral, there were simmering tensions between Mercy and her –in-laws. Her husband’s younger brother Themba

Protect families from property grabbing

seemed to be making all the decisions, from what food should be purchased and where, the funeral services provider, the suit that the deceased would wear, collecting all the money given as “chema” and Gift’s final resting place. On the day that Gifts body was to depart for burial in the rural areas, Mercy was surprised to see a big lorry also parked. She was advised that all the furniture

was to be taken to the rural area and that she has to put all he belongings in one room because after the burial, she was supposed to go back to her people.

The Deceased Persons Family Maintenance Act makes it a criminal offence for anyone to grab property upon death and evict surviving spouses and children. They have a right to stay on the property, use the furniture and cars and even reap and sell crops. These rights end when the estate has been fully administered.

Property grabbing and eviction of wife or husband of the deceased person from homes is a criminal offence.

A word from Getrude Murungu on property and inheritance rights in the context of HIV/Aids

In May 2011, WLSA conducted a baseline study on property and inheritance rights and its link to HIV and AIDS. One of the findings was that there are high levels of discrimination against women who are HIV positive when it comes to access to inheritance rights. During the study, 42% of the respondents who reported that they had faced property and inheritance disputes were women who

are HIV positive, 27% were women who are HIV negative, 15% were women who do not know their status and 16% were men. A female HIV positive respondent said; *‘When my husband died, his relatives said I am sick and about to die so they shared all the property we had among themselves and they said they were just waiting to be called back for my funeral.’* This woman, like most women,

did not take any legal action against the perpetrators neither did she seek legal advice. During this study 52% of those who faced inheritance disputes did not report cases to law enforcement agents because of: (i) Lack of knowledge on inheritance laws (ii) lack of marriage certificate or proof of marriage (iii) lack of knowledge on how to register deceased estates.

WLSA legal aid programme—A bird’s eye view from Dorcas Makaza

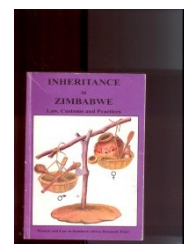
Since formation in 1989, WLSA has provided legal aid and services to indigent women.

WLSA has always had a special interest in property and inheritance rights especially after researching and publishing a report on inheritance rights, customs and practices. Most of the clients who visit WLSA offices seeking assistance on property and inheritance

rights would have suffered great hardships. However we note that some clients despite the law being on their side are afraid to use the provisions of the law. WLSA has thus embraced an approach of legal empowerment. It is not enough that women know the law but also that they should be confident enough to use the law.

Some sad cases include women

who are HIV positive being thrown out of properties by greedy relatives. WLSA with support from UN Women has also established two help desks at the Magistrate Court in Harare and the Master’s Office at the High Court. WLSA has authority from the Law Society of Zimbabwe to represent indigent women in the courts



WLSA research on inheritance, customs and practices



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Our mission is to be a renowned Southern Africa feminist and human rights organization that coordinates and supports evidence based interventions to promote and protect women and girls rights through legal and policy reform and changes to discriminatory socio-cultural practices

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**MAKING THE LAW WORK FOR
WOMEN**



OUR VISION IS A SOCIETY WHERE JUSTICE IS EQUITABLY ACCESSED, CLAIMED AND ENJOYED BY WOMEN AND GIRLS IN ALL SPHERES OF LIFE

The following laws are some of the critical laws in property and inheritance rights matters :

1. The Wills Act
2. The Wills Amendment Act
3. The Administration of Estates Act
4. The Administration of Estates Amendment Act
5. The Marriage Act
6. The Customary Marriages Act
7. The Matrimonial Causes Act
8. The Constitution of Zimbabwe
9. The Deceased Estates Succession Act
10. The Deceased Persons Family Maintenance Act
11. The Guardianship of Minors Act