THE ROLE OF A WILL IN PROPERTY SUCCESSION AND FAMILY COHESION IN NIGERIA

Okubor Cecil Nwachukwu*
Mekwunye Anthony Ndudi**

Abstract

In Nigeria, the creation and execution of a will are essential to property succession and the upholding of family unity. The purpose of this essay is to analyse the various purposes of a will in the socio-legal environment of Nigeria, emphasising how it helps to maintain family harmony, provide an orderly transfer of assets, and lessen conflict among heirs. It also examines the social and psychological benefits of wills in providing surviving family members with a sense of continuation. The definition of a will, the laws governing wills in Nigeria, the legal threshold for a valid will in Nigeria, the obstacles to the widespread adoption of testamentary practices, the testamentary capacity of a will, the statutory powers of limitation on testamentary freedom to dispose of a will in Nigeria, and what happens if a Nigerian dies without a will, are all addressed in this paper using a qualitative doctrinal approach. According to the findings, intestacy – the lack of a will – often results in protracted legal disputes, family disintegration, and the implementation of customary laws that might not be in line with the wishes of the departed in Nigeria. The paper's conclusion suggests that widows and their children can benefit from protection and empowerment when a legitimate will is in place, which is why there is a need for education and awareness on the topic. For the benefit of their dependents, Nigerian men must rise beyond tradition and superstition and embrace wills. To deal with widows and inheritance, government agencies such as the Ministry of Justice, the Legal Aid Council, and the National Human Rights Commission must establish a dedicated desk for this purpose.

Key -Words: Succession, Testator, Will, Property, Family

* LL.B, LL.M, Ph.D, BL, ACTI, Department of Public Law, University of Delta, Agbor; cecilchukwu@gmail.com; cnokubor@unidel.edu.ng; 08063632775, 07033693948
** LL.B, LL.M, Ph.D, BL, Department of Public Law, University of Delta, Agbor; anthonymekwune@gmail.com; 08036787001

1.**Introduction**

Nigerians are generally reluctant to make a will. This apathy has been explained in various ways. Creating a will reminds people of death, and pushing someone to do so is seen as unkind.[1]Generally speaking, a will is interpreted as a bad sign.[2]One of the main reasons to prepare a will is because death is inevitable. A will must be viewed as essential in the Nigerian setting due to the intricacies of inheritance matters brought about by customary law and the inherent injustices that typically occur. There are numerous examples where custom prevents the deceased's widow or widows and children from inheriting his estate.[3]Even though the courts have not recognised the legitimacy of such practices, they continue to exist. The loss of property to in-laws due to the absence of a will was cited by 55% of participants in research on the predicament of widows in a Nigerian university as their main issue.[4]More security for women and children is ensured by creating a will, which eliminates claims that are solely based on custom and culture.[5]

When a person is alive in Nigeria, they frequently have the ability to give their possessions to anybody they want. However, in some states of the nation, laws have limited that flexibility once the person passes away and leaves a will that specifies how their estate will be distributed. Cultural, religious, moral, and societal factors are frequently invoked to support these limitations on testamentary freedom. According to the paper, there are limitations on testamentary freedom in Nigeria. While some of these limitations are justified because they are worthy ideals, others may result in unrealistic and impracticable outcomes, and some may completely remove the testator's freedom. Therefore, it is important to strike a balance between the testator's wishes and the strict letter of the statutes when determining the limitations in order to give the deceased testator's wishes as expressed in their will as much as possible.[6] *Section 3 of Delta State's Wills Law*[7] expressly restricts the testator's ability to dispose of their property by will. The article concluded that our conventional

---

[1] P. K Obi "The Imperative of Making a Will for the Protection of Women and Children": *International Review of Law and Jurisprudence,* (2021), 3(2), 102.

[2] D. M Azuamairo, *Understanding Will, Its Importance and Characteristic* (Lagos: Jonugraphic/Solid and Basic Concepts, 2014), 5.

[3] P. K Obi, n. 1, p. 102.

[4] M. O Onadeko et al, "*Problems of Widowhood: A Study of Widows in a Tertiary Institutions in Ibadan Southwest Nigeria"* <www.nebl.nim.nih.gov> Accessed 5th May, 2025.

[5] P. K Obi, supra note 1, p. 69.

[6] A. I Fenemigho and D. O. Oriakhogba, "Statutory Limitations to Testamentary Freedom in Nigeria: A Comparative Appraisal": *Nnamdi Azikiwe University Journal of International Law and Jurisprudence,* (2013), 4, 69.

[7]*Ibid.*

society is vital and cannot be discounted, and that the testator's power is limited to prevent irrational will-making that might be against the interests of the family.[8]

Any succession law system that differs from common law or statutes—that is, a law passed by legislation—but is nevertheless enforceable and binding within Nigeria as well as between the parties bound by its terms is known as customary law.[9]The majority of customary succession is intestate.[10]Nigeria's several legal systems are reflected in the country's customary law intestate succession and inheritance patterns. Nonetheless, women and children are typically at the receiving end of the spectrum. Customary law does not favour intestate succession for women and children, particularly when the children are minors. The succession rules may have been effective in earlier times since they were designed for a subsistence economy. During that period, a male adult relative could inherit the deceased's wife and children, as well as the associated duties. Modern-day factors like school fees and medical expenditures were not included in those obligations. Additionally, the inherited goods were rarely valuable in the subsistence economy for which the customary norms of inheritance were created. In the subsistence economy, there were no vehicles, bank accounts, or landed property (aside from family land) to be inherited.[11]

Azuamairo summed up the injustice of implementing the old order in the modern day as follows: Relatives of the deceased typically sneak in under the pretence of applying the native law and customs' rules of inheritance in order to stoke animosity, disputes, and bitterness among the deceased's extended family, who compete for his property at the expense of his immediate family (wife and children). In severe situations, the wife and kids are eventually evicted from the home of the deceased father and husband.[12]

Therefore, women and children suffer greatly if such regulations are upheld. This is where a new strategy that is appropriate for the times must be implemented. The pre-colonial laws of inheritance shouldn't be considered enforceable rules in the modern day.[13]

---

[8] B. O Alloh "An Evaluation of the Limitation of Testator's Right to Dispose of Property by Will": *Port Harcourt Journal of Business Law,* (2016), 2(2), 628.
[9] Obi, n.1,102.
[10] *Ibid.*
[11] M. O Onadeko *et al*, n.4.
[12] D. M Azuamairo, n. 2, 3.
[13] Obi, n.1, 102 – 103.

Given this, the essay examines how a will affects family unity and property succession in Nigeria. Following this introduction, which is the first section of the paper, the material is divided into ten sections. The definition of a will is covered in the second section of the paper. It contends that a will is merely a legal document in which the testator specifies who will administer their inheritance after death and that there is no universally accepted definition of what a will is. Both large, costly objects and little ones that may have sentimental worth can be found in the estate. The executor is the individual designated in the will to administer the estate.[14]It goes on to say that it is crucial to remember that the definitions of a will that have been proposed over the years are not totally adequate; some only refer to the written manifestations of an individual's desires, while others restrict a will to a statement of an individual's wishes regarding the distribution of their property upon their passing.

The legislation governing wills in Nigeria is the subject of the third section of the paper. It makes the case that the laws are inconsistent because they differ depending on the Nigerian state. The legal threshold for a valid will in Nigeria is examined in the fourth section, which makes the case that a will must include some essential terms –: it must be made voluntarily, signed, and witnessed in accordance with the law; it must be a testamentary and revocable document; it must be duly executed; the testator must be of sound mind; and it must be subject to any legal restrictions.

The difficulties in implementing testamentary procedures widely are covered in the fifth section. It makes the case that a number of obstacles prevent these practices from being widely adopted in different communities and geographical areas. Cultural taboos around death, mistrust of legal institutions, and illiteracy are some of the most notable obstacles. The testamentary capacity of a will is the subject of the sixth section. It contends that the phrase "testamentary capacity" refers to any infirmity that denies someone the ability to create a legally binding will, such as the fact that any adult, Christian, Muslim, or other person of sound mind can create a will in English. It also makes the case for the testator's sound disposition, evidence of that disposition, presumption of that disposition, mad delusion, undue influence and fraud, suspicious circumstances, knowledge, and approval.

[14] L. Smith, "*What is a Will and Why Do O Need One?"* <www.ivestopedia.com> Accessed 5th May, 2025.

The statutory constraints on testamentary freedom to dispose of a will in Nigeria are examined in the seventh section. It contends that unfettered testamentary independence exists in the states where the Wills Act of 1837 remains the relevant legislation. In certain states, testators are allowed to distribute their properties to whoever they want, even if it means ignoring their dependents and family members and giving all of their assets to total strangers. However, moral, cultural, and religious objections have been raised against this unrestricted testamentary freedom. It was argued that it might result in testators disinheriting their dependents in favour of strangers, which would be difficult for those dependents. As a result, some states passed laws limiting testators' testamentary freedom with the state, which are an example of legislative authority. These are customary law constraints; Islamic law limitation and provision for family and dependants. In the end, it makes the case that the question that arises in light of these legal restrictions on testamentary freedom in Nigeria is whether they are warranted or if the testator would be better off using the possessions however they sees fit.

The eight section deals with the rules of inheritance arguing that that as circumstances differ, there is no simple solution to this query. The role of a will in family unity and property succession is the subject of the ninth section. It talks about why a will is required. The benefits and importance of creating a will. Therefore, it makes the case that based on the function of a will as mentioned, a man can use a will to specify what his heirs would inherit from his estate after he passes away. It provides precise guidelines for inheritance in the Nigerian setting and shields a woman and her offspring from overbearing in-laws. A will outlines the precise wishes of the departed and may deter avaricious family members from vying for assets because it makes the wishes explicit. The study concludes with recommendations in the tenth section.

2. **Definition of a Will**

A will is simply a legal document in which the testator specifies who will manage their estate after death. The estate may include large, costly items as well as small items that may have sentimental value. The executor is the person designated in the will to manage the estate.[15]Another definition of a will is a written testament or will that specifies how a testator's assets (estate) are to be divided after death.[16]It is a legal document that gives the testator the ability to decide how their inheritance will be administered and allocated following their

[15]*Ibid.*
[16] Obi n.1, 103.

passing.[17]A person can choose who will be their heirs by using a will.[18]A will is essentially a declaration of purpose that can be changed or cancelled at any moment; it only becomes operative upon the death of the testator.[19]Making a will is not required, but some people opt to do so in order to resolve their affairs before passing away or to prevent family conflicts after death.[20]

A will, according to Black's Law Dictionary,[21] is an instrument that allows a person to dispose of their personal and real property in a way that will take effect after their death and is, by definition, ambulatory and revocable while they are still alive. A will is also a written document that is executed in accordance with legal requirements and in which a person disposes of their real and personal property in a way that will be effective after his death. A will is a testamentary and revocable document that is voluntarily made, executed, and witnessed in accordance with the law by a testator who is of sound mind. In it, he disposes of his personal and real property, subject to any restrictions imposed by law, and gives executors (personal representatives) any other instructions he thinks appropriate to administer his estate in accordance with the wishes expressed in the will.[22]A will, sometimes known as a testament, is a formal declaration of the maker's intentions for matters that will be carried out upon or after his death.[23]

In *Re Barnett, Dawes v Ixer*[24], it was stated that a will can alternatively be defined as a testamentary document that is executed legally and willingly by an individual who is of sound mind and who instructs executors on how to dispose of their personal and real property after their death. The definitions of a will that have occasionally been proposed are not totally adequate. While some people restrict a will to a statement of a person's desires regarding the distribution of his possessions upon his death, others solely refer to the written representations of a person's wishes.

[17]*Will Legal Definition* <www.legaldictionary.thefreedictionary.com> Accessed 5th May, 2025.
[18] Obi n.1, 103.
[19] O. Egwuatu, "Limits of a Testator on Freedom of Will Testament" <http://www.nigerianlawguru.com/articles/customary%20law%20and%20procedure/LIMITS%20of%20A%20TESTATOR%20ON%20FREEDOM%20OF%20WILL%20TESTAMENT.PDF> Accessed on 5th May, 2025.
[20] The type of Will used in this context is the Statutory Will.
[21] H. Campbell, *Black's Law Dictionary with Pronunciation* (6th ed.) (U.S: St. Paul's Minn. West Publishing Co., 1990).
[22] E. A. Oduke and A. G. Agu, *Modern Nigeria Family Law with Marriage Act and Matrimonial Causes Act* (Lagos: Renaissance Publishers Limited, 203), 250 – 251.
[23] Riches: "What is a Will?:" *Virginia Law Report,* (1963), 49, 759.
[24] (1908) 1 Ch. 402.

Abayomi provided a workable and functional definition of a will when he said:

A will is a testamentary and revocable document that is voluntarily made, executed, and witnessed in accordance with the law by a testator who is of sound mind. In it, he gives his personal representative, also known as his executors, instructions on how to manage his estate in accordance with the wishes expressed in the will, as well as how to dispose of his property subject to any limitations imposed by law.[25]

Therefore, a will is a document that specifies how a person's possessions will be divided after his death. A will is essentially a declaration of purpose that can be changed or cancelled at any moment; it only becomes operative upon the testator's death. Making a will is not required, but some people opt to do so in order to resolve their affairs before passing away or to prevent family conflicts after death.[26]This is one of the most satisfactory definitions of a will in Nigeria.The individual who creates the will is referred to as the "testator," and the recipient of the gifts under the will is known as the "beneficiary." The "executor" is the person who carries out the will; they may also be granted the authority of "trustees."

It is important to remember that there are a number of different types of documents that can be considered wills. For instance, if a man gives his property to trustees for his life and the use of several people named in the deed at his death, with the power of revocation reserved, not having given up the deed or any portion of the property during his lifetime, and conforming in most respects to the disposition of the property by will at his death, then the deed and the will are regarded as testamentary documents.[27]In *Repington v Holland,*[28]a letter was deemed to be a testamentary document if it met the requirements of a will.

3. **Legislation Governing Wills in Nigeria**

Nigeria's laws pertaining to wills are not all the same; in the majority of the states that were formed from the Old Western Region,[29]Wills law is

[25] K. Abayomi, *Wills: Law and Practice* (Lagos: Mbeyi and Associates, 2004), 6.
[26] The type of Will used in this context is the Statutory Will. See A. I. Fenemigho, n.6 p69.
[27]*Hickson* v *Williams* 23 E. R. 107; see also *Doed Cross* v *Cross* (1846) 6 Q. B 714; 15 E. R. 1041. A Power of Attorney Operates on the Donor's Death as Device to the Donee. S. O. Imhanobe, *Legal Drafting and Conveyancing* (with precedents) (Abuja: Temple Legal Consult, 2010), 591 – 592.
[28] 161 E. R. 280.
[29] Edo, Delta, Ekiti, Ondo, Osun, Ogun and Oyo States.

the applicable law.[30]Although the states of Oyo and Delta have passed their own wills laws,[31] the laws that are currently in effect in the other states that emerged from the previous Western Region are essentially copies of the previous laws, with only minor modifications made to the state's name and enacting powers, among other things.[32]Through the Applicable Laws (formerly Edict) of 1972, Lagos State adopted the legislation that applied to wills in the Old Western Region.[33]The English Wills Act of 1837 continues to be the governing legislation in a few states in the former Northern and Eastern Region of Nigeria.[34]The laws of the states of Kaduna and Abia are different. Jigawa, Plateau, Bauchi, and Kwara are some of the other states that have passed their own legislation.[35]The High Court (Civil Procedure) Rules and Case Law are other relevant laws.[36]

4. **Legal Threshold Fora Valid Will in Nigeria**

Section 9 of the Wills Act[37]governs the requirements for formal validity of a will. It provides thus:

> No will can be deemed enforceable unless it is in writing, signed by the testator, or in his name by someone else in his presence and at his direction, and placed in a location on the will that makes it clear from the face that the testator intended for the signed document to be regarded as his will. At least two witnesses must be present when the testator signs or acknowledges the document, and the witnesses must certify and subscribe the will in front of the testator; however, no attestation of any kind is required. Any disposition or directive that is under or follows this section cannot be implemented by a signature under this section, nor can it implement any disposition or directive that is added after the signature is created.

[30] Cap 133, Laws of Western Region of Nigeria 1959. The states carved out from this region have re-enacted this law although with no change in substance. I. Sagay, Nigeria Law of Succession: Principles, Cases, Statutes and Commentaries (Lagos: Malthouse, 2006), 124.

[31] Wills Law of Oyo State 1990 and Wills Law, Cap W4, Laws of Delta State 2006.

[32] See n.30.

[33] Now Wills Law of Lagos State, Cap W2 Laws of Lagos State 2004.

[34] As amended by the Wills amendment Act of 1852. This is a statute of general application applicable in Nigeria having being in force in England on January 1 1900.

[35] Kwara State Wills Law, cap 168 Laws of Kwara State 1991; Bauchi State Willls Law, Cap 168 Laws of Bauchi State 1989; Plateau State Wills Edict, No. 2 of 1988; and the Jigawa State Wills Law, Cap 155 Laws of Jigawa State 1998. See Y. Dadem, *Property Law Practice in Nigeria* (Jos: Jos University Press, 2009), p. 262; A. I. Fenemigho and D. O. Oriakhogba, n.6, 70.

[36] S. O. Imhanobe, n.28, 593.

[37] Similar to Section 4 of the Wills Law of Lagos State and Delta State.

Every will must to be in writing in order to be considered formally valid. This indicates that spoken wills are prohibited by the Act/Law. Preventing fraud is the goal of the writing requirement. Any type of writing is acceptable; it can be printed, typewritten, or handwritten (holograph will). The medium on which the will must be written is not specified by the law.[38]

The need that a will be in writing is not always applicable. Both privileged wills and wills made in accordance with customary law are exempt from the writing requirement. An oral will is deemed enforceable under customary law provided it meets the following requirements:

a. It must to be made willingly;
b. The testator must to be in good mental health;
c. It must to designate the beneficiary;
d. It must to be witnessed; and
e. It must to identify the property.

In *Bankole Tapo*[39]it was maintained that a testator's oral disposition of land was adequate to give the beneficiary ownership of the property. In *Okon v Ana,*[40]using the following language, the court upheld the legality of an oral will under customary law:

The traditional method of the deceased Odo Efana's will, which involved writing accountable chiefs and giving the defendant possession of her entire home and goods, must be mentioned. Since she is deceased, this court is unable to change her wishes.

The signatures of the testator and witnesses are the second prerequisite for validity of a formal will. Any one of the following three techniques may be used by the testator to sign their will under the Act or Law.

a. The testator can sign the will personally in front of two witnesses who must subsequently attest to it;
b. The testator can ask and instruct someone else to sign on their behalf, and then acknowledges the signature in front of two witnesses who must attest to the will; and

[38] Some jurisdictions have designed standard will forms. A will written on an egg shell – Re Barnes, Hodson v Barnes (1926) 43 JLR 71. The photograph of a will written on the wall by the testators bed – Re Slavinsky J's Estate (1989) 53 SASR 221 have been admitted to probate.
[39] (1961) All NLR 140.
[40] (Unreported) Native Court Suit No. 43/61.

c. The testator can have already signed the will at another time and acknowledge the signature in front of two witnesses who must attest to the will.

The testator's thumbprint or valid signature,[41]initials, or a stamp engraved with the testator's name are sufficient,[42]and a testator's hand may be guided while making their mark if too sick.[43]The testator is not required to sign in front of the witnesses; they may pre-sign their signature or provide instructions to someone else to sign it for him. The testator then acknowledges their signature or a signature signed on their behalf to the witnesses.[44]The testator's signature is sufficiently acknowledged when a will bearing the testator's signature is produced and witnesses are asked to attest to it.

In *the Goods of Gunning*[45]a holograph will contained the following testimonium clause: 'I, June Randoph Gunning, hereby attest to this by signing and sealing this document on this twenty-fifth day of September, 1845.' It was determined to have been signed in accordance with the statute, notwithstanding the fact that she did not sign it again. If the testator's identity is clear and the will contains an incorrect name, it is still enforceable.[46]It is possible for an attesting witness to sign in the testator's name and on the testator's behalf. If someone else is signing on the testator's behalf, it must be at their request, which need not be expressed verbally but rather through gesture or inferred from the testator's actions and other circumstances. If the testator is blind or illiterate, the will should include a jurat, which should include the language, the name of the translator, and their signature to demonstrate that the testator accepted and approved the will.[47]There are two in this case regarding the position of the signature.

a. According to Section 9 of the Wills Act of 1837, the signature must appear at the bottom or end of the will. This implies that the

[41] In the Estate of Randle (Deceased) (1962) 1 All NLR 130 a thumb-mark was accepted as good mode of executing a will. The signature may be acknowledged and the will must be executed in the presence of two or more witnesses present at the same time and who should thereafter attest and subscribe the will in the presence of the testator. No form of attestation is necessary and the law is very strict about the witnesses being present at the same time when the will is being executed by the testation.
[42] In the Estate of Finn (1935) All E.R 419.
[43] Wilson v Beddard 10 L.J Ch. 305.
[44] In the Goods of Davies 163 E.R 1337.
[45] 163 E.R 1101.
[46] In the Good of Clarke 164 E.R 611.
[47] Okelola v Boyle (1998) 1 SCNJ 63.

will must end with the signature at the exact moment and on the page, and this condition was rigorously followed.

b. Section 9 of the Wills Act was expanded in scope by Section 1 of the Wills (Amendment) Act, 1852. The will is deemed valid even if the signature appears at, after, or following under, beside, or opposite to the end of the will. This is because it is clear from the will's face that the testator intended for the signature to give effect to the writing signed as their will if the court is satisfied that the dispositive part of the will was written before the signature.

According to Section 1 of the Wills (Amendment) Act, if the will is deemed to have been performed properly, the court will rule in favour of it using the *maxim Omnia preasuntur rite esse acta.*[48]
It is not appropriate to overextend Section 1 of the Wills (Amendment) Act of 1852's relates to the stringent requirement of the signature's position.

Therefore, no signature can be used to implement any decision or instruction that comes before or after the signature. In the case of *Everard v. Re Harris Murray,*[49]The words "my last will and testament" were scrawled across the top of a contested testamentary document by the testator. Her signature was located on the right-hand side of the document, just below these lines. On the right-hand side of the page, and at right angles to the document's body, were the names of the witnesses and the date. The entire paper which was some four inches square, was covered in writing it was held. According to Section 1 of the Wills Amendment Act, the testator's signature could not be regarded as being at, after, under, beside, or opposed to the end of the will, so the will could not be allowed to probate. Similarly in *Margory v Robinson,*[50]it was decided that because the testator's signature was in the centre of the will and the witnesses' signature was at the back, the will was not signed at the "foot and end" as defined by the Act, making it improperly executed and ineligible for probate. The last page must be signed; if the will is on multiple pages, it is assumed that the signature on the final page refers to the entire document. It is not required to sign each page.[51]

The existence of witnesses is the third prerequisite for a valid will. In the presence of two or more witnesses present at the same time, the will

[48] See Re Goods of Usborne (1909) 25 JLR 519; Re Estate of Roberts (1934) All E.R 62; (1934) p. 102; Hunt v Hunt (1886) L.R 1 P and D 209.
[49] (1952) 2 All E.R 409; (1952), p. 319.
[50] 57 L.J 281.
[51] *Ewen* v *Franklin* 164 E.R 485.

must be signed.[52]A minor who, if necessary, is able to testify on the proper execution of a will may witness a will because there is no legal provision that forbids anyone from doing so. The will remains legal despite the fact that the witnesses to it are incompetent witnesses as defined by the Evidence Act. As a result, beneficiaries, executors, and their spouses may witness a will, and their testimony may be used to demonstrate that the will was properly executed.

A blind individual cannot witness a will because it requires both mental and visual presence rather than just a physical one.[53]The act of signing or acknowledgement must be visible to the witnesses, or they must have the chance to observe it. The witnesses do not have to be familiar with every detail of the will. The presence of one of the witnesses at the time the testator signed or confirmed their signature is insufficient. The testator's signature must come first, followed by the witnesses' signature. Although the witnesses need not sign in front of each other, the witnesses must sign in front of the testator.[54] In *Wyatt v Berry*[55], in line with Section 9 of the Wills Act, 1837, it was decided that the testator failed to sign or confirm his signature in front of two witnesses who were present at the same time, making the will invalid.

Unlike the testator, a witness cannot acknowledge their signature even if they signs it with their mark, initials, or hand guided to the document. The testator must sign the will personally; neither a witness nor a third party may sign on their behalf.[56]Although it must be made *animo testandi*, the witness's signature does not have to be in any specific location within the will; preferably, it should be on the same page as the testator's. A will may be admitted to probate notwithstanding the negative testimony of attesting witnesses if it seems to have been lawfully executed on its face. However, the person who submitted the will may need to present proof to refute the witness's negative testimony. For the reasons mentioned above, the testator should be counselled to select independent and reliable witnesses.[57]

[52]*Apatira* v *Akanke* (1944) 17 NLR 149; (1962) 1 All N.L.R 130.
[53] In the Estate of Gibson (1949), p. 434; (1949) 2 All E.R 90.
[54]*Shires* v *Glascock* 91 E.R 584.
[55] (1893), p. 5 *Groffman* v *Groffman* (1969) 1 WLR 733; (1969) 2 All E.R 108.
[56] In the Goods of Cope 163 E.R 1337. The Position of the Law in England has changed. Section 17 of the Administration of Justice Act, 1982 (U.K) the witnesses of the Will of a person who died after 1 January 1983 may either sign or acknowledge their signature.
[57] S. O. Imhanobe, supra note 28, 614 – 621; Ita v Dazie (2000) 4 NWLR (pt. 652) 168 at 182.

The form of attestation is the fourth prerequisite for a valid will. According to Section 4 of the Wills Law of Lagos and Delta State and Section 9 of the Wills Act 1837, no attestation of any kind is necessary. Notwithstanding this condition, it is crucial to include an attestation language that certifies the will's compliance with the Act or Law. The short and lengthy forms of attestation are the two types available, and either is adequate. Over time, the short form of attestation is gradually replacing the long form. The abbreviated version is signed by us in his presence and by the testator in ours.[58]

The phrase "and then" is used to avoid a scenario in which it would be questioned whether the witnesses signed before or after the testator. In *Akofiranmi v. Nelson,*[59]The evidence presented to the court in an action to admit a will to probate revealed that the testator signed the will in front of attesting witnesses, but only after the witnesses had attached their signatures. It was decided that the will could not be admitted to probate because it was improperly executed.

There are two methods to demonstrate that a will was properly executed: positive proof and the assumption of due execution. A properly attested will is believed to be duly executed, which is an advantage of having a properly attested will in line with Section 9 of the Wills Act, the equivalent Section 4 of the Wills Law of Lagos and Delta. Even if the witnesses in *the will are unable to remember seeing it, the presumption of due* execution still stands.[60]The assumption of due execution may still be used if the will contains no attestation provision and there is no proof of the circumstances surrounding the will's signing.[61]

Strong and unambiguous testimony from attesting witnesses or other convincing evidence, such as the testimony of a handwriting expert demonstrating that the attestation is fake, can refute the assumption of due execution. It is the proponent of the will's responsibility to refute any witnesses' testimony that the will was improperly performed; if they do not, the will will be declared invalid. The court must consider the case's circumstances while determining which witness to believe if the witnesses' testimony is inconsistent.[62] If the court cannot accept the presumption of due execution, for instance, because the will is not properly attested in accordance with the law or because there is proof

[58] Re Selby Bigge (Deceased) (1950) 1 All E.R 1009.
[59] (1959) LLR 143.
[60] In the Goods of Holgate 164 E.R 720.
[61] See *Gove* v *Gawen* 163 E.R 686; In the Estate of Randle (1962) 1 All NLR 130; Glover v smith (1886) LT 60.
[62]*Croft* v *Croft* 164 E.R 1418; Daymon v Dayman (1894) 71 L.T 699.

from attesting witnesses that the will was not duly executed, the proponent of the will should present positive evidence, such as the testator's and witnesses' handwriting or other circumstantial evidence to support due execution.
*Order 48 R 20 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure Rules) 2025*provides that:

An affidavit from at least one of the subscribing witnesses, if either is still alive, is required by the court to demonstrate that the will was actually executed in compliance with those enactments in cases where there is no attestation clause or the attestation clause is insufficient.[63]

A will's proper execution is just as crucial as the testator's testamentary capacity; if it is proven that the will was not carried out legally, it is void and probate is denied.

Abayomi offers the following advice concerning the execution of a will:

i. It is crucial that the testator is counselled to select honest individuals to serve as witnesses to their testament. People who are easily swayed by pecuniary gain or who would readily compromise their position and conscience should not serve as witnesses. This is owing to the fact that their proof of the will's proper execution is given considerable weight;
ii. There should be enough room at the execution site to fit the testator, all of the witnesses, and the attorney. It will be unnecessary to enquire as to whether the will was carried out in front of the two witnesses who were present at the same time;[64]
iii. A will shall be attested using the language of Section 9 of the Wills Act, even though no attestation is necessary;

iv. Unless the circumstance falls under one of the exceptions to the rule that nullifies gifts to witnesses and their spouse, a beneficiary, their spouse, or both should not witness a will.[65]

In *Ita v Dazie*[66]The court determined that the proponent of the will has the burden of proving, at least on the surface, that:

a. The will was legitimately executed in accordance with the law;

[63] There is a similar provision in the Rules of Court of the states that adopted the Uniform Civil Procedure Rules.
[64]*Groffman* v *Groffman* n.55..
[65] A. Abayomi, n.25, 76.
[66] Supra.

b. the testator was of sound disposition at the time of execution; and
c. the testator knew and approved of its contents.[67]

5. **Difficulties in Implementing Testamentary Procedures**

To guarantee that a person's desires are honoured and that disputes between heirs are kept to a minimum, testamentary procedures – such as creating a will or other legal frameworks for the distribution of assets after death – are crucial. Despite their significance, a number of obstacles prevent these practices from being widely adopted in different communities and areas. Among the most notable obstacles are:

i. Lack of legal knowledge and illiteracy;
ii. Mistrust of legal authorities;
iii. Religious and cultural taboos;
iv. The belief that wills are only for the wealthy;
v. The cost and availability of legal services; and
vi. Social inequality and gender bias.[68]

6.**Testamentary Capability of a Will**

Recently, any inability that denies someone the ability to create a legally binding will is referred to as "testamentary capacity" in this context, the applicable rules on testamentary capacity include the following:

i. Anyone who is of sound mind and is an adult, Christian, Muslim, or otherwise can create a legal will in English.[69]In general, minors are not allowed to make wills. No will made by someone less than twenty-one years old shall be enforceable, according to Section 7 of the Wills Act of 1837. The age is set at eighteen under Section 3 of the Wills Law of Lagos and Delta State. The fact that a minor later reached the required age before passing away does not excuse the lack of capacity at the time of making a will in English. However, soldiers serving in the armed forces, sailors, mariners, and crew members of commercial airlines at sea or in the air are excluded from the requirements of the testator's age under Section 11 of the Wills Act of 1837 and Section 6 of the Wills Law of Lagos and Delta State. A privileged will may be executed by these individuals. People who are blind, illiterate, deaf, or mute are considered to have legal disabilities in the eyes of the law, and their cases should be handled carefully. A will

[67] S. O. Imhanobe, n.28, 621 – 627.
[68] Emphasis mine.
[69] Apatira v Akanke (1944) 17 NLR 149; (1962) 1 All NLR 130; Adesubokun v Yunasa (1973) 3 U.I.L.R (pt. 1) 22.

created by someone who is blind, illiterate, deaf, or dumb must be read to them so they comprehend it before they sign it in order for it to be deemed legitimate.

ii. The sound disposition of the testator: This category encompasses a number of issues:

a. Mental illness that impairs the testator's general faculties;
b. The testator's advanced age leading to senility.[70]
c. A testator with delusions;
d. Partial mental stability;
e. Habitual intoxication, etc.

It depends on the facts and severity of the testator's illness whether or not they possess the mental competence necessary to make a valid will. When determining whether the testator possesses the necessary mental ability, the following times are pertinent:

i. At the time the testator provided the directive in the will; and
ii. The testator carried out the will at that time.[71]

Irrespective of the foregoing, if the testator is sane throughout these two times, it makes no difference if they were insane before or after. This is because validity of a will is unaffected by supervening incapacity, and recovering from incapacity does not legitimise a will that would otherwise be invalid.

In *Banks v Good Fellow*[72]the principles that currently determine whether or not the testator had a sound disposing mind when creating and carrying out the will were established by the Court of Queen's Bench. After reviewing a number of authorities from both English and American jurisdictions, Cockburn Jr., for example, gave the court's judgment and concluded that the following is necessary for the exercise of such a power:

a. The testator must comprehend the nature of the process of creating a will and its consequences; they must realise that they are voluntarily giving up their property rather than selling it;
b. The testator ought to be aware of how much property they is giving up;

[70]*Balonwu* v *Nezieanya* (1959) ERLR 40.
[71]*Kwentoh* v *Kwentoh* (2010) 5 NWLR (pt. 1188) 543 at 566.
[72] (1870) L.R 5 Q.B 459.

c. They must have the capacity to understand and value the claims to which they should give effect (the one whom they willfully excludes from any involvement);
d. How the property is to be divided.

In the same manner that a lawyer would understand the complexities of creating a will, the testator is not expected to understand the legal form of its provisions. If the testator is mentally capable of appreciating the numerous dispositions of their property they are about to sign, then that is adequate.

In *Federal Administrator General v Johnson*[73]soundness of mind was contrasted with the state of bodily health, which may be the state of extreme imbecility, and yet the testator may possess sufficient intelligence to specify how their goods should be disposed of.In *Parker v Felgate*[74],it was held that a will is not void simply because the testator's mental state worsened after giving instructions but before carrying out the will.[75] In *Jenkins v Morris*[76]The presumption of sound disposing mind must be relied upon, and if necessary, positive affirmative evidence must be presented in order to establish that the testator had a sound disposing mind. Any evidence regarding the testator's mental state, whether oral or documentary, is admissible to prove a sound disposing mind.
In *Okelola v Boyle*[77]The Nigerian Supreme Court provided the following explanation on how the presumption of sound disposing mind is applied:

The maxim omnia preasuntur rite esse acta may be used by the court to declare a document ex facie duly executed. The adage only holds true when the will is completely regular in form and there is no reason to suspect it. However, the adage does not hold true as strongly in situations when suspicion is raised, the document cannot be considered ex facie regular, or the testator has a condition like blindness, deafness, or illiteracy.
Unless there is evidence of an irregularity, the courts are willing to accept a deceased person's will for probate. There is a rebuttable presumption that the testator had a sound disposing mind at the time the will was made if it appears reasonable and is properly executed.

[73] (1960) LLR 292.
[74] (1883) 8 P.D 171; *Perera* v *Perera* (1940) A.C 345; Thomas v Jones (1928), p. 162.
[75]*Battah Singh* v *Amirchand* (1948) 1 All E.R 152; Amu v Amu (2000) 7 NWLR (pt. 663) 164.
[76] (1880) 14 ch. D. 674.
[77] (1998) 1 SCNJ 63.

If the state of mind of the testator is questioned, the *onus probandi* is on the propounder of the will to establish, usually by establishing that the will is reasonable on its face, and that the will is duly executed. This provides a prima facie demonstration of sanity in favour of the testator or the proponent may elect to offer positive affirmative evidence in support of the testator's state of mind. The burden then passes to the challenger, who must present proof that the testator was insane at the time the will was prepared, even though it appears reasonable and was properly executed.[78]

The proponent of the will may use positive affirmative evidence to demonstrate that the testator had a sound disposing mind in addition to or instead of the presumption of sound mind. What is this affirmative, positive proof? It refers to the following:

a. Evidence indicating the testator wrote the will personally;[79]
b. Evidence from attesting witnesses that must to be verified;[80]
c. Proof of the testator's actions both before and after creating the will;
d. Evidence of the testator's lifestyle and general habits; and
e. Medical records from physicians who previously treated the testator.[81]

iii. The degree of delusion that can affect the validity of a will depends on the facts. Insane delusion is a concept of a disordered mind that imagines facts to exist without evidence; it is a belief held against all evidence and argument to the contrary, which cannot be accounted for on any reasonable hypothesis. This disorder may have developed from religious or superstitious belief.[82]

If it is shown that the testator has been subject to any insane delusion, a will prepared by them should be regarded with considerable mistrust and every presumption in the first instance weighs against it. But if it is shown that the delusion has not impaired the general capacities of the testator's mind, and it has no influence on the will, the will is legitimate.[83]

---

[78]*Jonson* v *Maja* (1950/51) 13 WACA 290; *Parke* v *Batlin* 12 E.R 1090; *Adebajo* v *Adebajo* (1973) 3 ELSLR 544; (1973) 3 UILR (pt. 1) 1.
[79]*Cartwright* v *Cartwright* 161 E.R 928.
[80]*Tyrell* v *Painton* (1894), p. 151; *Adebajo* v *Adebajo* (1973) 3 UILR (pt. 1) 1; *Johnson* v *Maja* (1950/51) 13 WACA 290.
[81]*Boughton* v *Knight* (1873) L.R 3 P and D 64; *Adebajo* v *Adebajo* (supra); *Okelola* v *Boyle* (supra).
[82]*Samuel* v *Tebbit* LR 1 P and M 398.
[83]*Banks* v *Goodfellow* (supra).

iv.Fraud and undue influence qualify as testamentary capacity issues because they impact the testator's right to distribute their property in their will as they see fit, even though they do not directly address the testator's testamentary capacity or call into question their mental state. Undue influence and fraud deal with third parties interfering with the testator's will, which is more common with the will of a person with a weak mind than delusion and unsound mind, which deal with the testator's own mental state.

For influence to be considered undue under any legal rule that would be sufficient to void a will, it must be exerted through coercion or pressure; persuasion, regardless of its intensity, cannot be considered undue influence. There should be a reason and an opportunity to exert such influence in addition to these two components. There is virtually little difference between pressure, persuasion, and compulsion. In every scenario, the test is whether the testator behaved as a "free agent" without interference when creating the will; if the answer is yes, there was no undue influence; if not, the will is void, and gifts acquired through fraud or undue influence may be revoked.[84]

A fiduciary relationship between a lawyer and a client, a teacher and a student, a doctor and a patient, a clergyman and a parishioner, etc., does not imply undue influence. In order to prove undue influence, there must be positive evidence. Such a fiduciary arrangement, though, can give rise to questions about suspicious circumstances.[85]

v.Situations where there is a fiduciary relationship between the testator and the beneficiary are considered suspicious circumstances. In cases where a fiduciary connection exists, the court takes great care in allowing the will to go through probate. It is the proponent of the will's responsibility to prove otherwise.[86]

Although suspicious circumstances may not always render a will invalid, they do require judicial scrutiny to allay suspicions and ensure that the will accurately reflects the testator's intentions. The burden of proof required to remove suspicion varies with the level of suspicion.[87]

vi.Understanding and consent: The testator must understand and consent to the terms of the document they signs as their will.[88]

The need for the testator's consent and knowledge is not substantive law, but rather a rule of evidence.[89]If there are suspicious circumstances,

[84]*Boyse* v *Rossborough* 10 E.R 1211; *Johnson* v *Maja (*supra); *Wingrove* v *Wingrove* 91885), p. 081; Hall v Hall LR 1 P and D 481.
[85] Imhanobe, supra note 28, 596 – 608.
[86]*Okelola* v *Boyle* (supra).
[87]*Wintle* v *Nye* (1959).
[88]*Okelola* v *Boyle* (supra).

especially involving people with disabilities like the dumb, deaf, illiterate, and blind, strong affirmative evidence of the testator's knowledge and approval of the will is necessary. Normally, the fact that the will was executed should raise prima facie proof that the testator knew and approved the contents of the will.

If it is proven that the testator understood, knew, and approved of the contents of a will at the time they gave instructions to their solicitor, but their health had deteriorated before the will was executed, then the testator is held accountable for knowing and approving of the will's contents. In a similar vein, expecting the testator to comprehend the technical terms used by a specialist who drafted the will is absurd. The knowledge and consent requirements are met if the will includes the testator's correct instructions.[90]

It is crucial that the testator possess the testamentary competence to create a valid will, and the solicitor has an obligation to carefully consider how the testator's incapacity could render the will void.[91]

7.Statutory Constraints on Testamentary Freedom to Dispose of a Will in Nigeria

Section 3(1) of the Wills Act of 1837 provides as follows:

> It shall be permissible for any person to demise leave or dispose of by his will, performed in manner hereby stipulated, all real estate and all personal estate which he shall be entitled to either at law or in equity at the time of his death

Unrestricted testamentary freedom exists in states where this rule is valid. In certain states, testators are allowed to distribute their properties to whoever they want, even if it means ignoring their dependents and family members and giving all of their assets to total strangers. However, moral, cultural, and religious objections have been raised against this unrestricted testamentary freedom. It was contended that it might result in the testator denying their dependents their inheritance in favour of strangers, which would be difficult for them.[92]Additionally, Sagay claims that Muslims are especially upset about the fact that this freedom would

---

[89] In the Estate of Flad (No. 3), *Hartley* v *Flad* (1968), p. 675; (1965) 3 all E.R 776 at 781.

[90]*Re Morris, Lloyd's Bank Ltd* v *Peake* (1971), p. 62; (1970) 1 All E.R 1057; The court will exclude out of the will words that were introduced inadvertently.

[91] Imhanobe, n.28, 608 – 613.

[92] Sagay, n.31, 127.

allow a Muslim to dispose of their possessions as they please, which is against Islamic law.[93]Additionally, it was asserted that certain properties are considered sacrosanct by customary law and cannot be disposed of as the testator pleases. All of these factors contributed to the legislative mindset that is evident in the Will Laws passed by several states, which now impose restrictions on the testator's freedom to leave a will in those states. These restrictions, which fall within three categories are statutory.

1.Customary law limitation: The laws of Lagos, Kaduna, Oyo, Delta, and the other states that made up the former Western Region of Nigeria contain this restriction. It can also be found in the states of Kwara and Plateau.[94]The property that can be disposed of by will is limited by this restriction. The following is stated in Section 3(1) of the Wills Law of Delta State and the Former Western Region:

Subject to any applicable customary law, it is legal for anyone to die, bequeath, or dispose of, by will executed as specified below, all real and personal property to which he may be entitled in law or equity at the time of his death. If not, the property would pass to his heir at law, or if he became entitled by descent, to his ancestor, or to his executor or administrator.

This statutory restriction acknowledged that total testamentary independence would violate certain long-standing principles of our customary law. In *Lawal – Osula v Lawal – Osula*[95]Belgore JSC stated:
Like certain other tribes in Nigeria, the Binis have long-standing customs and traditions that cannot be eliminated by simple law. certain of these customs are unique to them, while others are shared by other races worldwide. There would be severe chaos if some of these indigenous laws and customs were outlawed, which would make obedience and governance challenging. Because of these, regulations are carefully crafted to fit the laws and customs in question and to govern their implementation, rather than completely abandoning a practice that has been tried and established over generations.[96]

The effect of section 3(1) of western Nigeria's Wills Law was unclear; that is, it was unclear if it qualified the property that may be disposed of in a will or if it eliminated the testamentary ability of all individuals

[93]*Ibid*.
[94] Dadem, n.37, 258. Adamawa State is also included by the author. For the limitation in Delta State. See Section 3(1) of the Delta State wills Law, Cap 4 Laws of Delta State 2006.
[95] (1995) 32 LRCN 291.
[96]*Ibid.*

subject to any customary law.[97]However, in *Idehen v. Idehen,* the Supreme Court clarified this ambiguity.[98]This case concerned Bini customary law; the testator had left a testament in which he bequeathed to his eldest son the two houses he had occupied during his lifetime. However, because the two residences were expressly bequeathed to the son, they would belong to the residual estate because the son survived him. But during his lifetime, he resided in these two homes, which together made up the Igiogbe, or family seat.[99]According to Bini custom, which states that after the testator's second burial ceremonies are completed, the eldest surviving son of the deceased will automatically inherit it,[100] to the exclusion of all other children.

Therefore, the testator's eldest surviving son and a few other children filed a lawsuit to have the will declared void due to its inconsistency with Bini customary law. The trial court determined that the petitioner was, in fact, entitled to inherit the two houses that made up the Igiogbe since he was the oldest surviving son according to Bini customary law. As a result, the court affirmed the validity of the remaining portion of the will while declaring the portion that allocated the houses to the deceased eldest son to be invalid. The plaintiff's claim to the two residences was maintained in the Court of Appeal, but the will as a whole was ruled invalid because all of the dispositions made under it were invalid. However, following an additional appeal, the Supreme Court ruled that *Section 3(1) of the Wills Law of Old Bendel State*[101] only addressed the subject matter of a demise; in other words, it limited the property that could be passed under a will and was not meant to remove a testator's testamentary capacity, or his obligation to make a will. As a result, the trial court's decision was upheld and the Court of Appeal's decision was overturned.

A testator cannot attempt to omit the restriction imposed by customary law since it is so absolute. In the Lawal-Osula case, where the testator included the following declaration in the will, the Supreme Court took this thus:
I certify that I make the aforementioned bequest and devise while I am completely well and sane. My intent is that no one should change or alter it. It is my desire that this will not be changed or modified by Benin national law or custom.

[97] Sagay, n.31, 141.
[98] (1991) 6 NWLR (pt. 198), 382.
[99] Sagay, n.31, 143.
[100]Dadem, n.37, 259.
[101] Cap 172 of 1976, applicable in Edo State.

A devise made by the testator, who was bound by the Bini customary law on Igiogbe, to anyone other than his eldest son, was deemed void in spite of this declaration. In our opinion, the court should reconsider its stance in the aforementioned case. The reason for this is that a testator may make such a declaration for a number of reasons. The most common of these may be to completely disinherit a first son or the oldest surviving son who is wasteful and errant and who caused the testator a great deal of trouble throughout their lifetime because of their misconduct. Such a declaration might be the testator's only means of discipline. It is therefore illogical for a child to depend on the aforementioned clause to receive benefits from the testator's inheritance under the pretense that the property is Igiogbe after the testator had disinherited the child by leaving nothing to them in their will. In my opinion, this amounts to an unjustifiable limitation of a testator's testamentary intention and ability. The courts would essentially be helping the testator stop such a child from harvesting where they did not sow by agreeing to sustain such a statement.

A slightly different Lagos state limitation is as follows:

> 1(1) Every individual may lawfully bequeath or dispose of, by will executed in conformity with this law's provisions, all property to which he is entitled at the time of his death, either in law or in equity; however, the provisions of this law shall not apply to any property to which the testator was subject without the authority to do so by will or otherwise under customary law[102]

This restriction is "more-explicit and expensive," according to Abayomi, because it appears to apply to any property that the testator lacks the authority to dispose of, including family or community property, in addition to property covered by customary law.[103]

2.Islamic Law Limitation: One could argue that this restriction stems from the Supreme Court's ruling in *Adesubokun v. Yunusa,*[104]the testator in this instance, a Muslim from Lagos State who was governed by Maliki school Islamic law, created a will in accordance with the Wills Act. Because the testator did not make specific dispositions to their heirs in accordance with Islamic law, the legality of the will was contested. The trial judge ruled that the testator's failure to adhere to Islamic law

[102] Section 1(1) Wills Law of Lagos State.
[103] Abayomi, n.25, 260.
[104] (1971) 1 All NLR 225.

rendered the will void. The Supreme Court ruled, however, that Islamic law could not be applied to the testator because they wanted to divide their property in accordance with the Wills Act.Dadem said it might have been in reaction to the Supreme Court's approval of full testamentary freedom in *Adesubokun v. Yunusa,*[105]that the wills law outlined below was limited by Islamic law.[106]Islamic law dictates that a testator cannot leave more than one-third of their assets in a will without the approval of their legal heirs, or his heirs
as defined by Islamic law.[107]This restriction is currently covered by the Plateau State Wills decree, the Oyo State Wills law, and the Kaduna State Wills legislation,[108] the Bauchi State Wills Law,[109] the Kwara State Wills Law[110] and the Jigawa State wills Law.[111] For instance, *Section 2 of the wills law of Kaduna* reads thus:

> All property to which a person is entitled, either in law or equity, at the time of his death may be bequeathed or disposed of by his will executed in accordance with the provisions of this law; however, the provisions of this law will not apply to the will of a person who was subject to Islamic law immediately prior to his death

Every person may lawfully bequeath or dispose of all property to which they is entitled at the time of their death, either in law or equity, by having their will executed in accordance with the provisions of this law; however, the provisions of this law will not apply to the will of a person who was subject to Islamic law immediately prior to his death.[112]In *Ajibaiye v. Ajibaiye,* for example, this restriction was brought before the Court of Appeal for the first time. In this case, the deceased Muslim testator from Ilorin signed a will under the Wills Act that disposed of their assets in a way that was against Islamic law. The testator included the following clause in their will:

Despite being a Muslim, I have chosen to have English law govern my life's transactions and affairs, and I also want and want my estate to be divided in line with English law, as stated in this will.[113]The will was

[105]*Ibid.*
[106] Dadem, n.37, p. 262.
[107] Sagay, n.31, 140.
[108] No. 2 of 1988.
[109] Cap 168, Laws of Bauchi State 1989.
[110] Cap 168, Laws of Kwara State 1991.
[111] Cap 155, Laws of Jigawa State 1998, see also Dadem, n.37, 262.
[112]*Ibid* at 262.
[113]*Ibid.*

contested in court because the testator, a Muslim from Ilorin, Kwara State, was unable to dispose of his goods as he desired due to the Islamic law limitation in his will. His last wife, who was granted the majority of his fortune in the will, argued that her husband could not have been governed by Islamic law because he did not live his life in accordance with its precepts.In agreement with the trial court, the Court of Appeal ruled that the will was invalid because it violated Kwara state's will law. This was because the testator, who had identified himself as a Muslim, was bound by Islamic law even though he believed that he could choose to be governed by English law in this regard.[114]

3.The third statutory restriction on testamentary freedom in Nigeria is the provision for family and dependents. This restriction was put in place to accommodate family members or dependents who were left out of a will or to whom sufficient provisions were not made, in accordance with developments in England. The wills laws of the states of Lagos, Kaduna, Abia, and Oyo contain this restriction.[115] For instance, Section 2(1) of the Wills Law of Lagos State provides thus:

> Regardless of section 1 of this law, if a person passes away and is left behind by any of the following, they may ask the court for an order stating that the deceased's will's disposition of his estate does not provide for a reasonable level of financial support for the applicant: (a) the deceased's wife or wives, or husband; and (b) the deceased's child or children

In the event of a spouse's application, this reasonable financial provision refers to any amount of money that would be appropriate under all the circumstances for the spouse to receive, whether or not it is necessary for maintenance, with the exception of situations in which the marriage was the subject of a judicial separation decree.[116]Section 2(3) further specifies that all applications must be submitted within six months of the probate being granted.

Although the legislation in Lagos State and Kaduna, Abia, and Oyo States are similar, there are differences in the provisions for family and

[114] Fenemigho and Oriakhogba, n.6, 70 – 74.
[115] Section 2, Wills Law of Lagos State; Section 27, Kaduna State Wills Law; Section 4 Abia State Wills Law and Section 4 Oyo state wills Law; Section 127 of the Anambra State Administration and Succession (Estate of Deceased Persons) Law, Cap 4 Laws of Anambra State of Nigeria contains a similar provision.
[116] Section 2(2) of the Wills Law of Lagos State.

dependents. In the three latter states, the deceased's father, brother, or sister who received full or partial maintenance from the deceased prior to their death are now included in the group of people who may apply for reasonable financial arrangements. For that group of people, such as a parent, brother, or sister, "reasonable financial provisions" refers to the amount of money that would be appropriate for the applicant to receive as maintenance under all the circumstances of the case.People in that category in the states of Kaduna, Abia, and Oyo shall be considered to have been supported entirely or in part by the deceased if the deceased was contributing a significant amount of money or money's worth to the person's reasonable needs.[117]

8. What Happens if a Nigerian Passes away without Leaving a Will?

Because circumstances differ, there is no simple answer to the above question. Although it is more prevalent in developing nations, the mistreatment of widows and their children occurs worldwide.[118]Widows endure social marginalisation, starvation, and poverty alongside their children due to cultural and traditional mistreatment.[119]In Nigeria, widows experience the most severe abuse and are often pushed to commit suicide because they believe that being a widow is a death sentence. When there is a legitimate will, these issues are significantly lessened. In certain places, the deceased's full brothers, matrilineal uncles, matrilineal half-sisters, matrilineal sisters, matrilineal half-brothers, matrilineal aunts, and the deceased's mother all jointly inherit the property, although most customs dictate that sons inherit it as a corporate body.[120] In Re Whyte[121]the Fanti native law and custom, which grants all of a man's property to his maternal relatives at the expense of his wife and children, was applied to the deceased's assets. In *Mojekwu v Mojekwu*[122]and *Ukeje v Ukeje,*[123]due to a custom that prohibits spouses and daughters from inheriting property, there have been cases when women and daughters were prevented from doing so. In *Nezianya v Okagbue*[124]It was decided that a widow's ownership of her late husband's belongings does not constitute stranger possession.

[117] Dadem, n.37, 255; Fenemigho and Oriaghogba, n.6, 74 – 75.
[118] www.blueprint.ng.
[119] *Ibid.*
[120] J. B. Mulikat, "A Comparative Study of Women's Rights of Inheritance in Nigeria Under Islamic Law and Some Customary Law": *University of Ilorin Journal,* (2012), 157.
[121] 18 NLR 70.
[122] (1997) 7 NWLR 283.
[123] (2014) 11 NWLR (pt. 1418), p. 384.
[124] (1963) All NLR 358.

Similarly, in *Mojekwu v Ejikeme*[125]it was decided that a girl could inherit her father's property after he passed away.
An individual is considered intestate when they pass away without a legal will. This typically indicates that their estate will be divided according to the customary regulations that specify who will inherit what. The customary laws that attempted to bar women and children from inheriting property were not given legal support by the courts in the aforementioned decided cases. However, not everyone has the resources to engage in drawn-out, expensive litigation all the way to the highest court, therefore that does not provide sufficient protection. In actuality, only those with the courage and resources may legally dispute customary laws of inheritance. Essentially, the application of customary laws is still widespread. Cases such as *Mojekwu v. Mojekwu* and *Ukeje v. Ukeje* do, in fact, represent the small percentage of women who have the means and the courage to defy convention. Most people suffer in silence.[126]There are hundreds of other instances where the widow must suffer the burden in silence for every successful challenge against the unjust customary laws of succession.

The grim reality of Nigerian widows is chronicled in an essay about their harrowing experience. One widow describes how, even before the deceased's body was placed in the mortuary, her husband's brother started requesting title documents to landed property. Another describes how family members started requesting withdrawals from her husband's account while he was still in the hospital. There is also the tale of relatives who eventually seized all of the deceased's belongings despite failing to visit the hospital during their lengthy illness.[127]It has been said that the mistreatment of the Nigerian widow is becoming more concerning.[128]When a Nigerian passes away without leaving a will, their wives and children are left in a very difficult situation. Even widows who are considered intelligent have had reason to protest.[129]Every Nigerian should ideally have a will, considering the position of customary law on inheritance. It can be the greatest way to keep loved ones safe. Since the will is a written legal document, it is difficult to legitimately contest it on the grounds of custom and culture. When there is a legitimate will, it is simpler to use injunctions to keep troublemakers at bay.

---

[125] (2000) 5 NWLR 402.
[126] P. K. Obi, n.1, 104 – 105.
[127] Adekunle, "*Agonies of Widows Hit by Harsh Nigerian Traditions,"*<www.vanguard ngr.com.> Accessed 5th May, 2025.
[128] Conditions of Nigerian Widows Still Deplorable, <www.thisdaylife.com.> Accessed 5th May, 2025.
[129] Obi, n.1, 104 – 105.

The widows and children left behind have allies who must battle on their behalf when executors are appointed to a will. A will's executors, whose responsibility it is to carry out the deceased's instructions, must be the target of any legal challenge to the will. It is hard, if not impossible, to imagine how family members might evict the deceased from the house if the testator left a will designating trustworthy executors and leaving the house to their wife and children. Similarly, when there is a legitimate will, it becomes extremely difficult for avaricious relatives to access bank accounts. While the widow may easily be coerced into yielding to the whims of her late husband's relatives, same cannot be said of the executors.

9. The Role of a Will in Property Succession and Family Cohesion in Nigeria

The testator's desires for the division of their assets and the upbringing of any minor children are outlined in their will. A written will that is signed by the testator and their witnesses is necessary to increase the possibility that the testator's intentions will be fulfilled.[130]The testator has complete control over how their assets are distributed when they have a will. It determines how a smooth transition in the operation of a business or other investment will occur and provides instructions on how personal belongings should be divided.[131]A will can provide sufficient funding for the upbringing of small children, particularly for their tuition. Even if they are adults, children from a previous marriage may have their assets determined by a will. A will helps survivors avoid conflict and reduces or even eliminates the likelihood of family members fighting over property. Additionally, a scenario in which there is dispute for property while the associated obligations are neglected is prevented.

A will performs other roles:
The testator determines the distribution of their r estate. With the help of a will, a testator can decide how their estate will be managed when they pass away. There is no assurance that the testator's wishes will be fulfilled if they are not documented.[132]

The care of minors and other dependents is decided by the testator. The welfare of people left behind may be determined by a will. The testator is able to provide for their dependents' maintenance.[133]

[130] Smith, n.14.
[131] *Ibid.*
[132] Obi, n.1, 103.
[133] *Ibid.*

A protracted probate process is avoided with a will. A will tells the court how the deceased's inheritance should be split and expedites the probate procedure. It prevents protracted, needless delays.[134]It lessens the likelihood of a lengthy legal battle.

The cost of managing the deceased's estate is reduced when a will is in place. It may act as a deterrent to frivolous lawsuits.
Who will manage the business of the testator's estate is up to the testator. Sometimes a person does not trust specific relatives to manage their estate. Such individuals might have access to the estate in the event that there is no will. Choosing dependable individuals and designating them as trustees or administrators is facilitated through creating a will.

People who might otherwise be eligible to inherit can be disinherited by the testator. The easiest approach to prevent family members who would have claimed property based on custom from doing so is through a will. It is the most effective method of avoiding local customs and laws. Through the use of a will, a man without a male child may nullify any traditional claims to his wealth that his male relatives could have established. During the testator's lifetime, the testator has a list of people who could cause issues for their wife and children if they is not around.The will may specifically ban such individuals from handling the estate in any way.

A testator can make donations and gifts with the help of a will. One important reason to have a will is the power to make gifts. A person can want to give a trustworthy servant or someone else who is typically outside of his family a particular present.

A will aids in preventing more serious legal issues. If a person passes away without a will, the estate can end up in the hands of someone they did not intend. For instance, a wrongful death lawsuit awarded more than $1 million to the estate of a deceased son. The whole inheritance went by the son's father, who had not been involved in his son's life for more than 32 years, leaving siblings and close family members out of the equation
Since adjustments can always be made to a will, it helps to account for life's changes. Births, deaths, and divorces are examples of life events that may necessitate amending a will.

[134] B. Wisness, "10 Things You Should Know About writing a Will," <https://www.aarp.org/money/estate-planning/info-092010/ten_things_you_should_know_about_writing_a_will.html.> Accessed 27th April, 2025.

There is no guarantee of tomorrow; death is unavoidable and may strike at any time. Lack of a will is frequently caused by procrastination and an inability to embrace death as a natural part of life. Sometimes, such as after an unanticipated death or disability, it is too late to realise that wills are required. In order to prevent families from experiencing more stress at an already sensitive period...[135]

It is clear from the foregoing that a will enables a man to specify what his heirs shall receive from his estate upon his passing. It provides precise guidelines for inheritance in the Nigerian setting and shields a woman and her children from the abuses of her in-laws. A will outlines the precise wishes of the departed and may deter avaricious family members from vying for assets because it makes the wishes explicit.[136]

10. **Conclusion**

Disinheritance of wives and children by male relatives should be a thing of the today. Traditional inheritance laws are out of date and irrelevant in today's society. Unfortunately, in Nigeria, this is not yet the case. is evident that intestacy—the absence of a will often results in protracted legal disputes, family disintegration, and the implementation of customary laws that might not be in line with the wishes of the departed in Nigeria. It is logical to conclude that widows and their children can benefit from protection and empowerment when a legitimate will is in place, which is why there is a need for education and awareness on the topic. For the benefit of their dependents, Nigerian men must rise beyond tradition and superstition and embrace wills. To deal with widows and inheritance, government agencies such as the Ministry of Justice, the Legal Aid Council, and the National Human Rights Commission must establish a dedicated desk.

[135] *Ibid.*
[136] Obi, n.4, 103 – 104.