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## **Why Clarity is King When Writing Your Will: Avoiding Disputes and Ensuring Your Wishes Are Met**

The golden rule for the interpretation of testaments is to ascertain the wishes of the testator from the language used. And when these wishes are ascertained, the court is bound to give effect to them, unless we are prevented by some rule or law from doing so." (Quoted in the judgment below)

When drawing up your will ("Last Will and Testament"), remember that "clarity is king". Ambiguity is one of the cardinal sins of will-drawing because it exposes your loved ones to the risk of uncertainty, dispute, rancor, and quite possibly expensive litigation. Worse, if in the end a court has to try and decipher what you actually intended, there is no guarantee that it will be able to correctly ascertain your true wishes.

### **A case of different interpretations and a bitter dispute:**

A recent SCA (Supreme Court of Appeal) case confirms once again the need to express your wishes clearly and unambiguously in your will -

- A bitter dispute between a widow on the one hand and her three step-children on the other had its roots in a deceased father's ownership of two plots. On the one plot the father had built houses for his two daughters, with his son building flats for renting out on the same plot. He and his wife lived in their house on the other plot.
- The dispute centered on two different interpretations of a clause in the father's will in which he had left both plots to his daughters, but subject to a right of habitatio in favor of his wife. That, said the executor of the deceased estate, gave the widow the right to live in, and to rent out, the buildings on both plots.

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- The widow's step-children on the other hand argued that it could not have been their father's intention to give his wife such rights to the plot in question in light of all the "surrounding circumstances". They made much of the fact that their parents' ante-nuptial contract referred only to the other plot (the one with the marital home) in that context. They also pointed out that they had all agreed informally to each of the siblings being allocated a "portion" of the disputed plot.
- The siblings accordingly refused to pay out any rentals to the executor, and the dispute eventually found its way into the courts - first the High Court and then the SCA.
- In confirming the widow's right to live in the buildings and to let/sub-let them out and receive rentals from both plots, the SCA confirmed that a court will establish the intention of the deceased from the language used "in its contextual setting". In other words, "the will must be read in the light of the circumstances prevailing at the time of its execution." Thus, in this case it was relevant that the father had not changed his will to reflect the informal allocation of "portions" of the disputed plot between his children, and that he had probably intended his wife to benefit from the receipt of rentals for her financial well-being and maintenance.
- But beyond that, there is no place for the introduction of "extrinsic evidence" or "surrounding circumstances" if the wording of the will is clear and unambiguous - as it was in this case.

**Bottom line – it is critical that the wording of your will be drawn professionally to correctly, clearly, and concisely set out exactly what your wishes are.**