



APPLETON TIMES

DIGITAL ISSUE 04 | MARCH 2021

ENTER



TABLE OF **CONTENTS**



APPLETON TIMES

A MESSAGE FROM THE
 APPLETON **MANAGING DIRECTOR**

WORKING HARD BEHIND THE SCENES TO DELIVER RESULTS FOR YOU

You, our dear client, are the alpha and omega of our company.

We have been working particularly intensively during the Covid-19 lockdown period to achieve and maintain the highest levels of client care, service and efficiency. Nonetheless, we are dealing with numerous challenges, but wish to bring to your attention two. Firstly, the lockdown has created a significant backlog in the administration of all aspects of deceased estates at the Masters' Offices around the country. Truly some are more efficient than others, but a number of the larger Master's Offices in key urban areas are in a state of crisis, with delays of months being experienced.

I recently addressed these concerns personally with the Minister of Justice, Honourable Ronald Lamola M.P., as well as with Parliament's Justice Committee. I received a prompt response that the Minister was fully aware of the problems at the Master's Offices around the country and that his Department was in the throes of implementing an electronic on-line system and portals aimed at minimising the 'human interface' between ourselves and the Masters

Offices with the objective of boosting response and turn-around times. As an interim step the Minister and Department of Justice have undertaken to increase the number of specialised personnel in order to provide a fast-track service at a number of the larger Master's Offices commencing firstly with Johannesburg.

The second challenge we have faced is the closure of the government printers for the publication of legal notices in the Government Gazette. In terms of the Administration of Estates Act, Appleton is required to publish notices to creditors for 30 days at the time of lodgement and then before concluding the estate administration process Appleton is required to advertise for a further 30 days that the Liquidation and Distribution Account is open for inspection. Due to the closure of the Government Printer to the publication of deceased states notices in the Government Gazette, executors have been unable to advertise estates. Again, I raised our concerns with the responsible Ministers as well as Parliament and am pleased to report that as from last week, deceased estate notices are once again being accepted and advertised in the Government Gazette.

Having secured some relief for our clients, we assure you that we will do everything in our power to make up any lost time in order to execute and conclude our client's estates as rapidly as possible.

On a happier note, I would like to welcome our new Deputy Head of Administration, Doné Jozeph, to the expanding Appleton team. Doné is an admitted attorney who until recently ran the estate administration department of a legal practice. I am sure you will join me in wishing Doné many years of professional happiness, growth and fulfilment with Appleton.



Doné Jozeph, Deputy Head of Administration

Our second piece of happy news is that our specialist Will drafter, Fatima Abrahams was recently admitted as an attorney of the Cape High Court. Again, we wish Fatima (who also recently announced her marriage engagement) many years of professional success and fulfilment with Appleton.

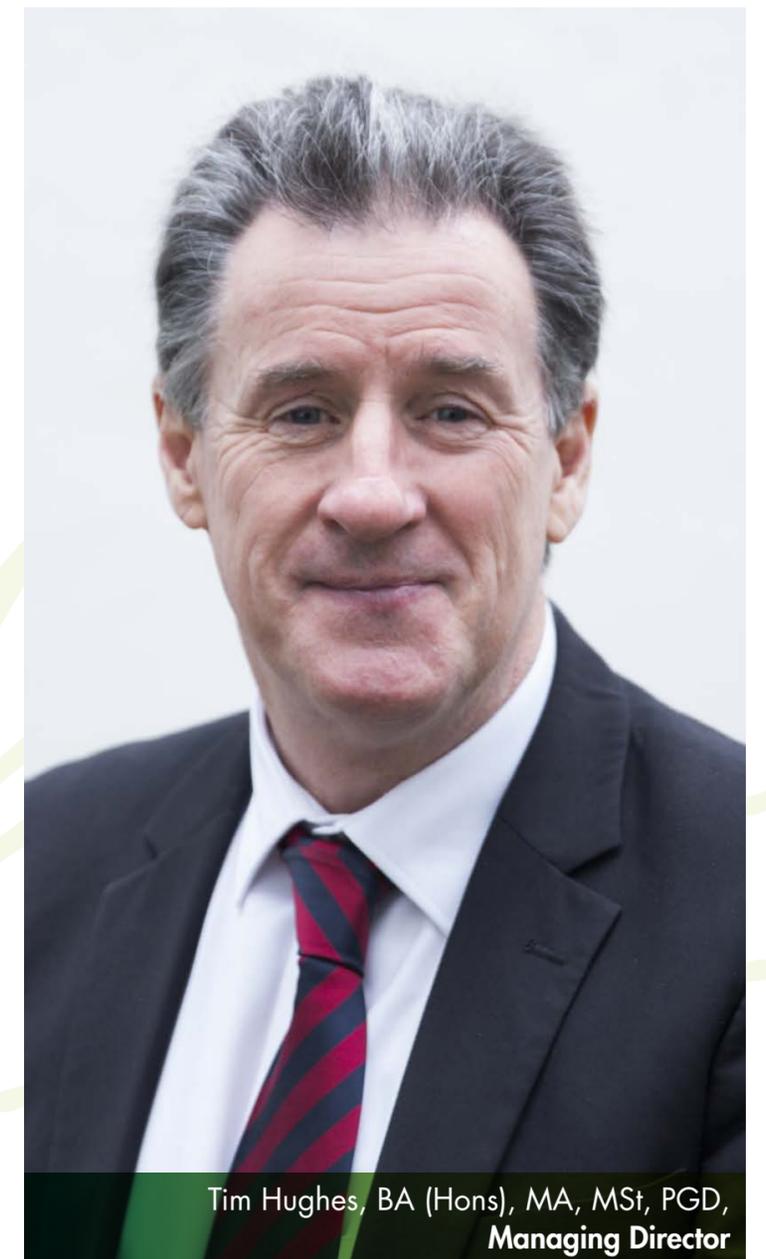


Fatima Abrahams, Attorney of the Cape High Court

With respect to the content of this quarter's Appleton Times, we have gone back to basics in outlining the key requirements of a Will and an Executor. This is followed by a discussion of a number of important legal cases which have bearing on deceased estate administration and finally we conclude with a salutary and sobering piece on Covid and seniors.

We hope you enjoy the read and as ever, please provide any feedback to [\[redacted\]](#), or call us Toll-free on 0800 50 60 70.

A handwritten signature in black ink that reads 'Tim Hughes'.



Tim Hughes, BA (Hons), MA, MSt, PGD, Managing Director

THE A-Z OF WILLS IN SOUTH AFRICA

WHO IS COMPETENT TO MAKE A WILL?

Anyone who is 16 years old and older, unless at the time of making the will they are mentally incapable of appreciating the consequence of their actions.

WHO IS COMPETENT TO ACT AS A WITNESS TO A WILL?

Anyone who is 14 years old and older, and who at the time that they witness the will, are competent to give evidence in court.

A beneficiary to a will should not sign as a witness, because they will then be disqualified from receiving any

benefit from that will. There are some exceptions to this rule. Consult your legal representative for more information in this regard.

WHAT ARE THE REQUIREMENTS FOR A VALID WILL?

- Since 1 January 1954, all wills must be in writing. They can be written by hand (not recommended!), typed or printed.
- The testator (person making the will) must sign at the end of the last page of the will.
- The testator must sign all other pages of the will anywhere on the page.

- The testator must sign the will in the presence of two or more competent witnesses.
- The witnesses must attest and sign the will in the presence of the testator and of each other.

WHAT ARE THE REQUIREMENTS FOR A VALID WILL IF I CANNOT SIGN MY NAME?

You may ask someone to sign the will on your behalf or you can sign the will by the making of a mark (for example, a thumbprint or a cross). If you make a mark, or get someone to sign on your behalf, you must follow these requirements:

- If it was made after 1 January 1954, the will must be in writing. It can be written by hand, typed or printed.
- The testator must sign the will at the end of the last page by making a mark, or if someone signs on their behalf, this other person must sign at the end of the last page in the presence and by the direction of the testator.
- The mark or the signature of the other person signing on behalf of the testator must be made in the presence of two or more competent witnesses and a commissioner of oaths.
- The witnesses must attest and sign the will in the presence of the testator/and of each other, and if the will is signed by the other person, also in the presence of that person and a commissioner of oaths.

- If the will consists of more than one page, every page except the last one must be signed by the testator or by the person signing on their behalf anywhere on the page.
- A commissioner of oaths must certify that they are satisfied as to the identity of the testator and that the will is the will of the testator.
- The commissioner of oaths must sign a certificate and each page of the will, anywhere on the page.

WHAT IS A CODICIL?

A codicil is a schedule or annexure to an existing will, which is made to add to or to change an existing will. A codicil must comply with the same requirements as a valid will (listed above).

A codicil does not need to be signed by the same witnesses who signed the original will.

WHAT IF I WANT TO AMEND MY WILL?

Amendments to a will can only be made while executing a will or after the date of execution of the will. Amendments to a will must comply with the same requirements for a valid will (listed above).

When amending a will, it is not necessary for the same witnesses who signed the original to sign the updated will.

MUST I AMEND MY WILL AFTER DIVORCE?

A bequest to your ex in your will, which was made before your divorce, will not necessarily fall away after the divorce.

The Wills Act says that, unless you specifically provide otherwise, a bequest to your divorced spouse will be cancelled if you die within three months of the divorce. This gives a divorced person three months after the divorce in which to amend their will.

Should you not change your will within three months after your divorce, your divorced spouse will benefit as indicated in the will.

WHAT WILL HAPPEN IF I DON'T LEAVE A WILL?

If you die without leaving a will or a valid will, your estate will be split up according to the Intestate Succession Act, no. 81 of 1987.

The estates of people who die intestate and whose estates are governed by the principles of customary law, must be reported to the Magistrate for the area in which the person was resident at the time of their death. The local magistrate should be consulted on how an estate that is subject to customary law will be dealt with.

(with acknowledgment to the Provincial Government of the Western Cape)



WHAT IS AN EXECUTOR?

During a person's lifetime s/he will gather assets, in other words, belongings such as a house or a motor vehicle. A person will also gather liabilities, in other words, credit such as a home or motor vehicle loan. These assets and liabilities will form part of a person's estate. At the death of that person, his/her deceased estate must be administered, in other words, divided, distributed and controlled by someone. This person is called an executor.

CASE STUDY ONE

David passed away and Doris was appointed in David's Will to be the executor of his deceased estate. She is not familiar with what this entails and wants to know what her duties will be as an executor. Doris contacts Appleton for some advice.

The Appleton Client Care Officer advises that the executor will be responsible for the administering of the deceased estate in terms of the Administration of Estates Act 66 of 1965 and the duties are set out as follow:

- The executor must meet with the family of the deceased in order to obtain all the relevant information and documentation needed, such as the death certificate and a list of the deceased's assets and liabilities.
- The deceased estate must be reported to the Master of the High Court in the area where the deceased lived.
- The executor must provide notice to the creditors (persons or entities the deceased owed money to) in order to inform them of the death of the deceased. The notice will also request the creditors to institute their claims against the deceased estate within a period of not less than 30 days or more than three months after publication of the notice. The notice must be published in a local newspaper and the Government Gazette.
- All existing bank accounts of the deceased must be closed and a separate bank account must be opened where all money that forms part of the deceased estate must be kept.

- The executor must determine if the deceased estate has enough assets to pay for the liabilities that forms part of the deceased estate. If there is not enough money to pay some or all of the liabilities, the executor must consider selling some of the assets that form part of the deceased estate.
- The executor will be responsible for drafting accounts that must be advertised for the public to inspect. These accounts must then be lodged at the offices of the Master of the High Court. These accounts will set out the assets and liabilities, as well as how the deceased estate will be divided and distributed between the heirs of the estate.
- After the accounts have been approved by the Master of the High Court, the executor must pay the creditors and distribute the deceased estate accordingly.

CASE STUDY TWO

Doris informs the Appleton Client Care Officer that she is scared that she will not administer the deceased estate properly and wants to know if she can appoint someone to assist her.

- The Appleton Client Care Officer advises Doris that she can appoint Appleton as professional executors to be the administrator and take care of all aspects of the deceased estate.

FEATURED ARTICLES

Every quarter our clients and readers identify key issues of concern and request clarity on these matters. This quarter we focus on the questions of 'soundness of mind' when completing a Will, as well as the question of gender and inheritance

The author, Louis Van Vuren, is CEO of The Fiduciary Institute of Southern Africa (FISA) has developed an extensive archive of court case summaries relating to fiduciary matters. You can visit the archive at

ConCourt rules it unconstitutional for females to be excluded from inheriting merely because they are female

COURT CASE SUMMARY BY FISA

On 19 February 2021, the Constitutional Court ruled the condition that upon the death of the last fideicommissaries the inheritance must go to the male descendants of the testators is invalid as it discriminates unfairly against the second to sixth applicants, who are all female. In a minority judgement Mhlantla J (Khampepe J, Madlanga J and Theron J concurring) held that the common law should be developed to make provisions in a will that fly in the face of the Bill of Rights unlawful and invalid.

As the provisions in the testators' will discriminated against female descendants that they did not even know purely on the basis of the fact that they are female, the provisions constituted unfair discrimination on one of the grounds prohibited in section 9 of the Constitution and were therefore unlawful and invalid.

In a majority judgement Jafta J (Mogoeng CJ, Majiedt J, Mathopo AJ and Victor AJ concurring) held that it is not necessary to develop the common law in this way, as unlawful provisions in wills have always been invalid and unenforceable. The court referred, amongst others, to

the judgements of the Cape High Court in Minister of Education and Another v Syfrets Trust Ltd NO and Another (2544/04) [2006] ZAWCHC 65; 2006 (4) SA 205 (C); [2006] 3 All SA 373 (C); 2006 (10) BCLR 1214 (C) and the Supreme Court of Appeals in BoE Trust Ltd NO and Another [2012] ZASCA 147; 2013 (3) SA 236 (SCA) and stated that the good morals of society (boni mores) are now encapsulated in the Bill of Rights.

The court was at pains to reiterate that nobody has a right to inherit and that testators are still free to choose who they want to benefit. There is no obligation to bequeath

anything to anyone and testators are free to disinherit any family member. However, if a provision in a will discriminates against someone purely on the basis of one of the grounds in section 9 of the Constitution, such a provision will be unlawful and invalid. As the provisions in the testators' wills are disinheriting the female applicants purely because they are female, these provisions are therefore unlawful and invalid.

FISA comments:

From a practical point of view the judgement is unlikely to lead to a spate of successful attacks on wills where a testator did not treat his or her heirs equally, or even disinherited one or more of the persons who would have expected to be heirs. The greatest possibility for interference by courts is likely to be where an individual or a class of potential heirs is directly or indirectly, but expressly, excluded from inheriting based purely on a ground which is one of the prohibited grounds in section 9 of the Constitution.

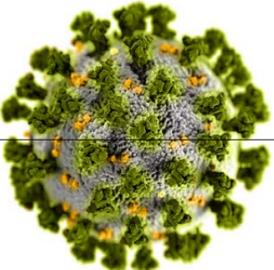
Court case – Testator's soundness of mind

The first plaintiff (V) took over as executor of the deceased estate of L from the second plaintiff's (E) husband (P), after he passed away. L made a joint will with her husband, G in 2005. G died later in 2005. L then executed a will in March 2010, and again in October 2014. She passed away in December 2014.

P initiated the litigation and applied to the court for an order declaring which one of the three wills should be given effect to, as the different heirs and legatees held different views as to L's state of mind when she executed the wills. Due to the material differences, the matter was referred to trial. When the trial commenced, all parties accepted that the 2014 will could not stand as, by then, it was clear that L suffered from dementia, and was already unsound of mind at the time of its execution. The first defendant (J) was adamant that L was already unsound of mind in 2010, and held the view that the 2005 will would be the last one validly executed. The third (S) and fourth (Z) defendants held the view that L was sound of mind when she executed the 2010 will.

The court (Sutherland J) applied the provisions of s4 of the Wills Act (7 of 1953), that any person who alleges that a testator was not mentally capable of executing a will is faced with the onus of proving that. Proof of the incapability must be on a balance of probabilities. Expert witnesses give their expert opinions, but the court must evaluate their evidence, together with that of any other witnesses, to reach a factual finding. After weighing the evidence of two experts, as well as the evidence of J, Z, L's physician, a friend of L, and two domestic helpers, the court concluded that there was nothing of substance to support J's allegation that L was already unsound of mind in 2010. The court held that the 2010 will was, therefore, L's last valid will.





COVID-19 – PENSIONERS ARE AT HIGH RISK AND EASILY IGNORED

MORE THAN 85,000 OLDER SOUTH AFRICANS HAVE PROBABLY DIED OF COVID-RELATED COMPLICATIONS

With the unwelcome news that at the current rate of roll-out it will take 19,5 years to reach community immunity from Covid-19 in South Africa, it is alarming to note that the official mortality statistics are likely to be a vast under-read of the true picture.

JAMES STENT OF GROUND-UP REPORTS

Since 3 May 2020, there have been nearly 85,000 excess deaths of people over the age of 60, according to the SA Medical Research Council [report on weekly deaths](#), published on 23 January. The SAMRC believes that most of these excess deaths are due to Covid-19 infections.

According to the [2020 mid-year population estimates](#) from Statistics South Africa, there are 5.4 million people over the age of 60. This would suggest that so far, 1.5% of South Africa's elderly population has died from Covid-19 infections. Many more could die: in a [survey](#) of 19 frail care homes in September 2020, 10% of residents of frail care homes who contracted Covid-19 died from these infections.

There is no clarity on when vaccines will arrive in sufficient volume to protect this segment of the population - the elderly here, unlike many other countries, are second in line. It is possible that South Africa will not have sufficient vaccines by June this year, when the third wave of infections is predicted.

HYPERTENSION AND DIABETES

South Africa's elderly people are particularly susceptible to the effects of Covid-19 because of high rates of obesity, hypertension and diabetes. [According to research](#) by the South African Medical Research Council and the National Department of Health, the two most

common comorbidities for Covid-19 deaths “by far” are hypertension and diabetes.

According to [a 2019 StatsSA report](#), more than 80% of elderly women living in urban areas are overweight or obese. Hypertension affects more than 50% of elderly men and more than 60% of elderly women living in urban areas. Diabetes affects nearly 17% of the elderly.

Elderly South Africans, particularly those from medium- and low-income areas, already face difficulty accessing healthcare facilities. According to [a 2019 report](#) by the Samson Institute for Ageing Research (SIFAR), elderly South Africans “face particular difficulties with transport to clinics, long waiting periods (which impose physical burden on older persons) and a general lack of health worker expertise on the management of chronic illness and geriatric issues.” The report found that only 22% of the elderly have medical insurance, with very different rates of coverage across population groups. Only 6% of elderly black South Africans had medical insurance, compared to about 17% of elderly coloured people and about 74% of elderly white people.

Further, people over the age of 60 are more likely to be denied critical care in hospitals for severe Covid-19 infection if beds are full, because of the way patients are prioritised. According to an [article in the November 2020 issue of the South African Medical Journal](#) by attorney Nicolette Erasmus, “Age is used as tie-breaker, so that the older the patient, the lower they rank in priority

for ICU admission.” Erasmus says the triage guidelines adopted by South African Medical Association exclude “even the mildly frail (evident slowing, needing help with shopping)” from admission to an ICU if space is limited.

BREADWINNERS

And yet the elderly are often the breadwinners and primary caregivers for their extended family, responsible for the needs of many.

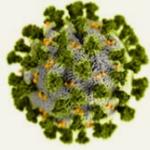
According to SASSA’s [2019/2020 Annual report](#), nearly 3.7 million people received the Old Age Grant - R1,860 per month - as at 31 March 2020. This grant is by far the largest grant administered by SASSA in terms of total expenditure; R83.5 billion in the 2019/2020 financial year, up 89% since 2013/14.

These grants are often shared between many. In [an analysis](#) of data from StatsSA’s 2018 General Household Survey, researchers found that 16.5% of elderly South Africans fell below the food poverty line of R561 per person per month. Further, [according to SIFAR](#), “Those receiving old age grants are also open to financial abuse by other family members and may not fully benefit from this income.”

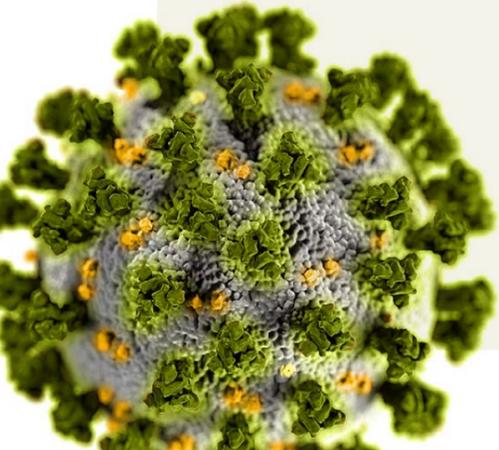
The elderly cannot simply isolate - many are integral to raising children. [An April 2020 report](#) by the Gauteng City-Region Observatory found, for instance, that 42% of Gauteng’s elderly live with children under the age of 18.

According to the 2018 South African Child Gauge, published by the University of Cape Town’s Children’s Institute, “Over 7 million children live in households where the household head is defined as their grandparent or great-grandparent, and in nearly half of these cases ... the grandparent is under 60 years ... Around 2.7 million children live with grandparents in the absence of their parents. These grandparents tend to be slightly older on average, although 39% are under 60 years and therefore not yet eligible for an old age pension.”

South Africa is faced with the likelihood of many further deaths among the elderly. And the effect of the pandemic on South Africa’s families will be devastating.



“PLEASE TAKE EXTRA SPECIAL CARE TO AVOID COVID RISK, FOLLOW ALL LOCKDOWN REGULATIONS, GUIDELINES & PROTOCOLS, **AND REMAIN VIGILENT!**”



APPLETON TIMES