

'Girlfriend' loses fight for husband's estate - Was it really necessary?

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We spend all our time trying to create wealth and building our legacies for our loved ones, and yet so few people dedicate any time to estate planning that creates clarity and certainty for when we're gone.

Recently, the Pretoria High Court ruled against an [applicant's](#) request to acknowledge her as the rightful heir to her long-time partner's estate. In this specific case, the deceased was married to his estranged wife through a customary marriage, but they never officially divorced, leaving little room for the applicant, who had been sharing a life with him for 13 years, to be considered as a spouse.



Alex Simeonides, CEO of Capital Legacy

When a couple has a traditional or customary marriage, the spiritual leader is required to register the marriage with Home Affairs. Once this is done, the marriage is recognised by South African law as legal, but South African law does not recognise polygamous marriages and when the marriage ends the couple needs to file for divorce. If they do not, there can be no other legally recognised spouse. Anyone else with whom the married partner creates a life with is colloquially known as a life partner.

In South Africa, very few laws acknowledge a life partner and one that does is the Estate Duty Act. The laws that govern whether someone inherits – Law of Intestate Succession, Maintenance of Surviving Spouse's Act, for example –

do not acknowledge a life partner and therefore a life partner does not stand to inherit legally unless it is an express instruction in a Will, or ruled by a competent court.

What this court case ruling means to the deceased's new life partner is that she walks away with nothing and the estranged wife gets everything. One would hazard a guess that this is certainly not what the deceased would have wanted.

"We can take a leaf from so many other South Africans books, especially women, who have learnt the hard way that without a valid Will they are often left destitute after the death of a life partner," shares Alex Simeonides, CEO of Capital Legacy.

In the last year alone, there have been many cases of women left uncertain as to where they stand because their spouses didn't have a valid Will, women such as deceased HHP's customary wife [Lerato Sengadi](#), who had to fight for her right to be recognised as a customary wife after she was [excluded from his Will](#). "As a country, we are already fighting GBV, and I do not believe we need to add to this by leaving spouses uncertain and destitute," argues Simeonides.

We spend all our time trying to create wealth and building our legacies for our loved ones, and yet so few people dedicate any time to estate planning that creates clarity and certainty for when we're gone. Besides nominating someone as the beneficiary on your life insurance, the only way you can guarantee that they will benefit from your estate when you pass away is to give this instruction through your Will.

"For various reasons, South Africans hesitate and delay drafting their Wills and so often it is too late. The only guarantees we have is death and taxes, and when you don't provide for either, it's your family and loved ones that are left to carry the burden," says Simeonides.

Capital Legacy is a leading provider of Wills and estate administration in South Africa, and we thought we would garner

from their 8 years' experience on what to do in a situation such as the above, and what you need to know when drafting your Will and providing certainty for your loved ones, regardless of whether you are married to them, legally adopted them or are a benefactor, and wish to continue being one after your death.

“People often think estate planning is overly complex, but it needn’t be if you speak to the right professionals.”

Things to keep in mind when drafting and signing your Will:

- It needs to adhere to the Will Signing guidelines.
 - It needs to be signed with ‘wet’ ink, which means printing it out to have a hard copy and signing it with a pen.
 - It must be witnessed by two independent witnesses who are not mentioned in your Will.
- The content should not be contradictory.
 - You cannot place contradictory conditions in your Will that will create confusion with regards to your Will as this may invalidate a part of your Will, or the Will in its entirety.
- You cannot give away what is not yours.
 - If you are married, your marital regime has a great effect on what is legally yours to give away.
 - Additionally, all your debts will be paid before your beneficiaries can inherit.
- You cannot rule from the grave.
 - You may not place conditions on an inheritance, such as “my daughter needs to marry a doctor before she may inherit”.

“We administer between 80 and 100 new estates each month and it’s heart-wrenching to see how the lack of planning often leaves families destitute. Here I am referring to planning all the way from putting your wishes into a valid Will, to planning for whether your life insurance is going to the correct beneficiaries. People often think estate planning is overly complex, but it needn’t be if you speak to the right professionals,” says Simeonides.

Each month Capital Legacy helps more than 6,000 people draft their Wills as part of their mission to combat the number of people who pass away without a valid Will - which renders their loved ones devastated, unsure of where they stand and often desolate.

These days, providing certainty for your loved ones through the drafting or updating of your Will does not need to take much time and effort, but it does mean you need to actually do it. Quite frankly, as can be seen in the case of the destitute girlfriend, neglecting your Will is just plain irresponsible.

For more information about Wills and Estates, visit www.capitallegacy.co.za. Your #1 provider of Wills, Legacy Planning Products and Estate Administration.

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Wills & Estates Specialists

Our mission is to ensure that more South Africans have valid Wills in place and to lower the legal fees at death for our clients.

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