



I assent.

[L.S.]

J. I. ULUIVUDA
President

[7th July 2004]

AN ACT

TO AMEND THE WILLS ACT

ENACTED by the Parliament of the Fiji Islands—

Short title, etc

- 1.—(1) This Act may be cited as the Wills (Amendment) Act 2004.
- (2) This Act commences on a date appointed by the Minister by notice in the *Gazette*.
- (3) In this Act, the Wills Act (Cap. 59) is referred to as the principal Act.

Section 2 amended

2. Section 2 of the principal Act is amended—
 - (a) by inserting the following definition—

“ “Court” means the High Court of Fiji;” and
 - (b) by repealing the definition of “will” and substituting the following definition—

“ “will” includes every testamentary disposition of property including a codicil and any instrument appointing an executor, revoking a former will or revoking the appointment of an executor and an instrument merely appointing a guardian, made in accordance with the provisions of this Act.”.

*Wills (Amendment)—10 of 2004**Section 4 amended*

3. Section 4 of the principal Act is amended by deleting "Subject to the provisions of Part V, every person" and substituting "Every person".

Section 6 amended

4. Section 6 of the principal Act is amended by deleting "Subject to the provisions of Part V, a will" and substituting "A will".

Section 6A inserted

5. The principal Act is amended by inserting after section 6 the following section—

"Court may declare a document to be a will

6A.—(1) A document purporting to embody the testamentary intentions of a deceased person, even though it has not been executed in accordance with the formal requirements under section 6, constitutes a will of the deceased person if the Court is satisfied that the deceased person intended the document to constitute his or her will.

(2) The Court may, in forming its view, have regard, in addition to the document, to any other evidence relating to the manner of execution or testamentary intentions of the deceased person, including evidence, whether admissible before or after the commencement of this section, of statements made by the deceased person.

(3) A party that seeks a declaration under this section has the onus of proof."

Section 11 substituted

6. The principal Act is amended by repealing section 11 and substituting the following section—

"Disposition to interested witness

11.—(1) If any disposition is made by will to a person ("the interested witness") who attests and subscribes the execution of the will or to the interested witness' spouse the disposition is void so far only as it concerns the interested witness or the interested witness' spouse or any person claiming under either of them.

(2) A disposition made by will is not made void by this section if—

(a) at least two persons who witness the execution of the will are not persons to whom any such disposition is so made or the spouse of any such person;

(b) all the persons who would benefit from the avoidance of the disposition consent in writing to the distribution of the disposition according to the will (all the persons having capacity at law to do so); or

- (c) the Court is satisfied—
 - (i) the testator knew and approved of the disposition; and
 - (ii) the disposition was made by the testator freely and voluntarily.”.

Section 13 substituted

7. The principal Act is amended by repealing section 13 and substituting the following sections—

“Subsequent marriage

- 13.—(1) Every will shall be revoked by the subsequent marriage of the testator (except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of such appointment, pass to the executor or administrator of the testator or the person entitled in the case of intestacy).
- (2) A will made in contemplation of a marriage, whether or not that contemplation is expressed in the will, is not revoked by the solemnisation of the marriage contemplated.
- (3) A will made which is expressed to be made in contemplation of marriage generally is not revoked by the solemnisation of the marriage of the testator.

Effect of termination of marriage on wills

13A.—(1) In this section—

“termination of marriage” means either dissolution of marriage by an order of the court or annulment of a void or voidable marriage by order of the court and, in either case, whether or not the testator is to be regarded at fault including any order to such effect made in another country, provided that it is recognised by the law of the Fiji Islands;

“former spouse” in relation to a testator, means the person who immediately before the termination of the testator’s marriage, was the testator’s spouse or in the case of a purported marriage which is void, was the other party to the purported marriage.

- (2) Where a testator has made a will and the testator’s marriage is afterwards terminated—
- (a) any beneficial gift under the will, other than a charge given for the payment of any debt, in favour of the former spouse of the testator and any power of appointment conferred on the former spouse is revoked;
 - (b) any appointment under the will of the former spouse of the testator as executor, trustee or guardian shall be taken to be omitted from the will; and

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- (c) any property which would, but for this section, have passed to the former spouse of the testator pursuant to a beneficial gift referred to in paragraph (a) shall pass if the former spouse had predeceased the testator, but no class of beneficiaries under the will shall close earlier than it would have closed if the beneficial gift had not been revoked.
- (3) Paragraphs (a) and (b) of subsection (2) do not apply where—
- (a) the Court, on the balance of probabilities, is satisfied by any evidence (whether admissible before the commencement of this section or otherwise), of statements made by the testator, that the deceased did not, at the time of termination of the marriage, intend to revoke the gift, power of appointment or appointment; or
- (b) the gift, power of appointment or appointment, as the case may be, is contained in a will which is republished after the termination of the marriage by will or codicil which evidences no intention on the part of the testator to revoke the gift, power of appointment or appointment.
- (4) This section does not affect—
- (a) any right of the former spouse of a testator to make any application under the Inheritance (Family Provision) Act; or
- (b) any direction, charge trust or provision in the will of a testator for the payment of any amount in respect of any debt or liability of the testator to the former spouse of the testator or to the executor or administrator of the estate or the former spouse.

Re-executed, etc wills

- 13B. Every will re-executed or republished or revived by any codicil is deemed to have been made at the time at which the will is re-executed, republished or revived by the codicil.”.

Section 15 amended

8. Section 15 of the principal Act is amended by—
- (a) deleting “Subject to the provisions of Part V, a will” and substituting “A will”; and
- (b) adding after paragraph (a) the following paragraph—
“(aa) by termination of marriage as provided for in section 13A;”.

Section 16 amended

9. Section 16 of the principal Act is amended by deleting “Subject to Part V, a will” and substituting “A will”.

Part V substituted

10. The principal Act is amended by repealing Part V and substituting the following Part—

“PART V—DEPOSIT OF WILLS

Deposit and registration of wills

- 17.—(1) Any person may deposit his or her will in the Court for registration.
(2) Any document so deposited shall be registered in the prescribed manner.

Failure to produce will

18. Any person who, having in his possession or under his control any will or codicil of a deceased person or any paper or writing purporting to be such a will or codicil, fails or neglects to produce and deposit the same with the Court, or, where there is reason to believe that the deceased person’s estate is a small estate, with Chief Registrar of the High Court within 30 days of learning of the death of the deceased person, commits an offence and is liable on conviction to a fine of \$1,000.”

Sections 26A and 26B inserted

11. The principal Act is amended by inserting after section 26 the following sections—

“Power of the Court to rectify will in construction

- 26A.—(1) If the Court is satisfied that a will is so expressed that it fails to carry out the testator’s intentions, the Court may order that the will be rectified to carry out the testator’s intentions.
(2) Subject to subsection (3), no application under subsection (1) shall be heard by the Court unless the proceedings are instituted before or within a period of 6 months after the date of grant of probate in the Fiji Islands.
(3) Notwithstanding subsection (2), if the Court is satisfied that reasonable grounds exist for the extension of the period of 6 months, and bearing in mind particularly the state of administration of the estate and the rights or interests of any other person, the Court may allow an application to be made outside the period of 6 months, upon such terms and conditions as the Court thinks fit.

Power of the Court to admit extrinsic evidence

Section 32 inserted

12. The principal Act is amended by inserting after section 31 the following section—

“Regulations

32. The Minister may make regulations to give effect to the provisions of this Act, and in particular to provide for—
- (a) fees and charges payable for the purposes of this Act ; and
 - (b) any other matter required to be prescribed for the purposes of this Act.”.

Transitional and savings

13.—(1) An amendment to the principal Act made by this Act applies in relation to a will, whenever made, if the testator dies after the commencement of the amendment, except in as far as another provision of this section applies.

(2) Section 11 of the principal Act, as in force immediately before the commencement of section 6 of this Act, continues to apply in relation to a will made before that commencement if the testator dies before that commencement

(3) Section 13A of the principal Act applies to a will, whenever made, if the termination of the marriage within the meaning of that section occurs after the commencement of that section.

(4) Section 26A of the principal Act applies to a will, whenever made, if the will is not admitted to probate or letters of administration with the will annexed are not granted before the commencement of that section.

(5) Nothing in subsection (1) affects the period determined in accordance with section 26A within which an application for an order under that section may be made.

Passed by the House of Representatives this 8th day of June 2004.

Passed by the Senate this 28th day of June 2004.