

ENJOVU FAMILY BUSINESS ESTATE PLANNING BREAKFAST
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UNDERSTANDING ESTATE PLANNING AND LEGAL STRUCTURES IN UGANDA

BY

Frank Ssewagudde, Hasfa Namulindwa & Sophia Nampijja

Katende, Ssempebwa & Company Advocates

E-mail: hnamulindwa@kats.co.ug, fjs@kats.co.ug

Website: www.kats.co.ug



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INTRODUCTION

- ✓ **Estate planning** simply means deciding in advance who will own and manage your assets (land, property, shares, businesses, investments, etc.) when you retire or pass away. In other words, planning your financial legacy.
- ✓ It involves putting in place structures through which you can safeguard your hard-earned legacy in case of death or incapacitation
- ✓ The main objective is provision for your loved ones long after you depart and protection of your legacy



INTRODUCTION

Why estate planning is important?

- **Distribution of your assets.** The main component of estate planning is designating heirs for your assets, that is who should take what upon your death.
- **Protection of beneficiaries.** To ensure that your beneficiaries e.g. children, spouse, dependants etc are cared for in a manner that you approve. For example; you'll want to name guardians for your children below 18 years.
- **Reduces the tax burden on the estate.** With estate Planning, assets can be transferred to heirs with an eye towards creating the smallest possible tax burden for them.
- **Helps to reduce the risk of Family disputes.** An estate plan will enable you to choose who controls your finances and assets if you become mentally incapacitated or after you die.



LAWS & INSTRUMENTS USED IN ESTATE PLANNING

Laws	Types of Estate Planning
The Succession Act Cap 268	Wills
Trustee Incorporation Act Cap 271	Trusts
Trustees Act Cap 270	Family Constitution
Companies Act 106	Asset Holding Companies
Land Act Cap 236	



WILLS

WHAT IS A WILL?

- A Will may be defined as a written legal document that states what property you own and how you would like it to be divided after your death. It is also a declaration of the intention of the person making it of the matters which he or she wishes to take effect on or after his/her death.
- **Section 29 of the Succession Act Cap 268** provides for capacity to make a will i.e. any person who is of sound mind and not a minor may by will dispose of his/her property.
- **Deaf, Dumb & Blind persons** can make wills if the person is able to know what he/she does at the time of making the will.
- **A person of Unsound mind** (Insane) may make a will during an interval in which he or she is of sound mind.
- No person can make a will while he or she is in a state of mind that the person does not understand what he or she is doing.

KEY REQUIREMENTS FOR A VALID WILL

- a) The testator shall sign or affix his or her mark to the will; or
- b) It shall be signed by some other person in his or her presence and by his or her direction.
- c) The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his or her mark to the will or have seen some other person sign the will in the presence and by the direction of the testator. (Section 47 SA).

Contents of a will.

- a) Name of the testator/testatrix
- b) Property to be distributed. (bank accounts, shares in companies, Debtors and creditors).
- c) Distribution of property
- d) Executors.
- e) Guardian for minor children
- f) maintenance for a spouse, children, lineal descendants and dependent relatives. (Court can make orders where no provision is made).

PROPERTY NOT TO BE INCLUDED IN A WILL

Residential Holding

The testator's principal residential holding or other residential holding shall be preserved (Section 25 SA). This is property normally occupied by the testator/testatrix as his/her principal residence including the house and chattels or any other residential holding held by the deceased.

The principal residential holding or any other residential holding possessed by the deceased shall be held by his/her personal representative in trust for his/her spouse and lineal descendants subject to the terms of occupation set out in the Act. (Section 22).

COMMON CONCERNS IN PREPARING A WILL

1. Treatment of a dependent
2. Treatment of legitimate vs illegitimate children
3. Disposal of the residential holding
4. Exclusion of certain children or spouse from will permissible
5. Leaving all property to charity or friends permissible?
6. Revocation, amendment or alteration of a will.
7. Revocation of a will by the marriage of the testator/testatrix.
8. Technical requirements: important to consult / prepare with assistance of a lawyer

RISKS ASSOCIATED WITH INTESTACY

Exposure to estate waste / squandering

Only legally recognized beneficiaries will benefit e.g. children, legal spouse and dependents

Distribution is statutory / no flexibility in distribution of assets

Exposure to family wrangles and disputes

TRUSTS

WHAT IS A TRUST?

A trust is a fiduciary relationship in which a settlor gives another party, known as the trustee, the right to hold title to property or assets for the benefit of a third party.

Trusts are established to provide legal protection for the settlor's assets, to make sure those assets are distributed according to the wishes of the settlor and, in some cases, avoid or reduce inheritance or estate taxes.

Types of trusts:

1. Incorporated or Un-incorporated

Upon issuance of the certificate, the trustee shall become a body corporate with perpetual succession and can sue or be sued.

2. Living Trust vs Testamentary Trust.

"Living" trusts allow you to maintain control of your assets during your life and allow a successor trustee to step in when you become unable to manage your affairs. Testamentary trust takes effect upon your death.

3. Revocable or Irrevocable Trust

"Revocable" means settlor retains the power to alter, amend or terminate the trust. Typically, also continues to receive income from the trust for the duration of their life.

REQUIREMENTS TO CREATE A TRUST

- ✓ Details of settlor, trustees & beneficiaries
- ✓ List of all properties to be transferred to the Trust
- ✓ Trust deed: This is a formal document appointing trustees. Here, the founder/owner of property appoints a trustee/s for proper management of the property for the benefit of beneficiaries.
- ✓ Some of the major terms included in a Trust Deed.
 - a) Name. e.g. (the registered trustees of Sarah Nambi's family trust).
 - b) Objects e.g., to cater for the needs of the beneficiaries, to preserve protect and safeguard the property for future generations.
 - c) Trustees powers and duties e.g., Trustee cannot make risky or speculative investments.
 - d) Appointment of trustees. (there shall be the board of trustees in which all the property envisaged in the deed shall vest.
 - e) Beneficiaries.
 - f) Meetings.
 - g) Others like secretary, dispute resolution etc.



WILLS VS TRUSTS

WILLS	TRUSTS
Effective only upon death of the testator	Can create a living trust during the life of settlor
Long & costly probate or letters of administration processes	Avoids the long probate court processes & provides continuity after death
Distributes assets/properties with finality. May not restrict use of property	Provides control/certainty to the Settlor in the management of properties & businesses for future generations
Time sensitive. Estate must be distributed within two years	Offers protection of property and assets over a longer period
No protection from debts and liabilities of the deceased	Protection from business and personal debts & liabilities of settlor
No tax implications	Tax implications i.e., transfer taxes e.g., stamp duty 1.5%
No complexity if the requirements of a valid Will are fulfilled	More complex and costly due to fees involved in the management & administration of the Trust

FAMILY CONSTITUTIONS

FAMILY CONSTITUTIONS

What is a family constitution?

- A family constitution (also known as a family charter, family code or family arrangement) is an overarching document that sets out the desired outcomes and core rules in relation to the ongoing management of a family's wealth, key investments or business (or a combination of them).
- It works in conjunction with other key documents such as Wills, company constitutions and trust deeds.
- It is rare that any two family constitutions are the same.
- A carefully crafted family constitution can help families successfully manage the transition of control to the next generation and deal with the complexities arising from multiple generations having an ongoing interest.



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WHY ESTABLISH A FAMILY CONSTITUTION?

A family constitution ensures:

- ✓ harmony and sustainable asset management.
 - ✓ defines governance, succession, and financial planning.
 - ✓ works alongside legal documents but carries moral significance.
 - ✓ Can stipulate use of finances from family business e.g. case of *L'oreal Cosmetics*
 - ✓ Supports generational transitions and leadership changes.
 - ✓ Defines dispute resolution mechanisms and establishes a code of conduct.
 - ✓ Articulates vision, values, and planning for future growth.
- Regular review of the family constitution is recommended as it ensures continued relevance due to the changing wishes and aspirations of the family.

KEY STEPS IN ESTABLISHING A FAMILY CONSTITUTION

- ✓ Define vision, mission, and core values which will guide the family behavior and business decisions.
- ✓ Define family members and applicability of the constitution
- ✓ Set family employment policies which set out clear guidelines for family members working in the business.
- ✓ Defining Shareholding Rights and Dividend Policy which is crucial for clarity on ownership and returns.
- ✓ Ownership and use of family assets (*L'Oreal Case*)
- ✓ Dispute resolution mechanism – preempt and provide for conflict scenarios
- ✓ Collective agreement (to ensure acceptability) through family meeting(s) to agree on key issues like; When will the rules take effect? How will it interact with overall estate plans? Will the family or the business/investments be prioritized? Should long-term business value trump personal interests? Will it apply beyond the next generation or after the main asset is sold?
- ✓ Drafting and reviewing of constitution as per the agreed issues in the family meeting.
- ✓ Communication of amendments which must then be agreed upon by majority of the family members.
- ✓ Adoption and acknowledgement of family constitution by the entire family.

ASSET HOLDING COMPANIES

ASSET HOLDING COMPANY

- A company that is formed for the purpose of administration of assets and rights whether real estate, shares, businesses or financial investments.
- Usually, a private limited company that owns assets or shares of other businesses on behalf of the family.
- Rather than each family member individually owning bits of property, all those assets are transferred into the holding company's name. The family members then own the holding company's shares.

ADVANTAGES OF A HOLDING COMPANY

Advantage	Explanation
Simplified Transfers	Instead of transferring multiple properties to different beneficiaries, only required to transfer shares in the event of death or incapacity of one family member. This greatly simplifies the paperwork and saves transfer costs
Centralized Administration	The holding company can have a board and management that takes care of all the assets. This can improve oversight and reporting. It also makes it easier to involve non-family professionals as directors or managers.
Asset Protection	As with trusts, if assets are owned by a company, they are shielded from personal debts and creditors.
More flexibility in management than Trusts	Easier to dispose of assets that may no longer align with family's strategic goals

SHAREHOLDING ARRANGEMENTS

What are they?

- a) These are arrangements usually contained in a **Shareholders Agreement** which governs the relationship between shareholders.

- b) This is different from the company's memorandum and articles of association. No requirement to register an SHA

KEY CLAUSES IN A SHAREHOLDING AGREEMENT

- ✓ **Decision making power;** how are decisions made in the company?
- ✓ **Pre-emptive Rights:** If a shareholder wants to sell their shares, they must first offer them to the other family shareholders (this is called a pre-emption or right of first refusal). This keeps outside parties from taking control.
- ✓ **Succession of Shares:** Decide what happens if a shareholder dies. For instance, the will of that person might leave the shares to the next generation, or the shareholders' agreement might allow the company or family to buy back the deceased's shares.
- ✓ **Provide for management rights of family members** e.g. life chairman / director for patriarch, who is eligible to become a director? etc.
- ✓ **Shareholder restrictions** e.g. must be a family member?
- ✓ **Reserved Matters** e.g. sell of primary assets, closure of business etc.
- ✓ **Dispute resolution & deadlock issues**

WHAT ARE THE COMMON PITFALLS IN ESTATE PLANNING AND HOW DOES ONE AVOID THEM.

- ✓ Failure to update estate planning documents regularly e.g. following major events such as child birth, getting married, divorce or death of a beneficiary.
- ✓ Not considering significant changes in the law: Changes in applicable laws may affect your estate plan. Always stay up to date/be aware of any changes that may impact your plan.
- ✓ Failure to indicate contingent beneficiaries in the event of death of a beneficiary or simultaneous death of testator & all beneficiaries .Always indicate residually beneficiaries who should take the remainder of the estate after paying debts.
- ✓ Provision for spouses who remarry
- ✓ Failure to consider creditors. Always ensure that there is a provision for payment of creditors if any.
- ✓ Failure to appoint the right trustees to execute your estate. Avoid mismatch of personality vs capability

FINAL REMARKS

- Every business owner should start estate planning early.
- Consult a lawyer or advisor to draft the necessary documents
- There is no one size fits all. You may need a plan that involves more than one estate planning tool.
- Communicate your plan with your family so expectations are set. By doing this, you ensure your family's security and the continuity of your life's work.

