 ***DOI:** https://doi.org/10.63108/IJLMH.13074*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 6

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: https://www.ijlmh.com/
Under the aegis of VidhiAagaz (https://www.vidhiaagaz.com/)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact **support@vidhiaagaz.com**.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to **submission@ijlmh.com.**

The Legal Status of Electronic Wills in Tanzania and Lessons from South Africa

GERVAS KULWA MWEBEYA*

ABSTRACT

Tanzanian succession law was built for paper. The Indian Succession Act 1865, as applied in Tanzania, requires a will to be signed by the testator and attested by two witnesses, and it assumes a physical document. The Electronic Transactions Act 2015 recognizes electronic records and signatures in general terms but is silent on wills. This leaves testators, advocates, probate officers and courts without clear guidance on whether a will made, signed, witnessed or stored electronically can be valid. This article uses a qualitative doctrinal and comparative method to examine the problem against the law of South Africa. South Africa expressly excludes wills from its electronic transactions statute, yet its courts have used the condonation power in section 2(3) of the Wills Act 7 of 1953 to accept electronic documents as wills where the deceased's intention is proved. The article finds that Tanzanian law does not clearly regulate electronic wills and offers no mechanism for rescuing a genuine electronic will that fails the traditional formalities. It argues that the most transferable South African lesson is structural: a strict formal code can coexist with an evidence-based remedial discretion. It recommends legislative, institutional and professional reforms adapted to Tanzania's own structures.

Keywords: *Electronic Will, Testamentary Formalities, Condonation, Wills Act, Electronic Transactions Act, Succession Law*

I. INTRODUCTION

A will is the main legal instrument through which a person decides, before death, how an estate will pass. For centuries the law has attached three formalities to it: writing, the testator's signature, and attestation by witnesses. These formalities protect against fraud, confirm the testator's identity and intention, and leave reliable evidence for the time when the testator can no longer explain what was meant.

Over the last three decades, the way documents are created, signed and stored has changed. Legislatures have responded with electronic transactions statutes that give legal effect to data messages and electronic signatures for most legal acts. Wills have generally been treated differently. A will speaks only after death, when the one person who could confirm its authenticity is gone, and legal systems have been slow to relax the rules around its execution.

* Author is a Student at University of Iringa, Iringa, Tanzania. ORCID: https://orcid.org/0009-0007-9222-9759

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Tanzania and South Africa share this problem but approach it differently. South Africa excludes wills from its Electronic Communications and Transactions Act 25 of 2002 (ECTA) but has developed, through litigation, a working route for accepting defective and electronic wills. Tanzania has neither an express exclusion nor a general remedial power. Its Electronic Transactions Act 2015 (ETA) is silent on wills,[1] and the Indian Succession Act 1865 (ISA) continues to prescribe formalities written for a physical document.

The article addresses two problems. First, Tanzanian succession law does not clearly regulate electronic wills. Second, it provides no statutory mechanism for validating a genuine electronic will that fails the traditional formalities. Using a qualitative doctrinal and comparative method,[2] the article examines how Tanzanian law on the making, signing, witnessing and validity of wills applies to electronic wills, compares the Tanzanian and South African approaches, especially on signing, witnessing and the treatment of non-compliant wills, and identifies the legal gaps and proposes reforms.

The article covers wills made under the general law (the wills provisions of the ISA) and Tanzanian law from 2015, when the ETA was enacted. For South Africa it covers the period from *Van der Merwe* to the 2025 decisions in *Perumal* and *Mokgoro*. The literature on electronic wills is concentrated on South Africa and the United States, and there is no sustained analysis of the legal status of electronic wills in Tanzania on execution, authentication, storage, admissibility and probate. This article addresses that gap.

The question is urgent because practice is moving faster than the law. Smartphone and mobile-money use in Tanzania has grown rapidly, digital record-keeping is now routine in banking, land administration and government services, and the COVID-19 pandemic showed around the world that people will turn to electronic means to record their wishes when physical attestation is hard, whether or not the law recognizes the result. A testator who types a will on a phone, signs it with a finger or a stylus, or records a video of the signing is acting on a reasonable assumption that a digital act should count. If the law says otherwise, the family learns this only after death, when the testator can no longer put it right.

The analysis is organized around four questions that a will must answer before it takes effect. Is the record and signature recognized at all (definitional adequacy)? Can the formalities be met in an electronic environment (executional adequacy)? Can the document be authenticated, preserved and proved at probate (evidentiary adequacy)? And if it fails the formalities, is there

[1] Electronic Transactions Act, Cap. 442 R.E. 2023, §§ 4–7 (Tanz.).
[2] Terry Hutchinson & Nigel Duncan, *Defining and Describing What We Do: Doctrinal Legal Research*, 17 DEAKIN L. REV. 83–104 (2012).

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

a remedy (remedial adequacy)? The same four questions are put to both jurisdictions, which keeps the comparison disciplined and shows where the two systems differ.

The choice of South Africa as comparator is deliberate. It shares with Tanzania a heritage of strict testamentary formalities derived from English law, it has an explicit statutory position on electronic transactions and wills, and it has produced a body of case law, including two 2025 decisions, that shows how the law works in practice. The article treats South African law as a source of lessons and not as a model to be adopted automatically.

The rest of the article is organized as follows. It first sets out the background to the problem and the concepts used. It then presents the Tanzanian, South African and comparative positions, including the wider legal and institutional environment, and discusses the results in light of testamentary theory. It closes with recommendations and areas for further research.

II. Background of the Problem

The development of digital technology has changed the way people create, sign, store, and share documents. These changes have also affected the preparation of wills, which are legal documents used to express how a person's property should be distributed after death. Traditionally, wills are prepared and signed on paper in the presence of witnesses. However, electronic wills create new questions about whether a digital document can prove the testator's final wishes and whether it can be accepted as legally valid.[3] The challenge is to ensure that the use of technology does not weaken the protection of the testator or increase the risk of fraud and disputes among beneficiaries.

In Tanzania, the law governing wills mainly follows traditional requirements for preparing and signing written documents. Section 50 of the ISA provides requirements relating to the testator's signature and the attestation of a will by witnesses.[4] Although the ETA recognizes electronic records and electronic signatures in general, it does not clearly explain how these provisions apply to wills.[5] This creates uncertainty about whether an electronic will can be legally recognized, how its authenticity can be proved, and how the law should deal with electronic signatures, witnesses, and the safe storage of digital documents. Section 25 of the Probate and Administration of Estates Act (PAEA) also allows probate of a copy, a draft or the contents of

[3] *See* Adam J. Hirsch, *Technology Adrift: In Search of a Role for Electronic Wills*, 61 B.C. L. Rev. 827 (2020); *see also* John H. Langbein, *Substantial Compliance with the Wills Act*, 88 Harv. L. Rev. 489 (1975) (on the functions of the formalities).

[4] Indian Succession Act 1865, § 50 (as applied in Tanzania).

[5] Electronic Transactions Act, *supra* note 1.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

a will where the original has been lost, misplaced or destroyed, but it does not establish a complete system for the execution and validation of electronic wills.[6]

South Africa provides a useful comparison because its law also places restrictions on electronic wills but allows courts some flexibility. Section 4 and Schedule 2 of ECTA exclude wills from its general provisions on electronic transactions. However, section 2(3) of the Wills Act 7 of 1953 allows a court to recognize a document that does not meet all the formal requirements if the court is satisfied that the deceased intended it to be their will and the legal conditions for condonation are met.[7] This approach is illustrated by *Van der Merwe v Master of the High Court and Another*, which concerned an electronic document intended to operate as a will.[8] South Africa therefore offers lessons on how courts may respond to electronic wills while maintaining safeguards against fraud and uncertainty.

The main problem is that Tanzania does not have a clear and comprehensive legal framework specifically governing electronic wills. This may create difficulties for courts, executors, and beneficiaries when deciding whether a digital document represents the testator's genuine and final wishes. Recognition of an electronic record alone does not necessarily establish that it is a valid will, that the testator had the required intention and capacity, or that the document has not been altered.[9] Therefore, this article examines the legal status of electronic wills in Tanzania and draws lessons from South Africa. It identifies gaps in Tanzania's existing law and considers how a clear legal framework could protect testamentary intention, ensure reliable evidence, and reduce disputes over the distribution of a deceased person's estate.

III. Key Concepts

Several concepts recur throughout the article, and it is worth fixing their meaning at the outset.

Legal status. Legal status is the position the law gives to a person, document or act: whether it is recognized, on what conditions it is valid, what effects it produces, and what remedies exist if the conditions are not met. It is wider than validity. A document may have evidential value without being a valid will, and an electronic will may be capable of consideration by a court yet still need a further legal step before it operates. This article uses the term to cover recognition, validity, evidential treatment and probate consequences together.

---

[6] Probate and Administration of Estates Act, Cap. 352 R.E. 2023, § 25 (Tanz.).
[7] Electronic Communications and Transactions Act 25 of 2002 § 4, sch. 2 (S. Afr.); Wills Act 7 of 1953 § 2(3) (S. Afr.).
[8] *Van der Merwe v. Master of the High Court and Another*, 2010 (6) SA 544 (SCA), [2011] 1 All SA 298 (SCA) (S. Afr.).
[9] *See generally* Ubena John, *E-Documents and E-Signatures in Tanzania: Their Role, Status, and the Future*, *in* Digital Democracy: Concepts, Methodologies, Tools, and Applications 610–642 (Information Resources Management Association ed., 2012), https://doi.org/10.4018/978-1-4666-1740-7.ch031.

Will, testamentary intention and capacity. A will is a declaration, made in the manner the law prescribes, of what a person wants to take effect on or after death. Two things matter here. The instrument must contain a disposition meant to operate after death, and it must represent the maker's final testamentary intention in a form the law will accept. Intention is narrower than a general wish to benefit someone: notes, drafts, emails and digital lists are not wills unless the maker meant that document to be final. This matters especially for electronic documents, which exist in several versions across laptops, email and cloud storage. Capacity, meaning the mental ability to understand the nature of the act, the property involved and the claims on it, is a separate concept from the physical form of the will. A reliable electronic signature may show who controlled a credential, but it does not prove that the person understood what they were doing.

Electronic will. An electronic will is a testamentary instrument created, recorded, signed, witnessed, stored or maintained by electronic means, with the intention that it operate as the maker's will after death. The definition is functional and not tied to one technology. It should be distinguished from a paper will that has merely been scanned for convenience, which is evidence of a paper instrument. The legal issues concern the validity of the original electronic act: how the testator signed, how witnesses took part, and how the integrity of the record can be shown.

Electronic record, electronic signature and remote witnessing. An electronic record is information created, sent, received or stored electronically and capable of retrieval, and it may be a word-processing file, PDF, email or cloud record. An electronic signature is electronic data associated with a person and used to identify them and show approval. It ranges from a typed name or click-to-sign to a biometric or cryptographic digital signature, and these do not carry equal reliability. Remote witnessing means witnessing where the testator and witnesses are in different places but connected by electronic communication. It raises questions of continuity, identification, recording, coercion and interruption that physical presence does not.

Authentication, identity verification, integrity and digital evidence. Authentication establishes that a record or signature is what it claims to be and is linked to the person it is attributed to. Identity verification establishes that the person taking part in execution is who they claim to be, and it is distinct from the signature method, since a signature tied to an account is only as reliable as the identity checks behind it. Integrity means the record can be shown to be unaltered after a given point, and tamper-evidence means alteration can be detected even if it cannot be prevented. Digital evidence, such as the will file, metadata, audit logs and communications about execution, is what a court would use to decide who made the document, when, whether it was changed and whether it reflects final intention.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Functional equivalence and substantial compliance. Functional equivalence holds that an electronic method can satisfy a requirement traditionally expressed in paper terms where it performs the same legal function. It does not mean every electronic method must be accepted, only those reliable enough for the function in question. Substantial compliance allows a court to recognize a will despite a formal defect where the purposes of the formalities have been sufficiently achieved. Neither concept removes the need for evidence of identity, intention and authenticity.

IV. THE LEGAL POSITION

A. The Tanzanian position

A plural system. Tanzania Mainland has no single Wills Act. Persons who have not elected Islamic or customary law make wills under the wills provisions of the ISA, retained after independence.[10] Customary wills fall under the Local Customary Law (Declaration) Orders (GN 436 of 1963 and GN 219 of 1967), and Muslims are in principle governed by Islamic inheritance law, which limits testamentary freedom to one-third of the net estate. Probate is handled under the PAEA.

Formalities. Section 50 of the ISA requires an unprivileged will to be signed by the testator, or by another in his presence and at his direction, and attested by two or more witnesses who saw the signature or received a personal acknowledgment of it.[11] Every element assumes a physical act on a physical document. A typed name, an inserted signature image or a software-generated signature is different in kind from a mark made in ink, and no provision says in terms whether such a signature satisfies section 50.

Witnessing. Attestation presupposes witnesses present at execution. Tanzanian law has no procedure for remote or electronic witnessing, and neither the ETA, the Cybercrimes Act 2015 nor the Personal Data Protection Act 2022 (PDPA) creates one. Yet remote witnessing is often the most useful feature of an electronic will regime, because it lets a hospitalized, travelling or remote testator execute a will at all.

The ETA. The ETA provides that a data message shall not be denied legal effect, validity or enforceability on the ground that it is in electronic format; that a legal requirement of writing or of a prescribed non-electronic form can be met in electronic form; and that where a law requires a signature, the requirement is met by a secure electronic signature, meaning one that is unique

[10] Indian Succession Act 1865, as applied through the Judicature and Application of Laws Act, Cap. 358 R.E. 2023 (Tanz.).
[11] Indian Succession Act 1865, § 50.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

to its purpose, identifies and is controlled by the signer, and reveals later changes.[12] Read alone, this seems to support electronic wills. But the ETA is a general transactional statute. It has no schedule of excluded transactions and does not say whether it reaches wills, while the ISA and the PAEA do not say their formalities may be met electronically. A general non-discrimination rule cannot resolve a conflict with a specific formal code that the general statute never mentions. The recognition question is left open.

Authentication and proof. An electronic will raises three difficulties a paper will does not: whether the record produced is the unaltered original; whether the electronic signature can be tied to the testator and not to someone with access to the device; and whether the record has been preserved unaltered over many years. No statute creates a custody mechanism for electronic wills comparable to the safe-custody function the Registration, Insolvency and Trusteeship Agency (RITA) and the Probate Registry perform for paper wills. The PAEA lets a court consider copies, drafts or other evidence where the original has been lost, misplaced or destroyed,[13] but it was not written for a digital file and sets no standard for proving that a file is unaltered.

Case law. No reported Tanzanian decision settles whether an electronic will is valid. The nearest authority is *Trust Bank Tanzania Ltd v Le-Marsh Enterprises Ltd*, which held a computer print-out of banker's books admissible in evidence, subject to the safeguards in the Evidence Act.[14] It concerns admissibility, not validity. Electronic-evidence law can help prove a will but cannot create one.

Finding. Tanzanian law does not apply to electronic wills in any settled sense. It does not address them. Recognition, formal compliance, witnessing and authentication each remain unresolved.

B. The South African position

Section 2(1)(a) of the Wills Act requires a will to be signed by the testator, or by another in his presence and at his direction, in the presence of two or more competent witnesses present at the same time, who then sign in the presence of the testator and of each other.[15] ECTA generally recognizes electronic records and signatures but expressly excludes the execution, retention and

[12] Electronic Transactions Act, *supra* note 1, §§ 4–7.
[13] Probate and Administration of Estates Act, *supra* note 6, § 25; *see also id.* § 161 (deposit of the wills of living persons in the Registry of the High Court).
[14] *Trust Bank Tanzania Ltd v. Le-Marsh Enterprises Ltd, Joseph Mbui Magori and Lawrence Macharia*, Commercial Case No. 4 of 2000, [2002] TLR 144 (High Court of Tanzania, Commercial Division, Dar es Salaam).
[15] Wills Act 7 of 1953 § 2(1)(a) (S. Afr.).

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

presentation of a will or codicil.[16] South Africa therefore states in its legislation what Tanzanian law leaves to inference.

Section 2(3) of the Wills Act allows a court to order the Master of the High Court to accept a non-compliant document as a will, or an amendment of one, if satisfied that the deceased drafted or executed it and intended it to be his or her will.[17] It separates formal compliance from testamentary intention and turns automatic invalidity into a question of evidence.

South African courts have applied it to electronic documents in a line of cases. In *Macdonald v The Master* the court treated a document held on a computer as capable of condonation on proof of authorship and intention.[18] In *Van der Merwe v Master of the High Court* the Supreme Court of Appeal accepted a printout of an electronic document, drafted by the deceased and sent by email to the appellant, that did not comply with section 2(1), reasoning that section 2(3) exists to stop genuine intention being defeated by non-compliance.[19] In *Perumal v Janse van Rensburg NO* (2025) the deceased amended his will on a laptop and sent it to his executor but never signed it. The court ordered acceptance after examining his conduct and communications.[20] In *Mokgoro NO v Master of the High Court, Kimberley* (2025) a former Constitutional Court Justice gave direct input into a will drawn up at her direction by a financial services firm, and it bore her electronic signature and those of two witnesses. Her life partner, who benefited under an earlier will, opposed its acceptance on grounds that included the exclusion of wills from ECTA; the Master did not oppose. The Northern Cape Division ordered acceptance under section 2(3), relying on her email and her direct input, and held that nothing in ECTA excludes the operation of section 2(3) where its requirements are met. The High Court refused leave to appeal.[21]

Finding. South African courts have never held that an electronic document is a valid will because it is electronic. In each case the document was rescued despite its form, and only through the evidence-based inquiry section 2(3) demands. Even in *Mokgoro*, where every signature was electronic, the rule that an electronic signature does not satisfy the Wills Act was left undisturbed. Each success cost an application to court, delay and uncertainty.

[16] Electronic Communications and Transactions Act 25 of 2002 § 4, sch. 2 (S. Afr.).
[17] Wills Act 7 of 1953 § 2(3) (S. Afr.).
[18] *Macdonald and Others v. The Master and Others*, 2002 (5) SA 64 (O) (S. Afr.).
[19] *Van der Merwe*, *supra* note 8.
[20] *Perumal v. Janse van Rensburg NO and Others*, (081849/2023) [2025] ZAGPPHC 145 (18 Feb. 2025) (S. Afr.).
[21] *Mokgoro NO and Others v. Master of the High Court, Kimberley and Others*, (09/2025) [2025] ZANCHC 60 (1 Aug. 2025) (S. Afr.), *leave to appeal refused*, [2026] ZANCHC 8 (30 Jan. 2026) (S. Afr.).

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

C. The wider legal environment

International and regional instruments. No treaty deals with electronic wills. The UNCITRAL Model Law on Electronic Commerce 1996 supplies the founding principles of electronic transactions law: information is not to be denied legal effect merely because it is in electronic form, and an electronic record or signature can do the work of paper or ink if the method is reliable enough. The UNCITRAL Model Law on Electronic Signatures 2001 develops the reliability factors, including whether signature creation data belongs only to the signatory and whether later changes can be detected.[22] These are commercial instruments. They remove the objection that a record is invalid only because it is electronic, but they do not decide whether the special formalities of succession law have been met. The same is true regionally. The East African Community Legal Framework for Cyberlaws and the SADC Model Law on Electronic Transactions and Electronic Commerce aim at harmonizing digital law, not succession law, and the Malabo Convention addresses cybersecurity, electronic transactions and data protection without touching wills.[23] Their relevance is indirect: reliable digital identity, secure signing and data protection are the safeguards any electronic wills regime would need.

Related domestic legislation. The Constitution of Tanzania protects property (article 24) and privacy (article 16). Neither creates an unlimited right to dispose of property by any method, but the privacy guarantee matters because a digital will holds sensitive information on beneficiaries, family and finances, and cloud storage raises risks that a paper will kept in a drawer does not. The Cybercrimes Act 2015 criminalizes unauthorized access to and manipulation of computer data, which protects a stored will after execution but cannot decide its validity. The PDPA governs the collection, processing, storage and disclosure of personal data, so any platform or institution holding electronic wills must meet its security, retention and access obligations. The Notaries Public and Commissioners for Oaths Act assumes that a notary physically witnesses a signature. If notarial attestation were ever used as an added safeguard for electronic wills, the Act would have to be read with section 10 of the ETA, which deems a notarization requirement met by the electronic signature of the authorized person, to decide whether a notary may attest a signature made or acknowledged electronically. South Africa has parallel legislation in the Cybercrimes Act 19 of 2020, the Protection of Personal Information Act 4 of 2013 and the Justices of the Peace and Commissioners of Oaths Act 16 of 1963.

[22] UNCITRAL Model Law on Electronic Commerce arts. 5–7 (1996); UNCITRAL Model Law on Electronic Signatures art. 6(3) (2001).

[23] East African Community, Legal Framework for Cyberlaws, Phase I (2010); Southern African Development Community, Model Law on Electronic Transactions and Electronic Commerce (HIPSSA 2012); African Union Convention on Cyber Security and Personal Data Protection, June 27, 2014.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Remote witnessing in South Africa. Since the COVID-19 pandemic, South African courts have divided on whether an affidavit may be signed and commissioned in the "virtual presence" of a commissioner of oaths. Some have read the requirement of presence broadly and allowed it; others have not.[24] These decisions concern affidavits and are not a reform of the Wills Act. They matter because they show that South African courts have already been willing, in an analogous setting, to accept real-time audio-visual presence as a substitute for physical presence.

D. The institutional framework

A statute can recognize electronic records in general terms, but recognition does not tell a court, probate officer or family how an electronic will is to be made, checked and administered after death. That is an institutional question.

Tanzania. The Judiciary decides disputes over wills. For an electronic will a court would have to decide whether the document is a will at all, whether formalities were met, whether an electronic signature satisfies a statutory signature requirement, whether remote witnessing sufficed, and whether the record is authentic and complete. With no appellate authority, lower courts would have to reason from existing statutes and general principles, which is workable but uncertain. RITA performs functions on trusteeship, probate administration and wills and runs the eRITA portal, so it is the natural body to receive, register or preserve electronic wills. But registration is not validity: a registration record can show that a document existed and was held by someone, while validity depends on succession law and the decision of the competent authority. The Ministry responsible for constitutional and legal affairs holds policy responsibility for succession law, and reform would need coordination between it, the Judiciary and the digital regulators, and a choice among amending the PAEA, enacting a dedicated statute, amending the ETA, or combining these. The Law Reform Commission is the natural home for a systematic review of how succession, electronic transactions, evidence, privacy and cybersecurity law interact. The Tanzania Communications Regulatory Authority (TCRA) regulates electronic communications and could contribute standards on secure communication, certification and audit trails. The Personal Data Protection Commission oversees the handling of personal data in electronic wills. The e-Government Authority runs digital identity infrastructure, which could be a technical basis for verifying a testator's identity. The Tanganyika Law Society would need to issue guidance to advocates who draft or witness wills electronically.

[24] Ciresh Singh, *Remote Commissioning: Signing an Affidavit in the "Virtual Presence" of the Commissioner of Oaths*, 35 STELLENBOSCH L. REV. 221 (2024), https://doi.org/10.47348/SLR/2024/i3a1.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

South Africa. The Master of the High Court supervises deceased estates and gives administrative effect to section 2(3) orders. The Master has introduced online estate registration, which shows that administrative digitization can proceed while the substantive law keeps wills execution tightly regulated. The High Court decides whether the conditions for condonation are met, weighing evidence to tell a genuine testamentary document from an informal message, an unfinished draft or an altered file. The Department of Justice and Constitutional Development provides the administrative setting, the South African Law Reform Commission could review the field if litigation shows recurring uncertainty, the Information Regulator enforces the Protection of Personal Information Act, and the Legal Practice Council regulates practitioners.

Institutional comparison. Both systems already digitize estate administration, through eRITA in Tanzania and online registration in South Africa. The open question in both is how far that comfort with digital administration extends to the execution and authentication of the will itself. Recognition without institutional procedures would be hard to apply, and electronic execution without strong identity and security controls could increase disputes and not reduce them.

V. Comparative findings

Recognition. Neither jurisdiction treats an electronic will as automatically valid. Tanzania reaches that position by silence, South Africa by express exclusion. The difference lies in transparency, not outcome.

Signature and execution. Tanzanian law defines a secure electronic signature but never applies it to section 50, and no reported decision has decided the point. In South Africa *Mokgoro* proceeded on the footing that an electronically signed will does not comply with section 2(1)(a). An electronically signed will is therefore formally non-compliant in South Africa and of uncertain standing in Tanzania.

Witnessing. Ordinary law in both systems requires physical presence. South African courts, however, have in some decisions accepted the remote commissioning of affidavits. Those decisions did not touch the Wills Act, but they give South Africa practical experience that Tanzania lacks.

Authentication and proof. Neither system has custody infrastructure for electronic wills. South African decisions show what a court looks for after death: contemporaneous communications, metadata or witness evidence of authorship, and conduct consistent with treating the document as final. Tanzanian courts have had no occasion to develop a similar checklist.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Non-compliance. This is the decisive divergence. Section 2(3) gives South African courts express power to ask whether a defective document reflects the deceased's genuine intention. Tanzania has no equivalent, and section 50 operates as a condition of validity. An unsigned electronic document drafted by the deceased and shown by clear evidence to be intended as a final will would plausibly succeed in South Africa, as *Perumal* suggests. In Tanzania it would be void, and the inquiry would end before intention was considered.

Institutions. In South Africa the Master of the High Court is the gateway for section 2(3) applications. RITA and the Probate Registry perform a similar gatekeeping role for paper wills but have no electronic-will procedure and no remedial power to refer disputed documents to a court.

A. The gaps identified

The findings support three conclusions. Tanzanian law does not clearly establish the status of electronic wills. South African experience offers useful lessons, but structural ones, since South Africa itself has no rule that electronic wills are valid. And the gaps create real uncertainty that requires reform. Four specific gaps emerge: no link between the ETA and testamentary documents; no electronic-execution rule adapted to section 50; no electronic or remote witnessing procedure; and no remedial power equivalent to section 2(3), together with the institutional gateway such a power needs.

VI. Discussion

Testamentary freedom. This theory holds that the law should give effect to a person's own wishes for the disposal of property, within limits set by public policy and protection of dependents. Measured against it, the Tanzanian position fails: a testator whose genuine wishes are recorded electronically has no route to having them honored, not because the wishes are doubted but because the medium was never contemplated.

Formalities theory. Gulliver and Tilson explain formalities by their ritual, evidentiary and protective functions, and Langbein's later account lists four: evidentiary, channeling, cautionary and protective.[25] The South African cases show these functions being served in substance where the form is electronic: each court examined authorship, deliberateness and communication of intention, which is what the formalities exist to guarantee. The functions can be met by evidence other than ink and physical attestation if a legal mechanism exists to receive and weigh that evidence. Section 2(3) supplies one and Tanzanian law does not.

[25] Ashbel G. Gulliver & Catherine J. Tilson, *Classification of Gratuitous Transfers*, 51 YALE L.J. 1 (1941); Langbein, *supra* note 3.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Intent theory. Following Langbein, formalities are evidentiary aids to ascertaining intention and not ends in themselves. Section 2(3) is this theory operating as positive law. Tanzanian law has no statutory substantial compliance rule, so even the clearest proof of intention cannot rescue a defective electronic will.

Functional equivalence and technology neutrality. The UNCITRAL model laws treat an electronic record or signature as equivalent to its paper counterpart where it performs the same function.[26] An electronically signed and communicated will, as in *Mokgoro*, can perform the identification and approval functions of a wet-ink signature. The difficulty is not conceptual. Neither the ETA nor ECTA has been extended to wills, so the principle stops short of testamentary documents in both jurisdictions. Tanzania's lack of any electronic witnessing procedure shows a system that is silent, not merely non-neutral.

Legal transplants. Watson holds that legal rules are frequently borrowed across systems, while Legrand argues that rules are inseparable from their context and risk distortion when transplanted.[27] This article follows the moderate view associated with Kahn-Freund. Section 2(3) copied verbatim would achieve little without a gateway like the Master's office and courts able to weigh intention-focused evidence. Even South Africa's long-established institutions still see litigation on how condonation applies to electronic documents. Tanzania would need to budget for training registrars and judicial officers, secure storage and identity technology, and public education. That cost is real, but so is the cost of uncertainty, which falls on individual families.

Risk theory. Formalities allocate the risk of fraud, mistake and undue influence in a setting where the testator cannot be questioned. Tanzania's position allocates that risk conservatively by leaving electronic documents outside its formal code. That reduces fraudulent electronic wills at the price of defeating genuine ones. South Africa allocates risk case by case through judicial scrutiny of evidence. Technology cuts both ways: audit trails, video recording and multi-factor authentication can reduce some risks below those of paper wills, while account compromise and manipulated files create new ones. The law should therefore focus on functional safeguards and not assume electronic means are either safer or more dangerous than paper.

---

[26] UNCITRAL Model Law on Electronic Commerce, *supra* note 22, arts. 5–7; UNCITRAL Model Law on Electronic Signatures, *supra* note 22.

[27] ALAN WATSON, LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW (2d ed., Univ. of Ga. Press 1993); Pierre Legrand, *The Impossibility of "Legal Transplants"*, 4 MAASTRICHT J. EUR. & COMPAR. L. 111 (1997); O. Kahn-Freund, *On Uses and Misuses of Comparative Law*, 37 MOD. L. REV. 1 (1974).

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Access to justice. Tanzania has a large rural population and limited notarial infrastructure outside major urban centers. Requirements of physical attendance before a lawyer or notary and physical co-presence of witnesses can bar the elderly, disabled, hospitalized or remote from making a will. Carefully safeguarded electronic and remote procedures may widen access to testation.

A. The gaps examined

A list of gaps does not show how serious each is. The six issues that would face a complete electronic wills regime in Tanzania differ in kind and in urgency.

Recognition. This gap is the most immediate because it may operate as a complete bar. It concerns whether an electronic will can ever be valid, however carefully made, whereas the other gaps concern how safely one should be executed. It is therefore the logical first step of reform, since the other gaps matter only once recognition exists.

Signature and identity. The ETA's secure electronic signature provisions and the e-Government Authority's digital identity infrastructure suggest that some tools for electronic identity verification exist but have not been connected to succession law. This may be the most encouraging gap, since closing it may need extension of an existing tool and not new infrastructure. The law should still set a minimum reliability standard for testamentary signatures, because a typed name, scanned signature, cryptographic signature and biometric method do not all carry the same weight.

Witnessing and remote presence. This gap is primarily human, not technical. It asks whether a witness attending by video can see what a witness attending in person would see. It is the gap most closely tied to undue influence, and it calls for the most cautious solution, not the quickest.

Storage, integrity and revocation. An electronic will can be copied and stored in many places, so the law needs rules identifying the single authoritative copy, secure storage standards, audit trails, and procedures for revocation and access after death. Legislation alone cannot solve this. It also needs a trusted institution to hold electronic wills, much as RITA already holds paper records, which makes this as much a gap in capacity as in law.

Probate and evidential procedure. Courts need a defined way to receive an electronic record, verify its source, test the signature, hear witness evidence and confirm completeness. General evidence law helps with admissibility, but the technical questions may need dedicated probate procedure. Some of this could be narrowed by Judiciary practice directions without waiting for Parliament, although that could not cure the recognition gap.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Fraud and undue influence. This is the most consequential gap because it is the one most likely to produce a truly unjust outcome: a will that looks valid on its face but does not reflect the testator's wishes. Digital systems reduce some risks through audit trails and strong authentication but add others such as account compromise and manipulated records. Closing the other five gaps while leaving this one open would recognize electronic wills formally while leaving vulnerable testators exposed, which is why safeguards against fraud and undue influence should sit at the center of reform and not at its edge.

A hypothetical shows the practical stakes. Suppose a retired teacher in a rural district, unwell and far from any advocate, types her will on a phone, names her nephew as executor, saves the file, sends it to him by message and says in the message that this is her final will. She dies six months later, and a cousin who was left nothing challenges the document. On these facts a South African court could ask under section 2(3) whether she drafted the document and meant it as her will, and the message to the nephew would be strong evidence. A Tanzanian court has no comparable power to ask the question. The document fails section 50 and the inquiry ends. The example also shows why fraud safeguards matter: the same features that make the file easy to make, a phone and a message, make it easy for someone with access to the device to forge or alter. A workable regime has to serve the teacher and protect against the person who would exploit her.

VII. The lesson and its limits

The lesson from South Africa is narrower than a call to recognize electronic wills outright. What Tanzanian law lacks is any mechanism capable of asking whether a document that fails the ISA formalities nonetheless reflects the deceased's genuine and provable intention. Of the six gaps that would face a full electronic wills regime (recognition, signature and identity, witnessing, storage and integrity, probate procedure, and fraud and undue influence), recognition is the most immediate because it may operate as a complete bar, and fraud and undue influence the most consequential because it produces the most unjust outcomes. Reform that closes the others while ignoring fraud would recognize electronic wills formally and leave vulnerable testators exposed.

VIII. Conclusion and recommendations

A. Conclusion

The legal status of electronic wills in Tanzania is unclear. The ETA recognizes electronic records and signatures in general but never mentions wills. The ISA governs wills but was written for

paper. No statute bridges the two and no reported decision has addressed the point, so a person who makes a genuine will electronically has no certain path to having it recognized.

South Africa shows this outcome is not inevitable. It also excludes electronic signatures from will execution, yet section 2(3) of its Wills Act lets courts give effect to genuine testamentary intention despite defective form. In each case the will succeeded not because it was electronic but because the evidence clearly showed the deceased's intention. Identical facts could produce opposite outcomes in the two jurisdictions. As more Tanzanians live and transact digitally, the cost of inaction will grow.

B. Recommendations

The recommendations below respond to the four gaps identified and are adapted to Tanzania's own structures and not copied from South Africa.

i. Legislative reform

Express recognition. Amend the ETA, or add a provision to the PAEA, to state whether and how wills may be made, signed and stored electronically.

Electronic-execution rule. Supplement section 50 of the ISA with a rule defining which electronic signatures satisfy the signature requirement for a will. The standard should be higher than for ordinary transactions, so that a typed name is not equated with an authenticated digital signature.

Remote witnessing. Permit remote witnessing only with contemporaneous audio-visual presence of the testator and both witnesses, identity verification and a durable recording of the attestation. As the gap most tied to fraud and undue influence, it should carry the heaviest safeguards.

Judicial remedial power. Empower the High Court, on application by an interested party, to order the Probate Registry or RITA to accept a document as a will despite non-compliance, where satisfied that the deceased drafted or executed it and intended it as a will. The applicant should prove authorship and intention by objective evidence such as contemporaneous communications, metadata or later conduct.

ii. Institutional reform

Gateway. Give RITA and the Probate Registry an express role in receiving, screening and referring disputed electronic wills to the High Court, with guidelines on the evidence expected.

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

Secure deposit. Task RITA with a secure electronic deposit and preservation facility where an electronic will can be lodged, time-stamped and kept unaltered during the testator's lifetime, subject to the PDPA.

Practice directions. The Judiciary should issue practice directions on receiving and testing electronic evidence in probate. This cannot cure the recognition gap but would reduce procedural uncertainty while legislation is pending.

iii. Professional and public practice

Interim guidance. The Tanganyika Law Society and the Judiciary should issue guidance affirming the primacy of section 50 formalities and advising testators who use electronic means to keep a signed paper original alongside any electronic copy.

Public education. RITA, the Ministry responsible for constitutional and legal affairs and the Law Reform Commission should educate the public on the current risks, so that no one learns only after death that a will they thought effective cannot be given effect.

iv. Sequencing and implementation

The recommendations do not all need to happen at once, and they differ in cost and difficulty. Three stages are realistic. In the first stage, which needs no legislation, the Law Society and the Judiciary can issue guidance and practice directions and begin public education. In the second stage, Parliament can enact express recognition and the judicial remedial power, and RITA and the Probate Registry can be given their gateway role, since these change the legal position most directly and depend least on new technology. In the third stage, once the second is working and capacity has been built, the electronic-execution standard, the remote witnessing procedure and the secure deposit facility can be introduced. This order puts the reforms that rescue genuine wills first and the reforms that raise the most technical and fraud risks last. Legislative and institutional reform should be treated as two parts of one program. A reform that recognized electronic wills without investing in verification capacity would simply move the cost from the drafting stage to the probate stage.

The law of succession is rooted in cultural, social and family norms, and reform must respect them. But the case for reform is clear. Tanzanian law should adapt so that a person's genuine final wishes are honored whatever medium was used to record them.

C. Areas for further research

Four areas deserve study. First, the treatment of electronic wills in other African common-law jurisdictions, such as Kenya and Uganda, to test whether the South African approach is typical

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]

or an outlier. Second, the interaction between electronic wills and Islamic and customary succession law in Tanzania, which this article did not address. Third, the cybersecurity and data-protection safeguards needed for an electronic will deposit facility. Fourth, empirical research on the extent to which Tanzanian testators already attempt to record their wishes electronically.

*****

© 2026. International Journal of Law Management & Humanities [ISSN 2581-5369]