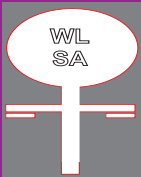


A Guide to Inheritance Laws in Zimbabwe



Women and Law
In Southern Africa Research and Education Trust



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Women and Law in Southern Africa Research and Education Trust (WLSA) researches women's legal rights, educates women about their rights, and encourages changes in the law to benefit women, in Zimbabwe, Zambia, Swaziland, Mozambique, Lesotho, Malawi and Botswana

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INHERITANCE IN ZIMBABWE

After a person dies, it is very important that his or her property, be it land, livestock, furniture, motor vehicles, grinding mills, kitchen equipment or agricultural equipment is properly protected and distributed according to law.

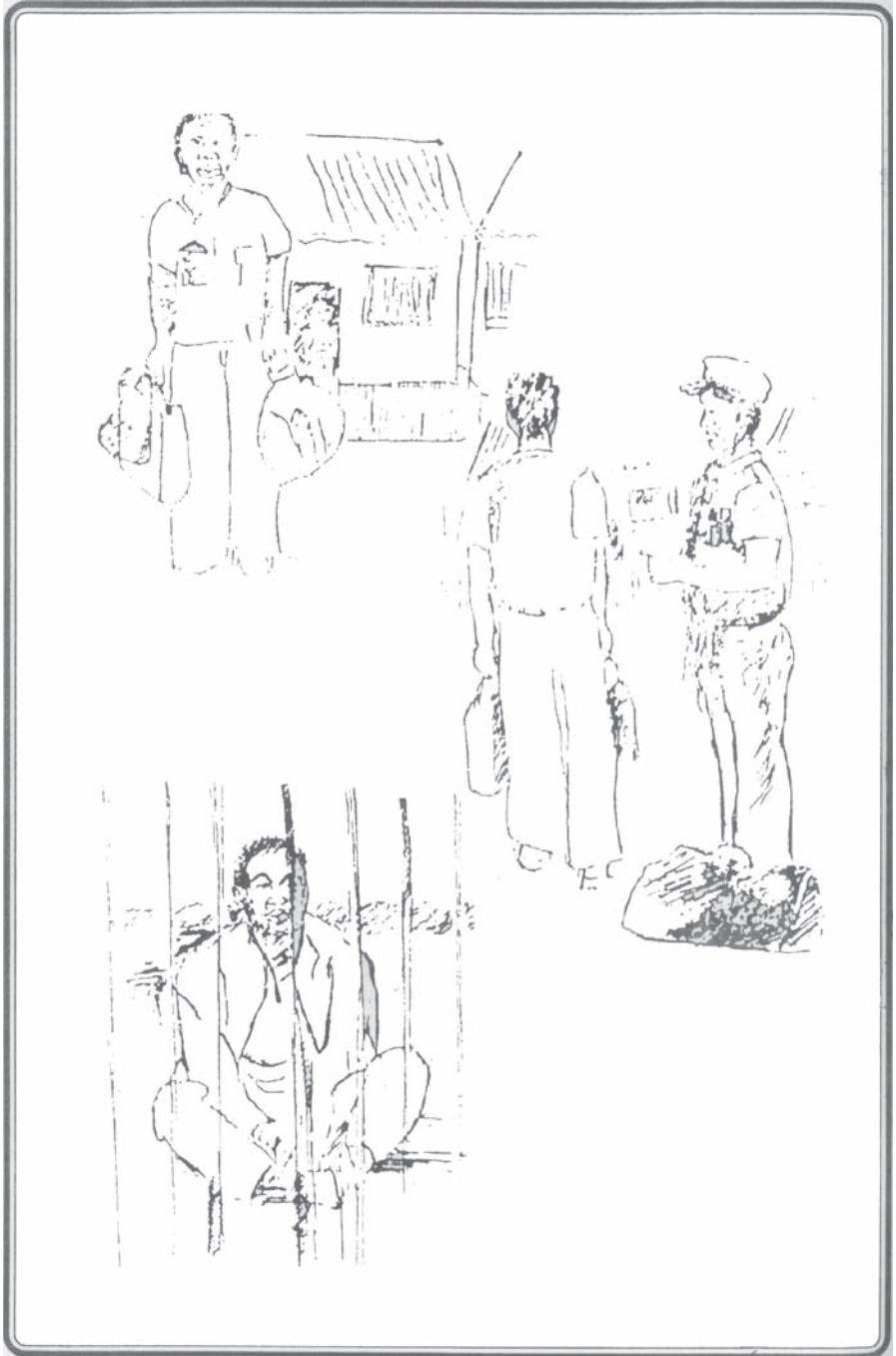
The property that a deceased person leaves has to be used to pay those he or she owes money to and to provide support for the members of his or her family. After these requirements have been met, the rest of the property is shared as directed by the deceased persons Will or by laws that say how the property of a deceased person not dealt with in a will is to be shared among his or her family.

Once someone dies, it is the responsibility of his or her spouse (husband or wife), grown up child or some other family member to look after the property that belongs to the deceased person until the estate can be properly administered. If none of these people are available, it is the responsibility of the person who owns or is looking after the place where the deceased person died to look after the property of the deceased.

Government, through the Deceased Person's family Maintenance Act, has made it an offence for any person to take property left by a deceased person or to stop the family of the deceased from occupying and using the land and property left by the deceased. This is similar to the customary laws in which the widow and children of a deceased man were left to occupy and use the land that had been allocated to him by his family or tribe. No one was allowed to chase the wife and children away from the land. A period of around a year was allowed for the wife or wives to decide what they wanted to do, whether to stay with their husband's family or to return to their own natal families.

Both Government's law and the customary law are designed to protect the family of the deceased person.

After someone dies and the steps have been taken to protect the family and property of that person, steps need to be taken to ensure that the estate is properly accounted for and distributed to those who are entitled to receive portions of it.



REGISTERING THE DEATH & ESTATE AT THE MASTER OF THE HIGH COURT'S OFFICE OR MAGISTRATE'S COURT

After someone has died, his or her death should be registered with the Births & Deaths Registry office. After that, so that the deceased person's property can be properly divided out among the family, the estate has to be reported to the Master of the High Court's office in Harare or Bulawayo or to the nearest magistrate's court.

The person who is responsible for reporting the estate is the wife or husband of the deceased, his or her grown up children, a family member, a friend or even the person's employer. It is very important that a wife or husband is able to go and report the estate wherever possible as he or she is the person who is responsible for caring for the family and property.

When you go to report an estate, you should take along the deceased Will if any and a list of his or her property with estimated values to help you prepare an inventory. An inventory is a list of the deceased person's property including land, bank accounts, shares and movable property. You will also be required to produce the deceased's death certificate. If the deceased was married, you will also need to provide a marriage certificate, birth certificate of children of the deceased should also be provided. If you can, make copies of all documents before you go to report the estate.

It is very important that the person who is responsible for the estate such as the wife, husband or child does not let any other persons take any of these documents after the death of the person. Special care should be taken at bank books and insurance policies.

Although most families try to look after the family of the deceased, there are others who try to take advantage of the widow, widower or children by getting these documents and then using them to be made heir(s) or take over the property or get the pension proceeds. Such actions are criminal and can attract punishment. If this happens, it is important to report to the police, the Master of the High Court's Office, Magistrate's Court, Legal practitioner or one of the organizations listed at the end of this booklet.

ADMINISTRATION OF THE ESTATE

After the estate has been reported and inventory written up, the process of organising the estate and making it ready for distribution will be undertaken.

An executor will be appointed to wind up and deal with the estate. The executor does not have to be a lawyer, and it can be very often the husband, wife or child of the deceased. Women are just as able as men to be the executor of any estate. Do not let someone prevent you from carrying out this very important task. If you need help, it can be obtained from the court, from a lawyer or service organisations: so do not be afraid to take on this task especially if you are worried that people may try to take property away from you and your children.

The executor has to make sure that the deceased debts are paid from the estates. Debts have to be proved, that is evidence produced that the amount is actually owed. Wives, children and family members do not have to pay the debts of the deceased from their own money. If there is not enough money to pay all the debts, then estate is insolvent and the family can be protected from having to find the monies themselves. If this happens, get advice from experts. Never let someone force you to pay off such debts, it is not your responsibility.

The executor will be appointed in accordance with the instruction of the deceased, as set out in a valid Will. If there is no Will, an executor has to be appointed after a meeting of the family. The law in Zimbabwe is that when an executor is to be appointed for an estate the wife or husband of the deceased person is the preferred person, followed by a child and then other relatives of the deceased.

Once an executor is appointed, a new inventory has to be made out. This is so that a check can be kept on all the deceased's property and how it is being dealt with.

The executor has to make sure that all the money that is owed to the deceased is paid into the estate and accounted for. No one can take this money or any of the deceased's property for themselves even if they think that they will ultimately get it from the estate.

There are two basic ways in which the estate can be distributed. These are in accordance with the Will of the deceased or as laid down by the law.

If the deceased left a valid (lawful) Will, this will be the basis on which the estate is distributed. However, it should always be remembered that if the Will does not adequately provide for the maintenance of the deceased's wife or wives, husband, minor children or major children who are physically or mentally unable to support themselves, then steps can be taken to see if maintenance for these people can be arranged from the estate. If the surviving spouse (wife or husband) has not been given a fair share of the estate., in light of their contribution to the wealth of the estate, this can also be taken into account in looking at the division of the estate. All this is provided for in the Deceased Persons Family Maintenance Act and members of a deceased person's family should be prepared to use this Act to protect their own interests. In such cases it may be necessary to seek legal advice or contact a legal aid or service organisation for assistance.

Where there is no Will (intestate succession). If someone died without a will then there are special rules that set out how the estate is to be dealt with.

THE NEW LAW

On 1st November 1997, the law was changed so as to ensure that the close family of a deceased person who dies without leaving a wWill were better provided for after their death. The main changes that this law makes are designed to help and protect families where the husband and wife were married according to the customary law.

As the research work **WLSA** has shown, many aspects of this new law are closer to the real values and purpose of customary law than what was taking place in the courts. For example the new law, the Administration of Estate Act, Amendment of Act 6 of 1997 states that the heir under customary law should receive the name or tsvimbo or intonga and any other traditional articles the heir would normally receive. The heir is not automatically entitled to any other property unless he or she is also someone who could share in the estate(a beneficiary). This is because of the need to make the care of the surviving family of the deceased person the most important thing that happens after their death. That is not to say that many heirs would not care for the family, many do. However, some do not, so the law tries to make sure that families are looked after.

WHERE THE DECEASED WAS MARRIED IN A CIVIL MARRIAGE

If the deceased person was married according to civil law, that is a registered church marriage or what was often called a chapter 37 Marriage now Chapter 5:11 then the estate is distributed as follows:

Where the deceased person died after the 1st of November 1997, the surviving spouse is

the wife or husband of such person, is automatically entitled to become the owner of the home or the domestic premises that was occupied by the couple or being occupied by the surviving spouse. Of course this can only take place where the deceased person owned the home or premises. If the deceased died before 1 november 1997 they do not get the house but all the other steps are the same.

The husband or wife gets all the household goods and effects that is all the furniture, cookery, cutlery, pots, pans and kitchen equipment that belonged to the deceased. He or she can then decide what to do with it. The spouse is also entitled to a share in the deceased's estate. The amount is worked out, where the deceased had children on the following basis:

You take the total value of the estate after payment of the liabilities and administration expenses, less the household goods and effects as described above and devide what is left by the number of children left by the deceased plus his or her spouse. Thus if there are three children (children include adult and minor children) and wife or husband the estate will be divided into four shares. If the amount of the spouses share is less than (as gazetted by the government) the wife or husband will take the amount that is gazetted and the others will share in the rest divided by three.



FAMILY MEETING SHARING PROPERTY EQUALLY TO BOTH MALE AND FEMALE CHILDREN AND TO PREPARE A PLAN TO ENSURE THAT THE WIDOW MAINTAINS OCCUPANT OF THE HOME

If the entire estate is or less then the wife or husband takes it all. From this he or she would have to look after any minor children.

If there are no children, then the spouse would take a half of the entire estate or (as gazetted by the government) or whichever is the larger amount. The rest of the estate, if any, is shared between the parents of the deceased and their children (that is the brothers and sister of the deceased person).

There are other arrangements for dividing the estate. The most important of these is that if there are only children and no surviving husband or wife, then the entire estate is divided between or among the children. Once again, if there are insufficient funds for maintenance of a minor or incapacitated child then one can claim through the Deceased Person's Family Maintenance Act for necessary maintenance.

As you can see the main purpose of the law is to make sure that the wife or husband and the children of the deceased person are as well provided for as is possible.

Although in some ways this seems very different from the customary law when one comes to think about the reasons behind customary law and the general law both have the same purpose, that is the care and protection of the family of the deceased person. However; the ways in which this is accomplished are different.

WHERE THE DECEASED WAS MARRIED ACCORDING TO CUSTOMARY LAW

People married under customary law sometimes have complicated family arrangements where there are number of wives and some very young and some much older children. The new law makes it possible for such families to decide what is the best way to deal with the estate. But, this a very important, it sets down guidelines that can be used to decide whether the plans made by the families are fair and look after the need of the family of the deceased person. The Master of High Court or the Magistrate who looks at the plan uses the guideline in the law to decide if the plan looks after the needs of the family, and if it does not the family might have to do the plan again.

What the law does is to require the executor to discuss who should share and how the estate should be shared out. The idea of the plan is quite new and is special to Zimbabwe. For women it is important that when such plans are being discussed that as members of the family they make sure that women and children`s needs are looked after.

The vatete or ubabakazi always had an important voice in the family council and at the kurova guva or umbuyiso ceremony and now women should be taking back those old roles under the new law.

The guidelines that the law sets out are best looked at by seeing what ought to happen in different situations. However, it is very important to realise that a plan might be very different from the guidelines but may still be the best solution for a particular family.

We will now look at what the guidelines say.

FAMILY SITUATION 1

The deceased person was married under customary law and is survived by more than one wife and also has children.

Firstly, each wife, if it is possible, should become the owner of the home in which she is living. If there are a number of wives sharing the home, then that sharing would continue. If it is possible, they should get ownership or shared ownership. Each wife should get the furniture and the household things that she used. If they shared some things, then this would probably continue. A lawyer might be needed at the time of the final sharing of the estate to carry out all legal steps that are needed concerning the homes).

Once the homes have been sorted out and the traditional items given to the heir, the law states that a fair sharing arrangement would be to divide the rest of the estate into three equal shares. Of course you can only do that after the value of the estate has been worked out, less the value of the home/s.

The wives share one third of the estate as follows: The first wife gets two thirds of one third of the estate and the other wives get one share of the remaining one third. The first wife gets two thirds because it is believed that she probably had made the biggest contribution to the estate in terms of work.

For the people who made the law, it was very difficult to decide what was really fair between the wives. They could not guess the problems and needs in advance. However, a really well thought out family plan could take some of these problems into account.

The remaining two thirds of the estate should be divided among the deceased person's children in equal shares, this includes both male and female children. If there is only one child, then he or she takes the whole of what was left after the one third wives' share has been dealt with.

If this distribution does not work out fairly for the family of the deceased person including his or her parents or someone that he/she was looking after at the time of the death, then that person could ask for maintenance in terms of the Deceased Person's Family Maintenance Act. If this is done, then the various needs of all the members of the family have to be very carefully looked into.

FAMILY SITUATION 2

The deceased man is married according to customary law but at the time of his death he had only one wife.

In such cases the wife should get the home and all the furniture and other items as explained above. The traditional items will be given to the heir and he will also have taken the deceased's name.

The new law indicates that the estate that is left after the home has been dealt with should be shared in a manner similar to a civil marriage. The reason for this is that as there is only one wife, the two forms of marriage are treated as the same for purpose of inheritance of property. What this means is that the widow and the children of the deceased man will share what is left of the estate equally. Although the widow should, if it is possible as we saw with the civil marriage, get the amount that is gazetted by the government.

The Deceased Person's Family Maintenance Act can be used to make changes in the distribution if there are needy dependants who have been left out, but only when it is really necessary.

FAMILY SITUATION 3

A wife dies and her husband has more than one wife.

A husband should get one third of the deceased wife's estate. Her children should share the other two thirds equally. If there is only one child, then he or she should get the two thirds that was left. However, the husband does not get the home in which his deceased wife lived in. Perhaps the lawyer who drafted the law thought the husband would probably own it anyway.

As we have seen above, adjustments can be made if it is necessary to provide maintenance and of course the family might come up with a different plan if it is fair to do so.

FAMILY SITUATION 4

The deceased person leaves a wife or a husband to whom they were married according to customary law but have no children at all.

In such a situation the wife or husband gets the home and the things in the home as discussed above. This is because the law is treating them as being in the same position as someone married in the civil marriage. The surviving spouse should get half of the estate that is left. The other half is to be shared equally between the parents (if they are still alive) and the brothers and sisters of the deceased person.

SITUATION 5

Where the deceased person is someone who falls under customary law and dies without leaving a husband or wife but leaves children.

The children should share the estate of the deceased person in equal shares. If there is only one child then he or she will take the whole estate.

If there are other people who did not get a share but who were being looked after by the deceased person at the time of his or her death, they might be able to make a claim under the Deceased Person's Family Maintenance Act.

SITUATION 6

The deceased person did not have a spouse or children.

If the deceased person's parents are married according to customary law, then his or her parents, brothers and sisters should share the estate. This does not happen very often although with the AIDS pandemic it could begin to happen more and more often.

Points To Remember In The New Law

- (1) The protection of the estates is very important. It is a criminal offence to take property from the estate. This is the same under the old law.
- (2) the spouse gets the home in which the couple were living in most cases.
- (3) That the welfare of the family of the deceased person is the most important part of the new law.
- (4) The sharing out of the estate can be adjusted if someone is really in need of maintenance.
- (5) That the family should sit down and discuss the best way for everyone's needs to be met and to put these into the plan that is taken to the Master of the High Court's office or the Magistrate's Court.
- (6) When this plan is being discussed, women must speak up. They had and still have a special role in these matters and they must ensure that this is continued.

THE OLD LAW

If the deceased dies before 1st November 1997 then his or her estate will be distributed according to traditional customary law. However, what custom is to be applied to the division of an estate is not always very clear. At the moment the highest court in Zim-

babwe, the Supreme Court has found that the eldest son can inherit from his father and that the oldest son is the one who should inherit all his father's wealth. However, in practice, there are many different ways in which property is distributed. Even daughters are given a share in their father's wealth after his death, as **WLSA** researchers found during their research on inheritance practices. So women should not be afraid to push for this approach if it seems the right thing to do.

Where a woman dies the real purpose of custom is to see that her children are looked after and it is her family's duty to see that her property is available for her children to benefit from, as they grow older. This is very important as they grow older. This is very important as in many families; the wife's efforts in earning income have been critical for the maintenance of the family.

To meet the changing needs of the people, the adaptations that ordinary people have made in dealing with a deceased person's property give very interesting ideas on how customs change and show new answers to old problems that would have emerged. Individuals should try and argue that the court's views of the law are now old fashioned.

PENSION, INSURANCE AND EMPLOYMENT BENEFITS

When a person dies who was a member of a pension scheme, had insurance policies or was employed, the wife, husband, children or other relatives should go and see the employer, the insurance company or pension fund to deal with the benefits due.

In Zimbabwe employers and pension and insurance administrators are very careful to ensure that the money that is due to go to the correct person or persons. Once again take along documents such as the pension policy, evidence of employment, pension fund papers plus marriage and death certificates. Where children are beneficiaries take along their birth certificates as well. The administration of the funds e.t.c would help you deal with the matter and if you feel that there are problems then seek advice from a lawyer, government officials or one of the service organisations listed at the back of this book.

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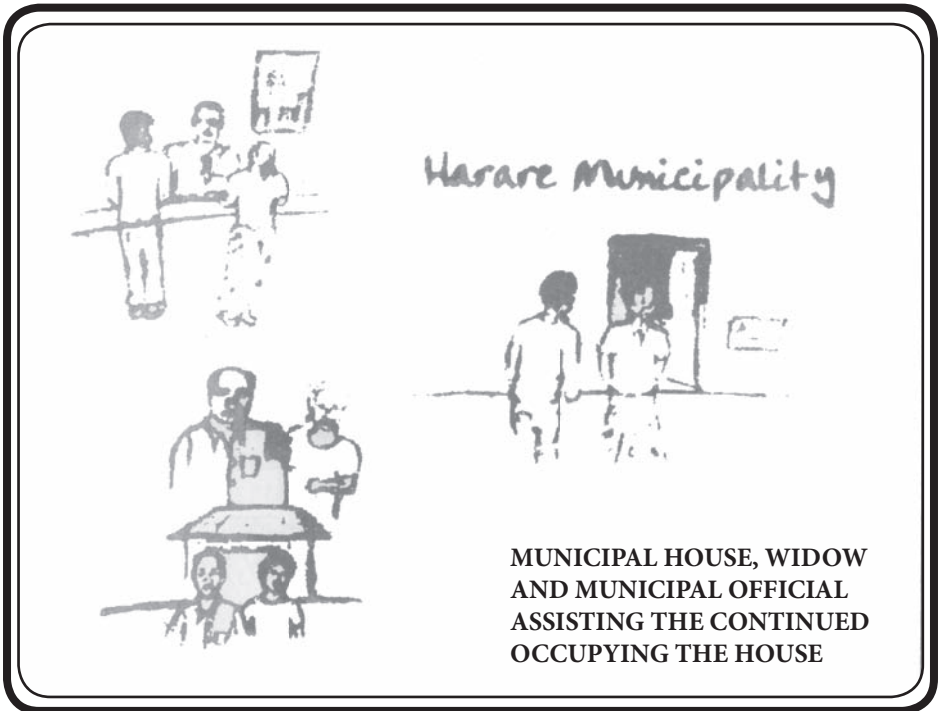
**PENSIONS
INSURANCE
EMPLOYMENT
BENEFITS**



HOUSING AND LAND RIGHTS

Although houses and land that have title deeds are dealt with as part of the estate as set out above, there are houses and land that are controlled by the Municipalities. Town councils or municipal house or flat or resettlement land, the wife, husband or children of that person should go to the housing or resettlement officer and report the death.

The policy of the municipalities is to make sure that the family of the deceased leasee of such property is looked after. Do not let yourself be pushed around or chased away by other relatives of the deceased, go to the housing office and they will assist you to have your rights protected. The same course of action should be pursued with resettlement officers. In some ways, the manner in which these people deal with the family of a deceased person are closer to the real spirit of custom than the approach of some of the courts.



REMEMBER

Whichever Law is being used the welfare of the family of the deceased person is the most important thing to consider. If there are any problems seek advice from the Magistrate Court, Master of the High Court's office, Service Organisations or a lawyer.

WHERE YOU CAN FIND HELP

MASHONALAND

1. WOMEN AND LAW IN SOUTHERN AFRICA(WLSA)
16 LAWSON AVENUE
MILTON PARK
HARARE
P.O. BOX 10171
HARARE
TEL: 253001/3
FAX: 252884
EMAIL: sly@wlsazim.co.zw
WEBSITE: www.wlsazim.co.zw
2. HARARE LEGAL PROJECT CENTRE
2ND FLOOR BLUE BRIDGE
EASTGATE
P.O. BOX 918
HARARE
ZIMBABWE
TEL: 728211/2
FAX: 728213
3. MUSASA PROJECT
64 SELOUS/SEVENTH STREET
P.O. BOX 712 AVONDALE
TEL: 794983
FAX: 734381
4. ZIMBABWE COUNCIL OF CHURCHES
128 MBUYA NEHANDA STREET
P.O. BOX 3566
HARARE
5. ZIMBABWE LAWYERS ASSOCIATION (ZWLA)
17 FIFE AVENUE
HARARE
TEL: 703766/71/706656/706719/5

6. Women`s Association Group
11 Lincoln Drive
Avondale
P.O. BOX 365
TEL: 339161, 339292
FAX: 308738

MATEBELELAND

- 7 Bulawayo legal Project Centre
95 Fort Street
P.O. BOX1131
Bulawayo
TEL: 09-68926/74091
8. Catholic Commission For Justice And Peace
P.BAG 5742
Binga

MIDLANDS

9. Gweru Legal Project Centre
St. Floor Mercury Building
Corner R.G Mugabe Way and 7th Street
P.O. BOX 1470
Gweru
TEL: 054-21665
FAX: 054-23147

MASVINGO

10. Masvingo Legal Project Centre
96 Hellet Street
P.O. BOX 290
Masvingo
TEL: 039-64563/65872
FAX: 039-67256

ANYWHERE IN ZIMBABWE

MAGISTRATE COURTS OR THE DISTRICT ADMINISTRATOR'S OFFICE CLOSEST TO YOU CAN DIRECT YOU WHERE TO GO FOR ADVICE AND ASSISTANCE IN DEALING WITH DECEASED ESTATES.

