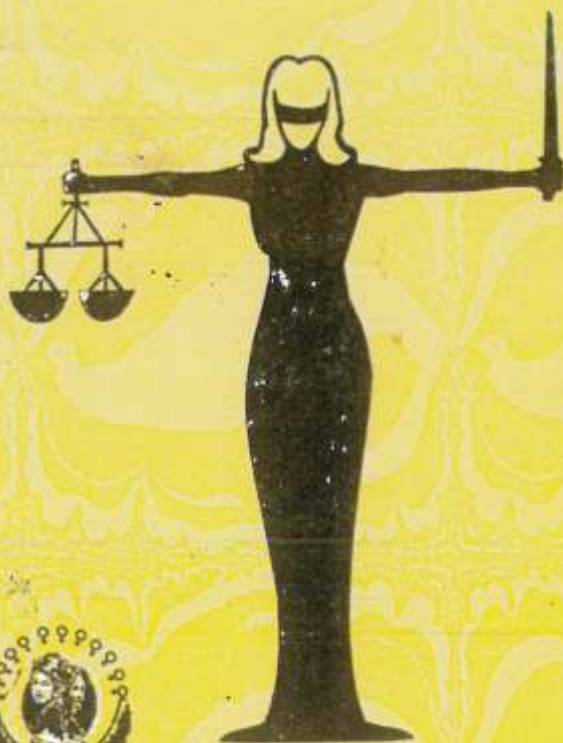


THE NEXT-OF-KIN PALAVER:

Had I Known



Published by
Women's Aid Collective
(WACOL)

Legal Literacy Series 10



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LEGAL LITERACY SERIES 10

Published by:
Women's Aid Collective (WACOL)

Prepared by: WACOL's Legal Unit Department, Enugu
Women's Aid Collective (WACOL)

Edited by: Joy Ngozi Ezeilo

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PREFACE

Most Nigerians are unaware of the meaning of the phrase 'next-of-kin' as often seen in employment forms and have suffered untold hardship as a result. In most cases, the person would have died before the consequences unfold.

The phrase has been mistaken for a 'beneficiary'. They are quite different. A person's next-of-kin is the person to be contacted in case of death or accident and is not entitled to a deceased's benefits unless he is made a beneficiary under a valid Will.

This paper highlights the problems associated with next-of-kin where a person dies intestate, that is, without a valid will. Most often, they step in as beneficiaries to dispossess the real beneficiaries of their entitlements.

The essence of this book published as part of WACOL's Legal Literacy series is to educate the general public to understand the true meaning of nextof-kin and to avoid related disputes often associated with misinterpretation by both employers and persons listed as next-of-kin.

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WHO IS A NEXT-OF-KIN?

According to Collins Concise Dictionary 4th ed., a next-of-kin means a person's closest relation. In my opinion, a next-of kin to be close should be a person's blood relation or spouse. This question of next-of kin, usually comes up when a person dies or when there has been an accident. In this case, the person to be contacted is the next-of-kin of the deceased or accident victim. A provision for next-of-kin under normal circumstances exists in the staff employment form, which is filled once a person, accepts the offer of an appointment in any establishment. At this point in time, the immediate consequences of this are not felt. Trouble arises where the employee dies and the question arises as to who should be entitled to his benefits. Usually, the firm or establishment contacts his next-of-kin. If the deceased makes a will, no problem will arise. However, nobody thinks of making a will since there may not be much to be shared out by the new employee.

Next-of-Kin - Legal Beneficiary or a Trustee?

There appears to be some confusion in the minds of the populace as to the legal status of the next of kin. Many people have the opinion that the person named as next of kin is in the same position as the person named as a beneficiary in a will. Hence we see people named as a next of kin laying claims to a deceased estate even over the legal heirs. It is only when the deceased dies in testate (without making a will) that the problem arises as to whether the next-of-kin is a legal beneficiary of an estate or a trustee. If the deceased dies testate (making a valid will) then the problem is resolved because definitely the will takes precedence. The courts for all intents and purposes will enforce such a will. The next of kin may also be a legal beneficiary under a valid will otherwise such a person is a mere trustee.



Next-of-Kin - The need to chose wisely

A lot of families have been wrecked over this next of kin palaver. The usual scenario is that at the death of a person in testate [with no will] the person named as next of kin automatically steps into the deceased place and takes over the administration of his estate. The hardest hit by this are young widows with little children.

Unfortunately most men do not use their wives as next of kin. They prefer to use their parents, male relatives or even their under aged son as next of kin. The consequence of this is that on the death of such a man, the so-called next of kin takes over the deceased property, benefits and entitlements leaving the widow and the children penniless. Many fresh widows have received a rude shock when they discover that the next of kin without their knowledge has collected their late husbands benefits and even before the corpse is buried. The widow is deprived of this fund, which would have helped in cushioning the effects of being the sole breadwinner of the family. The situation is more pitiable if the widow has no source of livelihood. Such a widow will continue to eke out a living even though the late husband has left enough savings for the family.

Most often people fail to update the information they provided in their staff employment form particularly the next of kin even when their circumstances have changed

particularly when there has been a divorce or separation. The name of the estranged spouse is still retained as next of kin and when death strikes such a spouse may lay claims to the deceased estate and death benefits.

Unfortunately, death strikes when one is at times not ready. We are so afraid of death that we refuse to think of making a will. Other times, the next-of-kin issue is trivialized because we do not know the upheaval that follows after the demise of a person.

Real Life Cases of the Problems Associated with the Next of Kin Issue
(Names used are not the real names of the persons involved)

- ◆ Mr. X and Mrs. Y were happily married and had six children, three boys and three girls. When the going was good, they were deeply in love and Mrs. Y used her husband, Mr. X as her next-of-kin in her employment form. About ten years ago, their marriage suffered a big blow, which sent Mr. X to live in

another town with another woman. Mrs. Y who had a well paying steady job took over the raising of the children. Four of the children are now graduates while the other two are still undergraduates. Two months ago, death struck and Mrs. Y who was the breadwinner of the family died. Mr. X who had not bothered about the welfare of his children surfaced as next-of-kin to collect her entitlements. He engaged the services of a lawyer to perfect his plan. He asked the eldest daughter to search and find out if their mother made a will. The children are hell bent on challenging the rights of Mr. X over the entitlements of their deceased mother. This case brings out the need for employees to be updating their employment forms from time to time, every two or three years as the case may be.

- ◆ In another case involving next-of-kin, Mr. Okeke used his brother as next-of-kin before he got married. When he died, his eldest child was

about four years old. At that youthful age, Mr. Okeke did not think about making a will. His next-of-kin took over everything as if he was the legal beneficiary. He went on and collected the entitlements of the deceased when the wife was still dazed and confused. The wife had only her SSCE qualification and was working with the Local Government Council here in Enugu. This next-of-kin dispossessed the widow of everything and sent her home to her parents. One pastor brought the matter to WACOL and with our support and guidance the police became involved and the next-of-kin is now begging for permission to rectify all the wrongs he had done to the widow. Mr. Okeke never dreamt that his wife now a widow would be subjected to the ordeal she went through at the hands of his brother (next-of-kin). If he had known, he would have updated his form at least even if he could not make a will. This would have minimized the hardship and affliction meted out to his wife

and children after he died.

- ◆ In the case of Obi, a police officer, he used his wife as next-of-kin but he died before they had any issue. They were married under native law and custom and his wife was still very young. She went to find out about her husband's entitlements and she was told that her brother-in-law had been coming to claim her husband's benefit. The officer-in-charge who knew the husband has refused to cooperate with the brother-in-law. The husband was from Anambra state while the widow is from Enugu State but they were living in Lagos before Obi died. We gave her a letter to the officer-in-charge to help her in this matter, as she was the next-of-kin. If Obi had known, he would have made a will and made her a beneficiary in the will. It is when the next-of-kin is mentioned in a will as a beneficiary that he can claim. In the absence of a will, customary law comes in and the brother-in-law can claim being a male member of the

family. Morally, two of them can share the benefits since the next-of-kin (the wife) may remarry and leave the family.

- ◆ Mr. Okoye wedded in the church and his wife had six children for him, three boys and three girls. Later, the marriage fell apart and the man married another wife. He used the second wife with whom he was living with as his next-of-kin. At the time of the man's death, his second wife had two sons but one of them was detained and awaiting trial. The second wife could not help her son and nobody did. A friend to Mr. Okoye helped to process the pension benefits of the deceased whom the friend alleged collected his gratuity before he died. This friend was the sub-treasurer and he was paying the pension to the first sons of the first and second wife. The first wife was not happy, claiming that the second wife was not legally married and had no claim. The first wife, on hearing that the second wife had also died,

impersonated her as the next-of-kin at the Local Government Pensions Board to claim Mr. Okoh's benefits which was still outstanding. Mr. Okoye had worked under the State Government and under the Local Government Council.

When the first wife came to WACOL, she never told us of the impersonation that she had done. This impersonation was based on the wrong notion that the next-of-kin is a beneficiary. Eventually, we resolved the conflict and the first wife agreed to make peace with her first son and others.

Under consideration so far is the next-of-kin as it affects civil and public servants. Where the deceased is not a civil or public servant, he/she is not really concerned with the next-of-kin terminology except maybe in the event of an accident. The determinant factor in sharing property in such cases will be the custom of the area.

- ◆ In another case Angela a widow was completely dispossessed of her husband's property and chased away. The deceased husband, Mr. Okafor, was still in the mortuary when his brothers removed his name from his company and shared everything among them. They were giving a paltry sum to the widow monthly. The widow had only one child for her husband, a daughter, but before her husband died, they adopted a male child. As a result of the adoption, all hell was let loose. The brother's-in-law planned to eliminate the widow. One day, they invited her to the village for a talk. While she was in the village, they broke into her flat in town and removed everything there. At the place where the talk was going on, one of the brothers-in-law poured acid on her. But for the mercy of God, it would have been her face but it was her neck and chest that was burnt. The widow made a complaint to the police and the brothers - in - law did not allow the matter to see the

light of day. The parties had four matters in court already and it was at this juncture that the widow came to WACOL. We invited some of the stakeholders but the brothers-in-law never came. The Igwe and his prime minister came to us. It was during one of our meetings with them that the prime minister told us that the widow asked for the trouble she got. He said that according to the custom, since the deceased had no son before he died, it was settled law that his brothers would inherit his property. Thus the brothers-in-law were challenging the effrontery of the widow to deprive them of their inheritance by going to adopt a baby boy.

After our discussion with the Igwe, he promised to wade into the matter. He had gone to the courts to ask for permission to look into the matter and he is already doing so. We believe that the Igwe as the custodian of custom can influence the review of this custom, which dispossesses a woman completely of

her husband's property in the absence of a will. This man was in the prime of his youth and was not thinking of death when armed robbers shot him dead in broad daylight. If he had known, he would have made a will, which would have settled the next-of-kin palaver.

- ◆ Mr. Chukwuka was a businessman and he had seven children all under 21 years at the time of his death. Mr. X and his wife contracted a marriage under the Act. On the death of Mr. X, his family members ceased his property and were collecting rent without accounting to anyone. His children, six females and one male were enrolled before his death in good private schools. After his death, the widow and her children started living in abject poverty despite the fact that Mr. X owned several houses and two cars. As a businessman, there would not have been any mention of next-of-kin but if he had known, Mr. X would have made a

will to minimize the cruel, degrading treatment perpetrated on the widow and his children. In the above-mentioned case, we referred the matter to the Administrator General and Public Trustee to take over and administer the estate of Mr. X who died in testate. This will cut off the brothers-in-law from the estate of Mr. X.

- ◆ Obi was a businessman and he also married a businesswoman both in the same trade of yam selling. The woman was not poor. The couple had two little daughters before Obi died. At the death of Obi, his father and brother broke into his apartment with the aid of a policeman in the absence of his widow and carried away the household property. They tried to confiscate Obi's lorry but his friends intervened. Obi was quite young when he died and his family that he loved so much was subjected to such hardship that he never expected in his lifetime. If Obi had known, he

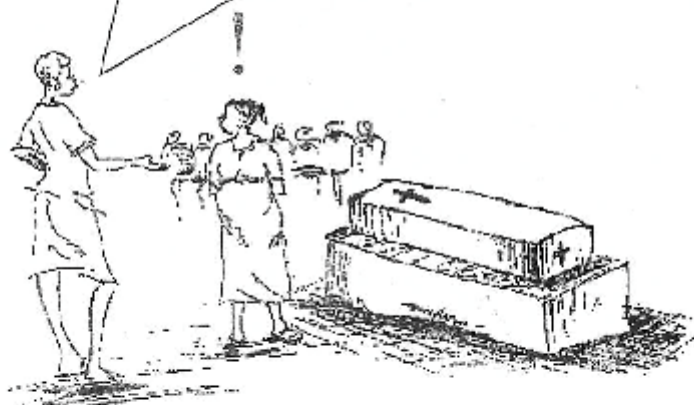
would have shared his property in his lifetime. He would have made it known to his people that his wife contributed in no small measure to their wealth and should not be dispossessed.

- ◆ Agnes, a public servant, lost her husband, a banker early in life. They had a boy and girl before the man died. Onyinye was the next-of-kin of her husband but the bank was trying to ignore this fact and had asked her to come with her brother-in-law before she could be given her late husband's benefits. The brother-in-law being a banker too was trying to influence the bank officials. In this case, the deceased had stated that his wife was his next-of-kin in his employment form, but the officials in charge did not like it and wanted to do otherwise.

It is one thing to provide for next-of-kin and another thing to honestly enforce the provision by those in charge.

- ◆ Mr. Eze was a police officer. He had married a wife in his youth and used her name as next-of-kin in his staff employment form. When the first wife became old, he left her behind in the village and married another younger wife. When Mr. Eze died, his file was checked to know his next-of-kin. Behold, it was his first wife. In this case, the customary law will be applied to minimize hardship on the children and the wives.

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wey concern im money both im
account. You know say na me be im
next of kin.



THE WAY FORWARD

The issue of next-of-kin, as it is presently contained in staff employment forms should be enlarged and a provision for yearly update added. This will put an end to "had I known" when a person dies. The form should also be designed in such a way that there would be different columns for next-of-kin and beneficiaries. This situation can help in the absence of a will. Thus one can during his lifetime if he wishes, mention his beneficiaries and may include the name of the next-of-kin if he so desires. If the next-of-kin is not named a beneficiary, he automatically becomes a trustee and cannot claim

It is morally wrong and annoying for a husband who had abandoned his wife and six children to walk back at the demise of such a wife as if nothing had happened and try to claim the benefits accruing to his late wife because he is the next-of-kin. It is equally heartless and cruel for the relations of a

deceased man to completely dispossess the widow and her children without any thought to their welfare because one of them is the next-of-kin.

In conclusion, we should all try to share out what we have no matter how little to our loved ones while we are alive by making a will because invariably, following the level of greed in the country presently, there must be those who will scramble over our property when we die. The enemies and family of the deceased most of the times are the ones who scramble for his property. We should all try to avoid "had I known" by taking proper care of little and big things when we are alive and well.

ABOUT WACOL

Women's Aid Collective (WACOL) is a non-governmental, non profit making organization registered as a company limited by guarantee with Corporate Affairs Commission (No. RC. 388132) and has an observer status with the African Commission on Human and Peoples Rights. WACOL is committed to promoting human rights of women and young people. We are gender conscious and work towards gender equality and human rights for all. Our vision is a society free from violence, all forms of abuses, where human rights of all, in particular women and young people are recognized in law and practice.

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ENUGU OFFICE:

No 9 Umuezebi Street Upper
Chime, New Haven, Enugu
P.O.Box 2718 Enugu State.
Tel: 042-256678, Fax: 042-256831
E-mail: enquiries@womenaidcollective.org,
wacol@alpha.linkserve.com

ABUJA OFFICE:

Plot 448 Kontagora Close
Off Jos Street Area III,
Garki Abuja.
Tel: 09-6711044,
08055054571
wacola@justice.com

PORT-HARCORT OFFICE:

39 Ogbia/Mbonu Street D-Line
P.O. Box 10369 Port Harcourt
Rivers State.
Tel: 084-572948, 084-483193,
08023136133
wacolp@womenaidcollective.org,
wacolp@yahoo.com

Website: www.wacolnig.org

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