

BRENDAN PEACOCK

**W**HEN something goes wrong with your car, you visit a trained mechanic.

On the other hand, when you get sick you visit a doctor.

These specialists have the knowledge and experience required to solve your problems.

So why would you get anyone but a trained expert to construct your last will and testament?

Here's a cautionary tale in the financial and emotional implications of not getting a will drafted by an accredited professional.

In late 2005, a Dr Raubenheimer asked his insurance broker and investment adviser to construct his will, which was intended to replace the one he had drawn up in 2002.

Raubenheimer's adviser — a Mr Hagen of Cape Town — was also instructed to appoint himself as administrator of his estate. In terms of the new will, the doctor left his estate to his wife. When Hagen brought a draft of the will to Raubenheimer for his approval and signature, he read through and signed it, although he had further bequests to add and would give them to him later.

Hagen told Raubenheimer that, to be valid, a will needed to be signed by two competent witnesses present at the same time, along with the person whose will is being signed.

With no suitable candidates present and with Raubenheimer

# Get an expert to draft your will

## Courts being called to intervene in many cases

growing impatient, Hagen said he would organise the signatures at his offices. Raubenheimer died three years later, without adding the specific bequests. The master of the High Court in North Gauteng accepted the will and appointed the adviser as executor of Raubenheimer's estate, but the doctor's children — from a previous marriage — believed something was fishy about the provisions in the will and began to question the adviser.

They discovered that the process had not followed the necessary formalities. The children sought a court order to declare the will null and void because of a failure to follow proper procedures and secondly for vagueness in apportioning the estate.

In March last year, a judge agreed with the children, but Raubenheimer's wife appealed to the supreme court to argue that either his intentions could still be determined from the will's provisions or, if not, his previous will should be used.

Judge Leach decided that Raubenheimer had signed the will in its basic form, meaning he was happy with its overall provisions. The judge also found that, even though the will drawn up by Hagen had been clumsily worded because he had not been properly trained in the law, Raubenheimer's basic intentions could be discerned and the will should stand.

The ultimate goal of the court, Judge Leach said, was to give effect to the wishes of the testator. By now, two court cases had incurred significant costs and while the high court had ruled that the costs of the first case should be borne by the estate, Judge Leach ruled it unfair that the estate should bear the costs of the appeal as well. Raubenheimer's children were thus left to foot the bill.

Delivering his judgment, Judge Leach said: "It is a never-ending source of amazement that so many people rely on untrained advisers when preparing their wills, one of

the most important documents they are ever likely to sign. This is by no means a recent phenomenon."

He added that the courts are all too often called upon to deal with disputed wills which are the product of shoddy drafting or incompetent advice.

The result is a family at war and a costly burden incurred by those seeking clarity.

The Fiduciary Institute of South Africa (FISA) said using a FISA member to draft a will would ensure a minimum high standard and protection from unscrupulous practitioners.

"FISA has over 700 individual members, drawn from trust companies and banks, as well as the legal, accounting and financial planning professions. Its objectives are to raise the standards of fiduciary practice in South Africa and protect the public. Our members are required to adhere to the FISA code of ethics and if not, membership is terminated due to non-compliance," said Angélique Visser, FISA's chairman.

To find a FISA practitioner, email [willsquery@fidsa.org.za](mailto:willsquery@fidsa.org.za)