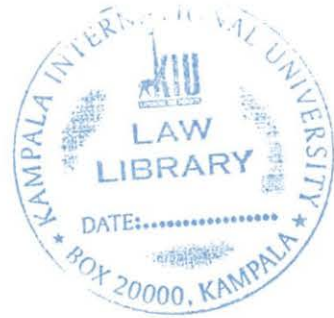


SUCCESSION LAWS: IMPLICATIONS TO WOMEN IN UGANDA



BY

KAHURAH TERESIAH MUMBI


LLB/10040/81/DF

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DECLARATION

I Kahurah Teresiah Mumbi do hereby declare that this dissertation is original and has not been published and/or submitted for any other degree award to any other University before.

Signed  Date 19/06/2012

APPROVAL

This dissertation has been submitted for Examination with the approval of the following supervisor.

Signed:  Date: 19/6/2012

Madam Emma Ssali

DEDICATION

I dedicate this dissertation to my loving mum Leah Ng'endo, brother Samuel Mburu Kahurah and my best friend Njoroge.

ACKNOWLEDGEMENTS

I acknowledge the understanding, patience and professional guidance of Madam Emma Ssali, who was my supervisor. I also acknowledge the support and good spirit of everyone who has assisted me through out my studies and in the writing of this dissertation.

Table of Contents

DECLARATION.....	ii
APPROVAL	iii
DEDICATION.....	iv
ACKNOWLEDGEMENTS.....	v
TABLE OF STATUTES.....	viii
TABLE OF CASES.....	ix
CHAPTER ONE	1
1.0 Introduction.....	1
1.1 Background of the Problem	1
1.2 Statements of Problem	3
1.3 Hypothesis.....	3
1.4 Objectives.....	4
1.5 Scope of Study	4
1.6 Significance of the Study	4
1.7 Literature Review.....	4
1.8 Methodology	7
1.9 Chapterization.....	7
CHAPTER 2.....	8
2.0 Legal Regime	8
2.1 The 1995 Constitution.....	8
2.2 Succession Act Cap 162.....	9
2.2.1 Testate Succession	10
2.2.2 Intestate Succession	11

TABLE OF CASES

1. Bamwite vs. Nangobi (1977) unreported
2. Charles Harwood vs. Maria Baker (1840) 3MOO PC 882. 13 ER. 117 PC
3. Chelang vs. Juma (2002) KLR 339 (Kenya)
4. In Goods of Francis Morton 1864 3 W& T.R 422. ER 1338
5. In Konde vs. Bulandina NanKya & Another (1985) unreported
6. In The Administrator General vs. Swaibu Nyombi and others (1993) Unreported
7. In the Estate of Faiz Khan (deceased) (1929-1930)12 KLR
8. In the matter of the Estate of Stephen Wanyoike Muhia HCCA No.6 of 2002 (Kenya)
9. In the matter of Grace Micholo HCSC No. 1978 of 2000(Kenya)
10. Mboijana vs. Mboijana CS No.8 of 1990
11. Moonlight Sengooba vs. Administrator General ICCS No. 894 of 1973
12. Nyendowa vs. Robert Nyendowa (1993) (unreported)
13. Re Michael Alias Kilenga (1990) (unreported)
14. Re Salum (1973) EA 522
15. Ruth Nsubuga & Others vs. Peter Nsubuga & Others (1988) Unreported
16. Shalik Abdul vs. Shaik Elias (1915)1 FMSLR 204
17. The Matter of Grace Ngulu Micholo HCSC No. 1978 of 2000 (Kenya)
18. The Matter of Stephen Wanyoike Muhia HCCA No. 6 of 2002(Kenya)
19. Uganda vs. Jemmima Kyanda 1977(HCB) 111
20. Vajay Chandrankant Shah vs. Public Trustee CACA No. 63 of 1984 (Kenya)
21. W.B Keatinge vs. Muhammed Bin Saif Salim and Others (1929-1930) KLR 74

CHAPTER ONE

1.0 Introduction

The law of Succession provides for the manner of inheriting property, mode of distributing property of deceased persons and how other related matters should be dealt with. In Uganda the law governing Succession includes the Succession Act¹, the Administrator General Act² and the 1995 constitution of Uganda.

There two modes of succession in Uganda, namely, intestate and testate. Testate succession occurs when a person dies leaving a will, while intestate succession may either be total or partial³. Total intestacy occurs where a deceased person leaves no effective testamentary disposition of any of his or her property which he or she was competent to dispose of by way of a will. On the other hand partial intestacy occurs where a deceased person's property passes under a will and partially under intestacy rules.

1.1 Background of the Problem

Before British colonialism inheritance and land matters in Uganda like many other aspects of life were governed by patriarchal customs in many communities. The customs dictated that transfer of land to an individual had to be through a male relative. The allocation of land was in the hands of male heads of family or clan leaders. Even when the natal family gave land to a woman she was not allowed to dispose it of to an outsider except to a male clan leader

¹ Cap 162 Laws of Uganda

² Cap 157 Laws of Uganda

³ Women and the law of inheritance in Uganda, Jennifer Okumu Wengi

As a result it was impossible for many women to inherit or own land from their natal or their marital family, because of these patriarchal customs that gave precedence to the males. Thus in most cases women only had user's rights to land.

Widows did not inherit land from their spouses and neither did they inherit the same from their male relative like fathers, hence widows acted as guardians of the land for the male minors until they grew up and inherited the land. The widows with no sons would be forced to marry their brothers in law in order to continue having user's rights to the home and refusal to be inherited meant that the widows lost the said rights to the land.

The colonial administrators did not change these patriarchal customs but instead introduced new property ownership laws where an individual had a right to own land either by freehold or leasehold. As a result, the customary practice of giving land to a male heir was extended to this new form of ownership whereby men acquired title deeds and upon their deaths their sons or brothers inherited their estate. In this system women did not have legal land ownership rights.

Although the statutory laws introduced by the colonialist could have benefited women the colonial administrators did very little about the patriarchal customs that prevented women from inheriting land. These laws were adopted by independent Uganda albeit with some minor amendments and they have made women user's rights worse than before because men who have title deeds use them to get loans or sale of the land without consulting their women.

Today's Uganda is still largely a patriarchal society with customary practices that place women in an inferior position that continue to operate in many communities inspite of the

statutory laws that condemn such practices. Customary laws put women in an economically insecure position, because they inherit very little or no property at all despite the fact that they contributed a lot to its acquisition or development.

Many discriminatory cultures in Uganda still undermine the status of women especially through their control of property and as a result they continue to be marginalized as far as ownership of property is concerned. This paper aims at establishing the effect that the legal system in Uganda has had on the women of Uganda in relation to succession considering the foregoing position.

1.2 Statements of Problem

- Violation of women rights in relation to succession due to the weakness of the legal frame work.
- Majority of women in Uganda do not own property, although the 1995 constitution of Uganda provides for women equality with men and the right to property ownership.
- Women being taken as property, because bride price has been paid and due to the lack of economic means this makes women submit to everything even being inherited by their in laws in order to meet their needs⁴.

1.3 Hypothesis

- Both Statutory and customary laws in Uganda regarding succession are not equitable to women.
- Cultural practices undermine the rights of women to own property in Uganda.

⁴ Rachael C. Loft spring; Inheritance Rights in Uganda.

- Women do not enjoy the rights of property ownership despite the provisions of the 1995 constitution and other statutory laws.
- Succession laws pay little regard to women's rights.

1.4 Objectives

- To establish factors that lead to violation of women succession rights in Uganda.
- To present evidence on the ways in which widows in Uganda are deprived of their inheritance rights.
- To assess the role of government in promoting and protecting women inheritance rights.
- Introduction of measures to address negative cultural practices which affect the full enjoyment of women rights to inherit property.

1.5 Scope of Study

This paper will strictly focus on assessing the challenges facing women and the girl child on the violation of their inheritance rights in Uganda.

1.6 Significance of the Study

To ensure that women's inheritance rights are not violated.

To ensure that there is competent and effective adjudication of women's inheritance rights.

To ensure that every woman in Uganda is aware of her constitutional rights, freedom and responsibilities and how they can obtain redress.

1.7 Literature Review

Different authors have tried to research and write on the on the rights of women in inheritance in Uganda and they include:-

Florence Akiiki Asimwe & Owen Crankshaw; The Impact of Customary Laws on Inheritance. case study of widows in urban Uganda.⁵ The authors discuss how women are deprived of property ownership upon their husband's death.

Florence Akiiki Asimwe; Statutory Law, Patriarchy and Inheritance:

Home ownership among Widows in Uganda. This is a paper based on research that was carried out between 2004 and 2007. it aims to show how women are deprived of home ownership upon the death of their husband's.

Percy Night Tuhaise, Mugisha John Frank, Vero I.D Matovu & Others; Muslim women and household resource management in Uganda. The said authors have discussed how the Islamic rules are discriminatory to women especially in regards to property ownership.

Percy Night Tuhaise, Vero I.D Matovu, Mugisha John Frank, Jennifer Okumu Wengi & Others; Women and Law in East Africa. The law of succession in Uganda. women inheritance laws and practices. The above authors carried out research on legal issues affecting women and the ways in which the women relate to such issues.

Valerie Bennett, Ginger Faulk, Anna Kovina & Tatjana Eres; Inheritance law in Uganda: The plight of widows and children. The authors herein addressed their minds to the injustices occasioned to widows when it comes to the inheritance of properties and how their children are taken away from them. to go and live with the husband's relatives.

Cheryl Doss, Mai Truong & Others; Women. Marriage and Asset Inheritance in Uganda. Working Paper No.184 (April 2011). This paper examines the relationship between inheritance, marriage and asset ownership.

⁵ Journal of Law and Conflict Resolution Vol. 3(1), pp. 7-13, January 2011

Rachel C. Loftspring; Inheritance rights in Uganda: How equal Inheritance rights would reduce poverty and decrease the spread of HIV/AIDS in Uganda. The said article provides a good analysis on how equal inheritance rights would reduce poverty and decrease the spread of HIV in Uganda. She argues that if women had inheritance rights in Uganda there would be less poverty and a reduction in the spread of the said virus.

W. M. Musyoka; A Case Book on the Law of Succession. The author in this book comprehensively discusses various cases on succession; this includes cases on testate, intestate and on Islamic succession.

W. M. Musyoka; Law of Succession. The author in this book broadly covers the area of law of succession in Kenya. He exposes the substantive legal regime applied in Kenya as well as Kenya's probate practice.

Mohammed Mustafa Ali Khan; Islamic Law of Inheritance: A new Approach 1998. This article discusses inheritance under Islamic law and the importance of the Islamic method of distributing shares to various people rather than distributing to a few people.

Elias Clark, Luis Lusky & Arthur W. Murphy; Gratuitous Transfers, Wills, Intestate Succession, Trusts, Gifts, Future Interests and Gifts' Taxation, Cases and Materials 3rd Edition. This book helped me to appreciate the law on wills and intestate succession.

John A. Brittain; Inheritance and the Inequality of Material Wealth. The book among other issues discusses how inheritance is a determinant of personal wealth drawing inferences from data on married women and men.

The New Vision (14th December 2010), Uganda: Women Denied Property Inheritance. This article focused on how women in Uganda are denied the right to own property and its focus was on women in northern Uganda.

Sanja Kelly; Women's Rights in the Middle East and North Africa: Progress Amid Resistance. This book considers the status of women's rights generally in the Middle East and North Africa especially in regard to the influence of Islamic laws in the said region. It provided special insight into the challenges posed to modern women by the said Islamic laws and culture.

1.8 Methodology

This paper has drawn qualitative information, analyzing secondary source of information, which include deferent text books, magazines, news letters, journals and the internet.

1.9 Chapterization

Chapter One: This Chapter will contain the general introduction of the whole paper, the background, objective, scope of the paper, the hypothesis, statements of problem, research methodology and the literature review.

Chapter Two: The Second Chapter will focus on the succession laws in Uganda.

Chapter Three: The Third Chapter will consider the effect of the succession laws on the women in Uganda. The fairness or appropriateness of the succession laws will also be considered here.

Chapter Four: This Chapter will provide various recommendations in regards to the improvement of the succession laws for the benefit of women in Uganda

Chapter Five: The Fifth Chapter will contain a comprehensive conclusion of the paper.

CHAPTER 2

2.0 Legal Regime

There are three legal systems in Uganda: customary law, religious law (particularly Islamic law), and statutory law. The right of inheritance directly relates to the duty to support one's surviving spouse and children upon one's death. The basic institution of inheritance dates back to pre-Roman times. As individual ownership replaced family ownership, severing the family's rights and obligations to property, rules of succession became necessary.

Succession laws and laws concerning women inheritance rights are not found in one source of law but various sources as aforementioned, like customary laws, religious laws (Islamic laws), various statutory laws which include: the 1995 constitution of Uganda, the Succession Act⁶, Land Act⁷ and the Administrator General Act⁸ among others.

2.1 The 1995 Constitution

The said constitution guarantees that all persons are equal and under the law⁹ and shall not be discriminated against on the ground of sex¹⁰. Further the said constitution provides that women shall be accorded full and equal dignity of the person with men¹¹ and prohibits any laws, cultures and traditions which are against women's dignity, welfare or interest which undermine their status.

⁶ Cap 162 Laws of Uganda

⁷ Cap 227 Laws of Uganda

⁸ Cap 157 Laws of Uganda

⁹ Article 21(2)

¹⁰ Article 21(3)

¹¹ Article 33(1)