THE RELEVANCY AND EFFECTIVENESS OF DOMICILE LAW IN UGANDA

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DECLARATION

I **KINYANA BRIAN** of registration number; **LLB/31401/102/DU**, declare that the work in boarded in this report is by my artistic efforts expect for where due acknowledgement is made in the text and has never been presented to any institution for this or any other award. Its reproduction without the author's or the university's consent will constitute an infringement in copy rights.

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APPROVAL

This piece of work has been under my supervision and now it is ready to be submitted to the external examiner.

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DEDICATION

This book is dedicated to God the almighty, my parents Mr. and Mrs. Munyawera and my brother Ruhinda Ronald for the love and care which made me over come all the hardships. You still remain to be a source of inspiration to my heart and a pillar of strength in my life.

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LIST OF ACRONYMS

FIDA – U	:	The Uganda Association of Women Lawyers
FOWODE	:	Forum for Women in Democracy
LAW-U	:	Law Advocates for Women in Uganda
UDHR	:	Universal Declaration of Human Rights

ABSTRACT

For a long time, the right to equality before the law in terms of sex, gender, race, among others things has been misconceived by a big population. A case study is the applicability and of administration equality in terms of domiciles most especially in Uganda.

The gender stereotypes where women are seen as a weaker sex and they are made to believe that whatever the society thinks of them is true and live by it which is not the case. The researcher looked at how the issue of domicile has been misconceived and misused by both married women and their husbands. Further still, the researcher tried to compare and contrast between municipal laws and common law principles as well as the loopholes and their implementation.

The researcher explores the effectiveness and the extent to which domicile law is relevant in Uganda, the barriers/obstacles faced in the implementation action of domicile and ways of eliminating such obstacle.

The researcher came out with 46% of married women whose rights have not been attained under the law of domicile, 7% of minors who feel have not been considered in as far as deciding on their domicile in concerned as well as not knowing the essence of domicile law. Only 24% of women have attained their rights under the law of domicile and its intended purpose and 3% of minors who feel its fine even if they are not considered in deciding on their domicile.

It is my humble submission that the law of dependent domicile of married women in Uganda be revised to meet the current social trends where women are to have equal and full dignity with men in the dissolution of marriage and in the determination of citizenship.

CHAPTER ONE

1.0 Introduction

This chapter looks at how domicile developed, what it means and also a review of what has already been in place, Statement of the Problem, Objectives of the Study, Research Questions, Scope of the Research, Hypothesis, Significance of the Study, Methodology, Chapterisation and the literature review.

Background of the Study

Domicile is a status that one acquires either by birth or choice[1]. Domicile is used in the determination of one's citizenship, in the dissolution of marriages among others things

In the case of Whicker Vs Hume[2], Lord Wensleydale observed that;

"A very good definition of domicile is habitation in a place with an intention of remaining there forever unless some circumstances should occur to alter that intention."

Domicile should be distinguished from residence and nationality. Nationality acquired by operation of the law either because one is born in a country or has been accepted to be a national of that country. As regards to residence, one can reside in a country without the intention of remaining there permanently. You can have residences in several countries whereas you can have domicile at a particular time.

For decades, the Ugandan society has been associated with socially, economic and politically related problems that have led to the misuse of domicile related laws in Uganda. For instance women who feel their economic status is low are forced to

[1] Sharpe v Crispin (1869) LR 1 P & D 611 at 615, per Sir J P Wilde
[2] 1843 ALL ER

abandon their marriage to acquire another domicile by entering into another marriage with individual whose economic status of their countries of origin is high[3].

Others intend to oust the jurisdiction of courts by changing their domicile through entering into other marriage with foreigners who come to Uganda[4].

Additionally, others feel that by marrying a foreigner would assists him /her to get a free pass to another country where he/she can get greener pastures.

Traditionally, individuals in society even in the so called developed societies would not concentrate on the issue of domicile rather than tax in the so called developed countries like UK since all other laws regarding domicile were not yet in place especially in Uganda and those that are in place have not been taken as a major concern[5].

A Problem arose with the adoption of colonialism. It is of no surprise that such Laws were copied and pasted in Uganda. For instance the Uganda order- in- council, 1902.

The 1902 Order -in-council formalized colonial rule in Uganda, and was the fundamental law of the Uganda Protectorate (of. Tanzania and was the fundamental law of the Uganda Protectorate (of, Tanzania and Kenya). The 0-I-C was en exercise of power granted to His majesty's Government under Foreign Jurisdiction Act 1890 with respect t its foreign territorial colonies.

Sixthly, under section 15(2), the 0-I-C contained a 'reception' clause 1 which empowered the Commissioner to apply any law of the United Kingdom (or any other Protectorate/colony of the UK) in Uganda, This is how the Evidence Act (Cap, 43) of.

[3] Miriam Ssimbwa; commenting on the status of women today, Sohel Mugabi, NTV, Saturday March, 2014, news at 7pm
[4] Ismael Kasooha, Bukkedde Newspaper, Tuesday May, 2003, Kyenjonjo, Pg 5
[5] www.cashy.me/articles/post/2011/07/19/Uk_domecile. the ties that bind

Amkeyo) Contract Act (Cap 75J, Companies Act (Cap. 85); Penal Code Act (Cap. 106) from India came to Uganda, The reception date is of legislation as at 11 August 1902[6].

At the same time the O-I-C represented negation of the idea of constitutionalism, even those ideas which had developed in the UK at the time.

It did not recognize the rule of law by applying double standards and open discrimination between the indigenous people and the Europeans (non-natives)[7].

The O-I-C gave much prominence to state power, and did not define the rights of the individual (no mention of human rights in the 0-I-C). It was also highly coercive as it did not allow for the state power especially officer bearers (election) up to 1962[8].

This with colonialism in place, laws applicable in England became applicable in Uganda by virtue of the 1902 order in council.

Common-law rules regarding to domicile became applicable in Uganda[9] as follows;

Domicile of a minor changed as a result of adoption, a married woman was deemed to have the same domicile as her husband, so the domicile of origin of the children of marriage was the same as that of their farther and at the time of birth.

Children gained their mothers domicile if their father deceased or they were born out side marriage, married women ceased to be deemed to have the domicile of her husband if the marriage ended among others[10].

Generally speaking, most of the above rules determining domicile in common law jurisdiction are based on case law in origin. Most jurisdiction although have altered some aspects of common law rules by status, the details of which vary from one

[6] GW Kanyeihamba, "constitutional and political history of Uganda 2nd Edition, Law Africa publishing(U)Lt d, Kampala 2010 p.8
[7] Ibid 6 pg 10
[8] Supra not e 7 p.9
[9] Judicature Act cap 13, 1st and 2nd Schedule
[10] Re Beaumont (1893) Ch 490

jurisdiction to another. The general frame work of the common law rules has however survived in most jurisdictions Uganda inclusive[11].

In effect, all the above domicile related laws seemed to enforce the patriarch customary systems that existed before. By women taking up the domicile of men, men have perceived it that they are superior to women and since customary laws emphasis the same. It has been hard for women to get out of this kind of treatment and because the women to get out of this kind of treatment and because the women themselves are aware of the different cultural norms that expect them to always treat a man as a head of the family even if he is unable to perform as a head of the family through various indoctrinations that women go through and the available literature[12]. For instance the indoctrinations that girls go through before marriage by their so called "Ssengas"

Articles 21, 26, 31 and 33 inter alia[13] came to address the injustices which were one to women. Article 21 is to the effect that all persons should be treated equally before and under the law in all spheres.

Article 31(1)b provides for equal rights in marriage, between men and women. As a result of the promulgation of the 1995 constitution, other subsidiary legislation were enacted in order to give effect to article 31 (1)b of the constitution.

1.2 Statement of the Problem

Before the promulgation of the 1995 constitution and the subordinate status there under, like the succession Act cap 162, children Act Cap 52, the status of women, children's and even men was of no means equal in all aspects.

This was escalated by the enactment of various statutes regarding domicile and its continuous misconception[14]. Domicile is now being used to oust the jurisdiction of

[11] Supra note 7
[12] Chinua Achebe, " things fall apart" 1958 william Heinemann Ltd Lagos. "Women shall croak but shall not forget to lay eggs". 1958
[13] The constitution of the republic of Uganda 1995

native courts in preference for other foreign courts in as far as divorce is concerned, it is being misused to front it as a tool by Ugandans to acquire nationality of foreign jurisdiction, among other things.

However, with the promulgation of the 1995 constitution[15] of Uganda and other international conventions which were ratified, their intention was to bridge the inequality between all human races to enable and foster children's rights to inherit property however much there are laws in place to bridge the gap of inequality, inequality still persists reason being that the enforcement mechanisms are weak and people are not aware of their rights.

The researcher came to know that domicile has not for awhile been publicized and the available material to consult is not adequate. The available information is not effectively implemented due to various barriers like highly levels literacy, among others

1.3 Objectives of the Study.

1. To find out the effectiveness of the law of domicile and its surrounding misconceptions in Uganda.
2. To find out the relevancy of the law of domicile in Uganda.
3. To find out ways of eliminating obstacles in achieving the intended purpose of the law of domicile in Uganda.

1.4 Research Questions

1. What are the effectiveness of the Law of domicile and its misconceptions in Uganda?
2. What are relevancies of the Law of domicile in Uganda?
3. What are ways of eliminating obstacles in achieving the intended purpose of the law of domicile in Uganda?

[14] One of which was the succession Act Cap 162
[15] The constitution of the republic of Uganda, 1995

1.5 Scope of the Research.

The research gives a general understanding of the of domicile and various legal propositions including the effectiveness of the aw of domicile and its misconceptions in Uganda, its relevancy and ways of eliminating obstacles in achieving the intended purpose of the law of domicile. The research was carried out within five months (January – May 2014) this is because it allowed time within which the researcher was expected to carry out his study. The research also covered the whole country (Uganda) since the researcher had required resources to carry out the research.

1.6 Hypothesis

1. There are laws that protect individuals as regards to domicile.
2. Children, women and men are aware of their rights under domicile.
3. The laws that protect women children and men during the determination of domicile are not widely implemented.
4. There are obstacles that hinder women, children and men from achieving their rights during the determination of domicile and there are ways of minimizing these obstacles.

1.7 Significance of the Study.

1. The researcher formed a basis for further research on the law and the protection of women and children's rights by providing literature where there understanding can be enhanced.
2. The study will assist the legislators, policy makers and the women themselves to ensure those women's rights during the determination since it will provide a basis of argument ad reference.
3. The study was done to help the researcher to fulfill the requirement for the award of his bachelor's degree and in academic development.
4. The study will help other researchers to make reference in line with the study.

5. The study will enable women and men not to misuse, misinterpret and also use it to their selfish interests.
6. The study will assist in identifying the gaps in our laws in reference to the determination of domicile and identify recommendations.

METHODOLOGY

1.8 Introduction

This is a step by step process of law of how one intends to achieve the objectives of the study. It includes the questionnaires, interviews since they are most effective in data collection and library work including magazines, journals and articles which also includes the chapterisation of the research.

The researcher started with a pilot study so as to know more about the area before the commencements of the research.

A pilot study is the survey of the area being studded by the research before the read research can commence. This helped the research to identify where to identify where meet the respondents who would be in charge of gathering the women and children.

After a pilot study, the researcher made an arrangement with one of the women to meet the rest of women in Kasubi where they were told together so that the researcher would talk to them on their right to property and many took interest.

1.9 Chapterisation

This chapter looks at how domicile developed, what it means and also a review of what has already been in place.

This chapter indicates the basic and analysis of the fundamental and performance of the law concerning the relation to domicile in Uganda. Illustrating and explaining the nature and concept of domicile in regards to women and children.

The purpose of this chapter is to explore the concept of domicile and to provide a clear understanding of the law of domicile.

Chapter four discusses the effectiveness of the Law regarding of domicile, findings, conclusions and recommendations

1.10 literature review

1.10.1 Introduction

This chapter gives the legal frame work of the Uganda instruments common law principles and what other scholars have said.

Webster[16]; defines residence as an Act or fact of abiding or dwelling in one place for some time. However Webster did not define what the proper definition of domicile would be. Little wonder it's the reason why he did not provide a stick yard between domicile and residents. Its for that reason therefore, that the researcher took keen interest to remedy the would be misconceptions in applying the law regarding domicile.

Good rich[17], was given the term domicile a much narrower construction. The term "domicile" was often used synonymously with residence but there is an objection to such usage. However the author did not put into consideration that residence may simply require bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's home[18]. It is evident therefore that one may have more than one residence and it is equally well settled that one may have only one domicile[19]. It seems that the definition laid down by the court in the instant case is more applicable to domicile than to residence. In my research I intend to diminish the practice of confusing the term which has become so common,

[16] Good rich, "Conflict of Laws-Domicile-Residence," Indiana Law Journal: Vol. 7: Iss. 5 (1932), Article 3. *Also* Available at: http://www.repository.law.indiana.edu/ilj/vol7/iss5/3
[17] Goodrich, Conflict of Laws, 27; American Law Institute Restatement, Conflict of Laws, draft I, sec. 12, subsec. b; and cases collected in 4 Iowa L. Bull. 5.
[18] Beale on Residence and Domicile, 4 Iowa Law Bul. 1, 1935
[19] Gilman v. Gilman, 52 Me. 165; Jacobs on Law of Domicile, 73.

not only with our courts but with all courts, that to quarrel with such usage would be more pedantic than helpful. It is now well settled that when the term resident is used in statutes concerning requirements for voting it is construed as meaning domicile[20].

Good rich in his book pointed out the question as to which of several houses is the home of a person was pointed out and that it is determined by considering a number of objective acts and facts in order to arrive at the true intent of the individual. Some of these facts suggested are: (1) Its physical characteristics; (2) The time he spends therein; (3) The things he does therein; (4) The persons and things therein; (5) His mental attitude toward the place; (6) His intention when absent to return to the place; (7) Elements of other dwelling places of the person concerned[21]. (c). these tests of determining intent have been rather uniformly accepted and have been adopted in the following cases: Pedigo -V.G rimes[22], Sanders v. Getchell[23], Putnam v. Johnson[24], Vanderpoel v. O'Hanlon[25].

However the author did not afford much information upon which to base these tests. In this research the researcher intends to provide a wider information upon which to base such tests.

Britannica[26], a person's dwelling place as it is defined for purposes of judicial jurisdiction and governmental burdens and benefits of certain aspects of a person's legal existence do not vary with the state he happens to be in at any given moment but are governed by a personal law that follows him at all times. In Anglo-American countries applying the common law, one's personal law is that of his domicile; in civil-law countries (e.g., those of Europe and Latin America), it is often that of his nationality or place of habitual residence.

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[20] Goodrich, Conflict of Laws, 27; American Law Institute Restatement, Conflict of Laws, draft I, sec. 12, subsec. b; and cases collected in 4 Iowa L. Bull. 5.
[21] Restatement of Conflict of Laws, draft I, Sec. 15,
[22] 113 Ind. 148;
[23] 76 Me. 158
[24] 10 Mass. 488
[25] 53 Iowa 246
[26] http://www.britannica.com/EBchecked/topic/168622/domicile

However, the author did not put into mined complications that would arise because statutes rarely use the word domicile but refer instead to residence (or, in some statutes, abode). In such contexts, residence usually bears the same meaning as domicile, but on occasion it may mean something else, such as a well-settled physical connection with the state without bearing toward it the requisite attitude of mind that one intends to reside there. Sometimes residence means something more than domicile namely, domicile in a place plus physical presence there during a specified period of time. Residence when used in a statute means a far closer relationship with a state than mere physical presence there. As in the case of domicile, once a residence has been acquired, it is not lost by a temporary absence from the state. In contrast to domicile, a person may have more than one residence at a time.

For the purposes of domicile, "residence" has an autonomous meaning, different from that in relation to residence/ordinary residence. In IRC v Duchess of Portland[27]. it was stated that residence requires little more than physical presence, but it must be presence as an inhabitant as opposed to as a traveller. In that case the judge indicated that sometimes a short duration of residence in a country can suffice, when accompanied by the necessary intention. However he considered that when a person divides his time between two countries, this is inherently improbable instead one must look at all the facts to decide which of the two he inhabits. In this research the confusion between domicile and residents are well settled.

The Judge in his learned view did not point out any criteria that may be used to determine ones domicile in such a scenario. It is in this breath that the researcher. Preferred a formulation which may be easier to apply, for instance, if a person has two residences the question is which of the two is his chief residence. This depends not only on the length of time spent in each place but also on the quality of the presence.

[27] [1982] Ch 314

Prjhana Kharin[28]**,** in his article, manifests his various misconceptions relating to domicile, and in this section of the research I hope to dispel a few of them.

(a) Domicile of origin is based on place of birth

It will be seen in the journal that a legitimate child has a domicile of origin in the place where his father is domiciled at the time of his birth. However, this need not be the place where an individual is born.

This can be illustrated by an example. Assume:

X's father had a domicile of origin in England;

The father moved to Pakistan for business purposes but did not intend to reside there permanently or indefinitely, and instead intended to return to England; and

X was born in Pakistan.

In this example X's father will not have acquired a domicile of choice in Pakistan, because he did not intend to reside there permanently or indefinitely. Instead he will have retained his English domicile. Therefore X will have a domicile of origin in England, notwithstanding that he was born in Pakistan.

(b) A person must have resided in a country to be domiciled there

The above example shows that a person can have a domicile of origin in a country even though he is not born there. Building on this, it can be seen that an adult person might be domiciled in a country he has never even visited.

Assume that, until X reaches the age of majority, his father remains in Pakistan but does not acquire a domicile of choice there, because at no point does he intend to reside there permanently or indefinitely. The father will remain domiciled in England

[28] Indiana Law Journal: Vol. 7: Iss. 5, (1935)

and in turn X remains domiciled in England. If, upon attaining majority, X decides to travel the world and resides in various foreign countries without intending to remain in any of them permanently or indefinitely, he will not acquire a domicile of choice in any of them. As such he would remain domiciled in England even though he was not born in England and had never even visited it.

(c) It is only necessary to look at one previous generation to determine a person's domicile of origin

As per above, the basic rule is that a person's domicile of origin is governed by his father's domicile at the time of his birth[29]. Nonetheless, in completing the enquiry it is frequently necessary to trace through a number of generations. This can be illustrated by an example. Assume that:

Y's grandfather, who had an English domicile, moved to India for business purposes but at no point did he intend to reside there permanently or indefinitely;

Y's father was born in India;

Upon reaching the age of majority Y's father moved to France and acquired a domicile of choice there;

Y's father subsequently left France, lost his domicile of choice there, and was then travelling between various countries but without forming the intention to reside in any of them permanently or indefinitely; and

In turn Y was born outside England.

Y's domicile of origin will be based on his father's domicile at the time when Y was born. However, at the time of Y's birth his father had lost his domicile of choice in France but had not acquired a domicile of choice in any other country. As such, Y's

[29] ibidi 29

father's domicile at that time will have reverted to his domicile of origin. To determine this it would be necessary to determine Y's grandfather's domicile at the time when Y's father was born.

This shows that in determining a person's domicile of origin it may be necessary to examine more than one generation. In complicated factual matrices one may have to track through numerous generations.

The lord Westbury[30], suggest that, If a child is born legitimate and during his father's lifetime, the domicile of origin imposed on him is that of his father at the time of the child's birth. If a child is born illegitimate[31], or born legitimate but after his father's death[32], the domicile of origin imposed on him is that of his mother. **Graveson**[33], however among other problems, according to him, one problem which could arise in this connection springs from the fact that the question of legitimacy is itself a matter of personal law. As the determinant of the appropriate person law is the child's domicile and as the child's domicile cannot be determined until the question of its legitimacy has been settled, it can be seen that, unless both parents are of the same domicile, an endless legal loop is created. Various solutions to the problem have been proposed but there is no authority on the question in English law. In this research, the researcher tends to diminish the above miscomputations relating to domicile.

Sir Wilde J.P[34] states that ,If a child becomes insane and their insanity continues beyond their sixteenth birthday, the law would appear to be that their domicile will continue to change with the parent from whom they last acquired a domicile of dependence, but that where they become of unsound mind after they have attained the age of 16 or married under that age, they will permanently retain whatever domicile

[30] Udny v Udny (1869) LR 1 Sc & Div 441 at 457, per Lord Westbury.
[31] Supra 14
[32] This is apparently unsupported by any English authority.
[33] By R H Graveson in Private International Law (Sweet and Maxwell, 7th edn) at pp 195–196.
[34] Sharpe v Crispin (1869) LR 1 P & D 611 at 615, per Sir J P Wilde

they then possessed and that domicile will be incapable of change either by their own act or by that of those who are entrusted with their care.

However Sir Wilde J.P did not state the degree of mental unsoundness which is required before these rules will have effect is not settled, but it is arguable that the test to be applied should be whether or not the person is capable of forming the necessary intention to bring about a change in domicile.

In both Anderson v Laneuville[35] and Re Furse, Furse v IRC[36], that was where the significance of the long residence of Anderson and Furse lay. All the evidence suggested that, despite their vague assertions of a possible return to their native lands, Anderson and Furse would have remained where they were, however long they had lived; and the courts, therefore, permitted the animus of true intention to be inferred from the factum of residence.

Where, however, there is evidence to the contrary something sufficiently concrete to counteract the effect of the duration of residence the duration of residence will not be conclusive upon the subject as Ramsay v Liverpool Royal Infirmary[37].

Scarman J's[38] stated that there must be a residence freely chosen, and not prescribed or dictated by any external necessity but he did not mention such external necessities. It is in this research that the researcher tried to explain such external necessities to include; If it can be shown that a person resides where he does, not by choice but by constraint, the necessary intention will be lacking and no change of domicile will be imputed to the involuntary exile. The most obvious example of residence by constraint rather than through choice is imprisonment in some country other than that of the existing domicile. No prisoner, during the term of his imprisonment, will acquire a new domicile in the country of his imprisonment, even if the imprisonment is for a very long

[35] (1854) 9 Moo PC 325.
[36] [1980] STC 596.
[37] [1930] AC 588.
[38] [1968] P 675.

term, for his residence is not a matter of choice[39]. Another example of constraint is the persecution which may impel a person to flee his existing country of domicile for some other country. Although the residence in the country of refuge will be a matter of free choice, the inference at law will be that the refugee will return to his homeland upon it being safe for him to do so and he will, therefore, prima facie lack the intention to reside permanently in the country of refuge which would be necessary in order to attribute him with a domicile of choice in that country. It might be, of course, that a refugee will acquire such an intention during the course of his exile[40].

A fugitive from justice is in much the same position as the refugee except that, if his crime is such that he will always (or for a very long time) be liable to proceedings in the country from which he has fled, there will be a presumption at law that he has selected his country of refuge with the intention of residing there indefinitely[41]. His departure will have been a matter of constraint but his establishment of residence elsewhere will have been a matter of free choice.

Elliot D.W[42], explains that in civil cases, where domicile is in issue the intention to abandon a domicile of origin must clearly and equivocally be proved[43] and the acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indications for or casual word[44].. The standards may be high as that in criminal matters. However, the researcher sees the standards required as being unfair to women in as far as their right to determine domicile is concerned. Women should have that free right to determine whether or not adopt the domicile of their husband or not.

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[39] Re the late Emperor Napoleon Bonaparte (1853) 2 Rob Eccl 606.
[40] De Bonneval v De Bonneval (1838) 1 Curt 856. See also Steiner v IRC (1973) 49 TC 13 where a refugee from the Nazi persecution of Jews made his home in England in 1939 but was held not to have acquired an English domicile of choice here until about 1950 when the facts were such as to indicate that he had formed the intention of remaining permanently in England.
[41] Re Martin, Loustalan V Loustalan [1900] P 211.
[42] "Phipson's manual of the law of evidence"
[43] Moor house -Vs- Lord (1862) 10 H.LC 272, 286, in the Este of Fuld (No.3) (1968) P.678, 685
[44] Re Flynn (1968) 1 WLR 103

Stanley[45] explains that;

"From the legal Unity of the husband and wife it follows that a married woman could not sue or be sued unless her husband was also a party to the suit, could not sign contract unless her husband joined her"

This trend continued to bar women from accessing their rights during the determination of the domicile they were time in memorial regarded as being minor.

Many writers even women activists agitated for other rights like property rights among others but other did not consider domicile as one of major areas where their rights were being violated. The researcher commends their efforts because they have laid a platform for the agitation of other rights by paving way for the new generations and showing them that everything is possible and can be achieved. For instance the Notoriety of the 1836 Caroline Norton case highlighted the injustices of women's property rights and influenced parliamentary debates to reform property law[46]. Importantly in 1855, Caroline Norton published her most important pamphlet: A letter to the queen on lord Chancellor Cranworth's marriage and Divorce Bill, in which she reviewed the position of married women under English law.

> A married woman has no legal existence whether or to she is living with her husband's;
> She cannot make a will; the law gives what she has to her husband despite her wishes or his behavior;
> He may sue for restitution of conjugal rights and thus force her, as if a slave to return to his home;
> She is not allowed to defend herself in divorce;
> She cannot divorce him since the House of Lords in effect will not grant divorce to her;

[45] Feminism, Marriage and the law in Victoria England 1850-1895 Princeton
[46] (WWW.Unhabital.org/downloads/docs/1556_72513_c50women.pdf)

She cannot bind her husband to any agreement among other;

In short, as her husband, he has a right to all that is her; including those rights that accrued from domicile.

Carol Namagembe, the communication officer of Forum for Women in Development (FOWODE) says while women own about 40% of private business in Uganda, their socio-economical development is still peripheral. So women have decided to take up domiciles of foreign countries by contracting other marriages in order to look for greater pastures. This shows a total misconception and misuse of the law of domicile by most women in Uganda. They still have unequal access to attainment of the rights that accrued during the determination of the law of domicile; with only 20% of them being able to access such rights, yet they contribute 70-75% to the formation of the law through their taxes and yet a big number of them are also legislators. **Mulyagonja Irene**[47] states that, this affects their ability to access other reproductive resources and undermine potential of women's hard work and ability as entrepreneurs which in turn waters down their ability to pay for their legal costs in order to see to it that their rights are considered during the determination of their domicile.

However, both individuals did not come up with the solutions to solve such problems as may affect women from time to time and its in this research therefore that the researcher intends to provide such solutions.

In Robina Erina Kayaga Kiyingi – Vs- Dr Aggrey Kiyingi[48]. It was stated that domicile must not be confused with nationality for the latter is rarely a relevant factor where family matters are concerned. This case emphasizes the fact that domicile should be distinguished from nationality which is the relationship between the state and an individual. Where the state and the country co-exist, the two may mean the same. However, the judges in this case did not point out the would be position in federated

[47] Mulyagonja Irene "Tail of bitterness and crocodile tears" a paper presented at a family law reform concerns, Harare Zimbabwe, 2003 FIDA publication, 2003.
[48] Uganda High court Civil appeal No. 41 of 2064

states. It is in this research that the researcher among other propositions states that, where the country is federated into different legal systems, nationality and domicile will be different for example one might have American nationality and a domicile of England is my submission. Therefore that it is possible for a person to have domicile in a country but without nationality. Furthermore, a person may be a subject or a national of a state but may have his domicile in some other area which has its own system of law and court as different from where he or she is a national. Hence, the law of domicile is one of ways of determining which will be used in a case involving such a person who is a national of a certain state but with a domicile in another state.

CHAPTER TWO

EFFECTIVENESS OF DOMICILE LAW AND ITS MISCONCEPTIONS

2.1 Introduction

This chapter indicates the basic and analysis of the fundamental and performance of the law concerning the relation to domicile in Uganda. Illustrating and explaining the nature and concept of domicile in regards to women and children.

There is no specific international instrument that entirely discusses the law of domicile. However, the researcher intended to look at how basically the domestic instruments and common law principles tend to favor or the extent of their efficiency in Uganda.

There are various types of domicile and these include;

Domicile by origin /acquired at birth.

This is acquired by birth (natural domicile) ie the place where you are born or domicile of your parents. If the parents are legally married then it's the domicile of the father, if not, its one of the mother. In the case of Gordon V Gordon[49], the petitioner was born in England and went to work in Tanganyika as an Ass. District Officer he married an African lady (respondent). The petitioner averred that he retained the domicile of origin whereas the respondent contended that he had acquired a new domicile. Issue was whether the petitioner retained domicile of origin. Court held that although the petitioner had been resident in Tanganyika for 18 years and had most of his ties in Tanganyika and could be said to have joined a new society. this fell far short of establishing or even raising a presumption that he had abandoned his domicile of origin and was therefore domicile in England.

Domicile by choice

[49] (1965 E4 87

This is usually acquired after attaining the age of majority. This can happen either by changing from the original domicile of choice to another or from the one of birth to another.

Domicile by marriage ('dependent domicile,).

This is normally acquired by married women thus a wife acquires the domicile of her husband at marriage. In Ogden V Ogden[50], the principle in this case was that in case of marriage celebrated in England between an English woman domicile in England arid a man domicile in a country where in the circumstances, the marriage would be invalid, the proper test of validity is the law of England at any rate for the purpose of determining in England the status of the parties to the, marriage.

Article 31[51] provides for equality before the law. Article 33[52] provides that women shall be accorded full and equal dignity of the person with men.

The Universal Declaration of Human Rights during the 5th Anniversary of the word conference on Human Rights in Vienna at which women and girls were seen as an important case in terms of segregation in regard to gender inequality. All forms of inequalities and violation of women and all forms of exploitation of such were declared incompatible with human dignity and their elimination was demanded.

2.2 The Discussion of the Domestic Legislations

The Constitution of the Republic of Uganda, 1995.

Article 33(1) provides that women shall be accorded full and equal dignity of the person with men. However the law of dependent domicile is in utter contravention with Article 33 (1) of the constitution of Uganda. The concept of dependent domicile is to the effect that a wife's domicile is dependent on the man's domicile which is a clear contravention

[50] 1908 1246
[51] The constitution of Uganda, 1995
[52] Supra 2

of the constitution hence it discriminates between persons and does not accord full equality of women with men.

2.3 The Succession Act Chapter 162 of Laws of Uganda.

The Act regulates matters pertaining to cases of the testamentary capacity of testate and intestate succession.

Section 14 of the succession Act[53] states that; by marriage a woman acquires domicile of her husband if she had not the same before. The section states that subject to subsection (2) the domicile of a wife during the marriage follows the domicile of her husband.

In Joy Kiggundu –Vs- Horrace Awori[54], Harace the husband of the petitioner was living and a resident to Nairobi in the matrimonial home of the couple. The wife filed for divorce proceeding against her husband on grounds of adultery and cruelty in Kampala High Court. Court framed the issue of domicile that is whether the High Court at Kampala had jurisdiction in divorce proceedings where the husband of the petitioner was domiciled outside Uganda. Court held that a wife as long as she is not judicially separated from the husband still lives; her domicile is that of her husband.

It is my observation that the above sections are in effect that a married women acquired the domicile other husband and her domicile changes with that of her husband even if they live a part.

The above position was also in the case of Lord Advocate –Vs- Jaffrey[55], where a husband and wife were domiciled in Scotland. The husband contracted a bigamous marriage in Queens land with the consent of the wife, while the wife remained in Scotland where she died and proceedings were brought in Scotland to determine the

[53] Chapter 162 of Laws of Uganda
[54] (2001) KALR 374
[55] (19 21) 1 A.C 146

domicile of the wife. The court of Appeal held that the wife was domiciled in Scotland even though she had never visited there.

The above sections and case affirm the fact that the wife's domicile is dependent on the husband domicile.

If further my observation that a wife can lose a domicile of dependency if the husband dies. In the case of Sculland Decd Smith-Vs- Brock and others[56], Sculland Atestrix left her husband in 1902 and never lived with him again. The husband had an English domicile which he retained till his death in 1955. The wife lived in various places till 1946 or 1947 where she settled in Guernsey with the intention of residing there until her death. The question was whether at the time of her death she was domiciled in Guernsey. The court held that after the death of her husband, she showed her continued intension to reside permanently in Guernsey and she had a domicile of choice in Guernsey at the time of her death.

Section 15 (2) of the succession Act Cap 162, states that the domicile of a wife no longer follows that of her husband is they are separated by a competent court. This means that when a divorce petition is successful, then the dependent domicile of a wife seizes to exist. She can acquire a domicile of choice. Another inference from this provision is that an order of separation is not enough to guarantee the loss of wife's dependently domicile which is attributed to her being married. It must be a divorce order used by a competent court as was held in A.G of Alberta –Vs- cook[57].

Section 13(1) of the succession Act states that, subject to subsections (2), the domicile of a minor follows the domicile of the parent from when the minor derived his/her domicile of origin. Section 16 of the same Act states that except as provided in section 13, a person cannot during minority acquire a new domicile.

[56] (1957)1 ch 107
[57] (1926)AC 444.

The above means that dependent domicile of minor would change depending on the domicile of the parent for example, a legitimate child born to a father domiciled in Uganda would acquire a dependent domicile in Uganda.

However, in the event that the father acquires a new domicile of choice in Kenya, the child's domicile would also change and would acquire a domicile of Kenya.

In case where the father of a legitimate child dies, the domicile of the child will follow that of the mother except for situation where the mother decides to move to a new country leaving the child behind a was held in Re Beaumont[58].

Section 17 of the succession Act provides that an in insane person cannot acquire a new domicile in any other way other than by his or her domicile following the domicile of another person. This section means that mentally in correct persons lack the legal capacity to form intention of remaining in a country permanently or indefinitely.

In the case of Urgahart –Vs- Butter Fields[59], it was stated that, if an independent person 075 becomes insane, he becomes incapable of acquiring domicile of choice because he is unable to exercise any will.

The above serves to mean that such an insane person acquires a dependent domicile. The section also means that even if he or she is of majority age his domicile cannot be changed by him. His or her domicile will be dependent on another person.

2.4 The children Act cap 52

This Act regulated matters pertaining children concerns in Uganda.

Section 520 of the Children Act is to the effect that where an adopter dies intestate, his or her property shall devolve in all aspects as if the adopted child were the natural child of the adopter.

[58] (1893) Ch 490.
[59] (1887) 37 Ch 337

The section means that such an adopted child will have access to the property of the foster parent as if he or she was a biological child of such parent.

In the case of adopted children, in Uganda, the child will be treated as if he or she was the natural child of his adopted parents. This means that he or she will have the foster parent. The Children Act Cap 59 Section 43(3) states that a foster parent in whose care a child is committed shall, while the child remains in his or her care, have the same responsibilities in respect of the child's maintenance as if he or she were the parent of the child. I submit that all the attributes of the foster parent shall be deemed to apply to such a child and dependent domicile inclusive.

Section 52 states that, a foster parent in whose care a child is committed shall while the child remains in this or her care, have the same responsibilities in respect of the child's maintenance as if he or she were the parent of the child. This means that the adopted minors will have the domicile of his or her foster parent and this is because they are to treat the child as if they were the parent of the minor and it is the duty of the foster parent to care for the minor.

However, these laws are not effective and have to a large extent misconceived and misapplied as explained below;

Section 4(1) of the Succession Act[60] provides that succession to the movable property in Uganda of a person deceased is regulated by the law of Uganda, wherever that person may have had his /her domicile at the time of his or her death. Section 4(2) is further to the effect that succession to immovable property of a person deceased is regulated by the law of the country in which that person had his or her domicile.

The spirit behind these sections is to have full control and protection of the deceased's property.

[60] Cap 162

However, it did not put into consideration the fact that if a foreigner dies here in Uganda, there is a higher likely hood if his family not knowing or having any knowledge about the properties of the deceased that he /she formerly had in Uganda.

The act does not address the issue on how women and the children of the deceased can get to know about the deceased's properties. In fact, even if the was a mechanism, on how they would know, it requires a lot of protocol.

Further still, it is costly to put into effect the decision and judgment from the jurisdiction due to public policy here un Uganda, among other things. It is for this reason that the researcher in the last chapter tries to show how this problems can be minimized.

Section 7[61] thereof provides that the domicile of origin of an illegitimate child is in the country in which, at the time of birth, his or her mother was domicile. The section tried to remedy a situation where in most cases especially here in Uganda, women tend to take responsibility of their children and end up going with them (children) into another marriage. However in this research, the researcher tends to put forward a view that today the situation has changed and in some cases some children do not know even their mothers. So men also end up going with such children into other marriages.

Section 9[62] provides that a man acquires a new domicile by taking up him fixed habilitation in a country which is not that of his domicile of origin; except that a man is not to be considered as having taken up him fixed habitation in Uganda merely by reason of his residing there in the exercise of any profession or calling. In this research, the researcher critically analyzed the essence of this section; and found out that it was intended to limit some crooks or fraud stars from ousting the jurisdiction of their countries by an easy access to a new domicile in Uganda. However, the researcher submits that this section limits competition on the job market because it is racist in nature. Natives with the Uganda domicile are considered first on the job market than

[61] Supra 62
[62] Supra 63

other individuals. Therefore this section would be amended to allow foreigners to easily acquire a Uganda domicile for purpose of acquiring services on merit other than considering the issue of domicile.

Further still, the period set out by section 10 of the Act[63] in which to acquire a domicile is too big for purpose of survival of a foreigner here in Uganda since some services like health in government hospitals among others, can easily be accessed by only natives with the Ugandan domicile. This means that poor foreigners can easily be denied a right to life especially women who may need more care in periods of pregnancy, among others and given the fact that they are a weaker sex.

Section 14 of the Act[64] inter alia states that by marriage a woman acquires the domicile of her husband, if she had not the same domicile before. This view was considered in the case of Lord Advocate V Jaffrey[65] where a husband and wife were domicile in Scotland. The husband contracted a bigamous marriage in queens land with a consent of the wife, while the wife remained in Scotland where she died and proceedings were brought in Scotland to determine the domicile of the wife. The court of appeal held that the wife was domicile in Scotland although she had never visited there. The researcher puts forward the view that the section should be read in line with article 33(1) of the constitution[66] which providers for equality between men and women. Others wise the Article would stand to be utterly abused or overthrown since the case under section are inconsistent with it.

Section 15(2)[67] of the Act provides that the domicile of a wife no longer follows that of her husband if they are separated by sentence of a competent court. This view was also considered ion the case of A.G of Alberta v Cook[68], the wife acquired a decree of judicial separation from her husband, both spouse at the time of being resident in Alberta. She

[63] Supra 64
[64] Supra 65
[65] (1957) 1 Ch 107
[66] Supra 2
[67] Supra 66
[68] (1926) A.C 444

then presented a petition for divorce. Her husband had retained his domicile of origin Ontario. The court dismissed the suit on the ground that it had no jurisdiction as the respondent had a domicile of Ontario and that an order of separation cannot amount into device which in turn means that a wife can have a domicile of choice separate from that of her husband. Lord Marrivel in his judgment explained the rational that;

"The contusion that a wife judicially separated from her husband is given choice of n anew a domicile is contrary to general principle on which the unit of the domicile of the married pair depends".

Therefore, in regard to a woman loose her dependent domicile, it can happen only when there is a divorce order instituted by a competent court. This section tends to put at risk the properties of women or children that may have been acquired in the Uganda jurisdiction. This is because most investments like land among others have a big attachment with domicile. For instance under the Registration of Titles Act a person whose domicile is not Ugandan cannot obtain a free hold title of land other than a lease and cannot acquire more than 100 hectares of land. No one would wonder what would happen to such properties that may have been acquired during and time one had the domicile of Uganda and when he later lose it by a competent court. Section 15 (2) tends to only penalize only women but not putting into consideration the principle of equality.

Section 17[69] of the Act provides that an insane person cannot acquire a new domicile in any way other than by his /her domicile following the domicile of another person. This view was held in the cases of Urquhart V Butter Field[70], it was stated if an independent person becomes insane, he becomes incapable of acquiring a domicile of choice because he is un able to exercise any will. This serves to mean that such an insane person requires dependent domestic. The section also means that even he or she of majority age his domicile cannot be changed by him. His or her domicile will depend on

[69] Supra 69
[70] (1887) 37 Ch 337

another person. However the drafts man did not put into consideration the fact that some individuals may take advantages of the insane by changing their domicile to take away their properties yet in actual sense there should be guidelines to guide on such matters.

2.5 Conclusion

Unless such misapplications are solved the rights that accrue during domicile can never be realized. This is because there is less will on the part of the legislators and the bureaucracy involved in enforcing such rights.

CHAPTER THERE

STRATEGIES AIMED AT DEEPENING A CLEAR UNDERSTANDING OF THE LAW OF DOMICILE

3.0 Introduction

The purpose of this chapter is to explore the concept of domicile and to provide a clear understanding of the law of domicile.

The concept of domicile (or domicile, as some prefer to call it) originated in the Roman Empire when, following the downfall of the Republic, Italy was divided into a number of individual townships known as municipia and the Empire was fragmented into numerous provinces. Each province and municipium possessed its own jurisdiction and, to a large extent, its own divergent internal law which was administered and enforced by magistrates. Most inhabitants of the Empire were connected by citizenship with one or more of these provincial or municipal communities and/or with Rome itself.

The link of citizenship could arise in various ways – by origo (the place within the Empire to which a person's father or, if he was illegitimate, his mother belonged), by adoption, by election or by manumission – and that presented three possibilities. A person might be a citizen of one place, a citizen of more than one place[71] or a citizen of none. This, inevitably, created difficulties. Given that, as stated, each province or municipium had its own system of law, to which system should a man in each of those situations be subject? The answer supplied by Rome was, in the first situation, the law of the man's place of citizenship, and, in the second situation, the law of his origo. In

[71] St Paul, for example, was a citizen of Tarsus in Cilicia and a citizen of Rome (Acts 21: 39; 22: 27).

the third situation, however, a different determinant was needed and the determinant created was 'domicile' – the place in which a person had made his permanent home[72].

That concept of domicile was one of the concepts of Roman law, which, in the thirteenth century, was enthusiastically revived by the 'post-glossators' jurists who were attached to the Italian universities and who were engaged in developing the Roman law to meet the nation's changing needs[73]. Italy had by then emerged from the barbarism and feudalism into which the civilised world had been plunged following the fall of the Roman Empire in the fifth century and had become a land of independent, cosmopolitan cities Bologna, Florence, Genoa, Milan, Padua, Pisa, etc all of which were subject generally to Roman law, but each of which had diverse laws of its own which gave rise to conflict as commercial intercourse between the cities increased. As a basis for the resolution of such conflicts, the post-glossators developed a set of principles, known to legal historians as 'statute theory', and it was into these that the revived concept of domicile was introduced[74].

A 'statute' in the terminology of the post-glossators was any legislative or customary local law which was found to be contrary to Roman law in general; and the statute theory proceeded from the premise that all such laws were either 'real', 'personal' or 'mixed'. A law which concerned things other than moveable's was 'real'[75], a law which concerned persons and moveable's was 'personal', and a law which concerned acts (such as the making of a contract) was 'mixed' as it generally concerned both persons and things. Real statutes were seen as essentially territorial and as having no application beyond the territorial bounds of the locality in which they were found. Mixed statutes were seen as partially territorial in that they applied to all acts done within the territorial bounds of the locality in which they were found but could give rise to litigation

[72] In the eleventh century the jurists of Italy had taken the Corpus Juris – the Justinian code of Roman law – and added to it glossae – explanatory notes. The jurists themselves came to be known as the 'glossators' and the revived and expanded Roman law became the general law throughout Italy and the legal code on which the post-glossators then worked.
[73] Ibid 72
[74] Ibid 73
[75] From late Latin realis (Latin res), a thing.

elsewhere. Personal statutes, on the other hand, were seen as non-territorial and as applicable to any person domiciled within the locality in which the laws were found, wherever that person might be. Thus a Bologna-born merchant whose permanent home was in Florence would remain subject to Florentine personal laws while visiting, say, Padua, and neither Bologna nor Paduan personal laws would apply to him[76].

The statute theory the basis of today's 'private international law' or 'conflict of laws' as it is often called was neither as simple nor as effective as it might appear and it was much refined by French jurists in the sixteenth century and Dutch jurists in the seventeenth century. Its subsequent development is beyond the scope of this work and it is sufficient to say that, despite all the changes which have taken place and despite the English and Scottish developments of the conflict of laws in the nineteenth century, the concept of domicile, and its use as the determinant of the system of personal law to which a person should be subject wherever he might be, has remained intact to the present day in the common law jurisdictions of the UK, the Commonwealth and the United States of America. To such nations, possessing as they do within their territorial boundaries a number of diverse legal systems, domicile still presents, as it once presented to Italy, the best determinant of the relevant personal law. Ironically, in the nineteenth century, Italy itself and most other countries in Europe rejected the test of domicile in favour of the test of nationality, and Japan and many South American states followed suit[77].

3.1 The two roles of domicile

The brief picture of domicile's origins given above should have sufficed to show that domicile is essentially a conflict of laws concept employed in determining the system of personal law which should be applied where a person has connections with more than one jurisdiction. Personal law is that part of law which, to some degree, governs the validity of marriage, the effect of marriage on the proprietary rights of husband and

[76] Supra 74
[77] Supra 75

wife, divorce and nullity of marriage, legitimacy, legitimating and adoption, wills of movables and intestate succession to movables. It follows, therefore, that, whenever a question arises in the English courts concerning any of these matters, it must be determined according to the law of the domicile of the person concerned and not (unless English law happens to be the law of his domicile) according to English law, the law of the territory in which he happens to be, or the law of the nation of which he is a citizen[78].

Alan, a citizen of Eriador (where wills require the attestation of three witnesses), dies on holiday in Mordor (where wills require the attestation of four witnesses) but, at the time of his death, is domiciled in Gondor under whose laws he has made a will attested by only one witness as is permitted under Gondorian law. His will is contested in the English courts on the grounds that two witnesses are required under English law or, alternatively, that three are required under Eriadorian law or, alternatively, that four are required under Mordorian law. The suit fails[79].

The rationale for this lies in the fact that (conceptually, at any rate) domicile, at any given moment in a person's life or at the moment of his death, singles out, from among all the territories in the world, the one territory in which – irrespective of where he happens to be or where he happens to reside or ordinarily reside that person has his real home; and, once that person's real home has been identified, the law of that territory, and of no other, is the law which should be applied in all matters which relate to him as a person[80].

[78] Supra 20
[79] J.R.R Tolkien; The territories used in this example are some of the fictitious territories created as a setting for The Lord of the Rings.
[80] Supra 78

3.2 The five principles of domicile

Domicile, being a common law concept, is defined by Lord Cranworth said that, 'by domicile we mean home, the permanent home[81], and, ever since, that has been regarded as a basic (if deceptively simple) definition of the term. Although the idea of a permanent home is indeed central to the concept of domicile, the meaning of 'permanent home' in this context is not necessarily the meaning which the man on the Clap ham omnibus would give to the term. There are, as will be shown, instances in which the courts will decide that a person's permanent home is in some faraway territory in which he has never set foot and with which, so far as he is aware, he has never had any connection. This is because domicile, though founded on fact, is not merely a finding of fact but a conclusion of law which is reached by application of a set of legal principles.

The principles referred to are five in number, and the first is that no one shall, at any time, be without a domicile[82]. The necessity for this becomes apparent once we remind ourselves that domicile is, in English law, the sole determinant of the personal law to which a person is to be subject. Indeed, it is one of the weaknesses of legal systems which have opted for nationality as a determinant of the personal law that a person may be stateless and may thus not possess the required connecting link. This is not to say, of course, that assigning a domicile to every person never presents difficulties: it frequently does, but the courts have developed additional principles to overcome these problems.

The second principle is that no one can simultaneously have more than one operative domicile[83]. The justification for this is that domicile, being the sole determinant of the personal law, must, by its very nature, be exclusive, otherwise a further determinant

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[81] Whicker v Hume (1858) 7 HL Cas 124 at 160.

[82] Udny v Udny (1869) Lr 1 Sc & Div 441 at 457, per Lord Westbury.
[83] IRC v Bullock [1976] STC 409 at 414, per Buckley LJ.

will be needed. This exposes another weakness in systems which have taken nationality as the determinant of the personal law, for many persons have dual nationality. The adjective 'operative' has been introduced into the above statement of principle because, as will be explained, there are three kinds of domicile and one of these, domicile of origin, will, if displaced by either of the others, become dormant but will, in the event of either of the others being lost, instantly revive. It should be noted that, in English law, domicile is regarded as a purely objective concept which remains unaffected by the subject matter of the point at issue[84]. In theory, therefore, there should be no question, in English law, of a person having one domicile for taxation purposes and another for, say, the purposes of divorce. As explained below, however, there are certain situations in which that may be possible – though not through any abandonment of the objective approach.

The third principle is said to be that domicile must relate to a territory subject to a single system of law, whether or not the limits of that territory coincide with national boundaries.

The fourth principle is that a change of domicile may never be presumed[85]. As Jenkins LJ has said:

'Change of domicile, particularly where the change is from the domicile of origin to a domicile of choice (as distinct from a change from one domicile of choice to another) has always been regarded as a serious step which is only to be imputed to a person upon clear and unequivocal evidence[86].'

In other words, a change of domicile will always have to be proved and, as Lord Chelmsford has said:

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[84] Supra 33
[85] See Moorhouse v Lord (1863) 10 HL Cas 272 at 286, per Lord Chelmsford.
[86] Travers v Holley [1953] P 246 at 252.

'... the burden of proof unquestionably lies upon the party who asserts the change[87].'

The fifth principle is that domicile must be determined according to the English concept of domicile. As Lindley MR said in Re Martin[88]

'The domicile ... must be determined by the English Court ... according to those legal principles applicable to domicile which are recognized in this country and are part of its law[89].

Likewise, even in Uganda it must be determined according to those legal principles applicable to domicile which are recognized in the country and apart of its law.

The significance of this rule lies in the fact that 'domicile' does not have a precise and universally accepted meaning. Not all jurisdictions accept the objective approach to domicile, others (such as Australia, New Zealand and the United States) do not accept English doctrines such as that of the revival of the domicile of origin and under some international conventions domicile is equated with habitual residence[90].

3.3 Domicile of origin

3.3.1 Acquisition

English law recognizes three kinds of domicile: domicile of origin, domicile of dependence and domicile of choice. Every person will possess the first of these, and may, at different times, possess either of the others[91].

The domicile of origin is the form of domicile which is imposed on every person at the moment of his birth. It is a link, forged by the law, which attaches a person to a particular system of law and which retains its hold on him throughout his life. Should he

[87] Moorhouse v Lord (1863) 10 HL Cas 272 at 286.
[88] [1900] P 211.
[89] [1900] P 211 at 227.
[90] Article 5 of the 1955 Hague Convention to Regulate Conflicts between the Law of Nationality and the Law of Domicile attributes domicile with this meaning.
[91] Supra 21

acquire a domicile of dependence or a domicile of choice, the link will be removed, but not destroyed; rather it will be held at readiness to reattach him instantly to the original system of law should his domicile of dependence cease or his domicile of choice be abandoned[92].

Except in the case of a foundling (when the domicile of origin imposed is that of the place where the child is found), the basis of imposition of a domicile of origin is parentage. If a child is born legitimate and during his father's lifetime, the domicile of origin imposed on him is that of his father at the time of the child's birth[93]. If a child is born illegitimate[94], or born legitimate but after his father's death[95], the domicile of origin imposed on him is that of his mother.

One problem which could arise in this connection springs from the fact that the question of legitimacy is itself a matter of personal law. As the determinant of the appropriate person law is the child's domicile and as the child's domicile cannot be determined until the question of its legitimacy has been settled, it can be seen that, unless both parents are of the same domicile, an endless legal loop is created. Various solutions to the problem have been proposed[96] but there is no authority on the question in English law.

It seems clear that in the event of an illegitimate child being legitimated the child's domicile of origin will remain unaffected since, legitimation does not operate retrospectively. In the event of a child becoming adopted, however, it would appear that a new domicile of origin will be acquired since adoption involves the complete severance of the legal relationship between parent and child and the establishment of a new one between child and the adoptive parent[97].

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[92] Supra 48
[93] Udny v Udny (1869) LR 1 Sc & Div 441 at 457, per Lord Westbury.
[94] Supra 32
[95] This is apparently unsupported by any English authority.
[96] Eg, by R H Graveson in Private International Law (Sweet and Maxwell, 7th edn) at pp 195–196.
[97] Bromley's Family Law (Oxford University Press, 10th edn) p 408.

Most of the Law Commissions for instance the Scottish Law Commission have recommended that the domicile of origin be abolished and that, in future, a child's domicile should be determined from the outset under revised domicile of dependence rules[98].

3.4 Displacement and revival

A domicile of origin, being a domicile imposed by operation of law independently of a person's will, can never be extinguished by an act of will or by mere abandonment[99]. It will continue to be operative, whether its possessor wishes it to be operative or not, until it is displaced by the acquisition of either a domicile of dependency or a domicile of choice. This is well illustrated by the leading case of Bell v Kennedy[100]. Lord Colonsay had this to say;

'I think it is very clear that Mr Bell left Jamaica with the intention of never returning ... But I do not think that his having sailed from Jamaica with that intent extinguished his Jamaica domicile ..."

He could not so displace the effect which law gives to the domicile of origin, and which continues to attach until a new domicile is acquired animo et facto[101].'

3.5 Married women

Until 1 January 1974 there were three classes of persons who could or would acquire a domicile of dependence: children, mentally disordered persons and married women. Now, only the first two classes remain, for, by the Domicile and Matrimonial Proceedings Act 1973 s 1, the rule at common law that every woman acquired from her

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[98] The Law Commission Working Paper No 88 and the Scottish Law Commission Consultative Memorandum No 63, 'Private International Law, The Law of Domicile' (1985), para 4.22.
[99] Supra 95
[100] Bell v Kennedy (1868) LR 1 Sc & Div 307.
[101] Supra 38 at 323.

husband his domicile immediately upon her marriage was swept away[102]. The Act provides that the domicile of a married woman as at any time on or after 1 January 1974;

'... shall, instead of being the same as her husband's by virtue only of marriage, be ascertained by reference to the same factors as in the case of any other individual capable of having an independent domicile[103].'

So far as any woman who married on, or has married since, 1 January 1974 is concerned, the position is quite straightforward. As the subsection quoted makes plain, the woman has the same capacity as her husband or any other non-dependent person for acquiring a domicile of choice. It will, of course, usually be the case that the domicile of a husband and his wife will be the same, but this will now merely be because of their independent choice to live together permanently in the same place. Such a choice is not always made at the time of the marriage, or if made then, may not be implemented by residence until later. In that event, each may, under the Act, retain different domiciles.

It this view that should also be adopted in the Ugandan legal system

3.6 Children

Until 1 January 1974, it was the rule at common law that a minor, whether married or not, was totally incapable of acquiring by his own act an independent domicile of choice[104]. A female child who, before then, married before attaining her majority

[102] The author's view is that domicile of dependence is, in any event, inconsistent with Art 14 (prohibition of discrimination) read with Art 1 (protection of property) to the First Protocol of the European Convention on Human Rights. See Irish Supreme Court in W v W 1993 IR 476, a case under the non-discrimination provisions of the Irish Constitution.
[103] DMPA 1973 s 1(1).
[104] Forbes v Forbes (1854) Kay 341; Harrison v Harrison [1953] 1 WLR 865.

acquired her husband's domicile as a domicile of dependence and, if widowed before that date, reacquired the domicile she had immediately before her marriage[105].

On 1 January 1974, however, the Domicile and Matrimonial Proceedings Act 1973 came into effect and, with application only to England and Wales and Northern Ireland[106], confined this rule to unmarried children under the age of 16[107]. Since then, any child reaching the age of 16 or marrying under that age, has been capable of acquiring an independent domicile of choice; and the same applied to any child who, at that date, was already over the age of 16 or, if then still under the age of 16, was then already married[108].

The present position is, then, that every child acquires at birth a domicile of origin and cannot, so long as they remain unmarried and below the age of 16, displace that domicile of origin by a domicile of choice acquired by their own act of will. There is, however, nothing to prevent their domicile of origin being displaced by an act of will on the part of one of their parents, and if this occurs the new domicile they acquire will be a domicile of dependence.

The primary rule is that, upon any change in the domicile of a child's father after the child's birth, a legitimate or adopted child will acquire their father's new domicile as a domicile of dependence unless their parents[109] are living apart and they either have then a home with their mother and not with their father or having had a home with their mother have not since then had a home with their father[110]. This is because, upon a separation, a child acquires a domicile of dependence from the parent with whom

[105] Shekleton v Shekleton [1972] 2 NSWR 675.
[106] Not Scotland. Under Scottish law the relevant respective ages are 14 in the case of a boy, 12 in the case of a girl.
[107] Supra 41 at s 3.
[108] Because no English domiciled child has the capacity to marry below that age, however, the parts of the rule which relate to persons who are married under the age of 16 is of application only to foreign domiciled children whose marriages are recognised by the courts in this country – as, for example in Mohamed v Knott [1968] 2 All ER 563.
[109] Adoptive parents in the case of an adopted child (Children Act 1975 Sch 1, para 3 as repealed and re-enacted in the Adoption Act 1976 s 39(1) and the Adoption (Scotland) Act 1978 s 39(1)).
[110] D'Etchegoyen v D'Etchegoyen (1888) 13 PD 132, DMPA 1973 s 4(1)–(2).

they make their home and, should they subsequently make their home with the other parent, they will (subject to a mother's right not to communicate her domicile to a child who is dependent upon her to acquire a new domicile of dependence from that parent, but, should they cease to have a home with either parent, their last-acquired domicile of dependence will continue. A legitimate, legitimated or adopted child who shares their time between the homes of both parents will acquire and retain throughout the arrangement the domicile of their father.

Where a child is illegitimate or was born after the death of their father, they will prima facie acquire as a domicile of dependence any new domicile acquired by their mother whether they have a home with her or not[111], unless the mother elects, bona fide and in the interests of the child, that the child's domicile shall not change with her domicile[112].

Where one or both of a child's parents die during a child's period of dependency, the rules are as follows.

Where a legitimate or adopted child's father dies after the child is born, the child acquires (if they have not acquired it already[113] the domicile of their mother as a domicile of dependence[114] which will then change as her domicile changes subject, as explained above, to her right to elect that it shall not be so. The same will be true of an illegitimate child who, before their father's death, has been legitimated, for such a child will, upon legitimation, have received their father's domicile as a domicile of

[111] Supra 45 at s 4(4) and Johnstone v Beattie (1843) 10 Cl & Fin 42.
[112] In Re Beaumont [1893] 3 Ch 490 at 496, Stirling J said, 'Change in the domicile of an infant which ... may follow from a change of domicile on the part of the mother, is not to be regarded as the necessary consequence of a change of the mother's domicile, but as the result of the exercise by her of a power vested in her for the welfare of the infants, which in their interest she may abstain from exercising, even when she changes her own domicile.' Where, however, a mother exercises her power in her own interest, eg to take advantage of a law of succession more beneficial to herself, such an exercise of her power will be ineffective (Potinger v Wightman (1817) 3 Mer 67).
[113] The child might already have acquired their mother's domicile as a domicile of dependence if their parents had separated before their father's death and if the child had, upon the separation, made their home with their mother.
[114] Potinger v Wightman (1817) 3 Mer 67.

dependence. The death of the father of an illegitimate child who has not been legitimated will have no effect.

Where a child's mother dies, the death will have no effect on the child's domicile unless the child was either born illegitimate and has never been legitimated or has (or last had) a home with their mother following a separation of their parents. In either event, the child will continue to have their dead mother's domicile as a domicile of dependence unless and until, in the case of a legitimate or legitimated or adopted child only, they make a home with their father[115].

Where a child's parents both die, the domicile of dependence which the child possessed at the date of their deaths will continue; though a child's guardian has no capacity to change the domicile of their ward[116].

A domicile of dependence will continue until animo et facto they abandon the country of that domicile. Thereupon their domicile of origin will revive until it is displaced by a domicile of choice[117].

3.7 Persons suffering from mental disorder

The position of a person suffering from mental disorder is lacking in direct authority so far as the question of their domicile is concerned. Until a child reaches the age of 16 or marries under that age, the rules governing their domicile will be those already discussed at 8.05 and 8.08 above. If, however, a child becomes insane and their insanity continues beyond their sixteenth[118] birthday, the law would appear to be that their domicile will continue to change with the parent from whom they last acquired a domicile of dependence, but that where they become of unsound mind after they have attained the age of 16 or married under that age, they will permanently retain whatever domicile they then possessed and that domicile will be incapable of change either by

[115] Supra 49 at s 4(3).
[116] The Conflict of Laws (13th edn, Sweet & Maxwell), Vol 1, p 141.
[117] Re Macreight, Paxton v Macreight (1885) 30 ChD 165.
[118] In Scotland, 14 in the case of a boy, 12 in the case of a girl.

their own act or by that of those who are entrusted with their care[119]. The degree of mental unsoundness which is required before these rules will have effect is not settled, but it is arguable that the test to be applied should be whether or not the person is capable of forming the necessary intention to bring about a change in domicile[120].

3.8 Domicile of choice

3.8.1 Acquisition

A domicile of choice can be acquired only by a person who is not incapacitated either by age or by unsoundness of mind. There are no formal steps to be taken for a person of full age and capacity to acquire a domicile of choice.

'To do so, you must broadly leave your current country of domicile and settle in another country. You need to provide strong evidence that you intend to live there permanently or indefinitely[121].

3.9 Intention

The acquisition of a domicile of choice requires not only residence (in the sense of actual habitation of the chosen territory) but also an intention to make that territory 'the permanent home[122]. The problem of what is meant by 'permanent' has lain at the root of many a case concerning domicile. Lord Chelmsford took a strict view of the matter. In Moorhouse v Lord[123] he said:

'The present intention of making a place a person's permanent home can exist only where he has no other idea than to continue there without looking forward to any event, certain or uncertain, which might induce him to change his residence. If he has in contemplation some event upon the happening of which residence will cease, it is not

[119] Sharpe v Crispin (1869) LR 1 P & D 611 at 615, per Sir J P Wilde.
[120] Supra 57
[121] HMRC6 (April 2009) , para 4.3.2.
[122] Whicker v Hume (1858) 7 HL Cas 124 at 160, per Lord Cranworth.
[123] (1863) 10 HL Cas 272.

correct to call this even a present intention of making it a permanent home. It is rather a present intention of making it a temporary home, though for a period indefinite and contingent[124].

It emerged even more openly when, in Gulbenkian v Gulbenkian[125], Langton J said:

'The intention must be a present intention to reside permanently, but it does not mean that such intention must be irrevocable. It must be an intention unlimited in period, but not irrevocable in character[126].

'A domicile of choice is acquired only if it be affirmatively shown that the propositus is resident within a territory subject to a distinctive legal system with the intention, formed independently of external pressures, of residing there indefinitely[127].

3.9.1 Motive as evidence of intention

It will have been noted that the first of Scarman J's two propositions in Re Fuld's Estate (No 3)[128]: concerning the acquisition of a domicile of choice, quoted at above contains the words 'fixes voluntarily his sole or chief residence', and that the second contains the words 'with the intention, formed independently of external pressures, of residing'. Those words draw attention to the fact that the acquisition of a domicile of choice presupposes a freedom of choice. As Lord Westbury put it in Udny v Udny[129]

'There must be a residence freely chosen, and not prescribed or dictated by any external necessity[130]..."

[124] Supra 61 at 285–286.
[125] [1937] 4 All ER 618.
[126] Supra 63 at 627.
[127] [1968] P 675 at 684.
[128] Supra 65.
[129] (1869) LR 1 Sc & Div 441.
[130] Supra 67

3.9.2 Proof of intention

As Scarman J said in Re Fuld's Estate (No 3)[131]:

'It is beyond doubt that the burden of proving the abandonment of a domicile of origin and the acquisition of a domicile of choice is upon the party asserting the change. But it is not so clear what is the standard of proof: is it to be proved beyond reasonable doubt or upon the balance of probabilities, or does the standard vary according to whether one seeks to establish abandonment of domicile of origin or merely a switch from one domicile of choice to another? Or is there some other standard? ... The formula of proof beyond reasonable doubt is not frequently used in probate cases and I do not propose to give it currency. It is enough that the authorities emphasise that the conscience of the court ... must be satisfied by the evidence. The weight to be attached to evidence, the inferences to be drawn, the facts justifying the exclusion of doubt and the expression of satisfaction will vary according to the nature of the case. Two things are clear – first, that unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists: and secondly, that the acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indications or casual words[132].

Those statements were later endorsed by Orr LJ who, in Buswell v IRC[133],

The approach to assessing evidence of intention was neatly expressed by Mummery LJ in Agulian & Anor v Cyganik[134]:

'(1) Although it is helpful to trace ... life events chronologically and to halt on the journey from time to time to take stock, this question cannot be decided in stages. [T]he court must look back at the whole of the deceased's life, at what he had done with his life, at what life had done to him and at what were his inferred intentions in order to decide whether he had acquired a domicile of choice in England by the date of

[131] [1968] P 675.
[132] [1968] P 675 at 685–686.
[133] [1974] STC 266.
[134] [2006] EWCA Civ 129 at para 49.

his death. Soren Kierkegaard's aphorism that 'Life must be lived forwards, but can only be understood backwards' resonates in the biographical data of domicile disputes.

(2) Secondly, special care must be taken in the analysis of the evidence about isolating individual factors from all the other factors present over time and treating a particular factor as decisive.'

3.10 Change of domicile of choice

It should by now have become clear that the courts will not easily be satisfied that a domicile of origin has been replaced by a domicile of choice. The presumption of a domicile of origin's continuance is of the utmost strength and, compared with a domicile of choice:

'... its character is more enduring, its hold stronger and less easily shaken off[135].

This is because a domicile of origin is conferred on a person by operation of law whereas, as has been explained, a domicile of choice is acquired merely animo et facto. Once acquired, however, a domicile of choice may be extinguished animo et facto also, ie, by an intention and an act. The act is the leaving of the country of the domicile of choice and the intention is the intention not to resume permanent residence there. This last is technically referred to as an animus non revertendi. Such an animus does not, it should be noted, include within it a decision to reside permanently elsewhere as was summed up in Udny v Udny[136],

Finally, it should be noted that where a person animo et facto abandons one domicile of choice and animo et facto acquires another, his domicile of origin will revive for the

[135] Winans v A-G [1904] AC 287 at 290, per Lord Macnaghten; F (F's Personal Representatives v IRC) [2000] STC (SCD) 1.
[136] (1869) LR 1 Sc & Div 441.

duration of the interval, however brief, between the abandonment and the acquisition[137]

Inclusion therefore, there is no any other better strategy than explaining or providing a source or a Clear understanding of the law regarding domicile by explaining the roles of domicile, the five principles of domicile and the different types under the law regarding the law of domicile.

[137] Harrison v Harrison [1953] 1 WLR 865. The proposal of The Law Commission and the Scottish Law Commission is that this should cease to be so and that an abandoned domicile of choice should continue until a new domicile is acquired (Working Paper No 88 and Consultative Memorandum No 63, para 5.22).

CHAPTER FOUR

FINDINGS, CONCLUSIONS AND RECOMMENDATION

4.1 Introduction

This chapter discusses the effectiveness of the Law regarding of domicile, findings, conclusion and recommendations of this research.

4.2 The Constitution of the Republic of Uganda, 1995.

The concept of the domicile of dependency offends Article 33 (1) which states that women shall be accorded full and equal dignity of the persons with men hence in that , it discriminates between persons. Dependency domicile tends to involve a question of status rather than that of personnel rights.

Domicile law tends to contravene the right to determination under Article 33[138]. This is because the wife is deemed to be domiciled in the country of her husband whether or not have a connection in the husbands country of domicile, hence the view that dependence domicile creates unity that is artificial because it may bear no relation of the actual circumstances of the spouse. In the case of Lord Advocate –Vs – Jaffrey[139]. In this case the husband was in Queensland and the wife was in Scotland, she had never been in Queensland. The courts of Appeal on the House of Lords held that the wife was domiciled in Queensland even though he has never been there.

4.3 The divorce Act.

In case of divorce, it can only be granted in the country where both the parties are domiciled but can not be granted independently hence a loop hole. For instance if a wife wants to file a petition for divorce to dissolve her marriage , she can only file the petition in the country of her dependency domicile.

[138] Supra 14
[139] Supra 4

Section 2(a) of the Act states that, any decree of dissolution of marriage unless the petitioner is domiciled in Uganda at the time when the petition is presented. In the case of Joy Kiggundu – Vs Horance Awori[140]. The petitioner filed a decree dissolving her marriage to the respondent in the High Court of Uganda at Kampala, the respondent was domiciled in Kenya and lived in Nairobi Kenya where at the time of the couple got 3 issues of the marriage being the husband committed adultery with a named women, the respondent had been cruel to the petitioner in various ways and by reason of which the petitioner suffered ill health both in mind and body. The court held that, the petitioner is domiciled in Kenya, the court therefore has no jurisdiction to entertain the petition she chose to file in this court the petition is dismissed.

4.4 The succession Act Cap 162.

In case a person whose domicile is not in Uganda marries in Uganda a person whose domicile is in Uganda, none of the parties acquires the property of the other unless it is agreed in a settlement hence for instance if a woman whose domicile is not in Uganda marries a man whose domicile is in Uganda her domicile will be in Uganda. Section 34 of the succession Act states that is a person whose domicile is not in Uganda marries in Uganda a person whose domicile is in Uganda, neither party acquires by the marriage acquires any right in respect of any other party not compromised in a settlement made precious to the marriage, when he / she were domiciled in Uganda at the time of the marriage.

Further, capacity of the wife to male a will and the devolution of the personal property on her death may be governed by a system law of a country she has no connection. For instance in the case of Queensland – Vs – Jaffrey[141], the husband was in Queensland and the wife was in Scotland. The court held that even though she had never been in Queensland, her domicile was there.

[140] Supra 12

There are laws, that protect women's rights during the determination of domicile. This has been confirmed looking at the municipal laws that relate to women during the determination of domicile.

Women are aware of their rights granted to them and their children during the determination of domicile, under this assumption, the researcher used both questionnaires and interviews to gather the information and out of the 80 women both literate and illiterate sampled by the researcher, 72.5% of them are aware of their rights that are granted to them by municipal laws and 22.5% are not aware. This means that awareness is at least okay which when increased by more sensitizing the 22-5% will reduce to 0 (zero). One of the women in Kasubi had this to say;

"I know the rights that are granted to me by the by the constitution of the Republic of Uganda but I fear to know more about it because an Anglican and married in church which means men are more superior in everything".

Another women respondent in the same area had this to say;

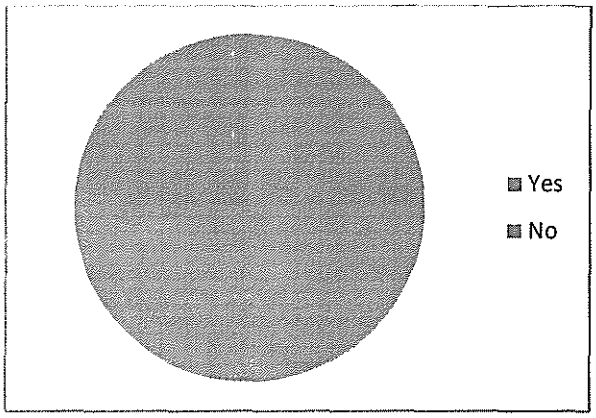
"I am a very busy woman, every morning I wake up and all I think of is how my children eat so I have not heard any rights that accrue from the determination of the law of domicile".

The rest of the women would side with the two women who were bold enough to open up by saying what was happening.

Table 1: Shows women awareness about their rights that accrue from the law of domicile.

Aware	Frequency	Percentage (%)
Yes	58	72.5
No	22	22.5
Total	80	100

Figure 1: shows the women awareness about their rights that accrue from the law of domicile.



Laws that protect women's right during the determination of the law of domicile are not widely implemented.

Findings indicate that about 66.25% of married women do not access such rights that they would other wise have possessed during the determination of domicile and 33.5% of have accessed such rights that accrue from domicile.

The fact that this right is known to at least 72.5% of the women in Kasubi and benefit from the intended law of the domicile. The researcher was able to meet some women who accessed such benefit from the domicile. One of the women said;

"I have benefited from the spirit behind the law because it has created unity between me and my husband".

Some women in Kasubi were okay with the inequalities that are associated with the law of domicile in Uganda and were okay with their husbands taking full control over their lives and being more superior than them as long as their children are taken care of in terms of school fees among others. One of the women had this to say;

" *Even if I petition against the inconsistencies in the law of domicile , my family and husband tell me he is the head of the family and so he is more superior and I have nothing to do but as long as our children are getting school fees from the estate of my husband , its fine with me"*

The rights that accrue from the law domicile are more practiced and accessed more in Urban centers compared to the rural areas. Kasubi is a suburb in the urban area but comprise of many tribes who came from various regions of Uganda, therefore, its being a mixture of urban and rural people that is what why the researcher was able to get 33.7% of women who appreciate the spirit behind the law of domicile. This means that the people who need more sensitization on the law regarding domicile are more in rural areas and with I urban centers like Kasubi , Nakulabye, Namungona among others.

Majority of women agreed that the law regarding domicile are not widely implemented, and do not comprehend its intended use, this is based on the fact that a respondent (Edger Brians) would follow culture but allow his wife decide on issues and rights that accrue from the law relating to domicile as long as the marriage subsists and would not mind as long as her children are doing well. This assumption was approved as indicated in the table below.

Table 2: showing effectiveness of the law of domicile.

Effectiveness	Frequency	Percentage (%)
Yes	27	33.75
No	53	66.25
Total	80	100

The researcher found out that there are obstacles that hinder women from achieving the rights under the law of domicile in Uganda. The researchers used one on one interview to get information in this assumption. Out of the 80 women that were interviewed, 66.25% said that the law regarding to domicile is not favorable to them due to laws they consider as being inconsistent with principles of common law and the constitution coupled with hardships to interpret and also comprehend, and also religious norms and cultural beliefs that hinder them. On this assumption one of the women (Jane) had this to say.

" I know am supposed to have equal rights with men but since am married in church , I was taught that my husband is more superior and may view can not therefore upheld".

Some of the business women in Kasubi market unanimously agreed that culture are the major obstacle in achieving the intended use of the law domicile and one of them said;

"Culturally, a woman is regarded as a man's property and in case I want to get greener pastures I will have to get another man from a country of my dreams so that I can be regarded as a resident of that country for purposes of improving my business, having changed that domicile".

From the Muslim point of view, other women supported the idea saying that a woman has no right over her domicile. One respondent (Nuriat) had this to say;

"In Islam a woman has no right over anything not even deciding on the issue of domicile, what is under my control, is what I keep my eyes on but I cannot start on issues of determining my own domicile"

This assumption was confirmed since the majority of the respondents agreed that there are obstacles that hinder the attainment of women's rights during the determination of their domicile.

The obstacles can be minimized through sensitization of women on their rights granted to them under the 1995 constitution of Uganda during the determination of the law of domicile.

Religious and cultural leaders should also be sensitized on the issue that two become one "after marriage", which has made some women to admit to the fact that they cannot change anything regarding the injustices under the law of domicile.

This result was attributed to several factors including the fact that payment of bride wealth often turns a woman into the property of her husband.

According to the interviews conducted face to face between the researcher and the women in Kasubi the researcher discovered that among the Basoga, Acholi and the Langi some women still believe they cannot any at any time be equated to men because they fear losing their families. It is thus very clear that if the women are to achieve their rights during the determination of their domicile, a reform to dowry and declaring some sections of the succession Act as being inconsistent with Article 33 of the constitution of Uganda, an increase of advocacy to deal with them by the minimizes concerned and other NGOs like Fowede, ULA, IRI among others.

4.5 Emerging issues.

The researcher looked at the laws and its implementation and discovered some loopholes which are discussed below.

A problem arises when the parties are not living in the same country or are not nationals of the same country. It may not be clear which country's law should make the decision, which country's law should be applied and how the decisions made in one country can be implemented in another.

The procedures for having judgments recognized and enforced in another country can be difficult and sometimes impossible. Generally, if you have a judgment from a court in one country, you have to go through another judicial (process ex quarter) procedure in another country in order to have it implemented there.

Most countries refuse to recognize decisions of another, for the reason that they are contrary to public policy.

The wife is deemed to be domiciled in the country after the husband whether she has not been there even though she does not have connections in husband's country. For example, if one marries a wife from Rwanda, she will acquire a Ugandan domicile mush as she has no any other relation in Uganda. this unfair law was witnessed in action in the case of Lord Advocate – Vs – Jaffrey, where the husbands was in Queensland and the wife was in Scotland where she died and the proceeding were brought to Scotland. The court held that even though she had never been in Queensland, her domicile of dependence was there to establish the husband's domicile which would in turn help to know the court's jurisdiction in handling a divorce matter. This is an unfair law because the wife should have the independence and choice of her own domicile other than the relying on the husband's domicile as a determinant factor of the wife's domicile.

Furthermore, the law of dependant domicile is in utter contravention with Art 33(1) of the constitution of Uganda which states that women shall be accorded full and equal

dignity of the person with men. The concept of dependent domicile is to the effect that a wife's domicile is dependent on the man's domicile which is a clear contravention of the constitution hence it discriminates between persons and does not accord full equality of women with men.

Coupled with the above gaps in the law, it is also important to note that the majority of women in Uganda are illiterate and therefore do not know about their rights, the law of domicile and their constitutional right of equality with men.

Additionally, for those women who know the law, enforcement of such may be hard for them because of their financial status. Most of the women are not formally employed hence may not be in position to access courts of law because of the expenses incurred in the processes of legal redress.

However , all the above happen because the legislature sometimes slow in acting on the woman's plaits, the law relating to domicile is not applied relating to its intended spirit of the drafts men some women and men themselves tend to manipulate the law relating to domicile in their own favor.

4.6 Conclusion and Recommendation

4.7 Conclusion.

The 1995 constitution of the republic of Uganda and other conventions to which Uganda Ratified give protection to women among other persons against abuse of the rights and enforcement of those statutory provisions is difficult as they conflict with on some provisions and in cases of law concerning the law of domicile . Therefore women should be sensitized about their legal redress where they have been denied their rights relating to domicile.

The Uganda Law Reform Commission views the basis of the survival, monetary and otherwise made by each spouse. There is need for the law to reflect social reality and give the equal rewards to different form of contribution of each spouse. In some instances especially in rural areas, matrimonial homes are situated on clan land or family land particularly that, which serves to indoctrinate women into thinking that they are always a secured property. This can be achieved by engaging cultural leaders in activities such as sensitizing the public on women's rights that accrue from the law of domicile. This is because they (cultural leaders) have authority respected by people they lead.

Further still, the concept of equality cannot be effective because of the higher illiteracy levels amongst women and their low economic status which do not allow them even take advantage of the positive elements of the law. Yet they cannot even seek redress in courts of law and as a result they are being left out in the determination of their domicile, because they cannot afford to pay for the expenses incurred in the courts of law.

4.8 Recommendation

It is my humble submission that the law of dependent domicile of married women in Uganda be revised to meet the current social trends where women are to have equal and full dignity with men.

Moreover, the law of dependent domicile in regard to the wife's domicile being dependent on the husband's domicile in United Kingdom from which Uganda adopted her laws by the 1902 order – in- council of which were abolished in the United Kingdom in 1973 and yet Uganda still applies it much as it was adopted from there. Wives in the United Kingdom can acquire a domicile of choice and their domicile no longer depends on that of their husbands.

Domicile of dependence of a married woman was abolished in United Kingdom because the change in the rule was to reflect social economic changes and situations of the current developed society other than the ancient days where women were discriminated against. In that spirit of respecting the dignity of women the matrimonial proceedings Act of 1973 was passed. Uganda should also borrow a leaf and pass such a law which respects the position of women in society. In IRC –Vs – Duchess of Portland[142], where a wife had a domicile of origin in Queensland married a husband domiciled in England. The issue was whether has domicile was in England. It was held that the wife was to retain her domicile of choice. This should be the same position to be applied in Uganda.

Under common law a married woman was deemed to have the same domicile as her husband so the domicile of origin of the children of the marriage was the same as that of their father and the time of birth. A child gained their mother's domicile if their father predeceased or they were born outside marriage. An orphan has the original domicile where he or she was found.

Every adult other than married women one can change their domicile by leaving the jurisdiction of their prior domicile with an intention of permanently residing some where else. A domicile of choice can be abandoned if a new domicile of choice is acquired or if the domicile of origin revises.

A married woman should not cease to be deemed to have the domicile of her husband if the marriage ends.

[142] (1982) Ch 314

Traditionally many common law jurisdictions considered a person's domicile to be determinant factor in the conflict of law and should not be used as a way of making women to lose their domicile other than by choice.

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APPENDIXES

APPENDIX I

QUESTIONNAIRE

Reform of Law on domicile study

Interviewer's Name : Kinyana Brain

Date: .....

Location of the interview: spontaneously around districts in Uganda.

Confidentiality

All the information you give shall be handled with great care and at most confidentiality. You may not answer any question which you feel you should not answer. However, I hope that you update the law for the whole country by giving this very important information.

Put a tick or cross in the box provided, a tick for this matter represents **Yes** and a cross means **No**

1 Please indicate the age range in the box and proceed to answer question below.

☐ 31-45 ☐ 46-50 ☐

2 Name .....

3 Occupation ☐ House Wife ☐ Employed ☐

4 Do you feel the law relating to domicile has helped you? ☐

5 Is your husband okay with it? ☐

6 If No, why?.....