

**THE LAW ON GENDER EQUALITY IN UGANDA: A CASE STUDY ON  
NAKASEKE DISTRICT.**

**A DISSERTATION PRESENTED TO THE FACULTY OF LAW  
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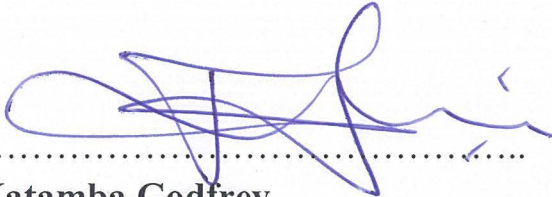
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## DECLARATION

I **KATAMBA GODFREY** do hereby declare that this research paper is entirely my own work, any secondary information has been acknowledged and to the best of my knowledge and belief is original which has never been submitted for the award of a degree in any other University.

  
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## APPROVAL

I hereby approve that **KATAMBA GODFREY** is the sole author of this dissertation and that it has never been submitted to any institution or University for any award whatsoever.

..... Date *20<sup>th</sup>* June, 2017

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**Supervisor**

## DEDICATION

This work is dedicated to Capt. Kaddu John Kavuma my loving father and my Family- Halimah Katamba, Najjuma Joy Faith Katamba, Isaiah Gumire Katamba and Nakakande Irene Sharuwah, and my best close friends- Mr. Kalungi Joseph, Mr. Kiggundu Ronald, and Mrs. Mercy Hashaka . Thank you all for your unconditional love and support. My sincere thanks goes to Makerere SDA Church members. Praise the name of Jesus who has made me through to achieve this.

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**KATAMBA GODFREY**

**LLB/36609/113/DU, JUNE,2017.**

**KAMPALA INTERNATIONAL UNIVERSITY**

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## **LEGISLATIONS USED**

1. The 1995 Constitution of the Republic of Uganda
2. The Children's Act Cap 59
3. The Succession Act Chapter 162
4. Administrator General's Act Cap 157
5. MARRIAGE Act Chapter 157
6. Customary Marriage (Registration) Act Cap 248
7. The Land Act Cap 227
8. Registration OF Titles Act Cap 230
9. Land Acquisition Act 226

## **BILLS USED**

1. The Women Domestic Relations Bill 2013
2. Marriage and Divorce Bill 2013

## REGIONAL AND INTERNATIONAL INSTRUMENTS

1. Universal Declaration of Human Rights (1948)
2. International Covenant on Civil and Political rights (ICCPR) 1976
3. The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) 1979
4. The African (Banjul) Charter on Human and Peoples Rights 1981
5. Organization of African Unity (1963)
6. Charter: African Charter on Human and Peoples' Rights (1986)
7. Commission: African Commission on Human and Peoples' Rights (1986)
8. Protocol: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2001)

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## **BBREVIATIONS**

1. CEDAW- Convention on The Elimination of All forms of Discrimination Against Women.
2. ECOSOC- International Covenant of Economic, Social and Cultural Rights
3. UWONET-Uganda Women's Network
4. UDHR-Universal Declaration of Human Rights
5. FIDA(U)-Federation of African Lawyers Uganda Chapter
6. ICCPR-International Covenant on Civil and Political Rights
7. COMESA-Common Market of East and Southern Africa
8. EOC- Equal Opportunities Commission-Uganda
9. HSRC- Human Science Research Council
10. ACHPR- African Charter on Human and Peoples' Rights
- 11.FHRI-Foundation for Human Rights Initiative

MoFPED-Ministry of Finance, Planning And Economic Development

## ABSTRACT

Inequalities on women to property inheritance is a practice protected under the legal framework of Uganda specifically in the 1995 and other statutes which do little, and what is unfortunate, the regional and international instruments of which Uganda as a nation have accession and ratification is not applied. It's notorious under the customary law. The practice has been documented in several reference books in accordance to several ethnic groups in Uganda and it's notorious among Bantu tribes. However, each tribe has customary practices of property inheritance of which is less different from other ethnic tribes because in almost all ethnic groups in Uganda it values a boy child as an affirmed member of the clan than the girl child and somewhere you find that the practice is less alike.

I applied all the possible methodologies to explore the justification of the need in which women in Uganda are deprived of the right to property inheritance upon the death of their husbands or fathers. Women Activists and Human Rights Organizations have endeavored and assiduously tried to advocate for fair laws that justify equality to property inheritance at a gender based in Uganda but failed; then what could be the cause, and their failure to success. The study further tries to harmonize the legal perspective and culturally deep-rooted customary practices relating to property inheritance attitude to change for consideration of women as part to enjoy their rights. Reviewing the existing situation, the research will seek to explain why the practice has been not favoring women up to today despite the several efforts that try curtailing the cultural practices and doing best to come out with a way of harmonizing the two extremes.

Equal rights and opportunity functions by invoking the metaphor of everyone being permitted to compete in a race, and based on this assumption, all other factors are usually ignored so long as it can be indicated on the face of things that

at a given material time, both men and women are equally treated. This implies that past historic disadvantages are ignored and yet these have worked together with other factors to constantly undermine equal development of women and men.

Globally, there is an evident correlation between gender inequality, societal poverty, and the failure to respect, protect and fulfill these rights for women. This failure entrenches gender inequality by reinforcing women's dependence on men, and prevents poor countries from finding a sustainable and equitable path to development; but "strengthening women's secure rights to land" can empower them to reach their potential as citizens and as part to economic actors, and enable them to take control over their own lives.

In the above view, women's empowerment to inherit and own land, food security and poverty alleviation, may reduce because of such women's economic empowerment, as land can serve as a base for food production and income generation.

It's recommendable that expanded equal rights for all women and men alike on land inheritance and in all other spheres of life and must be our goal because it is necessary for development effectiveness and because equality is a core value of human existence. The reason is that the world's strong financial institutions such as the World Bank when they are sure that women have access to [and] control over land and other natural resources they increase on woman's support purposely because they have trust that involvement of women in agricultural production increase on household food security and income in the households, as a result of resource allocation to women this can boost household welfare.

## CHAPTER ONE

### 1.0 THE LAW ON GENDER EQUALITY IN UGANDA: A CASE STUDY ON NAKASEKE DISTRICT.

#### 1.1 A Brief Profile of Nakaseke District

Nakaseke district lies in the Central region of Uganda about 45 km from Kampala. It borders with Wakiso district in the South, Kiboga in the East, Masindi in the North, Nakasongola and Luwero district in the West. Nakaseke's total area spans to 5,774 km<sup>2</sup>, most of which is characterized by savannah land, with some forests. The soil in the southern area of the district is generally fertile and able to support a diversity of crops, whereas the northern soils are more suitable for cereal production and cattle grazing. Most of the land in Nakaseke is under the *mail* land tenure system, with leasehold and freehold tenure systems also prevalent. Agriculture is the primary economic activity in Nakaseke district predominantly rural, it has few urban centers such as Semuto, Nakaseke, Kapeeka, Kiwoko and Ngoma town councils, with 8 percent of the population residing in such urban areas. In the research study, in all the 18 villages where research was conducted in the district women holding perpetual ownership of land reported that they were facing pressure on their land from men in their community. They reported that women are discriminated from inheriting clan land and those who hold their land faces pressure and threats of land grabbing and eviction from men and at times their land is encroached on.

#### 1.2 The Background from Gender Inequality to Equality

This background gives highlights of the historical relationship of gender equality on property inheritance in Uganda. Changing time and persistent patterns, Ugandan history prove that culture bestows women as inferior to men and they hold no equal social obligations. According to history, women are

caught between two conflicting forces. These included social and personal benefits. The said forces pulled and pushed them in a social arena of being considered as part of the property of men to only work and feed the family, and this poised to date a strong opposition that their scope is only domestic.

Looking back at the pre-colonial period, the political, economic and social set up was entirely founded and based on traditional values and cultural practices. Women had defined responsibilities that traditionally embedded in cultural values. It's important to note that there was almost no women representation in the political, social, and economic decision-making process attributed to inter-alia social-cultural perceptions and inhibitions. The degree and type of danger posed on women by traditionalists was substituted by such rights varying with their nature of being disadvantaged<sup>1</sup>. Very few women during the pre-colonial and early colonial period pursued any income-generating activities. It was a responsibility of the males to provide for the family needs. Women were mostly spending time in gardens to till land and grow food plus indulging in other domestic work. Therefore there was no need for women to mingle and socialize with men. In some societies, it was a taboo for women to go out of the home to participate in the market or trade fairs. This shows how early influences of culture impacted against women inequality treatment.

Similarly, with limited opportunities for a girl child to access education, women during the colonial time were extremely restricted niches in which they could not work outside their homes; women's work was greatly constructed to fit only social accepted roles. Accepted roles included cultivating land and to prepare food for the family. This constituted a bigger number of women work force in agriculture, even today despite the fact that they own no land as resource for farming. This is because land belongs to "a Clan" as a traditional cultural value

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<sup>1</sup> Aileen McColgan, Women under The Law; the False Promise of Human Rights. Printed & Published by Law in Focus 2000.



in all Ugandan ethnic tribes and clans consider a boy child as their blood continuity and identity, so land as property is left in the trust of boy child on behalf of the clan. Though missionaries often argued that women were capable as men; insisting that marriage and maternity should not end their career, the roles that were attributed to them are different to those 'reserved' for the men such as decision making positions. *Lovett* made a proper and comprehensive analysis of the domestic virtue model in Africa. He stated; a good woman is one who is respected by her male and female peers, and the cultural traditionalism emphasizes that women have practical duties within the household; that women's work occurs within the homestead and its fields except when going to get wood or water; and that women are subject to male authority<sup>2</sup>. This was supported by the male. To decide on ownership of land as property in marriage and apart from women tilling it, they were not given proprietary rights by their husbands. The domestic virtue model which began in the 20<sup>th</sup> century has remained and become clearly defined with a more negative tone against women because it was supported by the cultural norms of several societies in Uganda. According to *Lovett*, he adds that the Domestic Virtue Model acquired practical force and surprisingly longevity because it formed the basis for government policies and laws of the state<sup>3</sup>. It is notable that any diversion from the domestic virtue model has always been greatly opposed because it was seen as a threat to male dominance. This remained in the colonial period and has continued to today.

The early independence years purported to offer some support to women; attitudes towards women, and various factors that even caused legislations to be enacted. The changes of women status and roles, legal rights and the tides of time advocated for public participation and stressed the importance of participation to economic development, social and public life. This official

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<sup>2</sup>Lovett, Property Inheritance and Co-Ownership in Domestic Perspective. 1960

<sup>3</sup>Supra.

support for women participation was however limited to rhetoric; the government did not take any positive steps to assist women in entering the public domain. This is because it hit the snag of women being inferior, uneducated and customary practices.

The beginning of women's struggle surfaced in the 1950s. The report of the Constitutional Committee in 1959 showed that the Legislative Council was composed of among others, five nominated women. During this time, women proposed various measures which were designed to raise the status of women and promote equal rights and opportunities for women and men. The Ugandan Council of Women, which later became the National Council of Women, was formed in 1960 to act as political pressure group to represent women's groups and clubs.<sup>4</sup> Few women by that time participated in politics and mostly dominated by men. However, during the 1980s, women were involved than before.

### **1.3 The Institution of Land as a Property for Inheritance a Root Cause of Gender Inequality in Uganda**

The practice of property inheritance is an ancient one dating as back as ancient times. It is deeply rooted in many African cultures and is strongly protected and reserved by the elderly in societies with the help of law, who have encouraged their siblings to carry it on. Property inheritance lies at the heart of where a male person considered to be the head of the family on his demise has left children both girls and boys and customary laws give clan heads the power to distribute property among boy

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<sup>4</sup> 1959 Constitutional Committee Report

children of the deceased. In Buganda under the customs, girl children are obligated to appoint the heir (a boy child) who will inherit or succeed their father. Then in the second faunal rites ceremony called “Kwabya Lumbe (meaning second funeral rites for initiating the heir)” the heir is succeeded to the deceased and empowered to undertake (care taker) for property of the deceased especially the deceased’s principal residence and charged to caretaking all the deceased including land. This leaves a girl child and the widow without rights over the deceased’s property. Although girls and the widow can continue living in the principal residence and cultivating land, the heir has rights to distribute land among boys. He also has the right to utilize the land as he so wish including disposing it without consent of the other fellow children. This customary ceremony includes giving discretionary power to the heir over the property of a deceased and it is not regulated by any statute hence clan heads are at liberty to make their decisions as they so wish. It is worth noting that clan heads also have discretion under their custom to distribute the property of the deceased especially land to boy children of the deceased. A girl child is not entitled under the customs to be appointed heir and inherit property like land considered to clan land under the values of the Baganda custom and other ethnic groups’ customs. Although attempts were made in the Succession Act by regulating on the distribution property, it did not declare that it’s void under customary law to distribute property to boy children only. This remained an Ant hill to gender equality.

## 1.4 THE LEGAL FRAMEWORK ON GENDER EQUALITY

### 1.4.1 The 1995 Constitution

In Uganda, statutory law is applied alongside customary laws. Despite the entrenched bill of women rights in the Constitution and international ratified<sup>5</sup> instruments, discriminatory statutory, customary and religious laws remain in force, particularly in areas of family law, property law, and property inheritance law. Applying customary law is equally applying culture norms yet in most societies cultural practices are enemies of women's rights and stand as anti-hill in the initiatives of promoting gender equality. International laws are mostly domesticated in the 1995 Constitution.

This constitution is said to be Women's Landmark in the constitutional process of Uganda because it brought them on board. It is entrenched with the Bill of Women's Rights<sup>5</sup>. This 1995 constitution of Uganda adopted and promulgated on October 8, 1995 a ray hope to women's struggle it highlighted women's rights, including the right to own property under article 26 of the constitution, unlike the earlier constitution of 1962 and that of 1967. Though the constitution provides for a right to culture under article 37, it prohibits any culture, tradition and custom that undermines the status of women under article 32(2). Given that Uganda was a British colony, the English legal system and law is still predominantly embedded in Ugandan legislations. Uganda's legal system is based on English Common Law and African customary law. However, according to the constitution, customary law is in effect only when it does not conflict with statutory law. The laws applicable in Uganda are statutory law, common law, customary law and doctrines of equity. It is worth noting that this

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<sup>5</sup> National Association of Women Organizations in Uganda (NAWOU), Women's Landmarks in the Democratization Process in Uganda. Friedrich Ebert Foundation, Kampala. November 1995

customary law is entrenched with cultures valued most by societies in their social status. On the above, the 1995 constitution promulgated is the principle and supreme law in Uganda, and any law or custom that is in conflict with it is null and void to the extent of its inconsistency.

It contains several provisions on the principle of non-discrimination and equal rights of women and men. Under Article 21, “All persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other aspect and shall enjoy equal protection of the law. [A] person shall not be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability.”<sup>6</sup> The essence embedded in this article is that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled with all rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

It also proved that “men and women are entitled to equal rights in marriage, during marriage and at its dissolution” (Article 31, 32 and Article 33, entitled *Rights of women*, provides that “the State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realize their full potential and advancement”; “Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities”; and “Laws, cultures, customs or

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<sup>6</sup>Constitution of the Republic of Uganda, 1995.

traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution". This article also provides for special measures to increase women's representation in public life: "women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom"<sup>7</sup>.

### **1.4.2 The Succession Act**

During the time when the current succession law and the law relating to the deceased's estate were drafted, it was presumed that women owned no property, and therefore, no provision made on the devolution property of a woman upon her death. And in most cases, the purported husband or men have taken away the properties of women upon death. Due to pressure from Human Rights Activists, Domestic Relations Bill has been drafted and discussed time and again since 2001 in the parliament, but until now it is not assented too because it is viewed as taking away men's dominance and property. The distribution of property Section 27 of the Succession Act gives a woman to inherit only 15% of the husband's property (land)<sup>8</sup>. It is unfair in the sense that even if the man had more than one wife, the law provides them only a 15% share to be shared amongst all wives.

### **1.4.3 Customary Laws**

In Uganda, statutory law is applied alongside customary laws. Despite the entrenched bill of women rights in the Constitution and international ratified instruments, discriminatory statutory, customary and religious laws remain in force, particularly in areas of family law, property law, and property inheritance law. This is provided under Section 15 of the Judicature Act. Applying customary law is equally applying culture norms yet in most societies cultural

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<sup>7</sup>Constitution of the Republic of Uganda, 1995.

<sup>8</sup> Succession Act Cap 162

practices are enemies of women's rights and stand as anti-hill in the initiatives of promoting gender equality.

#### **1.4.4 Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**

Uganda also ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1985, without reservations. The Committee on Convention of Elimination of all forms of Discrimination Against Women (CEDAW) requires state parties to submit reports on the progress of implementation of the provisions of the convention. According to the Uganda's CEDAW reports, 2005, there have been significant measures to enhance de jure discrimination of women and in this regard, the Equal Opportunities Commission (EOC) Act derives its mandate from the constitution, which requires parliament to make laws to establish the Equal Opportunities Commission and provides for equal treatment of women and men respectively. This EOC Act provides a legal basis to challenge laws, policies, customs, and traditions etc. that discriminate against women. In most of its reports, the EOC says that progress with regard to operationalising the EOC, is curtailed by failure to finance it because it mostly focused as one which favors women. The same happened on the Domestic Relations Bill. The report says the progress on Domestic Relations Bill has been slowed after it was withdrawn to allow for further consultations following protests from sections of society on contentious clauses, where objections were raised in regard to cohabitation, polygamy, co-ownership of matrimonial property (particularly land)<sup>9</sup>. Although

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<sup>9</sup> Uganda Human Rights Commission, Annual Report 82-83 (2000-2001)

#### **1.4.5 Other International Instruments**

Uganda has also ratified several other United Nations human rights conventions relevant to the rights of women, including the International Covenant on Economic, Social and Cultural Rights in 1987 and the International Covenant on Civil and Political Rights in 1995, the Convention Against Torture in 1986 and the Convention on the Rights of the Child in 1990. Uganda has also ratified the African Charter on Human and Peoples' Rights (ACHPR) and, in July 2010, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). Uganda is also a signatory to the African Union Solemn Declaration on Gender Equality in Africa.

Although most of the African states do not specifically grant freedom of equality of women to men, Uganda in its constitution is endowed with such provisions and has ratified several international instruments to enforce and promote it. In March 2000, the Human Rights Committee adopted a comprehensive General Comment No. 28 on equality of rights between men and women. The committee is very clear that the right to gender equality is not merely a right to non-discrimination but positive measures are required<sup>10</sup>. In 1997, Ministry of Gender Labour and Community development came up with the National Gender policy, whose overall goal is to mainstream gender concerns in the national development process in order to improve legal or Civic, Political, Economic and Cultural conditions of the people in Uganda, in particular, women.

With all the above however, Uganda is among the ranking states that still abuse women's rights despite the fact that our constitution and ratified international instruments are entrenched with the bill of women rights. Men have been

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<sup>10</sup> 2000, Human Rights Committee Report



granted the audacity by culture, society and legislations to trample on women's rights. Such provisions are discussed in more details below and it is the pivot of this research. The aim of this is to challenge the views held by most people that entrenched right in the 1995 constitution guaranteed as they are in general, brought gender equality yet traditional or customary practices have time immemorial remained strong bondage in society and this has made gender equality almost impossible resulting into calls for enacting more laws.

#### **1.4.6 The Domestic Relations Bill**

Attempts have been made in the Domestic Relations Bill which proposes on property rights, matrimonial property and widow's property inheritance and general property rights even during the lifetime of the spouses. This Bill when it was presented in parliament it was strongly contested especially clause 66 (2) that provided for acquisition of interest by a spouse in the property of the other spouse in stages- as acquisition of 20% of the estate in property after 5 years of marriage; acquisition of 30% of the share in property after 10 years of marriage; acquisition of 50% of the share in the property after more than 15 years of the marriage. This would at least regulate property inheritance customs and women who constitute over 70 % in agricultural sector would own, and have land rights.<sup>11</sup> This would result into boosting their income and cure the scourge of gender inequality to property inheritance but the bill was not passed up to now and is in a comma because it tested the anger of men in parliament.

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<sup>11</sup> Domestic Relations Bill 2001

#### **1.4.7 Conclusion**

In my opinion, although the government and its affiliated institutions has offered a growing range of women opportunities, and women by several statutory laws are seen as protected to equal rights, unprotect ion in various provisions are seen such as laws not granting them total audacity to own property in perpetuity, and this opened up opportunity for Non-Government Organizations (NGOs) to sprang up to claim the applications of this rights, it is still so calling. Unless statutory laws keenly truck out the traditional mushroomed cultural value considerations and stereo in men's thinking that make them to feel that it's their natural right to trample on women, nothing much will change.

#### **1.5 Statement of the Problem**

During the constitutional making process (1988-1995), the major concern on women was the long history of their oppression and discrimination throughout the pre-colonial, colonial and post-colonial eras. This is because traditionally women were thought to be wives and mothers, meant to stay at home for domestic work, family related and a husband's object. Generally, women were not perceived to be public actors or public decision makers. The 1995 constitution recognized and guaranteed the women status to an equal footing with men. One would, therefore think that women's rights are wholly upheld. However, inequality to property inheritance is a tramp on women's rights or women still continue to suffer gender inequality not only due to debilitating influence of culture and patriarchy, but also because of slow pace and lack of willingness of law reformists in key areas with laws that still discriminate women from property inheritance. Therefore, there has been tension between legislators and gender activists for the struggle to reform, consolidate and enact laws relating to property inheritance, and this is the logic behind tactical refusal

to pass the Domestic Relations Bill 2003, and any other women upholding women discriminatory laws in several statutes. Therefore the drive towards women's emancipation and the elimination of all forms of discrimination as guaranteed in the 1995 constitution is still a hopeless.

## **1.6 Hypothesis**

Uganda being a state with strong traditional cultural engagements, it has met challenges to legislate constitutional provisions that are guarantee rights of a woman or a girl child to property inheritance or to achieve their fullest constitutional rights as guaranteed by the 1995 Constitution of the Republic of Uganda and in the ratified international instruments. Therefore, the 1995 constitution and the international instruments that granted women 'equal status' with men needs a strong back-up of other domestic statutory laws on the crucial matter of land as a property for inheritance so that the already existing constitutional provisions are not weakened or swallowed, due to already firmly entrenched cultural values that strongly backs social traditional engagement that are gender discriminative on property inheritance. Statutory and patriarchal customary laws deprive women their rights to inherit property as a patriarchal society, most land in Uganda is usually registered in the name of men.

## **1.7 Purpose and Objectives of the Study:**

### **1.7.1 Purpose**

The purpose of this study is to examine whether women inherit property (land) by way of succession and if not could it be the failure and weakness of the legal frame work which is in existence or it is because of gender cultural influences that has outweighed the legal framework to property inheritance by women in Uganda specifically in Nakaseke District where the vice is so rampant.

### **1.7.2 Objectives of the Study**

1. To examine and understand whether constitutional provisions postulating women rights of inheritance in our constitution and ratified international instruments have not only improved, but deteriorated over the years due to customary practices that appear to outweigh the constitutional provisions.
2. To examine and measure perceptions on whether the un-enacted women laws such as the Domestic Relations Bill is caused by the influence of long usage customs relating to women not to inherit husband's property (land).
3. To examine and enhance effective measures for the prohibition of laws and practices that discriminate women in Uganda from inheriting property of the deceased.
4. To analyze and harmonize the conflict between law, culture, and gender equality for purposes of consolidating them to enhance and harmonize women's constitutional rights to inherit property.
5. To encourage legislators to making property laws that are gender based to achieve women's contributions to state building and development.
6. Finally to present evidence on the ways under which women in Uganda are deprived rights of property inheritance by both statutory and customary laws and practices through experiences as shall be demonstrated by women in the research study.

## **1.8 The Scope & Concept of the Study**

### **1.8.1 Scope of the Study**

The study traverses on the strength and weakness of the current legal regime from protecting women from the scourge and lusts of customary practices in

most societies (ethnic tribes) that discriminate them from property inheritance. It covers the provisions of the 1995 constitution, statutes and provisions of the ratified international instruments that regulates and bestows rights to women to own and inherit property (land) but which still appear as a myth and a dream to most societies due to strong influence of cultural norms in Uganda. This study examines the provisions to discover whether they pass that sweeter taste and strength of traditional customary practices that marginalizes women basing on gender. The thesis is conducted in Buganda region and the study is centered in Nakaseke District to represent the region and the country. This is because people of this area are deeply indoctrinated in culture and have strong holds on traditional practices particularly their tribal norm to property rights, inheritance, to mention and these practices are notorious besides the prevailing provisions. The study inquires into questions of whether the long traditional practiced customs (cultural practices) usurped the prevailing laws relating to gender equality to property rights.

### **1.8.2 Concept of the Study**

The research examines the concept of gender equality in property (land) inheritance in Uganda besides the prevailing statutory laws that mandates for the same, failures and recommendations if any to harmonize statutory and customary laws that has an impact on women property inheritance.

## **1.9 Research Methodology**

This section briefly gives an insight on the research methods that were used in the collection and analysis of the data obtained from the case study areas. All the methods applied, relied basically on three main sources of information.

1. Documentary sources

2. A questionnaire surveys

- a) of households.
- b) of legislators.

3. A community participatory assessments focusing on specific issues.

The above were supported by a research study population, sampling technique, data collection instruments and methods, sources of data, administration, data processing analysis, presentation and limitation of the study. The researcher used various study guides, references and methodologies. The documentary source included review of related written documents domestically published and international bodies, states, organizations and individuals in a bid to ensure that the research did not simply reproduce various new biases but comprises collective and comprehensive approach. This was aimed at creating a clear understanding of the different texts in light of the concept of gender inequality in property inheritance.

A case study approach was also used by the researcher because it was convenient on the ground and the researcher was in a position to get exposure into the conflict in question that is the legal regime pluralism fused with statute law and culture. Data was collected through discussion and interview, which were all direct. The interviews mostly oral was conducted and key informant who were interviewed provided information on property ownership held by men and women in the communities and on trends of acquiring them and social norms surrounding property ownership and inheritance. The selection was done purposively. The researcher visited family units. A total of 40 individuals in 70 family units were interviewed in the 18 villages. A total of 60 percent of these individuals were women considered as primary respondents. Family units were chosen randomly from the villages. In each unit, up to three adults (18 years and above) were interviewed. These adults included the male and female heads (if both were present) and one or two other adults, including adult children,

grandparent or siblings of the unit. One Family member, referred to as the primary respondent, was asked questions about ownership of property (land) and to identify all the parcels of that anyone. Each primary respondent was asked to mention portions of land in a unit and ownership, and the manner was obtained either by inheritance or by purchase, then who decided this ownership, was it a clan meeting or by way of a will, then was asked more detailed questions about those that he or she owned, whether the ownership was individual or jointly. The other interviewed members of the unit (referred to as individual respondents) were asked about only whether a girl child or a woman in their family own or share, or inherit it. The answers are critically discussed in the data analysis. Key respondents were also asked ownership documents and who keeps them, and rights over the said parcels of land and decision making power regarding the ownership which they reside on. Men respondent typically, respondents would answer that they received it as an inheritance if they received it on the death of the benefactor. Very few female respondents answered that they inherited land from family or clan land. Other respondents included a randomly selected cross section of elders female and male whose information appeared to bear an apparent importance to the study.

The library research method was also widely used and embodies a close analysis of various textbooks, newspapers, reports obtained in conferences and regional and international seminars, case law books and statutes relevant to women's rights to inherit land as a property for inheritance. More information was also obtained from sampled woman parliamentarian Hon. Margaret Nantongo Zziwa, the Administrators General's Office (Office of the public Trustee at Georgian House in Kampala), non-governmental organizations that deal with women rights and special attention was paid to FIDA-Uganda, and Uganda Law Reform. The internet was also widely used especially websites advocating to women rights.

It should be noted that the study population included women and men of adult age, clan/family heads, non-government organization, relevant government departments, and women parliamentarian. Each method and tool applied in conducting this thesis intended to generate in-depth information on the subject matter.

This research was limited by the short time allocated to it. The researcher would have conducted a more comprehensive study and critically dig out all legal effects of exorbitant application of culture to deny women from inheriting property. The research was also constrained by financial constraints as it involved travels to reach the rural areas.



## CHAPTER II

### 2.0 LITERATURE REVIEW

According to Human Science Research Council (HSRC) 2008, Uganda's economy is mainly agrarian with 71% of the total population engaged in substance agriculture production. The agriculture sector employs a relatively higher population of women (83%) compared to men (MoFPED 2013). 71% of Ugandan rural households are headed by men, with a slightly lower percentage in urban of 47 percent. This percentage is not active in agriculture. Women cover big percentage and men are in civil service and business in urban and rural service. But unfortunately, men own the property as landlords and women are just tenants' with a lesser interest or almost nothing. This means property and particularly land which is essential to economic survival is also governed by men, and women are slaves to men. Historically, both statutory and customary law governs women's rights to land. Further stated that the customary tenure regime prevailed in Uganda before the advent of colonial rule, land tenure relations under customary tenure varied, depending on the customs of a given ethnic community. HSRC further asserted that, Uganda has made great strides in enhancing women's rights and incorporating gender equality into policy and legal framework<sup>12</sup>.

However, despite the remarkable progress, rhetoric has failed to translate into action. Classic example such as failure to secure co-ownership of land for spouses in land legislation and the summary shelving of the draft domestic relations bill in 2005 on the flimsy grounds of insufficient consultations are a blow to the seemingly positive environment. They show up the political will to directly tackle gender issues. However, HSRC did not suggest possible legal

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<sup>12</sup> Human Science Research Council (HSRC) 2008

framework to balance gender equality into a true promise of human rights. Since Uganda primarily relies on Agriculture production and women form the core labour force, it is understood that secure women's rights in land can be a strategic tool for poverty eradication and over dependence on men leading gender inequality because of women are of low income status.

According to **Valerie Bennett** property relations in pre-colonial Uganda were quite different from what exists today, they were largely patriarchal, but the advent of colonial rule brought in and promoted consolidation and registration of land rights into individuals. This strengthened the African patriarchal which is endowed with strong cultural values to men. Prior to 1995 constitution, we had gender neutral and statutory silence in land laws in that no written law prohibited or granted audacity a woman to own land, but the 1995 constitution was first positive step taking an <sup>13</sup>affirmative position regarding gender issues. However, it does not directly provide for women's property and land rights well knowing that during the pre-colonial, colonial as stipulated in the 1900 Buganda Agreement women were not given land except Namasole (the queen mother) and Nalinya (classificatory sister of the kabaka). Now the statutory laws such as The Land Act which came into force on the 2<sup>nd</sup> July 1998 and The Succession Act dispossess the Widow on Property rights. Inequality in inheritance is supported by both statutory law and the informal use of customary and Islamic laws in Uganda, despite the fact that the people of Uganda embraced the ideal of gender equality over a decade ago when the country ratified 1995 Uganda Constitution one of the most progressive and democratic constitutions in Africa today<sup>14</sup>. Although Benett attacks the statutory laws that grab the widows land rights, does not contribute and attack the in-depth of the

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13-Valerie Bennett, Ginger Faulk, Anna Kovina & Tatjana Eres, Inheritance Law In Uganda 2006

14<sup>13</sup> ibid

legal regime as making it intentionally to fail gender equality on property ownership.

**Article 154 of the COMESA Treaty** provided that “women make a significant contribution towards the process of economic transformation and sustainable growth and thus it is impossible to implement effective programmes for rural transformation and improvement in the formal sector without the full participation of women”.<sup>15</sup> The above statement is a positive stipulation towards gender equality and directly links women’s rights to economic development. However, COMESA did not do much to empower women to achieve property rights which are the key to income improvement to balance the power of breadwinner that highly privileges women and leads to abuse of their rights. Land has been owned customarily disregarding women to own it.

Mayra Gomez in a report for **Global Initiative for Economic, Social and Cultural Rights (GIESCR)** 2012, Mayra Gomez asserted that the current Millennium Development Goals (MDG) framework does not directly address women’s land and property rights.<sup>16</sup> That Goal 3, provides to Promote Gender Equality and Empower Women, but does not contain any specific target in relation to these rights. Similarly, Goal 1, which seeks to eradicate extreme poverty and hunger, provides no specific target in relation to these rights.

We should be committed to equal rights and opportunities for women in political and economic decision-making and resource allocation and to removing any barriers that prevent women from being full participants in the economy. We resolve to undertake legislative and administrative reforms to give women equal rights with men to economic resources, including access to

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<sup>15</sup>Article 154 of the COMESA Treaty

<sup>16</sup>The Global Initiative for Economic, Social and Cultural Rights(GIESCR) 2012

ownership and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technology. Further asserts that, women's land and property rights have been recognized in dozens of international human rights instruments and related standards<sup>17</sup>. In 1997, the former United Nations Sub-Commission on the Promotion and Protection of Human Rights adopted the first resolution by an international body directly addressing women's housing and land rights specifically, urging governments to; take all necessary measures in order to amend and/or repeal laws and policies pertaining to land, property and housing which deny women security of tenure and equal access and rights to land, property and housing; Encourage the transformation of customs and traditions which deny women security of tenure and equal access and rights to land, property and housing; and, Adopt and enforce legislation which protects and promotes women's rights to own, inherit, lease or rent land, property and housing.<sup>18</sup> This is actually a good step but policy makers have not adopted this administratively.

**In a case of Edward Mulindwa v Kalanda (1996) HCB**, the respondent lodged a caveat on a piece of property of which her husband was a registered proprietor in order to prevent its sale. The applicant sought to remove the caveat as purchaser of the property, the respondent challenged the sale on grounds that her husband and their 14 children lived in a house situated on the same property. She argued that the house had been completed by both herself and her husband and that the house was subject to a mortgage which herself had pursued and that her husband sold the family home fraudulently. Lady Justice Byamugisha held that the wife's declaration does not disclose the nature of her interest in the land and how it arose and whether this interest of hers is capable of being registered as a change of land when her husband is still alive.<sup>19</sup>

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<sup>17</sup> Supra,16

<sup>18</sup> supra

<sup>19</sup> Edward Mulindwa v Kalanda (1996) HCB

Accordingly, UWONET, 2006, asserted that 'people are confined in arbitrary contradictory world, governed at one moment by universal laws which apply to all citizen, and at another moment by laws, which solely to members of a given gender, tribe, clan, and ethnic group'. Claims for women property rights are sometimes resisted by vacillating between the two systems and successfully neutralizing any reforms may be instituted <sup>20</sup>. This statement is correct but he generalized and did not categorically in analytical manner show how women are affected in the area property rights.

Chronic Poverty Research Centre (CPRC) while conducting research on the causes of chronicle poverty in Uganda, their survey revealed that what determines control over assets, in all societies, asset ownership is based on legal and social norms. It is linked particularly to social norms regarding property rights and also to those regarding marriage and inheritance.<sup>21</sup> They concede that women However, their research does not presuppose what should be done for the social norms that seem to override the legal norms in determining property inheritance in order not to create imbalance in gender equality.

Mathias Samula in his report to the law reform committee on gender pointed out the problem of culture as an obstacle to protection, practicing and formulating gender equality laws by pointing out the possible factors that hinder the operation of such laws.<sup>22</sup> He further stated that with diversity of culture, it is very complicated and difficult to come up with a law that doesn't clump some of the cultural values. He therefore advocates for a law to encompass all cultures. Further still, cultural practices like traditional marriage practices

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20 UWONET, December 2006. Gender Audit of Key Laws affecting Women in Uganda.

21 Chronic Poverty Research Centre (CPRC) report.

22 Mathias Samula. Report on the proceedings of the Law Reform. Law Review Committee Workshop 1990 held in Kampala.

among others are some of the repulsive cultural practices in the protection of the rights of women. However, it's unfortunate that the authors did not suggest any solution to the above crucial problem. This still leaves us in a dilemma of the status quo.

**Jennifer OkumuWengi**, is accredited for her commendable work in her book, "The Law of Succession in Uganda. Women Inheritance and Practice, WEA Publications No.1". She acknowledges the fact that individual application of the various existing cultural practices at the same time with state law produces variable decisions with far reaching consequences for women and the context of the law. She appreciates that this is complex and results into conflicting values and she calls for a reflection on the appropriate concepts of the law. She goes on to expose how law has discriminated against women in all spheres of life, socially, politically and economically. She calls for a thorough juxtaposition of the law with reality in conjunction with meaning of justice, and at the end recommends that women should be empowered socially, politically and economically so, as to put them in equal footing with men as subjects and not objects of legislation.<sup>23</sup> This means there is need for legal reform which she did not recommend in this book as to property inheritance.

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23 Jennifer OkumuWengi. The Law of Succession in Uganda. Women inheritance and Practice. WLEA Publications No.1

Scholars, including **Tripp (2004)**, argue that the erosion of customary land ownership since colonialism has made women's access to land significantly more precarious as traditional protections of women's land rights through formal and informal relationships have weakened in the face of increased land commercialization and scarcity. Others claim that customary law is biased against women; **Kameri-Mbote (2005)** claims that customary law in Africa is characterized by the dominance of male community and family members over property and the lives of women, prohibiting women from owning or inheriting land because of their transient existence within the polity.<sup>24</sup> The formalization of land rights has not always benefited women, who may lose access and use rights to land once ownership is formalized.

**Sylvia Tamale** in her work "law reform and women's rights in Uganda" labours to analyze the discriminatory tendencies of the law against women in their social, economic and political area. She acknowledges the fact that legal reform alone cannot act as a remedy to women's problem. She is however conscious of the view that even if 'law in legislation' is far different from 'law in practice', law reform is sound foundation on which to formulate a ground for the emancipation.<sup>25</sup> We coincide with her assertion to only that extent that conscious of avoiding her apparent contradicting stand. In other words, while conscious of the view that legal reform is not enough, she goes further to acknowledge that it is a sound platform for emancipation of women. Her work was published before the promulgation of the 1995 constitution of Uganda and indeed some of her arguments were incidentally or coincidentally adopted in this constitution. Unfortunately, in a period of over twenty years of this constitution, some or hardly there been identifiable positive results especially to

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24 Kameri-Mbote (2005)

25 Sylvia Tamale in her work "law reform and women's rights in Uganda" East African Journal of Peace and Human Rights Vol 1 No.2, 1993

rural women where men's indebted by customs usurp the rights of women by strongly applying cultural values leading to persistent discrimination of women.

**Morris and Read (1966)**, they tried to analyze the law from the pre-colonial era through the colonial era up to post independence. They again attempted to traverse into several cultures of some ethnic groups in Uganda that included marriages, property ownership, and several others. The authors finally asserted that although English law appeared vigorous following its early acceptance and progressive acclimatization, the people of Uganda still retained strong deep-rooted customs that they apply as customary law and practice though its application is in the changing circumstances <sup>26</sup>. They acknowledge the fact that dual application of English law together with deep-rooted customary practices may accumulate or one overrides the other or lead to imbalance and inequalities in applying substantive law which may lead to miscarriage of justice to other social groups. Their assertion has continued to be evidenced where women laws legislated in the 1995 constitution has failed to put male and female at the equal footing in its real application causing the principles of gender equality a false promise. One cannot therefore assert that this dual law in Uganda has worked well when the consequences of such a law include a reproach of injustice, discrimination and keeping justice out of reach of a given section of the population. It should be taken as cognizance that the law in Uganda are biased against women and as such is not of much importance to us due to conflict of customary law, written law and human rights.

**Jennifer OkumuWengi**, further addresses the intricacies occasioned by the law to women. In her book "Women and the law in East Africa", she condemns the

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<sup>26</sup> Morris & Read (1966)



injustice occasioned by the law on practices in Uganda that emphasize on male chauvinism, which cultural practices that undermine women's dignity like, property inheritances<sup>27</sup>. She is conscious of the fact that state laws haven't been yet integrated by the indigenous social groups or tribes deeply rooted in traditional customs who continue to respond to their normative cultural beliefs in applying their customs in daily life social activities. Although she did not so much resolve by directly deal with the problem that directly deal with discriminatory and oppressive cultures and customs leaving a gap the long usage of customs practices that cause failure of gender equality in Uganda like traditional marriage practices especially bride price.

**Inglis B.O (1959)** is one of the important publicists who attempted to discuss the collusion of laws. He extensively discussed how any collusion or conflict of laws can be problematic not only to legislators or courts and academicians but also to the subjects of it. In interest of this research work, it means that injustice occasioned by collusion or conflict between legislated laws and customary law practice it's dangerous to the principles of gender equality. He describes a conflict of laws as a "dismal swamp filled with quaking quagmires" and that the ordinary court or lawyer is quite lost when engulfed and entangled in it.<sup>28</sup>

Although he did not show where comprehensively culture or customs in particular can have a serious danger to practicing the principles of gender equality, his contribution is crucial in that it labours to bring forward the repercussions of such conflict, which we have been enticed by this research to explore further for a better solution.

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<sup>27</sup> Jennifer Okumu Wengi ibid

<sup>28</sup> Inglis B.O (1959)

According to **Richard Anker**, asserts that social and economic roles assigned to women have indigenous origins albeit, with modifications of the colonial era in Uganda. He says that property and labour division which was centered along sex lines kept women in the background at home and offered recognition to men for their efforts<sup>29</sup>. As a result, men received better treatment and Uganda's history indicates that even today, as it were during the pre-colonial and colonial period, the trend applies and favors men even in property inheritance. Economic and social power was concentrated in the men, leaving no room for the recognition of women or their responsibilities and abilities. Anker although his works when analyzed prove that there was inequality in treatment of men and women and concentrated too much on labour; he does not relate the cause and tell that the division was based along the traditionalism of custom usage.

**Meinzen-Dick and Pradhan, 2002** while conducting a research on "women's property rights", they observed that their property rights are affected both by property rights law and family law. The presences of 'legal pluralism' in many countries complicate legal rights, especially for women. Legal pluralism is the coexistence and interaction of statutory laws with 'multiple legal orders such as state, customary, religion, project and local laws, all of which provide bases for claiming property rights'<sup>30</sup>. Their assertion could be very right but did not disclose clearly the legal status of Ugandan laws and specific provisions or statutes and which way that should be taken to be corrected.

**Margaret Synder** in her study on African Women particularly in Uganda arrives at a conclusion as the facts established in the United Nations Development Program Report 1997: Human Development Report. The report sets out the paradox that women in Uganda have economic responsibility but

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<sup>29</sup> Richard Anker

<sup>30</sup> Meinzen-Dick and Pradhan, 2002

without economic power. Synder further asserted that cursory analysis of Uganda's gender profiles demonstrates widening gender disparities a dichotomy between men and women as regards access to productive resources, poverty, levels, education and most importantly, economic opportunities and participation in the political process. Synder states that despite the women's activism and the positive attitudes and changes it has ignited, the situation of the majority of women calls for a more vibrant change. She makes reference to Sylvia Tamale who notes that sexual discrimination in the formal employment ensures women's continued dependency and subordination.<sup>31</sup> That women cannot inherit property and become also independent although some laws pretend to equate the problem but it's a false than a reality.<sup>32</sup>

**Joireman (2008)** on his data analysis on the issue of legal status and pluralism in Uganda explored the structural factors blocking the implementation of gender-equitable land reform by citing both corruption and a lack of capacity as impediments to the implementation of the Land Act. He noted that most women have limited understanding of the legal code and also lack access to legal advocacy, which is often rudimentary or non-existent in remote rural areas<sup>33</sup>.

Where legal structures do exist, they are mostly administered by local leaders, who may rule in favour of customary laws, rendering state law obsolete. This reinforces the marginal representation of women in local governance structures which in turn derives from the socially embedded power imbalance between the genders. While there are provisions in the Land Act to include women in the 'land boards' charged with adjudicating land issues at each level, there has been limited enforcement of this, and the boards remain dominated with male. And

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<sup>31</sup> Margaret Synder, *African Woman* 2007

<sup>31</sup> Supra

<sup>33</sup> Joireman 2008

also both of these reflect the weak enforcement of the national legal system in rural areas. In addition to the country's poor legal superstructure, Whitehead and Tsikata (2003) attempted to address the limitations of Uganda's land laws and the use of the laws themselves to produce gender equality. However, the researchers could not know which proper law should be implemented to produce gender equality of land rights.

According to **Phillip Mayer**, 'the legal position of a woman for whom bride wealth has been paid is too definable rather in terms of duties and restriction than in terms of rights. A woman has little personal liberty, no right of property traditionally, no claim against the husband for the custody of her own children and no power to restrain him from cruelty toward herself or from adultery. Phillip was good at citing its impact but emphasis was too much on importance of bride price and did not clearly tell whether it was as a result due to long practiced custom that has usurped the rights of women. He even does not give suggestion on how this scourge property ownership leading to gender discrimination faced by women can be regulated or possibly done away with it. Understanding how women, as distinct from men, acquire and control assets is critical to developing policies to increase their productivity and well-being and to reduce their vulnerability. Deere and Doss while examining the 'gender asset gap' observed that around the world 'relatively little work has been done on the distribution of asset ownership within the household' (Deere and Doss, 2006: 2).<sup>34</sup>

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<sup>34</sup> Deere and Doss 2006

Although, there is adequate documentation on gender inequality in terms of the inheritance laws of Uganda (Joireman 2008, Kanabahita, 2006; Meinzen-Dick and Pradhan 2002, Okumu-Wengi, 2001, 1997; Mbilinyi 1997, Sebina-Zziwa, 1998), there is little evidence to show how this inequality comes about in practice. The **United Nations Human Rights Committee** (which monitors States party compliance with the International Covenant on Civil and Political Rights) has similarly said: “Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.” The Committee has also stated unequivocally that “The capacity of women to own property may not be restricted on the basis of marital status or any other discriminatory ground<sup>35</sup>. This commitment from the international community is an important foundation on which to build, and must be urgently translated into reality for the world’s women and creation of gender balance to reality. This means that although it appears as if there is constitutional provisions in all instruments of laws local and international, they lack in themselves force compared to cultural values which overrides them, and a lot need to be done to check the legal regime on property inheritance visa viz culture.

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35 United Nations Human Rights Committee Report on Women Rights 1999

## CHAPTER III

### 3.0 A CRITICAL ANALYSIS OF THE LEGAL REGIME ON GENDER EQUALITY

#### 3.1 Introduction

##### 3.1.1 Natural & Biological Analysis

Women and men are different sex creatures because both have different features on them biologically. For women in legal meaning is substituted to mean any group of relatively disadvantaged people, and the degree and type of danger posed into their rights varies with the nature of being disadvantaged,—but instead all cultures interpret and elaborate these innate biological differences in relation to a set of social expectations about what behaviours and activities are appropriate, and what rights, resources and power men and women possess. Following this, social norms have also influenced the meaning and implication of the term gender. It has come to be understood as the relationship between male and female and it contains an unequal power in relationship with male domination and female subordination in most spheres of life. According to Moses 1993; Gender equality is not precisely defined but it is viewed ‘as the equality of opportunities in access of human capital and other productive resources, and ability to contribute to the development processes. It may well be understood in three dimensions; equality before and under the law, equality of opportunity in economic, social, political and other fields; and equality in dignity (internal worth of a person) between men and women. In its precision, it is a goal of equal opportunities in resources, rewards and legal rights enjoyed by men and women<sup>36</sup>.

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<sup>36</sup> Moses (1993) Gender under the Law in Africa

### 3.2 Conceptualization

According to Moses (1993), “Gender differs from biological sex in two given ways; we are born either male (man) or female (woman). But the way in which we become masculine or feminine is a combination of the basic biological building blocks and unfortunately, the interpretation of our biology by our culture is different. Every society has different scripts as values for its members to follow as they learn to act out their feminine or masculine role, and as such, every society has its own language. From the time that we are tiny babies until we reach old age, we learn about and practice ways of being male and female that our society prescribes for us.<sup>37</sup>” Also states that the attitude and practices of a given society always incorporate the perceptions of women’s beauty and sex as natural personality or born, and social gender role definitions put against women invariably negate their physical and psychological identity. As a result, oppressive forms of bodily differences that describe women’s sexual functioning, speech, mobility, intellectual possibilities and creative potentials emerge. Pain becomes an essential part of the process that women are required to bear with pride, respectability and compliance.” Further defines **gender** as the social attributes associated with being male and female and the relationships between women, men, girls and boys, as well as the relations between women and those between men and **Gender equality** is attributed to behaviors appropriate to women or men and about the relations between women and men – in other words, gender – is shaped by culture<sup>38</sup>. Gender identities and gender relations are critical aspects of culture because they shape the way daily life is lived in the family, but also in the wider community and at the workplace.

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<sup>37</sup> Moses (1993) *ibid*

<sup>38</sup> *supra*

Gender equality includes the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. When analyze *Mary Mafumbo*, it is found out that the concept of gender is literally understood as the socially construed roles ascribed to males and females, and that these roles, as learnt, change overtime and vary widely within and between cultures. If gender is attributed to culture, then one would like to better know what culture is about.

At the World Conference on Cultural Policies (Mexico, 1982) the delegation adopted a more comprehensive approach definition of “**culture**” to mean that part of the fabric of *every* society, including our own that shapes “the way things are done” and our understanding of why this should be so. “Culture” is described to refer to the beliefs and practices of a society, particularly where these are seen as closely linked with tradition or religion. “Culture is the whole complex of distinctive spiritual, material, intellectual and emotional features that characterize a society or a social group identity. It includes not only arts and letters, but also modes of life, the fundamental rights of the human being, value systems, traditions and beliefs”<sup>39</sup>. The values of culture of a particular society or social group are what summed up to be customs or culture.

According to **Osborn's Concise Law Dictionary (2009) 11th Ed, Sweet & Maxwell** defined **customs** to refer to a rule of conduct, obligatory on those within its scope, established by long usage. It **explains**; that a valid custom must be of immemorial antiquity, certain and reasonable, obligatory, not repugnant to statute law, though may derogate from the common law<sup>40</sup>.

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<sup>39</sup>Culture policies Mexico (1982)

<sup>40</sup> Osborn's Concise Law Dictionary (2009)



**Discrimination** has been defined to mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The concept of discrimination is considered from three different angles: income discrimination, occupational discrimination and participation discrimination<sup>41</sup>. To the extent that the force participation rate of women in key positions of social responsibility of the state is lower than that of men, participatory discrimination exists.

**Property rights** are claims to property that are legally and socially recognized and enforceable by external legitimized authority. They are broadly defined as land rights that can be understood as a variety of legitimate claims to land and the benefits and products produced on that land<sup>42</sup>. Inheritance, transfers from the State, actual ownership or the rights of use. **Inheritance** is a practice of passing on property, titles, debts, rights, and obligations upon the death of an individual. **Property inheritance** means having beneficiary proprietary rights in property or land of a deceased by way of succession<sup>43</sup>. A **Will** is a **written** document made while a person is alive in which he or she gives instructions as to how his/her property and other affairs should be taken care of after his death. Sometimes a person will make an oral will by saying how s/he wants to have her/his affairs and property handled by stating these wishes out loud in front of witnesses and an oral will may not be accepted as valid in every circumstance<sup>44</sup>.

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<sup>41</sup> supra 40

<sup>42</sup> Women's Property Rights in Uganda, Published by Human Science Research Council, 2008.

<sup>43</sup> Commentary of the Domestic Relations Bill (DRB), Law and Advocacy for Women in Uganda, 2003

<sup>44</sup> A Guide on Will Writing in Uganda, A Simplified Hand Book, by Department of Administrator General/Public Trustee

Witnesses may not remember clearly or may disagree with each other. Written wills are the most respected because the person can make her/his wishes known and record and this cannot be disputed; and all the definitions and elaborative meanings as stated above by the researcher, clearly intended to draw attention to a reader what the legal frame worker have to understand, interpret and then make laws that are in line with gender equality. The issue of women or female to land inheritance should indicate a balance in all constitutional making process and the existing land statutes or laws.

### **3.3 ANALYZING GENDER EQUALITY & INEQUALITY**

#### **3.3.1 Women and Property Inheritance**

Interviews conducted included extensive discussion about property. Women were asked about the history of how they came to live in their current location and whether they owned the property where they were residing, and their proof of ownership. Based on the actual context, these questions were asked using slightly differing wordings and were given varying emphasis. For instance at Namirembe, discussions concerning property were often initiated with conversations around what women consider wealth to be, which expanded the definition of property beyond land, house, and livestock, while at Kabeere interviews focused closely on land, household properties and house.

The phrasing of the question around the concept of wealth in Nakaseke provided insights into the differing uses of the kinds of property and the centrality of land to their existence. Almost all the women counted as part of their asset wealth is livestock and other household and business assets, such as bicycles, sewing machines if any, radios, televisions, and others. However, land

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was the central asset, and all the other components were subsidiary to it. Nalule is quoted to state “I wonder about some women, they say that I have my wealth when are rearing 2 cows, three goats or items like source pans to use at home. Land is the wealthiest thing. If you have land, then you have everything because you just handle a hoe and go and dig. Because if you are healthy and go to dig you cannot be defeated, you get everything”. Nalule stated this in an interview and what she intended to bring out was that land is everything that can make someone capable of achieving everything so denial of some rights to own property is as well denial of her a better successful life.

### **3.3.2 Land an asset for human livelihood of all levels**

During the study, it was revealed that different levels of economic development are most shaped by land as a property in the lives of the respondents. In Nakaseke where agriculture is the main occupation, it is vividly evident that land is a productive asset and an essential part of livelihoods strategy. It is also a productive asset for residence, where almost all respondents reside in their homes largely women grow food and are actually reliant on land for agriculture to take care of families. It is further worth to noting that land is a source of income for women. A number of women respondents reported that they don't have formal sector wage-earning jobs apart from cultivating land and get money to care for themselves, land, women in Nakaseke district undertook a range of activities that includes sale of livestock related products, brewing and selling millet sorghum and cassava liquor (malwa), and so many other things from agriculture because all of these activities depend on availability of arable land and livestock, it provides some explanation for why women in Nakaseke would prefer to have protection of property inheritance and ownership.

### 3.3.3 The household as a unit of production

In Nakaseke District, a clear division of labour between men and women appear within the household. Women are responsible for providing for the family on subsistence farming, caring for children, preparing meals, and managing households needs. In this relationship, women gain more access to land by providing their labour compared to men. Men on the other hand provide for household necessities other than food. Most men work in urban areas and others migrated to Kampala city where they do funky work other than agriculture. Women do provide necessities like paraffin, soap, salt, oil, children's school fees, and infrequently occurring expenditures. Men also build house for their children and family; in fact, failure to do so is an often repeated complaint by the women and a source of dissatisfaction within marriage.

Marriage in Nakaseke is not a means of acquiring property and it is not regulated anywhere that a married woman is entitled to land rights, and interests of ownership are automatically created on the land of her husband. In an interview with **Kemigisha Viola** at Katalekamese village, she stated that what we women call our land is the husband's land and this claim stops the moment the husband dies. Actually, women revealed that most importantly now are women to work and purchase their land and own it in perpetuity.

An old woman aged 82 called **Safina Namukasa** a resident of Kapeeka asserted that a place of one's own is perceived as conferring great independence of women from male partner dominance and more control in decision making. She explained further that this independence means the woman's self help in her health care and caring for her children give away her land in succession as you wish since men discriminate us from property inheritance. It also helps women to have self control and it is only safe for women from gender dominance and freedom from gender discrimination and violence.

### **3.3.4 Acquiring, joint ownership, accessing and tenure of security of property**

A noteworthy is that women are more often reliant on the institution of marriage to acquire and access land. And also it is noteworthy that majority of men in Nakaseke live on land that was given or obtained from a clan grant. Few men according to the study have purchased land from their sweat. It is worth noting that a majority of women married and widows in the study area live on marital clan land. The researcher's analysis is that the independence of a man to give perpetual ownership or co-ownership of land is also limited to clan restrictions or customs. This means that even if the man would love to distribute this land to his loved wife or girl children, he thinks or is restricted by the custom rules that this land is for the clan. Due to the will of keeping a continued existence of a clan land, he ends up distributing it to the boy children only. Women in the study area have attempted to acquire land through self-purchase but the number is very small that rates to 2% of the total interviewed respondents. Women love to live on land that they have acquired or purchased and own in perpetuity but the inability to acquire their own property has not been due to a lack of desire; but lack of the financial means to do so. It was critically taken note by the study that women do not love to own land jointly with their husbands. They claim that this is conditioned under the pretext that men have children outside the marriage which affects the quality and relationship of their partnership. Although some women perceive it in the context that joint ownership of land in a relationship could create harmony in the household, they think that they are also insecure about losing their claim if the marriage dissolved or if their husband died. The legal or formal joint ownership for some women is hard to conceptualize as putting a man's name on documents of ownership makes women vulnerable to losing it. Women's zone of comfort is the state rules to put in place a clear cut of ownership in percentage for marital land and rules on perpetual ownership of land totally and women legalism to succeed the husband's property without

regard to customs. The continued customary rules on property inheritance and ownership on marital clan land, impeaches their rights to equal footing with men. This legal regime puts the position of a woman in a property related conflicts with in-laws, co-wives, children or clan members; and if state laws are not clear the situational status as it stands is doing less protection. According to current customary rules and state laws, the ability to negotiate some rights depends to a certain extent on the quality of relationships with in-laws and other clan members, as well as their status in the community. The only security tenure of women or widows is having children because this is viewed or perceived in a context that the widow is holding land in trust of her children benefit, but after their children reach majority age, children at times start claiming for their beneficial interests and eventually the widow move away from their marital land. The context in this research is that secure women property rights in their livelihood spectrum is placed in a position that secure tenure and reduction of gender imbalance, and puts women to a same footing level with men in decision making and secure observance and protection of their constitutional rights as human being.

### **3.3.5 Customary Procedure of distributing inherited property**

Although this has been discussed previously, but being the pivot of this research, the research need not to leave any stone unturned. It is worth noting that property inheritance is a very important aspect in many African livelihood or social settings and the procedure is almost the same though the style of applying it may differ depending on the customs of each society. According to the survey conducted in Nakaseke district, inheritance is governed by either a written or oral will. In the latter case, an (aging) father invites clan elders to physically witness the distribution of his land to his children: to the heir (who retains the largest portion) and those sons who previously had not benefited from gifts of land (unmarried sons mainly). On his death, the clan elders are

expected to implement the wishes of the deceased accordingly. If neither written nor oral will exists, the clan elders are empowered to distribute the deceased's land according to their customs.

One **Nakiganda Margaret** of Butalangu in Nakaseke narrated that, "after the death of my husband, so many things happened that I was forced to abandon my marital home and return to my parents. The in-laws distributed the land according to the number of boys per widow. We were two wives, the first wife had two boys while I had five boys, so the piece that was given to my children was bigger compared to hers. Me as a widow and wife to the deceased and my two girl children we were not given anything. We were ordered to cultivate those parts of the boys until they will stop us when they will be ready to use their land.

Rural land that is a communal asset (kibanja) is passed onto men according to custom. In my clan girls do not inherit land, however, they are allowed to use it especially after failing in their marriages, they are allowed to dig, but for the boys they own the property. Another respondent **Nabatanzi Milly** narrated that, when my father died, girls did not get anything at all, I was the only one who was the child (of my father and mother) but because I am a girl, no one bothered to listen to me. When he died the land was given to my step brothers.

In the survey area, a woman is not her partner's automatic property heir; land is passed from father to son. Women do not inherit land from their father either because daughters marry outside the clan and would therefore take the inherited land with them to another clan. Husbands do not bequeath land to their widows for the same assumptions; there is concern that the widow might sell the land to non-clan members. The responsibility of looking after the widow falls to the son, who must protect his mother's interests.

Therefore, the woman's responsibility of managing the land of her deceased's husband seems to be attached in the interest of a trust for the children. Property for children but not hers until they reach or attain the majority age to be able to manage it themselves. The only opportunity a woman has is to have boy children from the relationship, whether that partnership was legal or not. However, even in this case a widow's continued occupation and use of land is dependent upon a number of factors. If the widow is young, she will be encouraged or forced to remarry or if the children are all girls, her rights are not protected either, and especially if it was a polygamous relationship, and male children exist from the other then property shall be for that with male children.

Therefore, under the customs, clan does not recognize girls as people who are also entitled to property. Whoever does not get married or manage to succeed in marriage comes back and stays at home but with no legal rights to the deceased's property. The only opportunity the clan may not at times interfere with, is only when the land was purchased by both spouses. If at all the widow contributed to the purchase of land, then she is automatically entitled to a share of it. However, if the land was inherited by the partner as customary (clan) land, the widow then has no inheritance rights together with her girl children save the provision in the succession act that provides children of the deceased an equal share without discriminating sexes.

### **3.3.6 Women's Tenure status**

A Woman's unequal ownership of property due to inheritance rights has greatly contributed to women's poverty and this place them at a social disadvantage. For women living under customary systems of tenure, marriage remains the primary means for access to land on which to live and grow food or cash crops. Women's rights are vulnerable to forfeiture or erosion of various kinds. It is therefore not sufficient for statutory laws to guarantee women the right to



purchase, own and dispose of property in their own right without setting clear and strict regulatory legal framework that will ensure change in practice, and that good laws shall shelve and deliver rights' for women. Until the control of property within the household is vested in the hands of the two spouses, gender equality in property inheritance may remain a dream. Explicit provisions for women's property rights or tenure in law and policy is even essential to control domestic violence and the expansion of income for household welfare.

### **3.3.7 Conclusion**

The Government Land Policy 2010, in its 5<sup>th</sup> Draft Version, also bring hope to put women on board of gender equality because it undertake further legislative measures to protect the rights of women to inherit and own land and that, this will address gender equality and ensure equal rights to land before marriage, in marriage, after marriage, and at succession without discrimination and will do away the issue of culture that appear to override statutory laws in land inheritance and land rights to ensure effective gender based property (land) rights.

## **CHAPTER IV**

### **4.0 CHALLENGES FACING GENDER EQUALITY**

#### **4.1 Introduction**

According to the Ugandan constitution and all other relevant statutes subordinate to the principle law, Uganda has no laws prohibiting women from owning land. However, under custom, women traditionally do not own family land in Uganda. Although women do most of the agricultural work, it is estimated that they only own 7 percent of agricultural land. Land generally belongs to the family or clan and is held by men, though women may have the right to live on that land and cultivate it. It should also be noted that although the circumstance appear as stated above, the laws that grants women to own land or property is not gender based. This is because of the prevailing discriminatory provisions, governing inheritance which results the vast majority of women being excluded from land ownership.

#### **4.2The Effect of Socialization to Property Inheritance in Uganda**

Socialization is a phenomenon whereby we are indoctrinated into a particular belief of what is appropriate feminine behavior for women and appropriate behavior for men. This in turn creates and sustains gender differences. Socialization per se would not be problematic but the problem lies in the fact that people or society accord one gender more values and privileges than the other. Cultural values in our society emphasize the autonomy of the family to men, making others to avoid or miss the core meaning. At the end the patriarchal values cause women in situations of inferiority within the family and men dominates authority of everything holding the most decision making. This has existed from generation to generation. The status of women is low because

it is institutionalized within the state structure. Eventually male sex predominates the female sex at the young stage and when they reach a stage of decision making it meets a clear line when male already have the vice of being superior to women and you find that this scourge of women discrimination is continuous as due to cultural values and has not only have an impact in marriage but even in property inheritance. You then find out that women do not care whether they have a right over land in respect of ownership or during the situation of inheritance, women leave ownership to men because they also grew up with that vice that men are superior in values than female persons. This calls for an immunization by the legislated provisions that shall put an end to this.

#### **4.3 Gender Discrimination in property inheritance as both Structural and institutional factors**

The study revealed that gender discrimination on property inheritance is more of a custom structural rather than a causal problem. According to the analysis of all the literature the study traversed, it came out with a positional stand that it is the structure of the family that leads to or legitimizes the acts, emotions or phenomenon that are identified as the “causes” of gender discrimination on property inheritance. This family structure is the one which is endowed with customs and at the end is mirrored and confined in the structure of society which condones the oppression of women and tolerates male discriminations as one of the instruments in the perpetuation of this power balance that even infringe on the rights to property ownership.

#### **4.4 The impact of Prevailing traditional attitudes and practices**

Customary marriage is still the norm in rural Uganda, with relatively few couples obtaining civil legal marriages. It is typically guided by the traditional

norms and practices of a community, and is unregulated by national legal statutes on marriage, including those governing inheritance and the division of property. Within Uganda, it is viewed as a social institution that involves many interests beyond those of the couple getting married. For example, the lineage group also has interests in the marriage (Birabwa-Nsubuga, 2007). It confers a sense of social recognition and legitimacy on couples through the traditional ceremonies and celebrations that accompany them. It is worth noting that customary marriages are unregulated by national laws but are legally recognized under the Customary Marriage (Registration) Act. This gives discretion of registering customary marriages but the law does not guarantee the effects of unregistering these marriages. Therefore legal measures need to be legislated that should declare unregistered customary marriages void to spouses.

#### **4.5 Legal procedure for spouses to attain rights on matrimonial property (land)**

The law is silent on procedure during attainment of matrimonial property, at its dissolution and inheritance of property after the death of one spouse. Also to note is the ideologies towards gender or beliefs and stereotypes of the expected characteristics of a particular gender, stand to be a standing block for women to gain property rights and enhance status. These ideas take some assumptions for the role of women in one way or the other and as a consequence leads implementers of policies to fail applying statutory provisions and policies that favors women to have property rights. Equitable justice requires both the removal of weaker laws, adding or enacting stricter laws and removal of harmful customary practices which abuse women equal rights with men, and ensuring that women are empowered to claim their rights (Nussbaum, 2001). Since gender inequalities and discrimination against women persist in Uganda, it is necessary for law makers and policy implementers in the area of gender and

justice to focus on creating an enabling legal and policy environment and to devise appropriate means of support for women and men so they can equitably co-exist justly.

The principle of recognition of women which is a major attribute of equality to property inheritance should not be misunderstood as a lamentation about women's undoubted suffering but a serious trend even for male-domination and protection by culture to inherit and own property of which they (women) have contributed to attainment of such properties so gravely and denial of such legal rights amounts to injustice. Preparations should start today and only by you the current State policy law makers. Clan heads and the individual-father or husband of someone to change the mindset that if women inherit property they will dominate over men and enrich other clans is to colonial and primitive setback in this post modernism era. If it is multifaceted practice it will mean that each a man and a woman will be sharing from the reaches of the other because the law should not only apply to men's property after his death but also to a woman's property.

#### **4.6 Inefficiency of statutory laws on property inheritance and its enforcement in Nakaseke District**

Property inheritance in Nakaseke is governed by the Succession Act. But apply to only few individuals if not 7% of the total population. Property is apportioned among the deceased's family members according to provisions and widows are entitled to inherit on the husband's property a 15% share. FIDA-Uganda and other women's rights organizations successfully petitioned the Constitutional Court in 2006 to declare some provision unconstitutional. However, over 5 years later, the Succession Act has still not been reformed to address women issues. The Law Reform Commission assured the FIDA/FHRI delegation that the women issue on property inheritance was on their agenda, following a

recent referral by the Ministry of Justice empowering them to take action. Obstacles to land ownership, particularly in a traditional mostly agrarian society, have huge bearing on women's capacity to become economically empowered. To counter this trend and curb the widespread dispossession of women, wives and widows, activists have campaigned for reforms to Uganda's property laws to provide for spouses to be deemed co-owners of "family land," i.e. land on which the married couple lives and depends. However, there does not seem to be any near prospect for further amending the Land Act (which was last amended in 2010 to provide that 'spousal consent' as is required in writing for the sale of family land on which the family resides or depends. Thus, efforts to enhance women's access to property through inheritance must target discriminatory statutory laws in addition to customary and religious practices.

While there are a growing number of contemporary laws, as framed by the modern State, which give women equal opportunities with men, the process of marriage and the traditional customs have remained largely unchanged. Thus, there remains a mismatch between marriage practices and inheritance laws, with the strength and biases of the marriage practice often overriding inheritance laws. This is also evidenced in the process of dowry practices. In many cultures, a daughter's dowry is viewed by her family as her direct portion of her inheritance, even though it may be typically absorbed by the new husband and his family. Thus, while in some communities' women do have the formal rights to inherit land, the social representation of inheritance in the form of dowries and the strength of the practice of marriage trump on the given laws. The fact also is that there are some numerous laws and policy reforms geared at the equality in property inheritance in Uganda, but the area of implementation still remains a gaping hole in the achievement of that equality. Despite the adoption of a gender sensitive Constitution of the 1995, legislative provisions that discriminate against women continue to exist. Although it may appear as there

is implementations, the study revealed that the percentage rate is at less than 9%. This means that there is low progress in removing de jure discrimination in property inheritance and preventing and eliminating de facto discrimination against women.

#### **4.7 Conclusion**

The legal system is a vital part of the ideology that defines and promotes gender equality or promote and separate spheres for women and men's systems. The 1995 constitution is entrenched with such rules together with the international instruments that give a bill of rights for women so as not to be discriminated. The law that specifically deals with the vice appears as if it has been enacted and pretends as if it is in plenty. The biggest problem is that most of the provisions are unconstitutional because they do contravene with other provisions. One would love to know, if the law is in plenty as drops of rain, why have this law failed to wipe out the vice of the scourge of culture or customs? Does it need critically to be addressed by the policy makers that although the law appears to exist to regulate gender equality to eliminate discrimination on women to property inheritance, the structural belief that men are the breadwinners. The answer to me is in affirmative. Men are accorded with a lot of privileges by customs and this continues to be a scourge which needs legal redress constitutionally. Because Property inheritance is the most efficient way of maintaining the status quo; it is the best tool available to men to keep women in their low place and deny to them any means of realizing their power and potential. This vice should also be addressed by policy makers and if necessary criminalize such acts that cause such gaps, like if a girl child is denied her right to inherit on the deceased's estate by the clan head.

In short, gender equality continues to be a myth other than a reality. The legal regime calls a legislative clinical revision and new laws and amendments needs to be made to clean out the scourge of customs that empowers one sex and disempowering the other. This is what exactly Roseau Montesquieu of advocated on “checks and balances”. That means that the disposal of the male patriarchs in our society to maintain the power of gender relations and ultimately women’s subordination and oppression may not end unless it is seriously checked by law and policy makers. Thus this explanation indicate that gender inequality or women discrimination to property inheritance endowed in the framework of cultural socio-economic and political spheres is cleaned up by the legal regime.



## CHAPTER V

### 5.0 FINDINGS, CONCLUSIONS AND RECOMMENDATION

This chapter covers findings of the study, conclusions from the findings and recommendations. The research was conducted in Nakaseke District particularly Semuto, Butalangu and Kapeeka. The respondents included local leaders, peasant women married, clan heads, widows, elderly up to sixty five years from the eighteen villages of Kabeere, Kadunda, Kapeeka, Butalangu, Kikyusa, Kilema, Kikandwa, Namirembe, Bukakala, Kyererezi, Bukokolo, Naluvule, Kifampa, Semuto, Kapeeka, Butalangu, Mabindi, and Bukatira, parliamentary members, and Advocacy Organizations assisted with literature review. The researcher also opted for a structured interview method which involved discussions with the respondents in their homes and places of work so as to create a more conducive environment for interaction. The study involved a total of 40 respondents from Kapeeka, Semuto and Butalangu sub-counties. Questionnaires were not used since majority of the subjects are illiterate. In the structured interview method, the following questions were put to the subjects by the researcher;

- Do you own property in your family? If not why?
- Does denying women their right to inherit and own property of their late father's or husband negatively affects their rights?
- Does property inheritance have negative impact on the girl child or women?
- Do clan heads interfere with women's enjoyment of their late father's or husband's property? If so how and why?
- Is there need to revise the prevailing laws on property inheritance and ownership in a family? Is there a need to legislate new laws?

- Should cultures and customs that infringes on women's rights to own and inherit property be regulated or abolished?

## 5.1 Findings

### The impact of customary practices against women on property inheritance and ownership

**Table 1:** Showing respondent's views to whether traditional customs or culture has an impact against women on property inheritance.

<b>Do you own property in your family? If not, why?</b>	<b>No. of respondents</b>	<b>%ntage</b>
<b>Yes</b>	<b>3</b>	<b>7.5</b>
<b>No</b>	<b>37</b>	<b>92.5</b>
<b>Total</b>	<b>40</b>	<b>100</b>

Table 1 shows the views of the respondents as to whether culture has a greater impact against women to inherit property such as land of their deceased's father or husband. It was observed in the study that 92.5% of the respondents women, both daughters and widows, old and young do not own property and their views were that property of a deceased husband or father belongs to a clan, yet a woman if is a married one is not a member of the clan and a daughter after getting married looses

membership of her clan because spends her life time to another clan where she becomes a semi-clan member. To them, they revealed that although they wanted so much to inherit and own land, this is governed by the rules of the clan and these customs hampers women property inheritance.

On the other hand, 7.5% of the respondent and all were women own property and hold the view that a woman to own property must not be married to any man and must have worked and obtained it through her sweat. Some who own property were widows who revealed that after their husbands' death, they were chased by clan members from clan property, so they worked by their sweat and purchased those small portions of land to sustain their livelihood. Most of these women were adults of mature age and mostly becoming to older age.

A section of the clan heads and local leaders educated and uneducated confirmed to the researcher that although Uganda has laws on property inheritance which are gender based, they cannot apply because in rural areas rules of customs apply than other statutory laws. That section of people did not buy the idea that women can inherit their father's or husbands' property. They held the view that land is a property of the clan and a woman cannot inherit it because it would be giving it away to another clan. It is therefore evident that culture impacts on women against property inheritance.

## **The social effect of denying women their right to inherit property**

**Table 2:** Showing the impact of denying women the right to inherit property as it infringes on their legal/constitutional rights.

<b>Whether denying women their right to inherit property has negative impact on their rights?</b>	<b>No. of respondents</b>	<b>Percentage</b>
<b>Yes</b>	<b>33</b>	<b>82.5</b>
<b>No</b>	<b>7</b>	<b>17.5</b>
<b>Total</b>	<b>40</b>	<b>100</b>

Table 2 describes the views held by respondents on the issue as to whether or not denial of women to inherit property negatively affects their rights. It was observed from the findings in the study area that the commonest forms of abuse of rights of women range from domestic violence, specifically wife beating, and abuse of property rights. Eight two percent point five respondents were of the view that most cases of domestic violence and abuse of women's rights stem from being positioned in a poor status by not owning or having legal authority over ownership of property in a family or a home. Nalule Mwajjuma woman representative at Local Council one in Kikandwa village admitted that there is a connection between not having a legal interest of ownership of property such as land in a family and abuse of women's rights due to the

big number of reports she receives connected to disagreements on ownership of property, and because women's status is vulnerable due to poor or almost nothing or low income levels. She is quoted to having stated that "if women had property or the law had automatically placed a share on them in a family property that kind of abuse of their rights could not exist in families".

Statistics could not be proved due to poor record keeping. Many women in the rural areas lamented that on many occasions they do the planting and weeding alone yet on harvesting, their husbands do the selling and use the proceeds of the sale to get another wife or buy local brew. Attempts to get redress from local leaders are not of much help since they are reminded that such land belong to the husband. It was also observed in an interview with a medical personnel that many women when they object either to the sale of produce or their harvests are battled by their husband but many of them keep silent, or come to clinics and nurse their wounds without taking any legal steps against their husband because they are aware that the land is for the man. Many women believe that even if they buy property or their mothers or fathers give them property as gift has to be put in the authority and ownership of men because they ought not to own land. One woman revealed in an interview that, you cannot have a voice in a family or your home where you have nothing in terms of material wealth. Who can listen or respect a poor you". Regarding the issue of equality in a home between a man and a woman, majority of the respondents both male and female, grown up children and old persons commonly responded that this was a myth and that the notion of equality in all sphere of life of a man and a woman will never exist. They mostly asked why is men who by custom own property alone.

Seven point five percent were with the view that women not to inherit property do not negatively affect women's status but instead enhances the status of such women by being submissive to their husband and as a consequence a family lives in harmony.

From the foregoing, it was observed that majority of the respondents agree that there is a connection between property inheritance and abuse of women's rights like the right to own property and freedom from equality and non-discrimination. This is because of the belief held by both men and women that a woman cannot own property, and this consequently gives the man a bigger chance to assume control over women and women are maintained in a poor status.

### **The impact of property inheritance on the girl child**

**Table 3:** Showing respondent's views as to whether property inheritance negatively affects the girl child

<b>Does P/I negatively affects the girl child</b>	<b>No. of respondents</b>	<b>%ntage</b>
<b>Yes</b>	<b>37</b>	<b>92.5</b>
<b>No</b>	<b>3</b>	<b>7.5</b>
<b>Total</b>	<b>40</b>	<b>100</b>

The study discloses a link between property inheritance and abuse of the rights and freedoms of the girl child by their family and clan members. It emerged from the study that brothers and clan members deny girl children to inherit property of their fathers. A respondent in Bukatira village called Najjuma Mangalita said that their father Onesimus Mutyaba Mukasa had bigger junks of land and that at the distribution

after the death of their father, bigger junks were given to the boy children by the clan and for them were given smaller pieces of land of whom they were even rejected to build houses in them that they may bring non clan members in the clan property and eventually grab them. They were only allowed to cultivate in it. She explained that her dream was to have a big poultry farm and agro farming plus animal grazing but she could not have it done because she had a smaller portion of land of which she could not even build a farm house. She further narrated that she had a husband whom she had two children and passed on. That that man had not bought land by the time he died. So Najjuma thought that she could be a powerful farmer and get money to sustain her two fatherless children, pay school fees until they graduate but her dream was shattered when clan heads denied her land. That this affected her since her two girl child had to get married after school dropout at primary six level because she failed to pay school fees for her children.

Seven point five percent (7.5%) respondents however, said that denial of property inheritance to a girl child has no link between property ownership of a girl and abuse of rights of a girl child. They asserted that some girls are indisciplined so they fail to couple up with the marriage and that historically girls never owned family property but they had strong families.

From the foregoing, it is observed that there is a link between property inheritance and abuse of rights of the girl child especially the right to financial and life sustenance, to care for her family, employment, property ownership and right to education and the issue of early marriage. The high rates of poverty in villages is due to denial of women to inherit

and own property because a bigger percentage of women are land cultivators who require total rights to utilize land for self-development.

### **The social impact caused by clan heads in distribution of property of a deceased person**

**Table 4:** table showing interference of clan heads in property inheritance

<b>Do clan heads interfere with women's enjoyment of their late father's or husband's property? If so how and why?</b>	<b>No. of respondents</b>	<b>Percentage</b>
<b>Yes</b>	<b>36</b>	<b>89.3</b>
<b>NO</b>	<b>4</b>	<b>10.7</b>
<b>Total</b>	<b>40</b>	<b>100</b>

Eighty nine point three (89.3%) answered in affirmative that clan heads interfere with property distribution of the deceased. A one Nantumbwe Nkemba (widow) asserted that in a circumstance where a deceased dies without distributing his property either by a Will or by physical gifts, clan heads are the one to distribute property among the children of the deceased. He asserted that most property including the principal residence is given to the heir and other children get peanuts. She illustrated that her late father Musa Parma was a private personal secretary to king Muteesa II and got land in Najjanankumbi, Kibuye, Kayabwein Mpigi, Maddu, Nakasongola, Kiboga and Kayunga. That he did not distribute it and gave the right to Namwama in a Will. That what Namwama did, is to distribute property among boy children and gave girl children smaller pieces of land. That Namwama used to allege that land is for the clan and to keep it



safe land for the clan be given to boys than girls. This illustration is a proof that clan heads under the spheres and confines of culture deny women the right to inherit property of their deceased's father or husband. Ten point seven percent of the respondents were of the view that a customarily property such as land belong to clan, and only clan heads exercise their rights to safe guard it from being taken away by another clan but not interference. There was however, respondents such as parliamentarians and district leaders who had a view that property inheritance should be regulated to limit culture interference and contradictions. They asserted that land is so much attached to culture and clans' own and safe guard land as to belong to their culture. This view was mainly held and supported by other women respondents. Hon. Nantongo Zziwa revealed that in Buganda culture is stronger than the need to protect women from enjoying their rights. That unless is regulated in our legislations, culture shall continue to interfere and infringe on the constitutional rights of women because it attaches land with strong values as a recognition of their traditional customs. Assistant Administrator General Nankya Nusura revealed that 87.9% of the total complaints filed in their office is caused by clan heads who give away land to boy children and disregard the girls and their mothers because are women. This calls for stricter provisions in the statutes to do away with it. She said that culture should not be allowed to trump on women's rights.

## 5.2 Recommendations

1. Uganda must sensitize senior citizens (clan heads) who are too prone in cultural relativism if we are to 'mainstream' gender equality. At the same time, specific programmes need to target customs that undermine women in order to build and change societies' attitude on property inheritance and ownership in social spheres in order to protect gender rights of women.
2. Gender inequality to property inheritance particularly land should be redressed to bring on board clear provisions that usurp the rights of women to inherit property of their deceased husband and fathers. Laws should be designed in this legal regime spouses to hold ownership of matrimonial property even at the death of one of the other by making provisions for joint or co-ownership of family land and matrimonial property. The Succession Act Cap 162 should be amended together with the Land Act Cap 227 to provide equal rights in succession, registration and inheritance of family property.
3. CEDAW should hold governments accountable on policy and principles of women to enjoy equal rights with men in all spheres of life including rights to property inheritance. This is because CEDAW goes beyond to supervise quality on rights commitment to ensuring that women's rights are respected, implemented and bear results.
4. National Laws should be reviewed to regulate customs that infringes on the rights of women to inherit and own property because customs contradicts the prevailing legal provisions. Legal practice in area of operation and implementation should intend to ensure that culture should not let justice to be denied. All statutory laws; civil, family, penal, labour

and commercial laws should not jeopardize the equal rights and rights to property inheritance to women.

5. There is need for legal awareness among women and men on their gender rights and entitlements as it varies from place to place according to statutory laws. This will enable women and men to understand their rights and centers of redress in case of abuse or violation of such rights and how to access justice in such abuse of rights. The real fact is that many women do not know how to access justice in case of abuse of their rights so that they can seek for protection or claim compensation or damages in case it is required. Therefore the need to raise legal awareness to both men and women should also entail judicial consequences and mechanisms of obtaining remedies from court.
6. According to the research findings, women and men do not have equal rights in property inheritance or own property of a deceased's estate or own land despite the fact that Uganda ratified international instruments like CEDAW. Although Uganda ratified these international instruments, the measure of implementation is not yet at the equilibrium. There is a need therefore Uganda to harmonize its legislation of customary laws with that of the international instruments for men and women to have equal rights in property inheritance and ownership.
7. Finally, Uganda should amend its constitution to expressly empower courts of law to refer to international law including treaties that have been ratified in interpreting the bill of rights. This need flows from the fact that judges have on many occasions omitted to put into consideration such instruments which expressly provide for rights of women. There is need for judicial activism so as to encourage judges to move away from the old practice of blindly following bad precedents set by their predecessors in deciding cases involving right of women to property inheritance and ownership.

### 5.3 Conclusion

The study shows that in enjoyment of the right to culture (article 37 of the Constitution), the rights of women and the girl child have been infringed upon. Society has given more regard to protection of the African culture in practice like property inheritance to be enjoyed by a boy child for safe guard the clan property/wealth, at the expense of women's freedoms. It is absurd that judges who are the stewards of justice have in many cases ruled in favour of preservation of property inheritance and ownership even were plaintiffs have produced evidence linking property inheritance to abuse of rights of women.

The advent of President Museveni's government brought a ray of hope in the hearts of women with the enactment of provisions in the constitution on equality of women with men. Uganda has ratified several international instruments with provisions on women's rights; however, these have not helped since judges are interpreting the constitution in the interests of culture with disregard to article 2(2) of the constitution which renders harmful customs like denial of women to inherit property. Various campaigns have to be aimed at regulating property inheritance and women's rights to equality which have been frustrated by society in order to protect the selfish interests of men. With the high levels of poverty and illiteracy, society is more than willing to continue suppressing women from ownership of property.

The reforms or changes that could be made, aid prevailing statutory laws, enforcement initiatives, education initiative to repeal the gender discriminatory provision of the existing Succession Act, and Land Registration Act to grant women and their daughters of the deceased the same ownership and inheritance right. Also, the reforms should also aid to change judicial and administrative processes to allow greater access to courts and equality or uniformity in the administration of justice. Further, there is a requirement parliament to provide

trainings or proper dissemination of information to public, police, judges, magistrates and all government officials and NGOs to sensitize publics about the inheritance constitutional rights. As it was stated a World Bank Survey Report on the status of Women on land and property inheritance, "That some women's rights have settled on a test whereby cultural values should only be scrutinized if they affect the autonomy of the women. Autonomy is violated if a cultural norm or value affects the capacity of a woman to make decisions about her own life and this should be avoided in our legal regime.

We have to commend the 1995 constitution which made the provision for the Bill of Rights which includes rights to be enjoyed by every person without discrimination on grounds of sex. This means that women should enjoy these rights on equal footing with men. It is worth noting that these rights are inter-related and abuse of one could lead to abuse of others; for example if women are denied the chance to exercise the right to equality on property inheritance, and non-discrimination, they cannot enjoy property rights. In many communities, the fact that women have continuously suffered from discrimination has hindered their enjoyment of other rights. These rights are also inalienable which implies that they accrue to every human being by virtue of their being human and hence cannot be taken away.

The 1995 Constitution of Uganda makes provisions for women rights and also emphasizes the notion of equality and non-discrimination; these include article 33(1) right of women to equal dignity with men, article 32(2) which prohibits discriminatory laws and customs, article 31(1) which accords both men and women equal rights in marriage and on dissolution, article 21 (1) on equality and non-discrimination, article 23 on personal liberty and article 24 provides for the right to personal dignity and freedom from torture, article 20 (1) provides for specifically that human rights are inherent which implies that no person has

power to interfere with realization of these rights. The state also ratified international and regional human rights instruments on women's rights for example the Convention on Elimination of all forms of Discrimination against Women which provides for equality and non-discrimination in all matters including in marriage of family, and also mandates state parties to eliminate customary practices which are based on the idea of superiority of sexes under art. 5 (a). With such law in place, one could assume that women would be given chance to enjoy such rights. However, the situation on ground is different since women have continuously suffered abuse of inequality from customs of societies and also a belief that a woman cannot share property of his husband because it remains a clan property. According to United Nations report, it stated that "the differences in sex roles begin at the moment of birth when a child is first identified as a male or female. From that moment on the child is expected to behave in accordance with the roles of customary assigned to him or her by sex. By the time the girl child becomes an adult, she finds that her world has been slowly but effectively restricted by the rules and expectations of others. She learns that being born female set her apart from men and limits her rights in law and in practice".<sup>50</sup>As earlier stated, the status of women in Uganda draws its inspiration from traditional and cultural values. Tradition hardly accepts the existence of women as human beings with rights accruing to them. It is worth noting that the abuse of rights of women enshrined in the 1995 constitution it has been partly due to the fact that majority of the women are either ignorant of their rights due to the high levels of illiteracy and lack of avenues to exercise rights.

Property inheritance though popular in Uganda has been criticized for infringing on the right to equality and non discrimination which is a fundamental right on the realization of gender equality and rights of women contained in the many statutes as has been repeatedly discussed. It is impossible for women to enjoy

other rights in the Bill of Rights like right to property and personal liberty if they cannot enjoy equality and freedom from non discrimination. It is provided for in the 1995 Constitution of Uganda and also other Human Rights Instruments both regional and international. Article 31 (1) (b) of the 1995 Constitution of Uganda provides that a man and a woman are entitled to equal rights during marriage and at its dissolution. Article 21 of the constitution also provides that a man and woman are entitled to equal rights. Article 1 and 7 of the Universal declaration of Human Rights and Article 2 of the African Charter on human and People's Rights also provides the right to no discrimination on the ground of sex. Article 16 of the convention on Elimination of All forms of Discrimination Against Women provides for equality and non discrimination in matters relating to family which includes matrimonial property. All the above said articles oblige state parties to take all appropriate measures to eliminate discrimination the field of property inheritance in order to ensure equality of men and women. Article 5(a) and 2(f) of the CEDAW prohibits cultures and customs that discriminate against women. Despite the various provisions on equality and non discrimination contained in the various statutes highlighted above, the enjoyment of such freedoms by women remains just but a dream due to the presence of cultural practices like clan rights to reserve clan land among only clan members which are jealously protected by society which recognizes only men and women have been reduced to the status of minors.

Property inheritance by boy children or men confers subordinate status on women and leaves them vulnerable to a legal system that does not recognize their status as human beings with inherent rights. Property inheritance not only gives men authority over women but subject women to household labour and gives men broader control over the affairs of a family and obligates women to obey their husbands. Jamil Ddamulira Mujuzi stated that it was observed by Odoki Commission that the right to freedom from non-discrimination was one

of the central rights that women wanted to be guaranteed in their new constitution. It was also observed “that women were discriminated against by oppressive and old fashioned traditions, customs and practices in the various tribes and communities which tend to reduce them to the status of children”. It is important to note that even with the presence of provisions against non-discrimination in the constitution of Uganda; women have not enjoyed this freedom due to the protection given to property inheritance by customs and communities’.

In the property inheritance system under customs, the notion of equality and non-discrimination does not apply to women. Women have been denied their constitutional right to equality and non-discrimination right from the time of a woman is married and bore children and among her children girl children also becomes victims as their mother. In most communities, property ownership and inheritance women do not take part during distribution by the clan heads when their husband has passed on. They are just spectators in situations that directly affect them and eventually become custodians for the property of the boy children if they are still young. In this system, girls and women are relatively powerless to determine their own personal lives. It is only the boy children and men relatives considered as clan members that have a right to share on the deceased’s property. This is clear discrimination and also an example of gender inequality.

The right of every individual to own property is laid down in various statutes and in domestic, regional and international instruments<sup>1</sup>. At national level, the right to own property is provided for under Article 27 of the 1995 constitution of Uganda. At the international level, article 17 of the Universal Declaration of Human Rights provides for the right of every one to own property. Article 15 of CEDAW mandates states to ensure that women are accorded the right to



administer property while article 14 of the African Charter on Human and Peoples Rights provides for the right to property. It is worth noting that despite the fact that Uganda has ratified several international instruments and international treaties, many judges have ignored them in their judgments yet the Constitution under article 287 recognizes them. Lillian Tebatemwa observed that in Uganda, the oppressive patriarchal order gives the male absolute superiority over women in the ownership of property. She further observes that although the husbands of these women had abandoned their duty to acquire property for the family, educate their children and dress their wives, they still exercise their right over property that women have acquired and in response subject them to physical abuse if they questioned that right. This is a clear manifestation of gender inequality by men brought by property inheritance and ownership. It is unfortunate that most women in Nakaseke District are so blinded by demands of customs or communities coupled with illiteracy that they cannot stand up for their rights since not even the local leaders are unwilling to interfere with matters of the family or culture and eventually society dictates on gender equality. In discussion with one of the local leaders in Semuto Sub County, he said that their hands are tied and as leaders are not in position to change the status quo brought by culture. It is an irony that evens the affected women themselves accepts that man has a right to deal with the property as he so wants. Property inheritance impedes women's right to own property; customary practices like authority clan heads have to distribute property as they so want after the demise of the deceased have hampered the implementation of the law on property inheritance and property rights. This is because upon inheriting all property of the deceased or owning property in a family, the man assumes all the rights of the woman since she is also considered as property of the man and has no authority to decide on the wealth of the family. It should be noted that in many societies, girls also like women or wives are not allowed to own property since upon marriage, the change membership of the clan to

another clan of the husband and therefore it would be illogical to let them own property. In the case of *Yudesi Kasikulu v Kyakulebule*, the court of His Highness Kabaka held that a girl could not inherit her father's property because a woman was regarded as property and property could not own property. Therefore, the logic behind refusal by customs to deny a woman the right to inherit property is because women are also property objects. These views may seem as archaic but are still held by many people especially the elderly who are clan heads and even women in the rural settings. Article 26 of the 1995 constitution provides for the right of every person to own property. This is an attempt by the state to protect the rights of women who have been reduced to chattels.

Courts have also started realizing women's rights to own property as illustrated in the case of *Uganda v Jemima Kyanda*, court held that a woman in Uganda is capable of owning property. However, with customs like land being a property of the clan infringes and tramples all women rights which makes the legal regime a failure and calls for enactment of more laws.

To sum up, lamentation that Uganda has the best constitution ever, and that the bill of human rights that guarantee the rights of women is a women's land mark to a democratization process in the 1995 constitution of Uganda, and that gender equality was adopted that put women and men on the same footing should end. Customary practices have made gender equalities a dream other than a reality, a myth other than a practice. Therefore, legislators should not relax to wait for angels to act, strict laws should be a solution for gender inequalities.

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