

**AN EXAMINATION OF THE LAW ON THE PROTECTION OF MATRIMONIAL  
PROPERTY RIGHTS IN UGANDA**

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### DECLARATION

I Wahwa Joseph declare that this dissertation is my original work and has never been published or presented to any university or institution of higher learning for the award of any academic qualification

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### APPROVAL

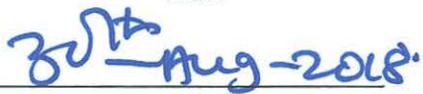
This is to certify that this dissertation has been submitted in partial fulfillment of the requirements of the award of a diploma in law of Kampala International University KIU with my approval as a University supervisor.

**MR. BYEKITINISA FRANKLIN**

Signature

Date

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## **DEDICATION**

I dedicate this report to people who participated in this research especially those who participated directly by answering my question, my mum Mary Kyomya, my brother Kirungi Humphrey, and lastly to my supervisor Mr. Byekitinisa Franklin

I am grateful

## **ACKNOWLEDGEMENT**

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Above all, I thank the Almighty GOD, whose mercy enabled this project to be a success.

## LIST OF ABBREVIATIONS

(CL)	Customary law
(CM)	Customary Marriage
(MPL)	Matrimonial property law
(NGO)	Non-governmental organizations

## LIST OF CASES

Case v Ruguru 1970 EA 55

Domestic Relations Bill

Julius Rwabinumi V Hope Bahimbisomwe Civil Appeal No.10 of 2009

Julius Rwabinumi V Hope Bahimbisomwe Civil Appeal No.30 of 2007

Kivuitu v. Kivuitu, [1990 – 19994] E.A. 270

LailaiGhinamouze V The Queen (1956) 23 EACA 609

Marriage and Divorce Bill, 2009

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## ABSTRACT

This article examines women's rights to property in marriage, upon divorce, and upon the death of a spouse in Uganda, highlighting the problematic aspects in both the state-made (statutory) and non-state-made (customary and religious) laws. It argues that, with the exception of the 1995 Constitution, the subordinate laws that regulate the distribution, management, and ownership of property during marriage, upon divorce, and death of a spouse are discriminatory of women. It is shown that even where the relevant statutory laws are protective of women's rights to property, their implementation is hindered by customary law practices, socialization, and the generally weak economic capacity of many women in the country. The article delves into the even weaker position of women's rights to matrimonial property at customary and religious laws. In many homes, wives provide labour to support their husbands without having a stake in the use or monetary benefit from it. Under Islamic law regulating intestate succession to property, the entitlements for widows fall short of the constitutional standards on equality and non-discrimination. Polygyny is widely practiced by Muslims implying that the widows share the one eighth whenever there are children or one fourth in cases when there are no children. Radical reforms such as adopting an immediate community property regime instead of the present separate property regime are inevitable if women's rights to property are to advance.

## CHAPTER ONE

### 1.0 Introduction

The chapter contains a background to the study, the problem statement, purpose of the study, research objectives, and research questions, hypothesis of the study, scope of the study and the significance of the study.

### 1.1 Back ground of the study

The law relating to matrimonial property is hinged on the concept of marriage. This law only and strictly applies to married and/or formerly married persons. In **Case v Ruguru**, court held that since the defendant was not legally married to the plaintiff, she could not base a claim of occupancy on ground that she was the plaintiff's wife.<sup>1</sup>

Marriage is the legal union of a couple as husband and wife,<sup>2</sup> Under Article 31(1) a person of the age of 18 years and above has a right to marry. There are various forms of marriages in Uganda. The forms of marriage recognized in Uganda include marriages conducted in accordance with the Marriage Act Cap. 251, Customary Marriage (CM) (Registration) Act Cap. 248, the Marriage & Divorce of Mohammedans Act, Cap. 252, the Hindu Marriage & Divorce Act, Cap. 250 and marriages contracted under or in accordance with any customary law recognized by the law of Uganda. A person can contract a marriage in any of the above forms.<sup>3</sup>

Matrimonial property in Uganda has not yet been clearly defined either by statutory law or case law. However courts have provided a starting point for determination of what constitutes matrimonial property. In the case of **Muwanga v Kintu (1997)**, Bbosa J noted that matrimonial property 'to which each spouse should be entitled is that property which the parties chose to call home and which they jointly contribute to.'<sup>4</sup>

The law relating to matrimonial property in Uganda has come a long way. To best understand the evolution of matrimonial property law, it is pertinent to understand the social perception of women's property rights in Uganda at the different times. Matrimonial property law (MPL) cannot easily be detached from the law relating to women's property rights. Indeed there is no

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<sup>1</sup>Case v Ruguru,

<sup>2</sup>Black's Law Dictionary pg. 3084

<sup>3</sup>The 1995 Constitution of Uganda

<sup>4</sup>Muwanga v Kintu (1997),

better argument to support this factual assertion than that of Twinomujuni JA in **Julius Rwabinumi V Hope Bahimbisomwe Civil Appeal no.30 of 2007** when he stated that, ‘A woman was regarded as a property of the man and totally incapable of holding property of her own independently of the man. As a result, the earlier court decisions held that women in a matrimonial relationship could not acquire and hold real property.’<sup>5</sup>

In the pre-colonial era, marriage and matrimonial property were basically governed by customary law. Customary law (CL) depended on the customs of the different societies in Uganda. During this time women could not own property. The property was basically owned by the man. A woman could hardly claim a thing on divorce. Okumu Wengi argues that this is because a woman was considered as a source of labour and divorce meant loss of source of labour (Weeding the Millet Field).

During the colonial era, courts interpreted customary law in terms favorable to women.<sup>6</sup>The courts protected the rights of women in relation to matrimonial property and ownership of land. The protection of these rights was embedded in two legal principles; the house property complex and the principle of gifting. The house property complex organized assets around autonomous female-headed houses. Men retained a few parcels of land but distributed the bulk of their assets to women for food production. This was premised on the idea of social order through food production. Under the idealized house-property complex, land passed from mother to son. Should a woman die or divorce before their maturity, the husband holds the land in trust for them.<sup>7</sup>

On the other hand the principle of gifting was simply premised on the idea that ‘once a man had allocated property to a wife’s ‘house’, the courts made it difficult for him to take it back’<sup>8</sup>The colonial courts perceived female authority to be a guarantor of social order from the 1930s to the late 1960s. Matrimonial property law at this time recognized women’s rights in marriage and sought to protect them.<sup>9</sup>

<sup>5</sup>Julius Rwabinumi V Hope Bahimbisomwe Civil Appeal no.30 of 2007

<sup>6</sup>Khadhadiagala, 2002 pg.2

<sup>7</sup>Khadhadiagala, 2002, pg. 10

<sup>8</sup>Khadhadiagala, 2002 pg.2

<sup>9</sup>Khadhadiagala, 2002 pg. 1

In the period between 1960s -1995 the law in relation to matrimonial property took a different position. Khadhadiagala argues that it was not until the late 1960s that courts favoured a more patriarchal vision of family and by the 1990s, entrenched in judicial doctrine was a legal presumption that property belongs to the male head of household (2002 pg. 1). This postulation reiterates the dictum in Twinomujuni's judgment in **Rwabinumi's case supra** when he observed that the law has a 'long history of treating the woman as an inferior partner in marriage'.

Matrimonial property law was governed by the Divorce Act 1904 which had its origin in the Matrimonial Causes Act of 1857 of England which Act had its roots in the common law of England. At common law the wife almost owned nothing. The wife's freehold property was controlled by the husband while her leasehold property belonged absolutely to her husband.<sup>10</sup> If the husband died before the wife, she resumed the right to all her freeholds but when she predeceased him, her estates descended to her heir subject to the husband's right, as 'tenant by the courtesy of England' to an estate for his life in all her freeholds in possession'<sup>11</sup>

During marriage, the wife took no interest in her husband's real property. If she survived him, she became entitled by virtue of her 'dower' to an estate for life in a third in all her husband's freeholds of which he had been seized in possession at any time during marriage, provided that she could have borne a child capable of inheriting, whether such a child was ever born or not.<sup>12</sup>

All personality in possession belonging to the wife at the time of marriage, or acquired by her during the marriage, vested absolutely in the husband who had the power to dispose of them In **Lailai Ghinamouze V The Queen (1956)**, court held that all chattels in the matrimonial home are naturally presumed to be property of the husband. Even if the husband died intestate during the wife's life, the property did not revert to her.<sup>13</sup>

There was a radical change in the law relating to matrimonial property in Uganda after the promulgation of the 1995 Constitution. This era is referred to as the post-1995 era. The Constitution introduced a new principle of law in relation to matrimonial property; the equality in marriage principle. This principle is encapsulated in Article 31 (1) of the 1995 Constitution

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<sup>10</sup> Divorce Act

<sup>11</sup> Lowe & Douglas, 2007 Pg. 127-128

<sup>12</sup> Lowe & Douglas, 2007 Pg.128

<sup>13</sup> Lowe & Douglas, 2007 Pg. 128

and it is to the effect that men and women are entitled to equal rights in marriage, during marriage and at its dissolution. As a result, several provisions of the Divorce Act which were not in conformity with the Constitution were declared null and void in the case of **Uganda Association of Women Lawyers & Others v Attorney General Constitutional Petition No.2 of 2003**.<sup>14</sup>

The question of equal rights in marriage has been a subject of debate. In **Julius Rwabinumi V Hope Bahimbisomwe Civil Appeal No.30 of 2007**, Twinomujuni JA held that at the time the bridegroom and bride become husband and wife, all the property they own become joint matrimonial property and on separation they should be equally divided and shared to the extent possible and practicable.

However on appeal to the Supreme Court, Kisakyi JSC observed that, 'The learned Justice of Appeal not only wrongly articulated the law as to what constitutes matrimonial property, but also how and when individually held property of person acquired before or during marriage becomes matrimonial property.' The court held that a spouse can own individual property as per Article 26 or jointly with his/her spouse. Further it was held that, 'Article 31(1) (b) of the Uganda Constitution (1995) guarantees equality in treatment of either the wife or the husband at divorce, it does not, in my opinion, require that all property either individually or jointly acquired before or during the subsistence of a marriage should in all cases, be shared equally upon divorce.' It was concluded that the question whether individual property became joint matrimonial property and whether it should be divided equally on divorce depends on the facts of each individual case<sup>15</sup>.

Where a spouse makes a substantial contribution to the property, it will be considered matrimonial property. The contribution may be direct and monetary or indirect and non-monetary.<sup>16</sup> In **Muwanga v. Kintu, High Court Divorce Appeal No. 135 of 1997, (Unreported)**, Bbosa, J., adopted a wider view of non-monetary indirect contributions by following the approach of the Court of Appeal of Kenya in **Kivuitu v. Kivuitu, [1990 – 19994] E.A. 270**. In that case, Omolo JA found that the wife indirectly contributed towards payments

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<sup>14</sup> 1995 Constitution

<sup>15</sup> Article 31(1) (b) of the Uganda Constitution (1995)

<sup>16</sup> Muwanga v. Kintu, High Court Divorce Appeal No. 135 of 1997



for household expenses, preparation of food, and purchase of children's clothing, organizing children for school and generally enhanced the welfare of the family and that this amounted to a substantial indirect contribution to the property<sup>17</sup>.

The property a couple chooses to call a home will be considered joint matrimonial property. This together with the property either of the spouses contributes to is what matrimonial property is. Summarily, **Bbosa J in Muwanga v. Kintu supra** held that 'the property to which each spouse should be entitled is that property which the parties chose to call home and which they jointly contribute to.'<sup>18</sup>

The question of whether property should be divided equally on divorce depends on the individual circumstances of the case. In **Gissing v. Gissing**, the House of Lords held that it is not in every case that the parties hold in equal shares. In **Mayambala v Mayambala, High Court Divorce Cause No. 3 of 1998**, the wife's interest in the matrimonial home was established at a 70% share. The Supreme Court in **Rwabinumi's case supra** summed it up and held that whether such property should be divided either in equal shares or otherwise depends on the facts of each case<sup>19</sup>.

The other important legal aspect in relation to matrimonial property is enshrined in section 38 of the **Land Act** as amended. The section guarantees the security of occupancy of every spouse on family land. This means that the spouse has a right to have access to and live on family land. The Land Act as amended under section 39 restricts transfer of family land without spousal consent. The Act prohibits the sell, exchange, mortgage, lease or transfer of family land without the consent of his or her spouse. In **Alice Okiror & Anor v. Global Capital Save 2004 & Anor**, it was held that in the absence of written spousal consent to mortgaging the property in issue for the amount stated therein, the mortgage created over it was void.

There have been attempts to modify the law relating to matrimonial property in Uganda. However these attempts have been futile. First was the Domestic Relations Bill 2003. This bill had been in parliament since 1965. It sought to define matrimonial property thereby clearing the

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<sup>17</sup>Kivuitu v. Kivuitu, [1990 – 19994] E.A. 27

<sup>18</sup>Muwanga v. Kintu supra

<sup>19</sup>Mayambala v Mayambala, High Court Divorce Cause No. 3 of 1998

doubt as to what constitutes matrimonial property. Under clause 65(1), the bill defined matrimonial property to include the matrimonial home, household property in the matrimonial home; property acquired during the subsistence of the marriage and deemed to be matrimonial property by express or implied agreement and immovable property owned by either spouse which is the basic income of the family. This bill was however rejected.<sup>20</sup>

The other attempt has been in the Marriage and Divorce Bill, 2009. This bill was a bit broader and under Clause 116 it defined matrimonial property to include separate property which a spouse made a contribution to and seed money by a spouse for establishment of a business. The bill under clause 123 recognized separate properties even during the subsistence of the marriage and prohibited taking into account separate property in distributing matrimonial property. Likewise this bill has never been passed into law<sup>21</sup>.

In conclusion, the law relating to matrimonial property has been a shift from male or patriarchal ownership of matrimonial property to a joint ownership of the same. The development of the law regarding matrimonial property clearly reflects the development of the status of the wife from being a subservient member of the family to becoming its co-equal head'.<sup>22</sup>

## **1.2 Problem statement**

With the exception of the 1995 Constitution, the subordinate laws that regulate the distribution, management, and ownership of property during marriage, upon divorce, and death of a spouse are discriminatory of women. It is shown that even where the relevant statutory laws are protective of women's rights to property, their implementation is hindered by customary law practices, socialization, and the generally weak economic capacity of many women in the country. The research therefore will try to find the effects of the law on matrimonial property rights and the relationship between the law and matrimonial property rights by delving into the even weaker position of women's rights to matrimonial property at customary and religious laws. In many homes, wives provide labour to support their husbands without having a stake in the use or monetary benefit from it.<sup>23</sup> Under Islamic law regulating intestate succession to

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<sup>20</sup>Domestic Relations Bill 2003

<sup>21</sup>Marriage and Divorce Bill, 2009

<sup>22</sup>Lowe & Douglas, 2007 pg. 127

<sup>23</sup>1995 Constitution

property, the entitlements for widows fall short of the constitutional standards on equality and non-discrimination. Polygamy is widely practiced by Muslims implying that the widows share the one eighth whenever there are children or one fourth in cases when there are no children. Radical reforms such as adopting an immediate community property regime instead of the present separate property regime are inevitable if women’s rights to property are to advance.<sup>24</sup>

**1.3 Purpose of the study**

The purpose of the study is to investigate how the law in Uganda protects matrimonial property rights

**1.4 Objectives of the study**

- 1. To establish the effect of the law on matrimonial property rights in Uganda
- 2. To establish the effect of customary on matrimonial property rights in Uganda.
- 3. To establish the relationship between the law and matrimonial property rights in Uganda

**1.5 Research questions**

- 1. To what extent does the law in Uganda affect matrimonial property right in Uganda
- 2. To what extent does the law protects matrimonial property right in Uganda
- 3. What relationship exists between matrimonial property rights and the law in Uganda as a country

**1.6 Research hypothesis**

**H0:** the Ugandan law positively impacts matrimonial property right in Uganda.

**1.7 Scope of the study**

**Conceptual scope;** the scope of the research will be limited to Uganda the study will be used to investigate how the law protects matrimonial property right in Uganda. Law is the independent variable and the Matrimonial property right is the dependent variable of the study. These variables are mediated by Marriage and divorce

**Time scope;** the study will cover a period of two years (2016s-2017) and fieldwork will take 6 months.

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<sup>24</sup>Islamic law

**1.8 Significance of the study**

This study will help enlighten Uganda of the various laws practices effects on Matrimonial property right. This information will encourage changes in policies and practices with in Uganda. On the same note, the study will stand to inform other countries to change in their policies and adopt new laws so as to protect Matrimonial property right thereby demonstrating the usefulness of Matrimonial property right in the development of the country.

The researcher hopes that, the study will form a basis for further research by any person who may be interested in this area of study. This study can be used as a reference and a source of literature examining the law protection of Matrimonial property right in Uganda.

The study may also be relevant to the policy makers not only in government but also in Nongovernmental organizations. The study may guide them for example in drafting the guidelines that will provide an appropriate approach when dealing with issues pertaining Matrimonial property right in Uganda.

## CHAPTER TWO

### STUDY LITERATURE

#### 2.0 Introduction

This chapter gives the literature survey, an extensive review of the available theoretical and empirical literature to the problem being investigated, critique of the existing literature relevant to the study, research gaps and the conceptual frame work. And further elucidation of the law and matrimonial property rights in Uganda, the assessment of whether law is helping matrimonial property rights, a relationship between law and matrimonial property rights basing on the available literature are described.

#### 2.1 Literature Survey

Jenifer OkumWengi, in her paper laid down emphasis on the rights of women to property in cases of divorce and widowhood, where she found out that several factors impinge on the rights of woman to property like the customary practice and the statutory laws were cited. She point out that the weak social and economic status of women directly affects their ability to own property, she gave example of customary secession law in Buganda , Toro, Madi and Lugbara and concluded that customary law of those tribes did not recognize any trust in or equitable contribution of the wife to the matrimonial property<sup>25</sup>

Dr. Sylvia Tamale and senior lecturer at Makerere University School of Law Patricia Atim during a national dialogue on the evolving status of divorce law in Uganda They argued that matrimonial property law is important in delivering a just system for sharing of property equally between husband and wife when the marriage is dissolved. "The Marriage and Divorce Bill was shelved by Parliament and there is no statutory law governing matrimonial property in relations in Uganda," Patricia Atim, a senior lecturer at Makerere University School of Law said.

Robert Gray (1961) views the role of property in the family structure and agreed that the family is essentially attached to property and resources. The writer noted situation where by a woman is supported and the husband appropriates the property the writers book is a foreign book not referring to Uganda but point out important situation where women do not own property but their needs are catered for by the husband while the man owns property as the head of the family.

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<sup>25</sup>Jeniferokumuwengi paper on women property right in dissolution of marriage 1990

Gray gave an example where a widow is expected to continue sharing from the family estate without individual entitlement to husband property<sup>26</sup>

Proponents of the '*Matrimonial Property Campaign*', such as senior Supreme Court advocate **Kirti Singh**, believe there is an urgent need for new and specific legislation recognizing the equal rights of women, be they wives or live-in partners, to the property and assets. In an interview with **Amy McArdle**, Singh argues that even in their role as primary caregivers within a domestic relationship, women must be entitled to an equal share in matrimonial property in case of marital breakdown. Women are responsible for the running and maintenance of the family home and are the primary caregivers. The nature of the contribution differs between classes; poor and working-class women engage in more labor intensive activities — they cook, clean, rear children and care for the elderly, while wealthier women, who may have recourse to domestic help, are still ultimately responsible for the supervision and organization of the household<sup>27</sup>.

Another example can be seen in **Section 4(7)** of the Family Law Act (1990), which governs the division of matrimonial property in Ontario, Canada, and specifically provides: “The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is equal contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to the equalization of the net family properties...”

Similarly, under **Section 79(4)** of the Australian Family Law Act (1975), courts must take into consideration the non-financial contributions made to the property and the welfare of the family through unpaid work at home and care of the children.

Advocate Singh begs the fundamental question: Why do rights to residence and maintenance only arise in situations where women are deemed to be “victims” or “blameless”? A woman who leaves her husband or partner, for any reason, should be entitled to just and equitable legal remedies immediately upon separation on the basis of her having accrued a beneficial interest in the property and assets through her contribution, productivity and sacrifice within the home. In

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<sup>26</sup>Gray Robert and P.H Gulliver, family estate in Africa

<sup>27</sup>Kirti Singh *Matrimonial Property Campaign*

the event of separation or desertion, women are entitled to financial relief in the form of “maintenance”. However, the laws governing maintenance are structured in such a way as to inherently disadvantage women. For instance, she must satisfy the court that she is unable to maintain her and prove any assertions concerning her husband’s income, so in reality provide little more than spurious protection<sup>28</sup>

The existing laws must be strengthened and a new law on the division of matrimonial property introduced, to protect the interests of wives, partners and children where relationships break down. This should be done not only in the interest of fairness but also to breathe life into the Constitutional recognition in **Article 15(3)** that women and children are particularly vulnerable to discrimination and that special provision can be made for their protection.<sup>29</sup>

## 2.2 Literature Review

### 2.2.1 The concept of law

There have been several attempts to produce "a universally acceptable definition of law". In (1972), one source indicated that no such definition could be produced. McCoubrey and White said that the question "what is law?" has no simple answer. Glanville Williams said that the meaning of the word "law" depends on the context in which that word is used. He said that, for example, "early customary law" and "municipal law" were contexts where the word "law" had two different and irreconcilable meanings<sup>30</sup>.

However numerous definitions of law have been put forward over the centuries. The *Third New International Dictionary* from Merriam-Webster defines law as: "Law is a binding custom or practice of a community; a rule or mode of conduct or action that is prescribed or formally recognized as binding by a supreme controlling authority or is made obligatory by a sanction (as an edict, decree, order, ordinance, statute, resolution, rule, judicial decision, or usage) made, recognized, or enforced by the controlling authority."<sup>31</sup>

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<sup>28</sup> Kirti Singh *Matrimonial Property Campaign'*

<sup>29</sup> Constitutional of Uganda Article 15(3)

<sup>30</sup> McCoubrey and Glanville William (1972)

<sup>31</sup> The *Third New International Dictionary* from Merriam-Webster

The *Dictionary of the History of Ideas* published by Scribner's in (1973) defined the concept of law accordingly as: "A legal system is the most explicit, institutionalized, and complex mode of regulating human conduct. At the same time, it plays only one part in the congeries of rules which influence behavior, for social and moral rules of a less institutionalized kind are also of great importance"<sup>32</sup>

According to Merriam Webster law is binding custom or practice of a community or a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority<sup>33</sup>

Law is the principles and regulations established in a community by some authority and applicable to its people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision.

### 2.2.2 Supporting law theories

Several theories explain different aspects of the relationship between the law and matrimonial property right. They are Natural, Positive, Marxist, and Realist Law theory. These are the fundamental theories that researchers have used to study these role conflicts. Other law theories are built on the foundations of the four theories.

#### Natural law theory

Natural law theory is the earliest of all theories. It was developed in Greece by philosophers like Heraclitus, Socrates, Plato, and Aristotle. It was then followed by other philosophers like Gaius, Cicero, Aquinas, Gratius, Hobbes, Lock, Rousseau, Kant and Hume. In their studies of the relation between nature and society, these philosophers have arrived at the conclusion that there are two types of law that govern social relations. One of them is made by person to control the relations within a society and so it may vary from society to society and also from time to time within a society. The other one is that not made by person but controls all human beings of the world. Such laws do not vary from place to place and from time to time and even used to control or weigh the laws made by human beings. These philosophers named the laws made by human beings as **positive laws** and the laws that are not made by human being as **natural laws**.

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<sup>32</sup>The *Dictionary of the History of Ideas* published by Scribner's in (1973)

<sup>33</sup> [www.Merriam-Webster.com](http://www.Merriam-Webster.com)



Natural law is given different names based on its characteristics. Some of them are law of reason, eternal law, rational law, and principles of natural justice.

Natural law is defined by Salmond as “the principles of natural justice if we use the term justice in its widest sense to include all forms of rightful actions.” Natural law theory has served different societies in many ways. The Romans used it to develop their laws as *jus civile*, laws governing roman citizens, and *jus gentium*, laws governing all their colonies and foreigners.

The Catholic Pope in Europe during the middle age become dictator due to the teachings of Thomas Aquinas that natural law is the law of God to the people and that the pope was the representative of God on earth to equally enforce them on the subjects and the kings. At the late of the Feudalism stage, Locke, Montesque and others taught that person is created free, equal and independent by taking the concept of Natural law as the individual right to life, liberty, and security. Similarly, Rousseau’s teachings of individual’s right to equality, life, liberty, and security were based on natural law. The English Revolution of (1888), the American Declaration of Independence and the French Revolution of (1789) were also results of the Natural law theory.<sup>34</sup> This law support matrimonial property right emphasizing that a person is created free, equal and independent regardless of being man or women, married or not married.<sup>35</sup>

### **Marxist law theory**

Marxists believe that private property is the basis for the coming into existence of law and state. They provide that property was the cause for creation of classes in the society in which those who have the means of production can exploit those who do not have these means by making laws to protect the private property. They base their arguments on the fact that there was neither law nor state in primitive society for there was no private property. The theory has the assumption that people can attain a perfect equality at the communism stage in which there would be no private property, no state and no law. But, this was not yet attained and even the practice of the major countries like the former United Soviet Socialist Russia (U.S.S.R.) has proved that the theory is too good to be turn. Nevertheless, this theory is challenged and the

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<sup>34</sup> Natural law theory BY Heraclitus, Socrates, Plato, and Aristotle

<sup>35</sup> French Revolution of (1789)

theory of private property triumphs. Marxists Theory tries to describe the basis for the coming into existence of law which basically according to this theory is private property<sup>36</sup>

### **Positive law theory**

Positive law theory is also called, imperative or analysts law theory. It refers to the law that is actually laid down by separating “is” from the law, which is “ought” to be. It has the belief that law is the rule made and enforced by the sovereign body of the state and there is no need to use reason, morality, or justice to determine the validity of law.

According to this theory, rules made by the sovereign are laws irrespective of any other considerations. These laws, therefore, vary from place to place and from time to time. The followers of this theory include Austin, Bentham and H.L.A Hart. For these philosophers and their followers law is a command of the sovereign to his/her subjects and there are three elements in it: command; sovereign; and sanction. Command is the rule given by the sovereign to the subjects or people under the rule of the sovereign. Sovereign refers to a person or a group of persons demanding obedience in the state. Sanction is the evil that follows violations of the rule.

This theory has criticized by scholars for defining law in relation to sovereignty or state because law is older than the state historically and this shows that law exists in the absence of state. Thus, primitive law (a law at the time of primitive society) serves the same function as does mature law.<sup>37</sup>

With regard to sanction as a condition of law in positive law, it is criticized that the observance of many rules is secured by the promise of reward (for example, the fulfillment of expectations) rather than imposing a sanction. Even though sanction plays a role in minority who is reluctant, the law is obeyed because of its acceptance by the community “habit, respect for the law as such, and a desire to reap the rewards which legal protection of acts will bring” are important factors the law to be obeyed.<sup>38</sup>

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<sup>36</sup> Beset; 2006

<sup>37</sup> Paton; 1967: 72-3

<sup>38</sup> Paton; 1967:74

The third main criticism of definition of law by Austin (positive law theory) is that it is superficial to regard the command of the sovereign as the real source of the validity of law. It is argued that many regard law as valid because it is the expression of natural justice or the embodiment of the spirit of people<sup>39</sup>

### **Realist theory of law**

Realist theory of law is interested in the actual working of the law rather than its traditional definitions. It provides that law is what the judge decides in court. According to this theory, rules not put to use to solve practical cases are not laws but merely existing as dead words and these dead words of law get life only when applied in reality. Therefore, it is the decision given by the judge but not the legislators that is considered as law according to this theory. Hence, this theory believes that the lawmaker is the judge and not the legislative body.

This theory has its basis in the common law legal system in which the decision previously given by a court is considered as a precedent to be used as a law to decide future similar case. This is not applicable in civil law legal system, which is the other major legal system of the world, and as a result this theory has been criticized by scholars and countries following this legal system for the only laws of their legal system are legislation but not precedents. This implies that the lawmaker in civil law legal system is the legislative body but not the judge. The followers of this theory include Justice Holmes, Lawrence Friedman, John Chipman Gray, Jerom Frank, Karl N. Lewelln and Yntema. According to this theory, rules not put to use to solve practical cases are not laws but merely existing as dead words and these dead words of law get life only when applied in reality.<sup>40</sup>

### **Marriage**

Ugandan law recognizes five types of marriages: civil, Christian, Hindu, Muslim, and customary.[21] Hindu, Muslim, and customary marriages are each covered by a specific law. The Marriage and Divorce Bill, pending in various iterations for approximately 40 years, aims to give effect to article 31 of the Constitution, and if passed, would apply to all marriages in

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<sup>39</sup>Paton; 1967: 77

<sup>40</sup>Realist theory of law biset; 2006

Uganda except Muslim marriages. (Muslim marriage and divorce laws apply in those cases, and are codified in The Administration of Muslim Personal Law 2008, which has not yet been enacted into law).[22] The Marriage and Divorce Bill contains detailed provisions about the property rights of married men and women.<sup>41</sup>

Marriage must be monogamous if contracted under the Marriage Act of 1904, the African Marriage Act of 1904 or the Hindu Marriage and Divorce Act of 1961. Polygamy is legal for customary marriages under **Section 4(2)** of the Customary Marriages (Registration) Act and under the Marriage and Divorce of Mohammedans Act of 1906 (invoking Islamic law). Polygamous marriages are restricted by law in the event that a man married under custom seeks to enter into a civil marriage with another woman

## **Divorce**

Divorce is the permanent ending of a marriage, and only applies to legally recognized marriages. The procedure for divorce depends on the type of marriage. The Divorce Act (1904) outlines rules for separation and divorce applicable to civil and church marriages. Separation can last up to two years, and can be by mutual agreement (Separation by Agreement) or by court order (Judicial Separation). Separation does not end a marriage, but only suspends certain rights of the husband and the wife, who remain formally married. The Divorce Act (1904), which only applies to civil, Christian, and Hindu marriages, touches on marital property rights, including land rights. **Section 27** provides that “When a decree of dissolution of marriage or of judicial separation is pronounced on account of adultery by the wife court may order the whole or any part of such property to be settled for the benefit of the husband or of the children of the marriage, or of both.”

## **2.3. Matrimonial property rights (MPR)**

This is mainly concerned with the rights that spouses have over property that they acquire before, during and on the breakdown of marriage. There are two systems which obtain on matrimonial property rights which includes the *Community of Property*;(CP) This is based on the assumption that marriage is an equal partnership which has both a social as well as an economic dimension

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<sup>41</sup>Marriage and Divorce Bill

and that system recognizes that each party to the marriage performs an important role in that social and economic unit even though their roles may be far in type or in quality. This system assumes equality in matrimonial property with each party having an equal right to the assets of the marriage.

In a pure community of interest system, legal ownership of the matrimonial asset is joint from the time of cohabitation or marriage. Therefore under the pure community of interest approach at the celebration of the marriage all the properties that are owned by either spouse are pooled together and deemed to be jointly owned and this will include any property that was owned before the marriage by the spouses.

Then the separate ownership approach which presupposes that during the subsistence of the marriage, either spouse may own separate property. However this has not always been the case in the common law tradition and in fact under common law husband and wife were regarded as one (doctrine of unity under common law).

According to Lord Denning the common law regarded husband and wife as one and the husband was that one. This was in a case of **William & Glyns Bank vs. Boland (1979) Ch. D 312 at 332**. Under common law all the wife's property and income vested in the husband on marriage and a wife could not own property separate from that of her husband. In the 18<sup>th</sup> and 19<sup>th</sup> century England it was common to have professional husbands and in **Republic v. Smith (1915) 1 Cr.** a case involving professional husband. Husbands married rich women who then died under mysterious circumstances leaving them all the wealth. With the onset of the industrial revolution, women started to agitate for involvement in socially and economically productive work and sought enfranchisement and the solution to the problem that commended itself was that of separation of property because the problems in their legal status at the time arose from the legal regime that applied to married persons. It was therefore thought that if the spouses' marital status no longer affected their property rights then the problem would be solved. This led to the enactment of the Married Women Property's Act of 1882. This Act recognised the right of married women to hold and own property separate from that of their husbands. This is one of the Acts of general application which applies to Kenya under the Judicature Act.

## 2.4 Effects of marriage on matrimonial property right

The law relating to matrimonial property is hinged on the concept of marriage. This law only and strictly applies to married and/or formerly married persons. In **Case v Ruguru**, court held that since the defendant was not legally married to the plaintiff, she could not base a claim of occupancy on ground that she was the plaintiff's wife. In most European countries, a divorce leads to an equal split of assets, which means that the wealth acquired during the marriage is subject to a 50/50 division between the husband and the wife if the marriage is dissolved, regardless to whom acquired it.<sup>42</sup>

Generally, in community property states, money earned by both spouse during marriage and all property bought with those earnings are considered community property that is owned equally by husband and wife. Likewise, debts incurred during marriage are generally debts of the couple. At the death of one spouse, his or her half of the community property goes to the surviving spouse unless he or she left a will that directs otherwise. Community property states are **Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin**. In **Alaska** and **Tennessee**, spouses can opt in to the community property system by signing an agreement designating specific assets as community property. However Married people can still own separate property. For example, property inherited by just one spouse belongs to that spouse alone. A spouse can leave separate property to anyone; it doesn't have to go to the surviving spouse.

Domestic Violence Act, 2005, has given the wife the right to reside in a shared household, besides providing for the payment of compensation to meet the expenses. Under the current laws, property remains with the spouse, usually the husband, in whose name it has been registered. As a result, the divorced woman has very little financial support, besides the nominal "maintenance" granted by the courts. The new amendments changed the two key legislations<sup>43</sup>

Hindu Marriage Act, 1955 and Special Marriage Act, 1954. This amendment remove a severe financial impediment that, at present, prevents many women from leaving abusive marriages, there are certain grey areas even in this progressive bill. One of the major bones of contention is

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<sup>42</sup>Case v Ruguru

<sup>43</sup>Domestic Violence Act, 2005

that the wife gets half the property, regardless of whether the property was acquired before or during the marriage. Many would argue that some women may take advantage of this loophole and now marry for property and, as with strict dowry laws; the amendment creates massive scope for misuse.<sup>44</sup>

**2.5 The effect of law on matrimonial property rights**

The Constitution (1995) was the first step in ongoing reforms that have significantly strengthened protections for women’s rights under the formal framework. Uganda’s Constitution prohibits discrimination based on gender and accords men and women the same status and rights (art 21); provides for the right of every person to own property (26(1)); guarantees women equal rights with men (art 33); provides special help/protection for mothers and women because of previous historical discrimination against women (art 33); and prohibits any customary laws, traditions, or customs that discriminate against women (art 33).this affected the customary law which use to discriminate women from owning property.<sup>45</sup>

The (1995) Constitution puts into reality the equality in marriage principle contained in Genesis Chapter 2 versus 24 (Supra) and what those who choose to contract marriages under the Marriage Act undertake to practice. According to Uganda constitution Matrimonial property is joint property between husband and wife and should be shared equally in divorce irrespective of who paid for what and how much was paid. Very often, the woman will find a husband who is already wealthy and has a lot of property. If that property belongs to the man at the time of exchanging the vows in church, that property becomes joint property. These days it is normal for a woman to come into marriage with wealth such as houses, Land, Cows and other properties from her own sweat, her parents, relatives and friends. If at the time the church vows they are solely owned by the woman, they become joint matrimonial property. From then onwards the fact that they are registered in the names of the wife or the husband is not relevant. It belongs to both. If the parties do not exclude any property expressly or impliedly before the marriage, the joint trust principle will be deemed to apply to all property belonging to the parties to the marriage **J A in Julius Rwabinumi Versus Hope Bahimbisomwe**.<sup>46</sup>

<sup>44</sup>Hindu Marriage Act, 1955 and Special Marriage Act, 1954

<sup>45</sup> Constitution (1995) (art 33)

<sup>46</sup> (Court of Appeal in civil Appeal No. 30 of (2007) (Unreported)

Inheritance in Ugandan law is governed by the Succession Act (Amendment) Decree 22/72 of (1972), which restricts the application of customary law in inheritance cases, and explicitly recognizes women's right to inherit from their husbands. While these provisions, along with Constitutional guarantees of widow's right to inherit matrimonial property, would seem to provide ample protection, women's inheritance rights under the formal law remain tenuous due to incomplete legislation. Significantly, the Constitutional Court ruled in (2007) that parts of the Succession Act and Penal code are unconstitutional due to discrimination based on sex, and are therefore void.<sup>47</sup>

(1897) **Native Courts Regulations, Article 64** of which provided that the African Christians were governed by the law that governed Indian Christians Interestingly the regulations did not say what law this was i.e. whether it was the Indian law of succession or the English Law of succession since both of these two laws applied to Christians in India. The position was clarified in (1902) with the passing of the **African Christian Marriage and Divorce Ordinance, section 39** of which provided that the English law of succession would apply to Christian Africans because after contracting a statutory marriage, the African was presumed to have discarded the African way of life and thereby ceased being governed by African customary law. Judicial determination in the case of *BenjawaJembe vs. Priscilla Nyondo* 4 EALR 160 (1912) where Barth J held that succession of a native Christian's estate followed the law of the tribe to which such Christian native belonged.<sup>48</sup>

(1961) when the **African Wills Ordinance** was passed to enable the Africans to make written willstestate succession became subject to this statute while intestate succession continued being governed by the respective customary law of the deceased. The African Wills Act originated from the recommendations made by one Dr. Arthur Phillips in his Report on Native Tribunals. In the chapter dealing with succession, Phillips underscored the then urgent need to provide the African with suitable legal machinery through which he could dispose of his modern property, which may not be adequately disposed of under customary law. He argued that colonialism had brought with it new forms of market economy and property ownership modes which were unknown to African customary law and which that law could not be adjusted to deal with e.g. shares in companies, insurance policies, premium bonds, bank accounts etc. He recommended

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<sup>47</sup> Succession Act (Amendment) Decree 22/7

<sup>48</sup> African Christian Marriage and Divorce Ordinance, section 39



that a law similar to the English Inheritance (Family Provisions) Act of 1938 be passed to enable the westernized African to deal with such property<sup>49</sup>

## **2.6 Relationship between law and matrimonial property rights**

Matrimonial property rights (MPR) is concerned with the rights that spouses have over property that they acquire before, during and on the breakdown of marriage this has made matrimonial property right apart of the law through Inheritance in Ugandan law which is governed by the Succession Act (Amendment) Decree 22/72 of (1972), which restricts the application of customary law in inheritance cases, and explicitly recognizes women's right to inherit from their husbands. These provisions, along with Constitutional guarantees of widow's right to inherit matrimonial property provide ample protection; therefore both matrimonial property rights (MPR) and the Ugandan law do encourage inheritance and discourage customary law in inheritance cases.<sup>50</sup>

The matrimonial property rights is intertwined in various law like family law customary law property law land law among others which all support (MPR) for example the Marriage and Divorce Bill applies to all marriages in Uganda just like (MPR) which applied to only married or formerly married people. The Marriage and Divorce Bill is supposed to give effect to Article 31 of the Constitution, which gives men and women equal rights in getting married, during marriage, and if and when they decide to end the marriage.

Just like any other Law Matrimonial Property Rights (MPR) is a part of human rights and is attached to the (1995) constitution of Uganda which was the first step in ongoing reforms that have significantly strengthened protections for women's rights under the formal framework. Uganda's Constitution prohibits discrimination based on gender and accords men and women the same status and rights (art 21); provides for the right of every person to own property (26(1)); guarantees women equal rights with men (art 33); provides special help/protection for mothers and women because of previous historical discrimination against women (art 33).

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<sup>49</sup> African Wills Ordinance (1961)

<sup>50</sup> Succession Act (Amendment) Decree 22/72 of (1972),

## **CHAPTER THREE**

### **METHODOLOGY**

#### **3.0 Introduction**

This chapter describes the procedures that were used in carrying out this research. It presented the research design, study area, population of study, sample size sampling methods, data collection methods, research instruments, data collection procedure, study variables, data processing and analysis and the limitation of the study.

#### **3.1 Research design**

The study used descriptive survey design. According to Martin et al (2013) descriptive survey design is appropriate because it involves collecting data in order to answer questions concerning current status of subjects of the study. Also both qualitative and quantitative data will be collected.

#### **3.2 Study area**

The area of the study was in Uganda, especially in the Central, Eastern, Western, Southern and Northern region however only one district was selected from each of the above regions as a representative of the regions a sample of 250 individuals was selected and believed to be representative enough for the study.

#### **3.3 Study population**

The study covered a population of 250 people from Uganda and will include the regions of: Central (78), Eastern (40), Western (56), Northern (45) and Southern (31).

#### **3.4 Sampling methods**

To select the needed number of individuals, convenience, non-probability sampling will be used. This technique permits the researcher to have complete freedom of selecting individual who can provide relevant data.

### 3.5 Sample size

Samples were selected mainly from Kampala in the central region, which is the most populated region of all, comprising of a high number of divorced individuals. However other major districts in the selected regions were also considered. Questionnaires were issued to these various districts

### 3.6 Data collection methods

Enon (1998) defines methods of data collection as devices that are used to collect data such as paper questionnaire or computer assisted interviewing system. The research will employ three methods of data collection which include:

**Questionnaire;** the study used questionnaires to collect primary data. The type of questions in the questionnaire were close ended, because they are more appropriate in collecting information regarding surveys that deal with the perception of the variables. Respondents were able to read and answer questions without being influenced by the interviewer, the respondents answered what was convenient for them without any pressure, and confidential information was not revealed.

**Interview;** the interview methods comprised personal (face to face) interview with key individual considered to have the necessary information relevant to the study objectives and those who did not have time to fill the questionnaires or even those who could not read or write. Structured interviews were used basing on the questions from the questionnaire and here the researcher asked the respondents' predetermined questions while recording the answers.

**Documentation review;** the researcher reviewed documents in order to obtain recorded information that is related to the topic under investigation. This method was used because it saved the researcher time from looking at all documents. It also enabled the researcher to access data at his convenience. This method enables the researcher to obtain data in the language of the respondent (Onen, 2008).

### 3.7 Data collection instruments

The researcher issued questionnaire to all the selected individuals in the various selected districts of different regions, especially that of Kampala in the central region. This instrument was used due to its suitability of having an ample time for the respondents concerned to adequately fill to

form. The 5-scale point was also used in the questionnaires where 1=Strongly disagree, 2=Disagree, 3=Not sure, 4=Agree, and 5=Strongly Agree. The questionnaire was also made up of 4 major sections and 26 items in total.

Once the researcher developed the questionnaire, it was tested by part of the selected individuals and research supervisor. The testing of the questionnaires was carried out to confirm the suitability for the intended purpose. This helped the researcher in redesigning it better and estimated the amount of time and money that was required to collect and process the data effectively. The questionnaires were delivered by hand to the respondents at agreed points during working hours by the researcher. They were issued and collected after a week to give respondents enough time to answer the questions.

### **3.8 Data processing, presentation and analysis**

Data from questionnaires was summarized, edited, coded, tabulated and analyzed. Editing was done to improve the quality of data for coding. Descriptive statistics was used where distribution (frequencies, percentages) are used. Data was analyzed using a statistical package for social sciences (SPSS). Editing involved going through the questionnaires to see if respondents responded to questions and see if there are blank responses. To this, missing data was replaced. Simple tabulation was used which involved counting the number of cases that fall into the various categories, the study adopted qualitative data analysis approach.

### **3.9 Limitations of the study**

In the process of carrying out the study, a number of constraints were met. These constraints did not affect the results of the study though they hampered the speed, which the study was carried out; they include the following;

- Obsolete information: some scholars who have written about law and matrimonial property rights have not reviewed their editions. The researcher struggled to screen the relevant information. This was to be overcome by selecting the latest model of work.
- Limited sources of information: since most of the websites required subscriptions before accessing them, it was hard to get to some relevant information about matrimonial property rights; this was overcome by visiting libraries frequently.

- Confidentiality of information: Many respondents in most regions concealed information, as they feared. With proper explanation as to significance of the study, the respondents were able to fully cooperate.
- Limited funds: due to frequent movement, printing and typing which all required money. It was thus a challenge to the researcher.

## CHAPTER FOUR

### PRESENTATION, ANALYSIS AND INTERPRETATION OF FINDINGS

#### 4.0 Introduction

This chapter presents findings of the study with the aim of providing answers to the research questions, as guided by the research objectives. The questionnaires were designed to obtain information on the effect of Law on matrimonial property rights, the effect of marriage on matrimonial property rights and the relationship between the law and matrimonial property rights.

#### 4.1 General Information on Respondents

**Table 1: Age of Respondents**

Age (Years)	Frequency	Percentage (%)
18-22	30	12
23-27	72	29
28-32	98	39
Above 33	50	20
<b>Total</b>	<b>250</b>	<b>100</b>

*Source: Primary Data 2018*

The table above (Table 1) shows the age of the respondents, with the highest number of residence (39% of the sample population) ranging between the ages of 28 to 32. The second largest group of residence was between the ages of 23 to 27 and takes up 29%. The smallest group of residence at a percentage of 12% is made up of those between 18 and 22 years. 20% of the residences are above 33 years of age. In short, the table reveals that majority of people staying in Uganda are relatively young.

**Table 2: Gender of Respondents**

Sex	Frequency	Percentage (%)
Male	87	35
Female	163	65
<b>Total</b>	<b>250</b>	<b>100</b>

*Source: Primary Data 2018*

The Table 2 shows the gender percentage in Uganda. The results show that majority of the Uganda population are women with 65%. The men take up 35%. From the above table, we can conclude that Uganda population has more female than male. This explains the high number of divorced in the country since women tend to appear desperate and men believes they can just move from one woman to another

**Table 3: Duration of Settlement**

Number of Years	Frequency	Percentage (%)
1-5 years	134	54
6-10 years	54	21
11-15 years	36	14
16 years and above	28	11
Total	250	100

*Source: Primary Data 2018*

In terms of the period of settlement, the Table 3 above shows that majority of the population (547%) in Uganda are temporary settlers for a period of less than 5 years. The second group with 21% was covering people who have settled in a particular an area for a period 6 to 10 years. The third group (11-15 years) took up 14% and the smallest group (11%) was found to have stayed in the place for more than 16 years we can conclude that the Uganda is not having many stable people with permanent home.

#### **4.2 Effects of the Law on Matrimonial Property Rights in Uganda**

**Table 4 : With proper laws in place, pressure of matrimonial property distribution is evenly distributed**

Response	Frequency	Percentage (%)
Strongly Disagree	12	05
Disagree	30	12
Not Sure	20	08
Agreed	68	27
Strongly Agree	120	48
Total	250	100

*Source: Primary Data 2018*

Table 4 shows that majority of the respondents (75%) agreed that with proper laws in place, pressure of matrimonial property distribution is evenly distributed. This mainly because of the provision ample protection, on inheritance rights, when the law is clear on certain facts about marriage then people settle in the marriage and are not afraid to acquire more asset.

**Table 5 : Matrimonial property in Uganda has not yet been clearly defined**

Response	Frequency	Percentage (%)
Strongly Disagree	10	04
Disagree	33	13
Not Sure	09	03
Agreed	79	32
Strongly Agree	119	48
Total	250	100

*Source: Primary Data 2018*

The respondents in Table 5 were asked whether Matrimonial property in Uganda has not yet been clearly defined 80% of the employees agreed that Matrimonial property in Uganda has not yet been clearly defined. This in most cases has affected which property to be considered as personal property or matrimonial property hence during the dissolution of marriages many people loses property to this unclearness.

**Table 6 : Matrimonial property law cannot easily be detached from the law relating to women's property rights.**

Response	Frequency	Percentage (%)
Strongly Disagree	17	07
Disagree	30	12
Not Sure	05	02
Agreed	65	26
Strongly Agree	133	53
Total	250	100

*Source: Primary Data 2018*



In table 6 above, people were asked whether Matrimonial property law cannot easily be detached from the law relating to women's property rights. From the results, 79% of the respondents agreed that indeed matrimonial property law cannot easily be detached from the law relating to women's property rights. For example matrimonial property is enshrined in section **38 of the Land Act** as amended. The section guarantees the security of occupancy of every spouse on family land. This means that the spouse has a right to have access to and live on family.

**Table 7 : A divorce leads to an equal split of assets**

Response	Frequency	Percentage (%)
Strongly Disagree	18	07
Disagree	60	24
Not Sure	14	06
Agreed	58	32
Strongly Agree	100	40
Total	250	100

*Source: Primary Data 2018*

In Table 7 above, the respondents were asked whether a divorce leads to an equal split of assets. 72% Agreed since the Marriage and Divorce Bill contains detailed provisions about the property rights of married men and women, the Divorce Act (1904), which only applies to civil, Christian, and Hindu marriages, touches on marital property rights, including land rights. Section 27 provides that "When a decree of dissolution of marriage or of judicial separation is pronounced.

**Table 8 : The law in Uganda fully supports matrimonial property rights**

Response	Frequency	Percentage (%)
Strongly Disagree	14	06
Disagree	29	11
Not Sure	19	08
Agreed	70	28
Strongly Agree	118	47
Total	250	100

*Source: Primary Data 2018*

In Table 8, it shows that 75% of the population agreed that the law in Uganda fully support matrimonial property rights. **Article 31(1) (b)** of the Uganda Constitution (1995) guarantees equality in treatment of either the wife or the husband at divorce and another example can be seen in **Section 4(7)** of the Family Law Act (1990), which governs the division of matrimonial property in Ontario, Canada, and specifically provides: “The purpose of this section is to recognize that child care, household management and financial provision are the joint responsibilities of the spouses and that inherent in the marital relationship there is equal contribution, whether financial or otherwise, by the spouses to the assumption of these responsibilities, entitling each spouse to the equalization of the net family properties.

**Table 9 : The law is partly our rights and partly our responsibility**

Response	Frequency	Percentage (%)
Strongly Disagree	14	06
Disagree	17	07
Not Sure	09	04
Agreed	82	32
Strongly Agree	128	51
Total	250	100

*Source: Primary Data 2018*

When respondent were asked whether the law is partly our rights and partly our responsibility in Table 9 above, 83% were in agreement. According to an interview with **Amy McArdle**, Singh argues that even in their role as primary caregivers within a domestic relationship, women must be entitled to an equal share in matrimonial property in case of marital breakdown. Women are responsible for the running and maintenance of the family home and are the primary caregivers.

#### 4:3 Effect of Marriage on matrimonial property rights

**Table 10 : Matrimonial property is hinged on the concept of marriage**

Response	Frequency	Percentage (%)
Strongly Disagree	25	10
Disagree	28	11
Not Sure	09	04
Agreed	68	27
Strongly Agree	118	47
Total	250	100

*Source: Primary Data 2018*

In Table 10, the respondents were asked Matrimonial property is hinged on the concept of marriage. According to the results, 74% agreed this is especially true because this law only and strictly applies to married and/or formerly married persons. In **Case v Ruguru**, court held that since the defendant was not legally married to the plaintiff, she could not base a claim of occupancy on ground that she was the plaintiff's wife And Marriage is the legal union of a couple as husband and wife (Black's Law Dictionary pg. 3084). Under **Article 31(1)** a person of the age of 18 years and above has a right to marry.

**Table 11 : The benefits offered by the matrimonial property rights should meet needs of the families**

Response	Frequency	Percentage (%)
Strongly Disagree	32	13
Disagree	37	15
Not Sure	07	03
Agreed	62	25
Strongly Agree	112	44
Total	250	100

*Source: Primary Data 2018*

In Table 11, the people were asked about the benefits offered by the matrimonial property rights should meet need of the families. Majority of the respondents 69% agreed that because

Constitution introduced a new principle of law in relation to matrimonial property; the equality in marriage principle. This principle is encapsulated in **Article 31 (1)** of the 1995 Constitution and it is to the effect that men and women are entitled to equal rights in marriage, during marriage and at its dissolution.

**Table 12 : Married people should always enter marriage with registered personal assets.**

Response	Frequency	Percentage (%)
Strongly Disagree	22	09
Disagree	33	13
Not Sure	18	7
Agreed	69	28
Strongly Agree	108	43
Total	250	100

*Source: Primary Data 2018*

The Table above (12) reveals that 71% of the respondents agreed that Married people should always enter marriage with registered personal assets. Because of the enactment of the Married Women Property's Act of 1882 This Act recognized the right of married women to hold and own property separate from that of their husbands. This is one of the Acts of general application

**Table 13 : Matrimonial property right is the source of divorce in Uganda**

Response	Frequency	Percentage (%)
Strongly Disagree	19	07
Disagree	27	11
Not Sure	04	02
Agreed	67	27
Strongly Agree	133	53
Total	250	100

*Source: Primary Data 2018*

From Table 13, majority of the people (80%) agreed that Matrimonial property right is the source of divorce in Uganda The Divorce Act (1904), which only applies to civil, Christian, and Hindu marriages, touches on marital property rights, including land rights. Section 27 provides

that “When a decree of dissolution of marriage or of judicial separation is pronounced on account of adultery by the wife court may order the whole or any part of such property to be settled for the benefit of the husband or of the children of the marriage, or of both.”

**Table 14 : There should be equal rights in marriage and wealth acquired during the marriage is subject to a 50/50 division.**

Response	Frequency	Percentage (%)
Strongly Disagree	27	10
Disagree	28	11
Not Sure	05	02
Agreed	77	31
Strongly Agree	113	45
Total	250	100

*Source: Primary Data 2018*

In Table 14 above, many of the population (76%) agreed that there should be equal rights in marriage and wealth acquired during the marriage is subject to a 50/50 division. In most European countries, a divorce leads to an equal split of assets, which means that the wealth acquired during the marriage is subject to a 50/50 division between the husband and the wife if the marriage is dissolved, regardless to whom acquired it. Generally, in community property states, money earned by both spouse during marriage and all property bought with those earnings are considered community property that is owned equally by husband and wife. Likewise, debts incurred during marriage are generally debts of the couple.

#### **4:4 Relationship between law and matrimonial property rights**

**Table 15: There is relationship between matrimonial property rights and the law**

Response	Frequency	Percentage (%)
Strongly Disagree	22	09
Disagree	33	13
Not Sure	18	7
Agreed	69	28
Strongly Agree	108	43
Total	250	100

*Source: Primary Data 2018*

In Table 15, respondents were asked if there is a relationship between matrimonial property right and the law (71%) agreed that there is a relationship between matrimonial property right and the law, Matrimonial property rights (MPR) is concerned with the rights that spouses have over property that they acquire before, during and on the breakdown of marriage which has made matrimonial property right apart of the law through Inheritance in Ugandan law which is governed by the Succession Act (Amendment) Decree 22/72 of (1972), which restricts the application of customary law in inheritance cases, and explicitly recognizes women's right to inherit from their husbands.

**Table 16 : Matrimonial property rights is intertwined in various law**

Response	Frequency	Percentage (%)
Strongly Disagree	36	14
Disagree	43	17
Not Sure	09	04
Agreed	74	30
Strongly Agree	88	35
Total	250	100

*Source: Primary Data 2018*

Table 16 above shows that 65% of the population agreed that The matrimonial property rights is intertwined in various law like family law customary law property law land law among others which all support (MPR) for example the Marriage and Divorce Bill applies to all marriages in Uganda just like (MPR) which applied to only married or formerly married people. The Marriage and Divorce Bill is supposed to give effect to Article 31 of the Constitution, which gives men and women equal rights in getting married, during marriage, and if and when they decide to end the marriage.

**Table 17: Matrimonial Property Rights is a part of human rights and is attached to the constitution of Uganda**

Response	Frequency	Percentage (%)
Strongly Disagree	25	10
Disagree	40	16
Not Sure	08	03
Agreed	79	32
Strongly Agree	98	39
Total	250	100

*Source: Primary Data 2018*

Table 17 shows that majority of population 71% agreed that Matrimonial Property Rights (MPR) is a part of human rights and is attached to the (1995) constitution of Uganda which was the first step in ongoing reforms that have significantly strengthened protections for women's rights under the formal framework. Uganda's Constitution prohibits discrimination based on gender and accords men and women the same status and rights (art 21); provides for the right of every person to own property (26(1)); guarantees women equal rights with men (art 33); provides special help/protection for mothers and women because of previous historical discrimination against women (art 33).

**Table 18 : Divorce Bill applies to all marriages in Uganda just like matrimonial property rights**

Response	Frequency	Percentage (%)
Strongly Disagree	19	08
Disagree	39	16
Not Sure	09	04
Agreed	92	37
Strongly Agree	89	35
Total	250	100

*Source: Primary Data 2018*

In Table 18, 78% of the respondents agreed Divorce Bill applies to all marriages in Uganda just like (MPR) which applied to only marry or formerly married people. The Marriage and Divorce

Bill is supposed to give effect to Article 31 of the Constitution, which gives men and women equal rights in getting married, during marriage, and if and when they decide to end the marriage.

**Table 19: Rights that spouses have over property are provided for both in the constitution and matrimonial property right.**

Response	Frequency	Percentage (%)
Strongly Disagree	18	07
Disagree	19	07
Not Sure	05	02
Agreed	114	46
Strongly Agree	95	38
Total	250	100

*Source: Primary Data 2018*

In Table 19, majority of respondents (84%) agreed that Rights that spouses have over property are provided for both in the constitution and matrimonial property right. Uganda’s Constitution prohibits discrimination based on gender and accords men and women the same status and rights (art 21); provides for the right of every person to own property (26(1)); guarantees women equal rights with men (art 33); provides special help/protection for mothers and women because of previous historical discrimination against women (art 33).s

**Table 20 : The law recognizes the right of married women to hold and own property separate from that of their husbands.**

Response	Frequency	Percentage (%)
Strongly Disagree	07	03
Disagree	12	05
Not Sure	02	01
Agreed	111	44
Strongly Agree	118	47
Total	250	100

*Source: Primary Data 2018*



In Table 20, employees were asked whether the law recognizes the right of married women to hold and own property separate from that of their husbands. 91% agreed, According to Uganda constitution Matrimonial property is joint property between husband and wife and should be shared equally in divorce irrespective of who paid for what and how much was paid. Very often, the woman will find a husband who is already wealthy and has a lot of property. If that property belongs to the man at the time of exchanging the vows in church, that property becomes joint property

**Table 21 : Marriage is an equal partnership; husband and wife are regarded as one**

Response	Frequency	Percentage (%)
Strongly Disagree	61	24
Disagree	100	40
Not Sure	06	02
Agreed	70	29
Strongly Agree	13	05
Total	250	100

*Source: Primary Data 2018*

Respondents were asked whether Marriage is an equal partnership; husband and wife are regarded as one (Table 21). Majority of (64%) disagreed; under common law all the wife's property and income vested in the husband on marriage and a wife could not own property separate from that of her husband, separate ownership approach which presupposes that during the subsistence of the marriage, either spouse may own separate property. However this has not always been the case in the common law tradition and in fact under common law husband and wife were regarded as one (doctrine of unity under common law).

**Table 22: law relating to matrimonial property has been a shift from male ownership of matrimonial property to a joint ownership**

Response	Frequency	Percentage (%)
Strongly Disagree	14	06
Disagree	15	06
Not Sure	09	04
Agreed	110	44
Strongly Agree	103	41
Total	250	100

*Source: Primary Data 2018*

In Table 22, respondents were asked whether law relating to matrimonial property has been a shift from male ownership of matrimonial property to a joint ownership Majority of (85%) agreed that was therefore thought that if the spouses marital status no longer affected their property rights then the problem would be solved. This led to the enactment of the Married Women Property’s Act of 1882. This Act recognized the right of married women to hold and own property separate from that of their husbands. This is one of the Acts of general application which applies to Kenya under the Judicature Act.

## **CHAPTER FIVE**

### **SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

#### **5.0 Introduction**

This research was carried out with the objectives of establishing the effect of the law on matrimonial property rights and establishing the relationship between the law and matrimonial property rights. In this chapter, a summary of the findings, conclusion and recommendations in relation to the relationship the law and matrimonial property rights in Uganda.

#### **5.1 Summary of Findings**

The area of the study was in Uganda, especially in the Central, Eastern, Western, Southern and Northern region however only one district was selected from each of the above regions as a representative of the regions a sample of 250 individuals was selected and believed to be representative enough for the study. The research involved 250 respondents. The study covered a population of 250 people from Uganda and will include the regions of: Central (78), Eastern (40), Western (56), Northern (45) and Southern (31).

**Section A** of the questionnaire looked at general information of the respondents such as the age of the respondents, shows the age of the respondents, with the highest number of residence (39% of the sample population) ranging between the ages of 28 to 32. The second largest group of residence was between the ages of 23 to 27 and takes up 29%. The smallest group of residence at a percentage of 12% is made up of those between 18 and 22 years. 20% of the residences are above 33 years of age. In short, it revealed that majority of people staying in Uganda are relatively young.

In terms of gender, majority of population in the gender percentage in Uganda, The results show that majority of the selected population were women with 65%. The men take up 35%. From this, we can conclude that Uganda population has more female than male. This is explains the high number of divorced in the country since women tend to appear desperate and men believes they can just move from one woman to another.

Looking at the duration of settlement shows that majority of the population (547%) in Uganda are temporary settlers for a period of less than 5 years. The second group with 21% was covering people who have settled in a particular an area for a period 6 to 10 years. The third group (11-15

years) took up 14% and the smallest group (11%) was found to have stayed in the place for more than 16 years we can conclude that the Uganda is not having many stable people with permanent home.

Section B of the questionnaire covered the effect of Effects of the Law on Matrimonial Property Rights in Uganda. In total 7 questions were asked and on average, majority of the respondents (75%) agreed that with proper laws in place, pressure of matrimonial property distribution is evenly distributed; 80% of the employees agreed that Matrimonial property in Uganda has not yet been clearly defined; whether Matrimonial property law cannot easily be detached from the law relating to women's property rights. From the results, 79% of the respondents agreed; whether a divorce leads to an equal split of assets. 72% Agreed; 75% of the population agreed that the law in Uganda fully support matrimonial property rights; whether the law is partly our rights and partly our responsibility in Table 9 above, 83% were in agreement;

Section C of the questionnaire covered the effect of marriage on matrimonial property rights. In this section 6 questions were asked, respondents were asked where Matrimonial property is hinged on the concept of marriage. According to the results 74% agreed; the benefits offered by the matrimonial property rights should meet needs of the families. Majority of the respondents 69% agreed; 71% of the respondents agreed that Married people should always enter marriage with registered personal assets; (80%) agreed that Matrimonial property right is the source of divorce in Uganda; (76%) agreed that there should be equal rights in marriage and wealth acquired during the marriage is subject to a 50/50 division.

In Section D of the questionnaire, it was concerned with establishing the relationship between work life balance and employee commitment. (71%) agreed that there is a relationship between matrimonial property right and the law; 65% of the population agreed that The matrimonial property rights is intertwined in various law; majority of population 71% agreed that Matrimonial Property Rights (MPR) is a part of human rights and is attached to the (1995) constitution of Uganda; 78% of the respondents agreed Divorce Bill applies to all marriages in Uganda just like (MPR); (84%) agreed that Rights that spouses have over property are provided for both in the constitution and matrimonial property right; whether the law recognizes the right of married women to hold and own property separate from that of their husbands. 91% agreed; whether

Marriage is an equal partnership; husband and wife are regarded as one (Table 24). Majority of (64%) disagreed

## 5.2 Conclusion

The study intended to establish the effect of law on matrimonial property rights, the effect of marriage on matrimonial property rights and the relationship between law and employee matrimonial property rights,. After analyzing the data and pointing out the various findings, it can be concluding that Matrimonial property in Uganda is a very sensitive issue. The critical analysis of the above holdings shows that at the time of marriage, a married person is at liberty to execute a legal instrument and to transfer into joint or sole ownership of land and/or property he or she held prior to the marriage in favor of his or her spouse, either at the time of contracting the marriage or any time after the marriage has been celebrated. Similarly, a spouse can also transfer into joint or sole ownership property he or she individually acquired during marriage. In such a case the spouse, in whose favor the transfer of land has been made, would clearly be entitled to register the properties in his or her names or in the couple's joint names as the transfer instrument may state.

If this is not done as is the case in most cases, then the courts will continue in divorce cases where ownership or sharing of property is at issue, to determine each case based on the Constitution of Uganda, the applicable marriage and divorce law in force at the time, in order to make determination whether the property in question is marital property or individual property acquired prior to or during the marriage and to determine whether such property should be divided either in equal shares or otherwise, as the facts of each case would dictate.

It is by no surprise that in **Muwanga v Kintu (supra) Bbosa J.**, rightly pointed out the challenges that Courts will continue to face in determining what constitutes matrimonial property in Uganda, when she observed as follows;

“Matrimonial property is understood differently by different people. There is always property which the couple chose to call home. There may be property which may be acquired separately by each spouse before or after marriage. Then there is property which a husband may hold in trust for the clan. Each of these should, in my view be considered differently. The property to

which each spouse should be entitled is that property which the parties chose to call home and which they jointly contribute to”.

Her formulation is insightful and provides a good starting point for a Court seeking to make that determination and the same formed a basic guideline in the Supreme Court decision of the well celebrated case of **Julius Rwabinumi v Hope Bahimbisomwe S.C.C.A NO.10 of 2009** which settled the legal position on matrimonial property.

**5.3 Recommendations**

Basing on the research findings and conclusion, the following recommendations are forwarded as a way of improving matrimonial property rights in Uganda.

There should be guiding principles that the Supreme Court laid down in determining how to distribute matrimonial property as was illustrated in Julius Rwabinumi v Hope Bahimbisomwe (supra). This guideline is important because it helps on how to deal with the question of the sharing of the parties’ separate property, as well as their joint property, whether acquired prior to or during the marriage. In Rwabinumi, Supreme Court observed that proprietary rights cannot pass from one party to another by merely exchanging religious marriage vows at the time of marriage and therefore property individually owned by spouses before marriage cannot become jointly owned.

The Marriage and Divorce Bill and the Sexual Offences Bill must be urgently adopted to increase protection of women’s rights. A marriage and divorce law protecting Muslim women’s rights, in conformity with the Constitution and international law, must also be adopted urgently, with a view to eventually adopting a unified Act on matrimonial property rights.

Implementing regulations, the necessary budget, and an implementation scheme must be adopted without delay. Such implementation scheme must include the following as priorities: Adoption by government of a training scheme for actors in the justice and law sector; Review of the Local Council Act to include the duties under the law as part of their mandate; Provision of training to local authorities on their new duties under the Law; Launch of a media awareness raising campaign on the Law, including air-time for NGOs; Include awareness raising/training module on the Law on MPR and specialized training for community services officers.

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