

ANALYSIS OF WOMEN LAND RIGHTS IN UGANDA (MAKINDYE Division)

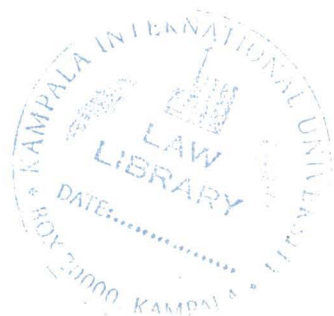
BY

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APPROVAL

This work has been done under my supervision as a university supervisor and submitted with my approval

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.....05/01/2011.....

Declaration

I Mutunga Murithi Boos hereby declare that this work has not been submitted in this university or any other institution of higher learning before for an academic award and should not be reproduced.

Signature

Date

Dedication

I dedicate this book to my entire family, dad Mr. Gichuru Mutunga, mum Catherine Gichuru, brother Franklin Kiogora, Munene Kiriimi and friends whose support has been unconditional to make this struggle successful. I also dedicate this to my lecturer Madam Anne Nyakato for her un dying support in achieving this book.

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I wholeheartedly acknowledge the financial and social support from my entire family, my fellow students, academic staff and mostly my supervisor, who have enabled me accomplish this tedious journey

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LIST OF ABBREVIATIONS

-ACHPR African Charter on Human and People's Rights

CEDAW Convention on the Elimination of all forms of Discrimination against Women

LCs Local Councils

MFPEP Ministry of Finance ,Planning and Economic Development

NGO NonGovernmental Organization

ULA Uganda Land Alliance

UDHR Universal Declaration on Human Rights

UWONET Uganda WOMEN'S NETWORK

UNICEF United Nation International Children 's Education Fund

LIST OF STATUTES

The Constitution of Uganda, 1995

The Administrator General's Act, Chapter 140, Laws of Uganda

The Judicature Act Chapter 13, Laws of Uganda 1996

The Land Act Chapter 227, Laws of Uganda 1998

The Land Transfer Act, Chapter 202 Laws of Uganda

The Succession Act Chapter Chapter 139 Laws of Uganda 1971

The Succession (Amendment) Decree 1972, Laws of Uganda 1972, Laws of Ugaanda

The Succession Ordinance 1906, Laws of Uganda

The Uganda O RDER in Council 1902,

LIST OF CASES

BALINDA for KITEYIRWA V BYARUGABA	Civil Case No 54/1994
EDITH NAKIYINGI V MEREKIZEDEKI	(1978) HCB 107
JAWEV PUBLIC TRUSTEES	HCCS NO 20/1976,90
KASIMU MITI for BALIMANYI V MULA ONDOLA	Customary Reports 1940-55
KAYIZZA V BISSA	(1980) HCB 139
OLIVE AMELIA KAGGWA V REGISTRATION OF TITLES	Civil Appeal No 38/1974
NATIONAL PROVISIONAL BANK V AINSWORTH	(1965)AC II5
YOWANA NALWANGA V EDIMUND KYEYUNE	Principal Court Civil case No
116/1945	
YUDESI KASISI V KYAKALAMBULE	Principal court Civil Case
UGANDA V JEMIMA KYANDA	(1977) HCB 111

1.0 INTRODUCTION

In 1998, the government of Uganda revolutionised land rights in the country. For the first time, "traditional" or "customary" ownership of land (ie without any official papers) was legally recognised. (More than 80% of Uganda's land is owned in this way) Local systems of justice were allowed to determine land disputes, but the state also gave the right to go to local courts, which have very low fees (less than \$1) and where hearings are without lawyers. The state also outlawed any discrimination in local "customary" rules.

Unfortunately, the situation for women and their right to land is still terrible and seems to be getting worse. The Land and Equity Movement in Uganda (LEMU) has spent several years researching the grassroots realities of women's land rights in Uganda, and working with people to find appropriate solutions to their problems. Majority of widows suffer attempts by neighbours or relatives to grab their land – and in a non-industrialised country with no urban jobs, having nowhere to farm means starving, children having no education and the sick going untreated. Almost all divorcees and separated women are denied land by their own brothers, and live, often with children to support, in misery and destitution. Land grabbing is always aggressive and unimaginably abusive, and sometimes violent.

The conventional wisdom is that customary law - people's local cultural norms - are both backward and discriminatory, treating women as possessions and denying them rights. Gender activists want the law to give husbands and wives automatic co-ownership

of any land the family lives on. Then, once we educate women about these rights, they can use the courts to enforce their rights.

The basic flaw in conventional wisdom is that it isn't true. A major problem regarding land in Uganda is that policy is still designed without finding out the real situation on the ground. Customary law for most tribes in Uganda gives women considerable rights, far more than state law allows under the freehold title system. However, customary law is not always being applied. There are many reasons for this – including the fact that many of the customary authorities (clan leaders) don't know their own unwritten law any more.

1.1 Background

Currently land is one of the valuable asset one would wish to own since it does not depreciate but instead appreciates. Land in Uganda is a source of wealth more so in urban areas where people are developing at an alarming rate .Makindye is also one of the developing districts in Uganda with vast land held in all forms of land tenure systems in Uganda¹. Land ownership in Uganda is not limited to any one safe for non citizens whose procedure is provided for by the Land Act² .The constitution provide that every person has a right to own property either individually or in association with others .this is powered by Article 21 (1)which provides for equality before the law in all spheres of political ,economical ,social and cultural life but how this is to be realized remain a myth

¹ 1998 Uganda Land Act

² Section 40

in our patriarchal society. Women constitute the majority of the total population, they produce 80 percent of the food in Uganda and forms 70 percent of agriculture labour force more so 60 percent of the cash crops exported from Uganda ,but they own only 0.7 percent of registered land .it is vital for women to own land so as to facilitate development in the country ³. Various laws have been enacted with the objective of empowering women to actively participate in developments, this include ;the constitution ,Article 26(1) states that every person has a right to own property either individually or in association with others and further Article 21(1)provides for equality under the law in all spheres of political, economic, social and cultural rights. The same rights have been guaranteed in the regional and international instruments. The **Universal Declaration of Human Rights (UDHR)** in Article 17(1) states that “all human beings are equal in all rights and dignity” and in the same vein, the **African Charter on Human and peoples’ Rights (ACHPR)** in its preamble states that freedom,equality,justice and dignity are essential objectives for achieving the legitimate aspirations of the African people. The **convention on the elimination of all forms of discrimination against women(CEDAW)** in Article 6 enjoins all state parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage relationship and in particular ensure equality between men and women in respect to ownership of property.Despite all this legislations women land rights are greatly affected by other factors such as culture and women ignorance to their rights which is mostly attributable to their submersible nature caused by lack of economic control and thus depend on men for economical survival despite they being the source of labour. Makindye district comprise of various classes of people holding land under different forms of land

³ S,Bazili Ed 1991 putting Women on the Agenda pg 8

ownership in the country ,however the number of women owning this lands is very small. My presumption is that the laws in Uganda have accepted that everyone can own land ,then why few women in this division own and control land and what can be done to make up for this,

1.2 Statement of problem

The state has ignored the clan system, instead of supporting it and holding it to account, so clan leaders are no longer clear about their powers and responsibilities. They no longer take responsibility for preventing land grabbing. In customary law, all land is owned by families, not individuals, but men who wish to grab land for themselves have claimed that "women don't own land". By constant repetition – including from women's organisations – and from lack of any challenge, the myth is becoming reality.

The state is not protecting rights, because justice is not available from local courts, LEMU has identified many factors behind this. Court members are not trained in customary land law. How can they uphold women's rights if they don't know in what form they exist? Courts function with no support or oversight. Lower court "judgments" rarely make reference to evidence. Though sometimes guilty of bias or corruption, they often give judgment defending the rights of women.

The underlying problem is the reliance on the justice system to ensure that land administration happens smoothly. This indicates weakness on the justice system. The justice system will remain overwhelmed until there is a way of preventing conflicts arising, by making sure that land rights are clear, by clearly marking land boundaries, and

recording all transfers (when people sell land, or pass it on to their children). Reform of land law only thought about titled land, and completely ignored land administration for customarily owned land.

1.3 Purpose of the study

The major objective of this research paper is to critically analyze the factors that prohibit women in makindye from accessing land under the multiple land tenure system existing in Uganda

To analyze the level of women 's knowledge of their legal rights to land and whether they have taken the initiative to identify the administrative constraints which restrict them from accessing land and how to deal with such constrain.

To evaluate how the law protect women land rights and it drawbacks in implementation due to the traditional customs and culture that are embedded in our laws.

To examine the structural established for enforcement of the women land rights their efficacy and their shortcomings to the realization of the said dream of equal land ownership.

This study also aims to find solution and recommendation as to how the delicate issue of women`s land right access, control and ownership can be facilitated

1.4 Research question

Whether the land law and other laws have had impact on women's land rights.

What are the main factors that are denying women their rights to land?

Whether the society at large and the women in particular are aware of the land laws and other laws pertaining to gender access to land.

Whether women participate in land matters.

1.5 Scope

This study shall cover the general history of women land rights in Uganda as whole minding all the relevant legislations both national and international and its impact, and then narrow it down to a specific area of research (Makindye division) trying to evaluate the efficacy of the said laws.

1.6 Scope of study

This is shall cover the period from the enactment of the Land Act in 1998 up to the present date. Makindye division was chosen because of it is overwhelmed by hap hard urbanization, multiple land tenure systems and population growth currently established at 5 per cent per annum⁴. However, amidst this, one of the critical factors affecting women's welfare seems to be accessibility of land, as well as control and management of the land utilization.

⁴ Central Bureau of Statistics

1.7 Justification of the Study

By exposing the importance of women's activities on agricultural development and economic growth, this study seeks to examine the legal and extra legal factors that determine women's rights to access land, as a tool for social, economic and cultural reforms. This will help legislators appreciate these legal factors while making laws that have efficient mechanisms in facilitating women's land rights. This study is intended to provide prerequisite information to scholars seeking to have a deeper insight in the problems relating to women's land rights and the solutions at hand.

1.8 Chapterization

This study is divided into four chapters as follows;

The first chapter contains the general introduction of the study, statement of the problem under study; it also outlines the objectives, research questions, justification of the study, methodology, literature review and the relevant definitions.

The second chapter shall examine the effect of the customary laws on women's land rights, right from the colonial period to the present situation and specifically discussing issues of succession, divorce, widowhood and the post-colonial legislation.

The third chapter shall analyze women's land rights under the Land Act (1998) which will include family property (land), co-ownership of family property, implications of section 27 of the Land Act, women's rights under customary land tenure, institutional mechanisms for women's rights and implementation of the Land Act.

The fourth chapter shall be the last chapter of this study, it will contain the study findings of women's position in society, conclusion and recommendations as to what should be done to solve the problems restricting women's rights of accessibility to land which prompted the carrying out of this study.

1.9 Literature Review

There is increasingly growing literature and discussions on women's restricted rights of access to ownership and control over land. Many academicians, lawyers and politicians have highlighted the general public about the injustices women face when confronted with the land issues but very few of these authors actually tackled the issue of gender access to land in Makindye division.

Obol-Ochola James (1971), Customary Land Tenure and Economic Development in Uganda⁵. The author generally discussed customary land law examining its practices, giving criticisms and objections to these criticisms. However the author's work is gender insensitive, he fails to relate his discussions to women's rights over land. He does not even point out that customary land tenure discriminates against women.

Kabonesa Consolata (2002), Gender Relations and Women's land rights to Land in Uganda⁶. A case study of Kabarole District Western Uganda. The author generally analyzes the issue of women's land rights under the land tenure systems, especially customary land tenure which covers most of the district. She examined the traditional customs and cultural aspects that hinder women's access to control and ownership over land since Uganda is a patriarchal society. She also briefly discussed the circumstances under which women and men acquire land.

⁵ LLM Dissertation UNIVERSITY OF Dar es salaam

⁶ East African Journal of Peace And Human Right vol .8. NO 2PG 227-249

Even though the study was limited to Kabarole District, the social, economic and cultural factors associated with women's rights of access to ownership and control over land is almost similar through out the country.

Nawangwe B. Nuwaga A and others (2002), Research Report on Land Tenure and Administrative issues in Kampala City and their effect on Urban Development⁷. The report carries a topic on gender and access to land that addresses the social, economic and cultural factors that have affected access to control and ownership and control over land but law provides the relevant statistics to these factors, giving it a very practical element.

However, the author fails to discuss the various legislations that are put in place to enforce women's rights thus making it have a non-legal element.

Tamukedde Mugambwa John (2002), Source Book of Uganda's Land Law⁸. The author did a commendable job by analyzing the various laws that embrace gender equality and also summarized the various discussions for the demand of recognition of women's land rights by the parliament of Uganda for the Land Bill (1998). The author further discussed the saga of the "lost amendment" on the contentious issue of spouse co-ownership of property and its likely impact.

However, despite the author's good analysis, he does not discuss the social, economic and cultural factors that affect the enforcement of women's land rights.

⁷ Makerere University.KAMPALA

⁸ Fountain Publishers LTD, Kampala

1 a. Methodology

This study adopted a multi-faced research design in order to gather on spectrum of variables related to women's rights access of, control and ownership over land, and its likely economic impact on development. This comprised use of various techniques such as quantitative survey, qualitative methods, case studies, focus group discussions and key informant interviews.

1b. Area of Study

The area of study comprised of Kampala City bordered by Wakiso district and Lake Victoria. It has five divisions namely, Nakawa, Kawempe, Rubaga, Makindye and Central division. The study shall cover only Nakawa division because the area experiences different land tenure systems, which have impacted differently on women's land rights depending on the overall urban process of development.

Pre-Field Activities

These were the activities carried out by the data collection:

- a) Review of existing literature from a number of scholastic materials like case law, magazines, textbooks, newsletter, internet websites and statutes. This was done from the Makerere library, Makerere Social Research Institute and from a number of Non-Governmental Organizations' libraries.
- b) Identification of conceptual gaps forming the choice of the objectives of the study and research instrument so as to make sure that there is quality control of the questions to be asked and these included relevant questions which could be missed.

Study Population

The study will target women and men of twenty years and above whether single, married, widowed, divorced, self-employed, unemployed, poor or rich Makindye is the leading commercial centre in Uganda. Each of the women and men in the city with regard to their socio-economic status uses the city differently because they have varied needs and interests.

A total of 40 women and men from Makindye Division will be chosen as respondents for the purposes of carrying out interviews.

Selection of Respondents

The method used for selection of the respondents was cluster sampling in the division. The clusters are determined by socio-economic configuration of urban settlements in Makindye division of Kampala City, because it reveals the relative levels of income differentials. One parish will be selected from the division and two villages will be selected from the parish.

Data Collection

The research will use the following methods for data collection;

a) Questionnaire

The questionnaires were administered to selected respondents inclusive of the Local Councilors in the area.

b) Key informant interviews

This will involve personally interviewing the key respondents using a self-determined questionnaire. The main aim is to gather information with deeper insights regarding the intricacies of issues concerning women's rights of access to, control and ownership over land.

For this study, the key informants identified for interviews were land officers in the Ministry of Lands, Water and Environment especially from land commission and land registry in Kampala, advocates from Non-Governmental Organizations like Uganda Land Alliance (ULA) and Uganda Women's Network (UWONET)

c) Focus Group Discussions

The focus group discussion will be held to elicit information from households regarding the women's ability to have access to, control and ownership over land, and the relative impact of land tenure on urban development. This study shall have two focuses; group discussion involving men and women respectively.

Study Limitations

A number of limitations were encountered during the course of this study which included the following;

There was limited time to carry-out the research and this can explain the small number of respondents whose opinions were sought after the study.

Difficulty was encountered in finding key informants since most of them were either too occupied to avail their time or they were simply unavailable.

Most of the library materials that needed to be consulted for the research were very scarce and a few were in a usable state.

There were financial constraints that prevented the carrying out of extensive research in the area of study and the sampled areas were small.

1 c. **Definitions of Key Words**

Women's rights to land refer to whether or not the women have access to land, own land and control land⁹. Rights here refer to claims that are legally and socially recognized and enforced by an external legitimized authority¹⁰.

Access to land refers to the ability of individual males and females to get and use land regardless of ownership rights. In which case the rights of the user are limited to improving the land and using the land for production of perennial crops and the owner can withdraw the user's rights anytime¹¹.

Control over land refers to the individual's power to dispose off the land, renting, selling and bequeathing.

Land ownership requires a written documentation or registration and title stating the individual who owns and manages the piece of land.

⁹ Kabonnesa Consolata 2002

¹⁰ Agarwal B, and Others 2000)Are we not peasants too ?

¹¹ Nawangwe B and Others.2002 pg144

CHAPTER TWO

2.0 WOMEN, CUSTOMS AND LAND OWNERSHIP

2.1 Customary Law

Before the advent of the colonialism, there was a single tenure for central Uganda. Customary tenure, for which individual ownership is not absolute, was dominant and rested on elaborate traditions and customs which served to enforce group control over its use and disposition¹². No one could sell, pledge, transfer and deal with this land without the permission of the clan council. This is because the lifetime of any one individual and the concept of community tenure carried with it an obligation for future generation.

The individual rights to possess and use land was subject to control by the family, clan and community, who settled disputes in their areas of control and exercised the option to buy land offered for sale by a member. The community authority was vested in the kings, chiefs, clan heads and in some cases community elders.

This communal ownership of land adversely affected the women who were only given user rights on the men's land. This is explained by the fact they did not sit on the clan council dominated by men and never participated in any decision making of the land that they tilled.

The women were usually allotted part of the land to till and provide food for the family though they had no individual rights over this land¹³. They could not sell, pledge, dispose of or transfer the land by will or intervivos. Their rights to stay over the land terminated upon divorce where they could only leave the land with personal property. Divorced women could only go back to

¹² Nawangwe B and others (2002)

¹³ Nawangwe B and others (2002)

their father's land and if allowed back would be given a piece of land for their upkeep without ownership rights in it¹⁴.

The fact that women in the earlier centuries had no permanent settlement as it was subject to change of their marital status, was recognized in the case of **Yowana Nalwanga v. Kyeyune**¹⁵, where court held that if a man moved house, his wife had to follow.

It is thus clear from above court holding that women did not own land and had only usufructuary rights that were not absolute because the general concept is that "*a woman is a visitor in her father's home by marriage she became a full pledged member of the husband's family who also view her as a visitor who may exist any time*"¹⁶. Therefore, customary law put women in an unsafe position where she inherits no property even though she enormously contributed to the home.

2.2 Succession

Among the societies of the central region of Uganda, the succession laws shows how primogeniture they were and how they operated against women. The succession laws and customs in the region gave men all the powers of property ownership rights (including land) and the women were left with nothing they could call their own¹⁷.

Land within the Ganda societies belonged to the male household head and upon his death, the land passed on to the male customary heir usually the eldest son¹⁸. Such issues never arose when

¹⁴ Okumu Wengi J.(1997). Women's Land Law and Grassroots Justice in Uganda. Uganda Law Watch. P.21

¹⁵ Principal Court Civil Case No.116/1945

¹⁶ Ruganda Margaret.(1998) "Land Act or not, Most Women still Land less," The Otjher voice News Letter, December. P5

¹⁷ Okumu Wengi.J. (1997). Supra at . P21

¹⁸ Kigula John.(1999). Op cit at P.21

the man survived the woman who were considered not to own any real property and by marriage it devolved to the husband.

In situations where a man dies without a son, his daughters do not normally inherit the land, the land is passed on to a male relative¹⁹. Out right gifts of land by male family heads to their wives and daughters with respect to land inheritance were unheard of. The heir looked after the family and was subrogated to the rights of the deceased. Even when a widow was left with property, the heir had to look after her and the property. She was unfairly denied the rights to manage her own property.

Thus in the central region women had no rights in land because traditions and customs barred her from ownership. Even if women may be said to have user rights in land acquired through their husbands, it amounted to no ownership rights.

2.3 Colonial Policy

With the advent of colonization, its policies aimed at propagating the status quo of the men regardless of how affected the women. The colonial policy was seen as a tool for indirect rule and appealing to indigenous people by appearing not to tamper with their culture and customs. However, in actual practice, the colonial policies had the effect of promoting patriarchy that seemed to protect women's rights, but in reality it extended the male domination over women especially with regard to real property. This was clearly manifested by the Buganda Agreement of 1900.

The Buganda Agreement was a bad practice of legislation that transformed the communal usufructuary rights into individual rights of ownership and granted them to influential people in

¹⁹ IBID.

society (men) who originally had been trustees of this land. The impacts of this agreement were far reaching because the communal usufructary rights of women were lost, since land was now individual, not communal property²⁰.

In cases where the parties were natives, the courts were to be guided by native laws and customs that were not repugnant to justice, morality and not inconsistent with written law. However, it was not clear what good conscience and morality meant²¹.

It is important to note that the courts were presided over by men who could be sympathetic to the men's cause rather than the women's. A look at few cases decided by the native courts show how unjustly women's property rights were unfairly disregarded.

In the case of *Yowana Nalwanga v. Edimund Kyeyune*²², the plaintiff wanted from her husband the sum of shs 1,148/= value of crops grown by her on a plot occupied by the couple when the defendant wanted to sell it. The court stated according to Kiganda customs when a woman marries a man, she lives in her husband's absolute control and the husband can move from one place to other going with his wife. The plaintiff can not be treated as an independent woman whereby the crops are treated as her personal property. She obliged to abide by her husband's orders as it is the custom in Buganda to vacate one place to another.

²⁰ Nugagaba Mbalinda.(1999). ``Women`s Land Rights Under Land Act 1998,Myth or Reality? LLB Dissertation,Makerere U niversity 1999. P47

²¹ Article 12 (8)

²² Ibid

In **Yudesi Kasisi v. Kyakalambule**²³, the court held that a girl could not inherit her father's property. As such, she could not sue her paternal uncle for denying her possession of her father's 30 cows.

In **Balinda for Kiteyirwano v. Byarugaba**²⁴, the court held that the plaintiff who had lost her husband being "a mere woman who gave birth in a clan" cannot interfere with probate matters.

More so, in the case of **Kasimu Miti for Bijowal Balikomany v. Nula Ondola**²⁵, the court held that a woman whose husband died intestate and with no children could inherit all his property, but if the property included land and money, then the deceased's parents and (male) relatives supported by the clan could share the wealth.

The injustices demonstrated by the decisions in the above cases cannot be over emphasized. Thus customary law did not recognize any equitable contribution of a wife to the maintenance or acquisition of matrimonial property, it only made sure it deprived the women of their property.

2.4 Women's Land Rights Under Particular Post-Colonial Legislation

The post-colonial laws have not been so helpful in promoting and protecting women's land rights. Where the statutory law stipulated that women can own land, in reality the customs and traditions of our societies prevent being implemented on the ground. A critical look at the post-colonial legislations reveals how the position of women in some aspects was unfortunate.

²³ Principal Court case No. 116/1945

²⁴ Principal Court case No. 116/1945

²⁵ Civil case No.116/1948

2.5 The Land Transfer Act Cap 202

Section 2 of the Act provided that non-Africans may not enter into possession of or occupy or purchase, take on lease or accept any interest in land which is registered under the proprietorship of an African without the consent of the minister in writing. Though this provisions affected both men and women, it however revealed how unfairly women were to be treated compared to men.

A non-Ugandan woman could not succeed to her Ugandan husband's land despite having Ugandan children . This also meant that a Ugandan woman married to a non-Ugandan man could not transfer his land to her children.

In the case of *Olive Amelia Kaggwa v. Register of Titles*²⁶, a widow of mixed blood (had a Ghanaian father and British mother) and who was an Ugandan citizen could not inherit her husband's land. The court stated section 2 referring to an indigeneous tribe in Uganda. This provision denies a woman the right to inherit land to which they have a legitimate right.

2.6 Succession Ordinance 1906

This ordinance gave the Governor the discretion to exempt any class(es) of persons from the application of the whole or parts of the Ordinance. By the Succession (exemption) Order, the governor exempted Africans from the application of Part V of the Ordinance dealing with the distribution of an intestate's estate. This meant that customary laws did not favor women could be applied in its place.

²⁶ Civil Appeal No.38/1974

Mohammedans were also exempted and under the Shari a law a woman inherits 1/8 of the estate of her husband if there are children and ¼ if they are none. The Shari a law only guaranteed men with more inheritance powers than the women, since the males always inherited more.

By the **Succession (Exemption) Order²⁷ Statutory instrument NO 181 of 1986**, this position slightly altered, customary law was applied only to intestates. However, this did not amount to much since very few people made wills.

Succession (Amendment) Decree 1972

The basic law of inheritance is governed by the Succession Act and its Amendments. The Decree Agreement guaranteed that women could inherit their spouses' property whether they died testate or not²⁸. Customary law was not to apply without consent of the dependents of the deceased and sanction of the Court²⁹.

The beneficiaries could also apply to court to alter or revoke a will if they had not been adequately catered for. Marriage of a testator revoked a will in order to ensure that the family (including the wife) was catered for. No one could acquire an interest in the property of another merely by virtue of marriage³⁰. This was to protect women's property from being grabbed by their husbands but however, these provisions simply remained on paper because up to today, men still continue to grab women's property.

The effect of customary law however remains strong since many customs were directly incorporated in the 1972 Amendments to the Decree. The Succession Decree provides that where

²⁷ Legal Notice No.11/1906

²⁸ Section 26

²⁹ Section 222228(3)

³⁰ Section 4

there is equality between kindred of the same degree a male is preferred to a female as the legal heir to the estate³¹. This provision simply promotes customary law that strongly denies women their rights to inherit property.

The Succession Decree only provides for devolution of property upon death of the wife and is silent about what happens in case the husband survives the wife. Even though the Act provides for making of wills by women bequeathing their property, in practice the husband takes his entire wife's property if she died intestate without being subject to the rigorous provision she goes through if she survives him and regardless of whether he made any contribution to the acquisition of the property.

In **Kayizza v. Bissa**³², it was held that the unfiltered rights of a man (legally married to the deceased) to succeed her estate was recognized.

The Decree does not favor the wife in regard to the scheme of distribution in case of intestacy. Under section 28 of the Succession Act the widow is entitled to only 15% of the estate if there are dependents, lineal descendants and a customary heir. However, the wife's contribution is always well over 15% and as such it is unfair for 75% of the estate to go to the wife's children who have made no contribution.

The legal heir inherits the matrimonial home and surrounding land while the widow only has rights of occupancy, which are forfeited upon re-marriage. The provision that a widow's property should terminate upon re-marriage supports the fact that women's rights to their husband's property are almost at an end upon the death of the husband regardless of her contribution.

³¹ Section 3 (b)

³² (1980) HCB 139

This provision is at variance to **section 14(2)(b)(1) of the Judicature Act**³³, makes the doctrines of equity ³⁴applicable in Uganda. However, it is in rare cases where the courts have applied the doctrines of Equity to protect the contribution of a woman to matrimonial property. In the case of **Edith Nakiyingi v. Merekizadeki**, court held that the house and *Kibanja* were owned by the husband and the wife under a trust for sale, the trust having arisen out of the substantial contribution by the wife to the development of the land and building of the house, gave the wife the rights to remain on it.

The Act does not provide for cohabiters regardless of the period they have spent with the deceased or the contribution made in acquisition of the property. The definition of a wife in section 2 of the Act includes only those married validly under the laws of Uganda or under any customs or laws in any country whose laws recognize the marriage as valid.

In the case of **Jawe v. Public Trustees**³⁵, the court relied on the presumption of marriage. In this case the plaintiff cohabited with the deceased until the time of his death and there were three issues of the cohabitation. The Court decided that the case on the grounds that the act of cohabitation gives rise to the presumption of marriage being a common law principle applicable to Kenya by virtue of Judicature Act presuming the existence of marriage. The Court held that the plaintiff was entitled to inherit her husband's estate in accordance with the law. However, this view is not applicable to Uganda.

³³ Chapter 13 Laws of Uganda 1996

³⁴ (1978) HCB 107

³⁵ HCCS No.20/1976,90

Administrator General's Act Cap 140

This Act empowers the wife of the deceased in section 5, 6 with the right to apply for letters of administration to her husband's estate within a period of two months after the deceased's death. However, most wives in Uganda are illiterate³⁶ and do not understand the process of obtaining letters of administration.

³⁶ Ministry of finance, Economic Planning and Development ()1991_ Reoprt, stated that 45% of Ugandan Women are illiterate

CHAPTER THREE

WOMEN'S RIGHTS UNDER THE LAND ACT (1998)

3.0 Introduction

The provision on women's rights in the **land Act 1998** are derived from the objective **XV** of the National objectives and directive principles of the state policy in the 1995 Uganda Constitution, which provides that the state shall recognize the significant role of women in development and emancipate them to incorporate them in all spheres of national building.³⁷

The fact that women are entitled to own property was reflected in the case of **Uganda v. Jemima Kyanda**³⁸, where Asthma J held that "... a woman in Uganda is capable in law to hold and own her own property..."

It is provided that land in Uganda belongs to all citizens³⁹ of the country and the 1995 constitution imposes an obligation on the state to rectify the nullities caused by customs, traditions and legislation that restrict women's rights. **Article 33(6)** prohibits laws, customs or traditions which are against the dignity of women or which undermine their status. Parliament is also required by article 31(2) to make laws for the protection of the rights of widows and widowers to inherit the property of their deceased spouses.

In addition, it is important to note that article 26 gives a right to individual ownership of property and protection from its deprivation.

³⁷ Mugabi Frank.(1998). "The New Land Act; Has improved the position of Women? The Defender News Letter, vol.4, Issue No.p.10

³⁸ (1977) HCB 111,146

³⁹ ARTICLE 237(1) Constitution of Uganda 1995

Article 2 of the Constitution declares that the Constitution is supreme law of Uganda and if any other law or custom that is inconsistent with its provisions, that law or custom shall be void to the extent of the inconsistency. Accordingly, when interpreting the provisions of the Land Act or any other law (including customary law) affecting land, one should be mindful of the constitutional provisions mentioned above.

3.1 Family Property

The Land Act provides for spouses to enjoy security of occupancy on family land by having a right to use the family land and give or withhold his or her consent to any transfers which may affect his/her rights under section 38A. The Act further defines security of occupancy to mean "*a right to access and use family land⁴⁰*" while family land means "*land on which is situated as the ordinary residence of the family, derives sustenance and which is treated as family land according to the norms, culture, customs, traditions or religion of the family⁴¹*".

The effect of this provision gives both men and women equal powers of control on production and transactions done on family land, where previously customary beliefs and practices in societies automatically awarded only to the men absolute ownership and control in it.

Section 39 of the Land Act imposes restrictions on a landowner to transfer or enter into dealings affecting 'family land'. This provision makes it illegal to carry out transaction on any land that is residential property of the family or its main productive source without consent from a spouse. However, this provision has been attacked by some people (mainly men) on the ground that it

⁴⁰ Section 38A (3)

⁴¹ Section 38A (3)

facilitates the deprivation of one's property, thereby violating the constitutional right to its ownership and protection of property⁴².

Section 39(1) provides that no person shall sell or enter into a contract for the sale, exchange, transfer, pledging, mortgage, or lease any family land or give away family land, inter vivos or enter into any other transaction in respect of family land except with the prior consent of the other spouse. The purpose of this section is to avoid irresponsible sales by the husband that usually leaves the wife and children without anywhere to stay.

In a study done in the country, it was realized that 72% of the land sales are made by the men (husbands usually), 14% by local councils and chiefs, 8% by father and son jointly, 2% magistrates⁴³. Thus this provision endeavors to encourage the involving of women in land transactions contrary to the previous practices where women were rarely consulted.

Section 39(1) of the Land Act is considered very helpful in the testamentary disposition of family property and enables women play a recognizable role. Many a time widows have been beaten up and chased from the matrimonial home by the relatives of the husband in the name of *taking what belonged to their late son who rightfully belongs to them*. Thus, this provision curbs situations of property grabbing, where relatives of the man, claim after his death that the land was bequeathed to them since a woman is expected to give consent for any transfers in the property.

Section 39(4) has got the effect of making transactions in family land that are not in compliance with section 39(1) void. This section is important in the sense that it protects the transfers of family land in the presence of transactions tinted with fraud by the other spouse and without the

⁴² The Constitution of Uganda 1995, Article 26

⁴³ The Other Voice Newsletter (1998) vol.1, No.1.P. 2

constructive notice. This is simply because many transactions that take place on land is between people who know each other and are in a position to tell that the land which is subject matter of the purchase is family property that requires consent from the other spouse. In such a situation of transfers of family land one would have to submit to the proper requirements for it to be a valid transaction.

Section 38A and 39 of the Land Act have been very instrumental in ensuring women's property interests in land. The former section provides that for a spouse to have a right to have her consent sought she need not ordinarily reside on the family land permanently. Under section 38A a family land means land on which is situated as the ordinary residence which the family derives from sustenance and is also land treated as family land according to the norms, cultures, traditions and religion of the family⁴⁴. This provision is very fair to the other spouse who has materially and substantially contributed to the purchase or made considerable improvements thereon, whether or not they live together on the land to derive sustenance there from.

However, section 38A and 39 is guaranteeing women's propriety rights in land have overlooked a number of incidences. The Act does not provide for consent sought from wives of polygamous families. Section 38A (1) and (3) literally provides for consent ought in respect of a 'spouse' and not 'spouses'. Therefore, it is difficult to tell how section 38A and 39(1) will operate in circumstances where one of the wives refuses to give her consent and others do.

By virtue of section 39(7) the dissenting wife does have a right to lodge a caveat on the land which will simply complicate matters of land transactions in it. The Land Act should have

⁴⁴ Section 38A(4)

provided that where more than one wife resides on the land, then the wives become tenants in common so that each has a right to consent or oppose only the sale of her portion of land.

Section 39(3) limits the application of section 39 because it makes one helpless in the face of transfer of land by the mortgagee in the exercise of powers under the mortgage. In situations where the husband without the consent of his wife, mortgages the land for a loan for his personal or family benefits, the effect is that the mortgagee may then proceed to the process of foreclosure of the mortgage and sell the land leaving the wife without any means of survival.

In the case of **National Provisional Bank v. Ainsworth**⁴⁵, the court held that a personal right of a spouse by virtue of her occupancy status as a wife cannot defeat a legal one acquired through means of purchase or mortgage.

3.2 Co-ownership Clause 'The Lost Amendment'

Upon the passing of the Land Act 1998, a clause on **co-ownership of land by spouses** was conspicuously and controversially left out in the final text of the Act despite the fact that it received prior unanimous support by the legislature. The factors surrounding the omission of the clause were largely based on the de facto (cultural, traditions and customs) rather than defuse discrimination⁴⁶.

The clause in its original text read;

"Land held or acquired for the joint occupation and use of the spouses shall be held and registered jointly.

While any land whether acquired before or during marriage remain separate property.

⁴⁵ (1965) AC 115

⁴⁶ The Monitor Newspaper ,January 24,2005,.P.7

In polygamous marriages each wife shall jointly own with the husband the piece of land she occupies and cultivates.

Where wives occupy and cultivates the same land, they shall hold it jointly with the husband⁴⁷ d”.

The effect of this omission is that the current Land Act does not address the issue of access and use of land where women predominate; instead it is a piece of legislation that addresses ownership⁴⁸. The Land Act (1998) is not a land policy but one that merely provides opportunities for registration of land rights (that most women do not have) making it vulnerable to multiple interpretations and a calamity to women⁴⁹.

It has been said that what the Act has attempted to do is replace access or use with ownership. Women have not been owning any land and have nothing to register. This is where the “lost amendment” gains an upper hand. In our communities the feeling of insecurity and probable loss in cases of divorce and separation is highest among women. The Act and the Constitution in reiterating that “all land belongs to the citizens of Uganda ⁵⁰.”, enhances men who already have the land and the women with their user rights are left hanging.

In this clause, the spouses are presumed to be owners in common rather than joint owners, in law, owners in common have individual but undivided shares in land where they as joint owners own the whole land jointly. However, the clause does not prevent parties from agreeing to hold land as joint tenants if that is what they want to do. The principal difference is that owners in

⁴⁷ The Parliament of Uganda (1998)Parliamentary Debates (Hansard)June 23

⁴⁸ Was included in the clause but excluded in the final draft

⁴⁹ Rugadya Margaret(1998) Land Act or not ,Most Women still Land Less;The Other Voice Newsletter Dec pg6

⁵⁰Article 237(1)

common can deal with their separate plots without affecting the other partner's share whereas in the joint ownership there is a risk that one partner can deal with the whole and affect it wholly⁵¹. Thus, the co-ownership clause helps to avoid situations where transactions in land are left unclear and the way is opened to unscrupulous dealings.

With the absence of the co-ownership clause there exists a complex situation whereby women without register able interests have no say in the determination of land transactions, a right that is purported conferred by section 39(1). The rights women have will only be limited to giving or withholding their consent before land transactions take place. They will have no right to determine how the land is used and for what purposes, since they do not own it. Their rights at most are mere encumbrances and these are incomplete rights that amount to no rights⁵².

The co-ownership clause provides for the doctrine of survivorship, which is considerably important in the solving of succession disputes in the event of death of the household head. The doctrine of survivorship applies upon death of a spouse where land is held jointly between a husband and wife, his or her interest in the land is extinguished and the survivor becomes the sole owner of the land without need for letters of probate. This will curb the situation of property grabbing and widow evictions from the family land or matrimonial home.

However, the quest for justification of co-ownership has lost its sting given the amendments to the Land Act 1998, by inserting a new section 38A and amending section 39 to provide further securities for the married women by adding certain elements of co-ownership. It has been pointed out that the section 39 in the Land Act is an achievement and reforms to that section are substantial, such that it would only be fair to test the efficacy of this section.

⁵¹ Co-ownership of Land by SPOUSES (2000) a publication of the Uganda LAND ALLIANCE pg 8

⁵² Nuwagaba Mbalinda (1999) Women's Land Rights under the Land Act 1998, MYTH or reality?

3.3 Women's Land Rights under Customary Land Tenure

Customary land tenure is one of the four land tenure systems recognized by article 237(3) of the 1995 Uganda constitution. Customary land tenure is a system of land ownership governed and regulated by customary principles and usually sanctioned by customary authority as indicated in section 1(1)⁵³. Section 3 provides for incidences of customary land tenure. Customary land tenure has been a target of criticisms for its effects on the rights of women on land. The question to investigate in this study is whether customary land tenure frustrates or guarantees women's rights in land.

Article 237(4)(a) of the constitution empowers all Ugandan citizens owning land under customary land tenure to acquire certificates of ownership and it is on this basis, that section 4(1) of the Land Act provides that individuals, families, communities holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of the land they occupy. The granting of these certificates if proof of ownership where upon women can be able to assert their rights over the land in case of any wrangle that may arise.

However, several women activists have criticised customary land tenure that it discriminates against women. Customary land tenure is regulated by customary law that it is the main factor frustrating women's rights in land in Uganda today. Customary law creates room for cultural practices which exclude women from all levels of decision making and from owning any land, thus maintaining the status quo of men as the legitimate land owners.

Furthermore, legalizing customary land title on its own is insufficient, because customary tenure is multi-dimensional and involves rules relating to inheritance, religious and other cultural rights.

⁵³ The Land Act, Chapter 227 Laws of Uganda

There is need to harmonize customary and statutory tenure system so that landlords provide a framework to guide change and avoid conflict⁵⁴.

The Act provides for registration of land held under customary land tenure so as to obtain the certificate of customary ownership; however the procedure of application is a nightmare for many women. Women in Uganda have the highest illiteracy levels than men and thus, a large percentage of them cannot be expected to know and understand the bureaucracy of applying for certificates. Furthermore, they cannot afford the prescribed fee for a certificate of customary ownership.

This situation is made complicated by the fact that the committees that are supposed to grant the certificates of approve the conversion of customary land to freehold are dominated by men who may be more sympathetic to a man's cause than to a woman's, thus promoting the interests of men at the expense of women. Although section 65(1) of the Land Act provides that atleast one of the members in the land committee may be a woman, this may not be sufficient enough to prevent these committees from furthering the interests of men.

The Land Act makes provision for owners of land under customary land tenure to convert the tenure to freehold and for the grant of land in freehold out of former public land. Section 9(1) of the Land Act provides that any person, family, community or association holding land under customary tenure on former public land may convert it to freehold. However, the process of application for grant of freehold seems to be complicated and might involve unaffordable cost to the poor women. In this regard registration requirements should be reconsidered in favor of a

⁵⁴ Tamukedde Mugambwa(2002)pg 80

single application process which removes the need or cost of conversion process with significant loss or the ability.

The Act under customary land tenure does not recognize the user rights of women which is supported by the fact that it does not define the phrase “holding land⁵⁵”. Our customs do not recognize any significant rights of women over land rather than user rights which cannot qualify as “holders” of that land or “exercising rights” there under amounting to ownership. The rights exercised by women over such land can at most be recognized as third party rights.

3.4 Section 27 and Rights of “Women” or “Customs”

Article 33 of the Constitution which prohibits laws, cultures and customs that are discriminatory, renders void such practices irrespective of the tenure under which the land is held. In the same vain, section 27 of the land act renders void any customary practices affecting customary land that deny women, children or persons with disability access to ownership, occupation or use of customary land. However, this provision is inadequate because it falls short of specially providing for rights of women over land, instead it places emphasis on customs and culture which are the major offenders of women’s rights.

The Land Act aims at correcting historical mistakes that have been perpetuated in this country regarding the control and ownership of land against women. This historical mistake are embedded in our “customs”, traditions, culture and norms that do not favor women’s rights enshrined in the constitution. Women form almost 50% of the population and are responsible for over 5% of the agricultural production yet they do not have rights of control and ownership in

⁵⁵ Tamkedde M ugambwa (2002).Principles of Land Law in Uganda

the land they till⁵⁶. Thus, it is a shame to note that the same customary practices outlawed by the constitution and that have worked against women since time immemorial is reflected in the Land Act⁵⁷.

Although section 27 was meant to address the problem of the culture and customs which discriminate against women, in actual sense does not grant women their rights but the rights of customs and culture⁵⁸ from which it gains its legitimacy. It should be noted that when the legal regime gives customary law precedence over other laws its tantamount to undermine gender sensitive clause which advocates for equality in all aspects for women and men⁵⁹.

It's hard to implement section 27 of the Land Act given the fact that there are different customary practices in different societies. It may not be very easy to point out with clarity when these practices fall out below the minimum standards required by the Constitution and the Land Act. The cultural practices in one society may appear to contravene the provisions of the law yet when placed within the context of another society it may not be in conflict thereof⁶⁰. The provisions this section would have been easily enforced if the customary practices are codified so that the accepted standards are clearly laid down.

Therefore, it is worth noting that despite the shortcomings of section 27, it at least portrays the intentions of the law makers that women's land rights must be protected at all times. The legislature should harmonize the customary and statutory laws so as to avoid conflict of gender rights in the Land Act.

⁵⁶ United Nations International Children's Education Fund 1998 report

⁵⁷ S.26 of the Land Act Cap 227, LAWS OF UGANDA 1998

⁵⁸ Tamukedde Mugambwa(2002) pg 82⁵⁸

⁵⁹ Art 21(1) Uganda const

⁶⁰ Nuwagaba MBALINDA(1999) PG 85

3.5 Institutional Mechanism for Women's Land Rights

Institutional frameworks are very important tools for the promotion of women's land rights. Institutions are created to ensure that the provisions of the Land Act are implemented on the ground and not simply remaining on paper. The Land Act provides for a number of institutions such as land committees and tribunals. However, it is important to observe whether these institutions are created in such a way as to ensure implementation of women's land rights embedded in the Land Act, particularly in the form of representing them at all levels.

Section 47(4) states that at least 1/3 of the members of the district land committee shall be women.

Section 58(3) states that atleast 1/3 of the members of the district land board shall be women. However, section 64 does not provide for any women representation in the land committee and yet these are rural based and is an important institution as far as implementing the Land Act is concerned.

Section 74 of the Act provides for the establishment of the land tribunal in each district and section 80(2) provides that at least one member of the sub-county land tribunal in each district shall be a woman. However, this representation is missing in the urban land tribunals as provided for in section 81(1).

The government by providing for women representation in the land institutions is an attempt at ensuring that provisions protecting women's land rights are implemented. However, the representation is inadequate given the policy of 1/3 of the members being women representation in the land boards and more so, the same policy is not present in other institutions. The provisions for the land committees and tribunals are silent on women representation.

The implementation of the land act is difficult in light of the fact that there is a big difference between what is in the ground and what is in the statutes. The main problem with the institutions put in place is the lack of consciousness of women's land rights at all levels, since the land tribunals and committees are dominated by men who are mostly to further men's interest rather than for women.

In order to institutionalize women's land rights there is need for government commitment and support yet there is notably little allocation of resources for this course. For example, the number of districts land tribunals have been significantly reduced to 18 because the government lacks resources to set up tribunals and yet the court stopped handling issues on 2nd July 2000⁶¹.

3.6 Implementation of the Land Act 1998

Over the years after the promulgation of the Land Act in 1998, it has been found that most women in the country especially in urban areas are aware of their rights to have access to, control and ownership of land. The government and a number of Non-governmental Organizations (NGOs) have embarked on massive sensitization programmes through the media and workshops in order to enlighten the general public on women's land rights.

The conversion of customary tenure into freehold or acquiring certificates of customary ownership under the Land Act, has granted security to the women who occupy these lands in the face of traditional customs and culture that do not favor them. However, the process of acquiring of the certificates is quite complicated and the requisite fee is unaffordable by most illiterate women.

⁶¹ Gender ,Patriarchy and Land Right (2000) Workshop Report by the Uganda LAND Alliance

Most women are aware of the importance of registration of land that they own individually in their names rather in the husband's or any other persons name. the educated women have learnt to stand and fight for their rights in land while the illiterate ones whose attitudes are model by customs and culture, totally lack the confidence to exercise her rights, in the face of her spouse. Thus it is essential to empower the uneducated women through education since it is the only way they can become aware of their rights.

The establishment of institutional mechanisms like land committees and tribunals have played a big role in the resolving of land disputes in the public. The committees and tribunals do not have complicated procedures like the courts of law and the litigants can easily access them. However, these institutions are full of men and women's interests may be defeated due to insufficient representation.

The translation of Land Act into many local languages could also be crucial. It will ensure that many local people get to understand the contents of the act which will enlist support from them.

There is need to have an effective, transparent and well equipped land registry. The process of registering and cross checking land titles has proven to be a nightmare for many people. It should be possible to check on many piece of land in Uganda in the land registry and get the status of the land accurately and quickly without too much cost.

In conclusion for the meaningful realization of women's land rights, there is need to empower them through education so that they can effectively fight for their rights incase of discrimination in all aspects of life.

CHAPTER FOUR

4.0 STUDY FINDINGS.

4.1 Introduction

“Women in Africa toil all their lives on land that they do not own, to produce what they do not control and at the end of a marriage through divorce or death, they can be send away empty handed⁶²”

Women by virtue of being human beings and citizens of Uganda have rights to access, utilize, own and control land. Women in Uganda play a big role in the agricultural sector though this is not reflected by sufficient access to and ownership of land. Women provide 70-80% of their labour in agriculture and contribute 90% in food production and processing, they own only 7% of the land⁶³. Thus, it is a well known fact that in order for women to fully participate, contribute and enjoy the benefits of development through agricultural production, they need an enabling environment which allows them unlimited access to land and guarantees equal control over the land.

The major finding of this report indicates that first and foremost, it is largely unheard of for women to own land, let alone inherit it and this state of affairs is dictated by their economic status and traditional customs. Contrary to popular believe that in urban areas cultures and customary practices do not exist it has been found that it is extremely difficult to separate customs from everyday life and to a large extent it does exist in urban areas. Understanding women's rights to land particularly those of access, control and ownership requires examining

⁶² Mwalimu Julius Nyerere

⁶³ United Nations International Children's Education FUND 1998 Report

gender relations within the socio-economic and political factors as well the contest of the cultural systems in which our societies are structured.

The field work study was carried out in Makindye Division in the Parish of Kansanga. The study sought to investigate the various modes under which women gain access and ownership to land, land control and decision making at household level and the factors concerning women from accessing land.

Access to land basically refers to the rights or opportunities to use, manage, own and control lands and its resources⁶⁴.

Control over land refers to individual's power to dispose off the land, renting, lending, selling and bequeathing. Land ownership a written document or registered land title stating the individual who owns and manages the piece of land.

A total of 40 people were (36 females and 14 males) were interviewed. Of the total sample 18 were married, 11 widowed, 9 separated/divorced and 2 were living together,. Out of the 40 respondents, 17 live in female headed household and 23 in male headed households. In addition two land officers from the land registry and the land commission respectively, and 2 advocates from Uganda Lands Alliance and Uganda Women's Network respectively were chosen key informants. A total of 10 people formed a focus discussion group for the men and women respectively.

In order to determine the rights of women and men in respect to access and control over land, land control and decision making at household levels as well as the factors constraining the access and ownership over land the following major questions were asked:

⁶⁴ Nawangwe B and Others (2002) Research Report on the Land Tenure and Administrative issues

4.2 Modes of Access to Land

In the study conducted, it was found that the majorities of women, most of whom depend on the land for their livelihood, are either squatters, or have limited rights to land. In addition many have access to land mostly customary land but lack decision making rights on how the land will be utilized. The main modes of acquisition or access to land by women, the study found are through inheritance and purchase. It is in very rare cases that women acquire land through it from their relatives and friends.

Land inheritance is one of the cheapest modes of land acquisition, yet it is a practice almost exclusively reserved for men and not women⁶⁵. The guiding principle in inheritance has been that lands should remain within the lineage, in Uganda it has been the patrilineal lineage. Since women marry outside their lineage only in rare cases do they inherit land. Many of the women interviewed said that they gain access to the land by inheritance through their male relatives, for example husbands, fathers, brothers in their capacity as wives, daughters, sisters, etc.

However, their rights to access to land are not permanent and can be terminated any time depending on any change in relationship with their male relatives. As one woman in Kansanga Parish said “women in this world belong nowhere, not at their fathers’ home because they will be married somewhere else, and not at their husbands because they were not born there”.

In this study only a 1/3 of the respondents said a woman can inherit land from the father and another 1/3, also said a woman could inherit from the husband. Fewer women inherit land and only do so in rare cases such as where a man does not have a male relative. Some respondents however expressed reservations over a woman inheriting the husband’s land, stating that it rarely

⁶⁵ Kabonesa Consolata (2002) Gender Relations and Women’s Rights in Uganda

decision making over it. The modes of general access to, and control over land put women in substandard to make their own decision on the different forms of general land use. This is sss because of the painful truth that women have access to land but do not have ownership claims.

Ownership is rooted in decision making and the ability to control and make use of the proceeds that derive from the thing owned, yet the study findings show to the contrary as regards to women's land position is society. Access to land by women has been as misrepresented to make it seem like they own or co-own land. But very few women respondents interviewed have access to land and can inherit in any decision regarding that land.

Majority of the respondents said that the man makes all the decisions regarding land transactions in production and a small percentage of the respondents said control and decision making over land is a joint venture since a woman contributes to the general welfare of the family. Therefore, the husband is the decision maker, even where a woman are left to use the land for their own productive means.

However, the majority of the illiterate female respondents interviewed seemed content with having access to the land and they even considered it ownership, since they could decide to use the land for productive use subject to their husband's wishes while the literate female respondents had a totally contrary opinion.

4.4 Factors Constraining Women's access to Land

The main factors constraining women's access to land in Makindye Division include bad laws, lack of education, low income levels, customs and culture.

The majority of the female respondents revealed that the apparent low economic power among women is responsible for women inability to access land, since most women are not employed or engaged in any income generating activities. In the study conducted, it was found that more than 2/3 of women in the division couldn't access land due to low incomes. Women in the study reported "fellow women occupy wetlands/swampy areas because the land is cheap and readily available... people with small means resort to informant areas and then settlements develop in these areas over time."

Additionally, the low income by women is partly attributed to the low literacy rate of women in the country. According to the 2000 population census 45% of women in the country are illiterate. It is expected that an educated woman would most likely get a job and earn an income. Therefore without education women cannot easily secure gainful employment and thus cannot afford assets like land.

The study findings indicate that 1/3 of women respondents cannot access land due to lack of education.

Some factors such as bad laws were found not to be significant in constraining women's access to land. In the study conducted, the key informant like advocates from non-governmental organizations revealed that Makindye division, which comprise the area of the study is semi urban center and more so near the Capital City and urban areas are centers of information awareness and communication. It was found that most women are aware of the change of laws to facilitate their rights to access land. For example the 1995 constitution and the Land Act all empower women to freely acquire land if they can afford to purchase it. Though the reality is that most women cannot afford to purchase land on the open markets.

The culture and customary practices in our societies also contribute to the factors constraining women's access to land. Our cultures and customs dictate that women are capable to own land in their personal status and the right is simply endowed upon men. This study found out that culture and customary practices were prominent among the illiterate families whose daily lifestyles were based upon it while among the literate families the incidence of culture and customs was applied in a compromised rather than conservatively.

In Kansanga Parish, especially in the areas that land is held in the form of customary land tenure, customs and cultural practices control access to the land. 2/3 of the female respondents interviewed said that they could not acquire land through inheritance since their culture and customs denied them land ownership and control rights.

CHAPTER 5

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The problems surrounding women's land rights have existed for centuries and generations and it is no longer news to the public. Women's land rights have suffered due to bad legislature, cultural, social, economic and political connotations that should be a concern of everybody. This study highlights a number of issues that have to be rectified in order to guarantee women's land rights on the ground.

Women's lack of economic power is further compounded by their higher illiteracy levels. Lack of education among women and hence women's cultural beliefs whereby they see themselves in submissive position and some have considered it proper. It further keeps women ignorant of their legal rights in respect to access to land which the men have taken advantage of by grabbing their land.

The customs and cultural practices in our societies have been identified as one of the influential factors that deny women their rights to have access, ownership and control of land. Culture and customs create a strong believe that women are not supposed to own any real property because it is a right conferred solely to men.

The passiveness of the authorities has partly been blamed for the depreciation of women land rights. The government has been reluctant to ensure that the Land Act 1998 is implemented on the ground but not simply remaining on the paper. Due to this, women's rights have been neglected, leaving the matter to be decided by other discriminatory existing laws and culture.

As a result of the insecurity of tenure and other discriminatory policies that women have confronted with daily, their economic potential has been frustrated. Women's land rights and their economic potential have in truth had adverse effects on the economy. It is the men as owners of the land who reap the fruits of the women's labor. The consequence of this is that, if women's rights are not protected their economic potential will deteriorate and in turn adversely affect the national economic growth.

The study established that the greatest contribution the Land Act 1998 makes to the cause of women is that it gives them some considerable security in terms of registration of titles and the land they occupy which is notable with the family property.

The preservation of customary tenure also helps women to have their rights registered at a lower cost through the acquisition of certificates of customary ownership, though customary practices do generally work to the disadvantage of women.

In Makindye, the main factor that the study has found to deny women their rights to access land is the apparent low economic power. Most women are not employed or engaged in economic activities and the few that are engaged do not generate sustainable returns to enable them purchase land. This makes the women totally dependent upon their male relatives and lives under their subrogation and submission.

5.2 General Recommendations

The following recommendations are made based on the findings from the study and literature review.

- i) Women's rights to land in the home and access to and control over the benefits from the land was reported to vary among households, thus it is recommended that it is important to examine wishes of both men and women, in order to find out what's better in a given system and to design policies in that respect.
- ii) The study found that women's lack of ownership land adversely affects the economy. It is thus recommended that in cooperation of co-ownership into the current land act 1998, so as to grant proprietary interests over the land, thereby providing them with security of tenure. In essence, this gives women the chance for the optimal utilization of the land, leading to high productivity and eventual economic growth.
- iii) The government should show its will and commitment to the implementation of the Land Act. There is need for implementing the Land Act on the ground rather than simply leaving it on paper and that can only be done by the government initiative to sensitize the general public of the importance of promoting and respecting women's land rights through its relevant ministries and organs.
- iv) Although it is true that culture cannot be abolished by mere legislation, it is thus necessary at this material time to enact a proper succession law to replace the existing inadequate and defective succession act which seems to favor men more than women in cases of succeeding to property.

5.3 Specific Recommendations

- i) The process of acquiring certificates of land titles on customary land tenure has been very complicated and involves unaffordable costs to the ordinary women in Makindye division. It is thus proposed that registration requirements should be considered in favor of a single application process to avoid unnecessary costs and delays.
- ii) The main problem with the institutional mechanisms (land tribunals and committees) is that there is insufficient representation of women at all levels. There should be equal numbers of women and men in the institution such that gender balance is ensured.
- iii) There is need to translate the Land Act into local language, such that the local people who are not conversant with the English language are able to read and understand. This will ensure the quick sensitization of the public of women's land rights.
- iv) There is need to have an effective, transparent and well equipped land registry. This will necessitate computerization of the land registry such that one can check the status of any land in Uganda quickly and accurately.

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B- INDEX

C- QUESTIONNAIRES

1.0 Background Information

My name is Boos Murithi Mutunga, a Law student at Kampala International University carrying out research on women's rights to access land in Makindye, Uganda. This questionnaire is seeking to find out whether and to what extent the Land Act (1998) and other laws have had an impact on women's land rights. The findings will be vital in establishing how women and men obtain access to ownership and control over land.

2.0 Socio-Demographic Characteristics of Respondents

1. Name

2. Sex (i) Male (ii) Female

3. Marital Status

i. Single

ii. Married

iii. Divorced

iv. Widowed

v. Separated

4. Age:

5. Main Occupation

i. Civil Servant

ii. Self employed

iii. Any other

6. Highest Level of formal education

i. None

ii. O' Level

iii. A' Level

iv. Any other

7. Should women own land?

i. Yes

ii. No

8. Who is the head of your household?

i. Husband

ii. Wife

iii. Male Child

iv. Female Child

v. Any other

WOMEN'S LAND RIGHTS

3.0 Access to Land

1. Do you have access to any piece of land?

i. Yes

ii. No

2. Through whom have you had access to it?

i. Self

ii. Husband

iii. Father

iv. Mother

v. Any other

3. Who has a right to allocate land?

4. Under what conditions may land be allocated if any?

.....

5. Do you have control over the land?

i. Yes

ii. No

6. Who benefits from any productions accruing from the land?.....

.....

7. Are women involved in decision making on land use, allocation, disposal and utilization of the benefits that accrue from the land?

i. Yes

ii. No

4.0 Ownership of Land

1. Do you own land?

i. Yes

ii. No

2. How did you acquire the land?

i. Purchased it

ii. Inherited it

iii. Gift

iv. Any other means

3. Is your land registered?

i. Yes

ii. No

4. If yes, whose name is it registered?

5. Does ownership guarantee control over land?

6. What factors may cause a woman not to own land in this area?

i. Customs

ii. Lack of money

iii. Bad laws

iv. Any other

7. Should women own land?

i. Yes

ii. No

8. Should a woman be entitled to share ownership of her husband's land?

i. Yes

ii. No

9. Give reasons for your answer to number 8.

.....
.....
.....

FOCUS GROUP DISCUSSION FOR WOMEN

1. How many of you own land?
2. How did you acquire it?
3. How many you have access to land?
4. Does access to land guarantee control and eventual ownership of the land?
5. Should women own land? Why?
6. Should women be entitled to co-own land of their husbands?
7. What are the factors that restrict women from accessing land?

FOCUS GROUP DISCUSSION FOR MEN

1. How many of you own land?
2. How did you acquire the land?
3. Should women own land?
4. Give reasons for your answer above.
5. Should women be entitled to share ownership of land with their husbands?
6. Are there any factors that affect access to, control and ownership over land?

INTERVIEW GUIDE TO KEY INFORMANTS

Ministry of Water, Lands and Environment

Land Commission

Name

Sex

Position held

1. What is the predominant land tenure system in Kampala City?
2. Do women in Kampala City have rights to, control and ownership over land?
3. How has the Land Act (1998) and other laws been effective in promoting women's rights of access to and ownership of land?
4. What reforms can be made in our laws to solve the conflicts and confusion women and men have land?
5. Are there women who contest land ownership in Kampala city?
6. What are their chances of winning before a land tribunal?
7. Are women involved in settling land disputes in Kampala City?

8. Has the government of Uganda played a big role in the implementation and promotion of women's land rights in Uganda?

