

**ACRITICAL ANALYSIS OF THE LAW ON INTESTATE SUCCESSION AND ITS
EFFECTIVENESS IN PROTECTING WOMEN AND CHILDREN RIGHTS, ACASE
STUDY OF KOBOKO DISTRICT**

BY

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DEDICATION

I dedicate this research work to my late Dad AlegeKenedyKazimoto who did not live long enough to witness the fruits of his efforts, Rest in Peace Dad! And my lovely mother Gire Agnes, my beloved brothers Mr. Sam AlegeKazimoto, Batali Moses Kazimoto, Denaya Richard Kazimoto, sisters Jane, Jackie, Beatrice, Amana, Fiona and Scoviafor the unconditional financial, parental and spiritual support without which my efforts would be futile. It cannot be underestimated.

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I am truly grateful.



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DECLARATION

I Kepo Alfred Kazimoto, declare that this report on "A critical analysis of the law on intestate succession and its effectiveness in protecting women and children rights; A Case study of Koboko district" is entirely my own effort and has never been submitted to any other institution or university for any form of award whatsoever.

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APPROVAL

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LIST OF ACRONYMS

ACHPR	African Charter on the Rights and welfare of the Child
ACHPR	Africa Charter on Human and Peoples Rights
A.G	Attorney General
A.G	Administrator General
AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention on the Elimination of Discrimination Against women
FIDA	Association of Uganda Women Lawyers
H.I.V	Human Immune Virus
ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic Social and Cultural Rights
L.C	Local Council
NGO	Non-Governmental Organization
PSWO	Probation and Social Welfare Officer
UDHR	Universal Declaration of Human Rights
UPF	Uganda Police Force
UWONET	Uganda Women Network

LIST OF LEGISLATIONS

The 1995 Constitution of the Republic of Uganda as amended

The Succession Act Cap 162

The Administrator Generals Act Cap 157

The Land Act 2008

The Children Act Cap 59

LIST OF INTERNATIONAL CONVENTIONS

- 1 Universal Declarations of Human Rights' 1948
- 2 Convention on the Elimination of all forms of Discrimination against Women 4th January 1969
- 3 International Conventions on Civil and Political Rights 19th December 1966
- 4 International Conventions on Economic, Social and Cultural Rights January 1976
- 5 African Charter on Human and people's rights 1981 entered force in 1986
- 6 African Charters on the Rights and Welfare of the Child 1990 entered force 1999

LIST OF CASES

- 1 BamwitevsNangobi (1977) unreported
- 2 Charles Harwood vs Maria baker (1840) 3 MOO PC 882 13 ER117 PC
- 3 ChelangvsJuma (2002)KLR 339 (Kenya)
- 4 In Goodsof Francis Morton (1864) 3 W & T.R 422 ER 1338
- 5 KondevsBulandinaNankya&another (1985) unreported
- 6 Administrator General vsSwaibunyombi and others (1993) unreported
- 7 In the Estate of Faiz khan Deceased (1929-1930)12 KLR
- 8 In the Matter of the Estate of Stephen WanyoikeMuhia HCCA NO.6 of 2002 (Kenya)
- 9 In the Matter of Grace Micholo HCCS No.1978 of 2000 (Kenya)
- 10 MboijanavsMboijana CS No 8 of 1990
- 11 Moonlight SengoobavsAdministrattor General HCCS No 894 of 1973
- 12 Nyendowavs Robert Nyendowa (1993) unreported
- 13 Ruth Nsubuga& others vs Peter Nsubuga&others (1988) unreported
- 14 Shalik Abdul vsShaik Elias (1915)1 FMSLR 204
- 15 Uganda vsJemmimaKyanda (1977) HCB 111
- 16 VajayChandrankant Shah vs Public Trustee CACA No 63 of 1984
- 17 W.B KeatingevsMuhammed bin SaifSalim and others (1929-1930)KLR 74

ABSTRACT

Intestate succession is defined as a means by which the estate of a person who died intestate (without a will) are shared among the beneficiaries.

Since time immemorial, the affairs of the family in the African setup including but not limited to succession are determined by customs and traditions.

In Uganda there is no exception to that and therefore intestate succession has been, is still and will probably be governed by customs despite the legal framework that governs it.

This is mainly due to the fact that customs are allowed as part of our laws, however this does not / should not mean discriminative cultures are encouraged or allowed to apply.

A host of these cultures are so strict and discriminative against women and as a result they are always deprived of property of an intestate deceased person.

This all happens because cultures / customs dictate that women don't have proprietary rights as such they are often denied inheritance of property from their deceased parents and husbands.

This trend not only deprives women of property but rather it also ensures that some women are abused especially widows when they try to inherit property of their intestate husbands.

Cases of women sent out of matrimonial Homes are very common in Uganda especially in rural Uganda where women do not often know their rights.

This problem is perpetrated by lack of awareness among people for the importance and the need to have /write wills as a result most Ugandans die intestate and this comes with its associated evils like women property deprivation.

In addition to the above, the weak or rather inadequate legal framework governing succession in Uganda greatly contributes to the abuse on women in regard to property inheritance. Coupled with that is the weak enforcement mechanism by the authorities who are empowered to enforce the law, the mechanism is so weak that it needs urgent redress.

The research established overall that the above reasons contribute greatly to the denial or rather abuse of women's rights to property despite the same being protected by the various laws in place.

CHAPTER ONE

1.0 Introduction

The law of succession provides for the manner of inheriting property, mode of distributing property of deceased persons and how other related matters should be dealt with.

In Uganda the law governing succession includes; various international conventions which are ratified by Uganda, The 1995 Constitution of the Republic of Uganda, The Succession Act¹, The Administrator Generals Act², The Land Act³ inter alia, Islamic law (sharia law) and to some extent customary law.

It is however prudent to note from the onset that succession in Uganda is hugely influenced by culture/cultural practices which to date remain predominant in most parts of the country.

Succession in Uganda has two modes namely testate and intestate succession.

Testate succession is the passing of rights or property by will⁴ occurs when a person dies leaving a valid will whereas intestate succession is where the deceased left no will or perhaps where a will left was invalidated by subsequent acts of the testator for example remarrying by the testator and revocation of the will by the testator.⁵

Majority of Ugandans' die intestate (without leaving a will) and this is due to the superstitious belief that writing a will hastens one's death and the poor level of knowledge and sensitization about the advantages of will making coupled with the high levels of illiteracy in Uganda.

This has only ensured that estates of persons who die intestate are governed either by customs or the Succession Act which is often to the disadvantage of the women and children.

¹ Cap 162 Laws of Uganda

² Cap 157 Laws of Uganda

³ Cap 288 As amended

⁴ Black's law dictionary 7th edition at page 1485

⁵ Ibid 4 page 827

Intestate succession is further sub divided into two that is total intestacy where the deceased left no will at all for the disposal of his estate whereas partial intestacy is where a deceased person's estate passes under a will and partially under intestacy.⁶

This research is however majorly going to focus on intestate succession with a critical analysis of the law and its effectiveness on the protection of women and children rights in that regard.

1.1 Background of the study

The period before colonialism (pre Roman times), inheritance (succession) and land matters like many other aspects of life and society were governed by patriarchal customs in many communities. Man was involved majorly in hunting and gathering and thus there was communalism where in everything including land and other tools of production were owned by the society. It's worth noting that around the stone age era Africans/ natives did not possess other property apart from land and animals especially cattle as the only treasured source of wealth, pride and heritage.

Land is the most important asset in rural Uganda and land rights and ownership are embedded deeply in social norms and customary laws, including those related to marriage and inheritance.⁷ Allocation (inheritance) or better still succession of such property was vested in the hands of male family heads or clan elders regardless to the contribution a woman might have made in accumulating/ amassing such wealth. Customary law in Uganda is biased against women and it is characterized by the dominance of male community and family members over property and the lives of women prohibiting women from owning or inheriting land because of their transient existence within the polity.⁸

This is due to the fact that culture dictates that transfer of land and other property especially animals to an individual had to be through a male relative upon the demise of a relative.

⁶Jennifer Okumu Wengi; Women and the Law in East Africa, law of succession in Uganda; Women inheritance laws and practices essays and cases. Kampala WLEA PUBLICATIONS NO.1 1994

⁷ Women marriage and asset inheritance in Uganda; working paper No 184/ April 2011 chronic poverty Research centre

⁸KameriMbote, the land has its owners! Gender issues in land tenure under customary law in Kenya working paper Nairobi international environmental law resource.2005-9,page

The existence of such patriarchal nature of inheritances only ensured that women remain with user rights over the land without necessarily having ownership of such land. Widowhood affects women's livelihood when their rights are not secure they become vulnerable when they are widowed, in particular when marital property is seen as belonging to the man. The woman may have tenuous rights to it after her husband dies.

Customary law is often cited by members of the man's extended family to justify their claims to the matrimonial home. They even claim property that the wife owned herself or that she acquired jointly with her husband. As a result of that state of affairs and because property is deemed to belong to the husbands relatives, these relatives frequently steal the widows property all the way down to bed sheets, evict her from her home under the threat of physical beating and death threats and take away her children.⁹ Such a situation is worsened where a widow was not allowed to inherit from her deceased husband while at the same time she is not allowed to inherit from her deceased father or relative.

It was impossible for many women to inherit or own land from their natal families or marital families because of this patriarchal custom. Thus in most cases women only had user rights. Women did not inherit from their spouses and neither did women inherit from their male relatives. Widows acted as guardians of the land for the male minors until they grew up and inherited the land.¹⁰ This reduced women into guardians of such property for the minor male children of the deceased. Women after marriage often lose their identity since they have no rights in regard to property at either the husbands place or their parents' home.

To be a widow in Uganda is to be an outcast. Too often, when a woman loses her husband, she is also cast out of her family, forced from her home, stripped of all her property, and separated from her own children.¹¹

It is not uncommon for relatives to take over a widow's home and grab all of the property and surrounding land for themselves. Because customary law views a wife as an outsider to her husband's clan, if she wishes to remain in her home with her children, she may have to submit to

⁹Professor Tony Bennet; Culture and society, collected Essays, Guangxi Normal university Beijing china 2007 page 260

¹⁰ Florence AkiikiAsimwe and Owen Crankshaw; the Impact of customary laws on inheritance, a case study of widows in urban Uganda page 8, journal of law and conflict resolution volume 3(1) pp 7-13 January 2011

¹¹Ibid 8

being “inherited” by one of her deceased husband’s relatives.¹² Often widows who did not have male children were forced to marry their brothers in law lest they lose their user rights on the said land

The widow’s children suffer gravely as a result of these practices. Following the death of their father, children are frequently taken from their mother and must start a new life with their father’s relatives. Daughters will typically be married off quickly to another clan. As a new wife, the daughter now finds herself an outsider in her husband’s family and unable to return to her own family because they cannot afford to return the “bride price” they received for her. The cycle of exclusion continues when her own husband dies and she is again left destitute.

This trend of affairs continued right up to the time the colonial masters discovered and started colonizing Uganda. From the period between early 1880 up until 1962 the colonial masters did not make much of a change to the existing patriarchal customs/practices that were discriminatory against women in regard to inheritance/succession, instead they introduced new property ownership laws where an individual would acquire/own land either by lease or freehold, succession and other matters were governed through ordinances.¹³

The same patriarchal customary practices of giving property only to male heirs or the brothers of the deceased continued because the laws brought by the colonial masters¹⁴ only ensured that women were more alienated from property ownership worse than the status they had before colonialism.

Property of a deceased only vested on the male heir or his brothers as culture dictated. Such patriarchal customary setups only ensured that women had no say in land ownership let alone having any rights on the land and other property like animals. As much as the laws introduced by the colonialists would have helped the women in regard to property rights, the colonial masters did little or nothing at all to stem the patriarchal customary practices that were detrimental to women especially in regard to property rights and inheritance.

The property law that was in place was not applicable to natives while in the same time laws of inheritance only applied to the colonialist whereas customary law as it was remained the

¹²Professor Tony Bennet 2007; 260 ibid

¹³Succession Ordinance.

¹⁴Through 1902 Order in council

dominant law applicable to the natives with all its injustices against women. The said laws were later to be adopted by independent Uganda from the period 1962 to 1972 when we had The Succession Decree albeit with minor amendments which instead of remedying the situation of women rights made their user rights even worse than it was before. It was common place to find men dispose of their property without consulting the women who still survive, till and derive sustenance from the land.¹⁵

It is worth noting that from pre colonial time up to the time of independence and beyond, Ugandans as result of illiteracy and lack sensitization and a host of other reasons did not make wills before their death or they were not even aware of the advantages of making a will at all. This in essence meant that the most common form of inheritance was intestate succession with all its associated evils against women.

The period from 1995 to date depicts Uganda as still largely a patriarchal society with customary practices that existed before colonialism still existent which put women in an inferior position despite the statutory laws that condemn such discriminatory practices against women. The 1995 constitution of Uganda as amended is the grand norm and supreme law in Uganda that outlaws all cultural practices that are in contravention of the constitution including discrimination based on gender, sex, race inter alia.¹⁶ The constitution for the first time provides for the right to own property individually or in association with others.¹⁷ Unlike before we see that women and other marginalized groups looked upon with contempt by customs are accorded relief in the name of equality, fairness and justice.

Despite such legislations, a vast number of cultures in Uganda still undermine the status of women especially through the control of property. For example across the country its common to find customs and cultures that prohibit women from inheriting property of a deceased and the situation is remedied if the person died testate because how his estate is divided will depend on his aspirations however when a person dies intestate the customs/cultures are invoked which are often to the detriment of women and children especially the girl child. Thus women are marginalized in regard to property ownership.

¹⁵ Valerie Bennet, Ginger Faulk Anna Kovina and TatjanaEres: Inheritance Law in Uganda; the Plight of The Widows and Children 2006 page 457

¹⁶ Article 2(2), Article 21(2)

¹⁷ Article 26

This paper aims at establishing the effectiveness of the laws on succession in Uganda on and its effects on women /widows and children especially the girl child in Uganda considering the foregoing position.

1.2 Statement of the problem

The right to own property is guaranteed both internationally and nationally.¹⁸ International conventions for example CEDAW, UDHR, ICCPR among others provide for the right to own property as well as the 1995 constitution provides for the right to own property. Under such ownership there is no regard to discrimination on sex in that a woman also has a right to own property in her own name or in association with others.

In reality women are often denied the right to own property especially where the right to inherit from their husbands or fathers accrues them, and this is more rampant where the deceased died intestate.¹⁹

This trend of affairs occur due to the discriminative cultures that are in our society that ensure that women are often in transient existence in that they are not considered to own property.

It has also been rampant due to the loopholes in our laws especially the succession Act which tends to be discriminative to the women and children especially in regard to intestate succession. As was evidenced in the case of Law and Advocacy for women in Uganda versus A.G²⁰ Law and Advocacy Uganda petitioned the constitutional court seeking declarations that various sections of the Succession Act where discriminative to women in regard to property inheritance.

Court agreed and held in their favor and made declarations that sections 2(n) (i) (ii), 14,15,26,27,29,43,44 and Rules 1, 7, 8, 9 of the 2nd schedule to the Succession Act were inconsistent with and contravene articles 21(1), 2, 3, 31, 36(6) of the 1995 Constitution of the Republic of Uganda as amended.

Unfortunately the law remains as it is despite the declarations made by the constitutional court. Indeed as cultures dictate women are always deprived of property to inherit despite the

¹⁸ Article 26 of the 1995 constitution and various conventions

¹⁹ Rita Aciro Lakor and Jacqueline Asimwe Mwesige, Property Rights and Gender A training kit, 2010 International Center for Research on Women and Uganda Land Alliance. Page 2

²⁰ Constitutional petition No/13/2006

constitution of Uganda 1995 granting such rights among other laws including the right to inherit property.

1.3 Objectives of the research.

- 1 To critically analyze the law on succession with specific emphasis on intestate succession.
- 2 To examine the factors that lead to violation of women and children succession rights.
- 3 To analyze the efforts undertaken by stake holders to solve the problems faced by women and children in succession matters especially matters.
- 4 To suggest practical solutions, recommendations and conclusions to the problem of study/findings.

1.4 Research Questions.

- 1 How effective are the laws/ legal framework regulating succession in Uganda especially intestate succession?
- 2 What are the factors that lead to women and children succession rights violation especially under intestate succession?
- 3 What are the steps taken by the government and the various stake holders in mitigating the social menace
- 4 What are the practical recommendations for eliminating the problem from society?

1.5 Scope of Study

1.5.1 Content Scope

The research aims at analyzing the legal framework that governs succession I Uganda with specific emphasis on intestate succession. It will also focus on the effectiveness or otherwise of the laws and where loopholes exist in the law suggest practical solutions and possible amendments to the law. The research is also intended to examine the enforcement mechanism and take an analysis of the role played by various stake holders in regard to women succession rights particularly intestate succession.

1.5.2 Time scope

The research covers approximately one semester including the field work and the contents of the literature review. This is because research at the graduate level is usually done at the forth year second semester which in essence makes it a one semester period usually towards the end of the course.

1.5.3 Geographical scope.

The research is carried out in Uganda particularly in Koboko District in the west Nile sub region. This is based on the fact that the problem of women and children inheritance rights breached/ denial is so rampant and since the writer hails from the district it is hoped that the vice can be addressed through research and also highlight on the plight of such victims.

1.6 Significance of the Study.

The study will contribute a considerable awareness on the loopholes in the law on succession especially the rights of women under intestate succession to the concerned actors as well as government to undertake reforms.

The study is expected to contribute towards improvement on the laws governing succession and make such laws effective in protecting the rights of women and children to inherit property in a just fair and equitable way.

The research is expected to provide a foundation for future research which will help to narrow down the existing gaps in the law and practices of succession in Uganda with emphasis on intestate succession.

1.7 Methodology

In order to achieve the objectives of the study the researcher focused on qualitative information, analyzing secondary source of information which include different text books, magazines, newsletters, journals and the internet.

1.8 literature review

A number of authors have researched and written about the topic of study and below sampled are the authors works reviewed.

Florence Akiiki Asiimwe and Owen Crankshaw;²¹

This piece of work helps to elaborate the plight of women who get deprived of property upon the death of their husbands in Uganda. The paper dug deep into the customary practices that existed and still exist in Uganda that are discriminative in nature to women.

It also took a review of the legal frame work governing inheritance in Uganda with special emphasis on the applicability and the loopholes therein as the writers observed that the laws especially the succession Act is very discriminative in a number of areas including but not limited to the definition of the an estate of a male intestate instead of leaving it gender neutral, failure to provide clearly how property of a woman intestate can be divided among others.

However this leaves a lot to be desired since it puts emphasis on urban women and more so it suggests no practical solutions to the vice simply because the problems faced by a woman in rural Uganda are quite different from the problems faced by a woman in urban Uganda their area of concentration.

Valerie Bennet, Ginger Faulk Anna Kovina and TatjanaEres;²²

The authors addressed their minds to the injustices occasioned to widows when it comes to inheritance of properties and how their children are taken away from them to go and live with the husband's relatives. It elaborates the difficulties women face without providing an elaborate framework of solving the effects of such practices in Uganda.

This paper would be practically relevant to Uganda and it would go a long way in ensuring that women and children are protected in regard to their inheritance rights, however due to the application of different legal systems to wit, customary law, statutory law and religious law/norms it is hard to enforce the suggestions and even if amendments were made to the statutory provisions there would still exist cultures which are acceptable and operate a long side the statutes which in turn are discriminatory to women and children however it is worth reefing to because it expounds more on the plight of women and children.

²¹ The impact of customary laws on inheritance, case study of widows urban Uganda 2011 op cit

²² Inheritance law in Uganda: the plight of widows and children 2006 page 456

Cheryl Doss, Mai Truong and others:²³ This paper examines the relationship between Inheritance, marriage and asset ownership. The paper shows that women and children especially the girl child have no inheritance rights in regard to property inheritance.

The paper also established that women are looked upon as assets upon the payment of bride price in most cultures across the country.

Like most other texts referred to, this piece of work contains vital information on the plight of women and children especially the girl child who are often denied property upon the death of their husbands and fathers respectively.

It would have been equally important if the suggestions made in the paper are implemented and to the detriment of many women in Uganda such suggestions are not enforced let alone being taken into consideration.

Generally the paper observes the lack of political will and poor law enforcement mechanisms as the major perpetrators of women property denial at the hands of men, which trend the researcher intends to make suggestions to, to ensure that the rights of women and children in regard to property inheritance are safeguarded.

Florence Akiiki Asimwe:²⁴

This paper was based on research between 2004 and 2007 and it elaborately describes the state of women deprived of home ownership upon the death of their husbands.

It explains that the women and children have no rights of inheritance since the property left by husbands are often taken over by the relatives of the deceased leaving the women and children in desperate conditions.

The author gives a detailed analysis how women get deprived of property, why they are deprived and suggests practical suggestions.

Importantly as one of the chief causes of women property deprivation the author cites the rudimentary customary practices that ensure women are always alienated in society in all aspects of life.

²³Women, marriage and asset inheritance in Uganda. Working paper No 184/April 2011

²⁴ Statutory law, patriarchy and inheritance 2007

This the author elaborated well on the reasons and how women get deprived of property at the hands of the relatives of the deceased, however the author ignored the fact that some laws are also so discriminative that they ensure women are deprived of property.

This was not well emphasized and it would only be proper if the author touched on the controversial issue of the laws being discriminative and perhaps throw more light on how the laws have played unfairly against women, though it's a good piece of work for example she does not allude to the inadequacies in the succession Act as the major Law governing succession in Uganda.

John A Brittain:²⁵ The book among other issues discusses how inheritance is determinant of personal wealth drawing inferences from data on married women and men. The author elaborates quite well the relationship between personal wealth and inheritance and asserts that those who inherit property are at a higher chance of getting rich and have a better life compared to those who don't inherit any wealth.

This paper only has short comings in as far as it does not provide the reasons why women are deprived of property and does not in equal measure suggest practical skills to solve the problem of women property deprivation. Nevertheless it helped the writer to draw a good inference on the life of people who inherit wealth and those who do not and it helped the writer in understanding the link between poverty affecting women as a result of being denied property.

W M Musyoka; law of succession.²⁶The author discusses the legal regime governing inheritance in Kenya and also elaborates on the cultural practices that affect women in regard to inheritance. This is relevant because Uganda and Kenya have almost similar cultures, however it does not go deep into providing substantive suggestions to be made in the legal regime to help address the problem. The same author in his book 'a case book on the law of succession' discusses various cases on succession ranging from testate and intestate succession and on Islamic succession

This piece of work helped the writer to have an elaborate understanding of the legal framework before and after colonialism since both Uganda and Kenya were colonized by Great Britain more

²⁵ Inheritance and the inequality of material wealth, Brooking institution 1978

²⁶ A case book on the law of succession law; law Africa publishing 2010, law of succession law Africa 2009 page 5

so it elaborated expansively on the forms of succession and how it was before and after colonialism.

In regard to the plight of women the author offers no practical solutions to the problems faced by women and this leaves the work lacking in that area however it was so vital in tracing the origins of the law of succession in Kenya and since the laws and cultures are almost similar between Uganda and Kenya it still was relevant.

Rachel C Loftspring:²⁷

The author stresses that had there been equal inheritance rights in Uganda poverty and the spread of HIV/AIDS could be reduced. She makes a nexus between poverty HIV and property inheritance in that if women are given a chance to inherit property they would ultimately not be so desperate to go out to the streets to engage in prostitution. It high lights the plight of women who have been deprived of property and how they end up indulging in prostitution to earn a living

However the author does not elaborately demonstrate how the equality in rights could lead to a reduction in the two menaces, more so it does not suggest practical solutions to the problems of study and it overly puts emphasis on the nexus between H.I.V, poverty and property inheritance ignoring the fact that

Mohammed Mustafa Ali Khan:²⁸This article discusses how Islamic inheritance is conducted and it elaborately emphasizes on the importance of Islamic inheritance in that it allows distribution of a deceased property to many people/beneficiaries other than to a few people often to the detriment of others. The author does not elaborate on the rights of women breached by the Islamic laws since women are accorded equal rights with men especially by international conventions like ICCPR, CEDAW, UDHR which all allude to the fact that women have equal proprietary rights to men

²⁷ Inheritance rights in Uganda: how equal inheritance rights would reduce poverty and decrease the spread of HIV/AIDS in Uganda, 2007 vol 29.1 page 248-256

²⁸ Islamic law of inheritance: A new approach 1998

Elias Clark, Luis Lusky and Arthur W. Murphy;²⁹ this book helped me appreciate the law in regard to wills and intestate succession. It provided elaborate cases that touch on intestate succession and it was very vital in my research. However it was inadequate as far as intestate succession is concerned in that it does not provide in depth information on intestate succession which was greatly needed by the writer in the course of the research.

Percy Night Tuhaise, Mugisha John Frank, vero ID Matovu and others:³⁰

This text helped me have a deeper understanding of the plight of women in Uganda in regard to inheritance and in particular the various cultural practices that affect women in Uganda and it also gave me a deeper understanding of the patriarchal nature of our society and its effects on women especially in regard to inheritance. The same authors in their book Muslim women and house hold resource management in Uganda explain how the Islamic rules are discriminatory to women especially in regard to inheritance of their deceased husbands' property. The authors did not as the writer intends to elaborate on the key aspects of the law that need urgent reform for being discriminative, they stopped at highlighting the loopholes without suggesting practical solutions to the problem.

Sanja Kelly:³¹ The author considers the status of women's rights generally in the Middle East and North Africa especially in regard to the influence of Islamic laws in the regions.

It provides insights into the challenges posed to modern women by Islamic laws and culture.

Sandra Ka Hon Chu³² writes about the practices that are discriminative against women and children and why such practices are so entrenched. The author makes a deep analysis of the need to make reforms in the laws that govern women and children property rights elaborating quite well the international conventions that provide for such rights and why there is need for reforms in sub Saharan Africa. The author attributes the problems faced by women to rigid cultures and lack of a political will for which she had this to say;

²⁹ Gratuitous Transfers, Wills, intestate succession, Trusts, Gifts, Future interests and Gifts taxation cases and materials 3rd edition west publishing co st Paul Minn 1985

³⁰ Women and the law in Africa. The law of succession in Uganda women inheritance laws and practices LDC publishers first published in June 2001

³¹ Women's rights in the middle East and North Africa: progress Amid resistance Rowman and little field publishers 2011.

³² Women and The Law: the missing link July 08 2011 page 28

*“Within a context of entrenched gender discrimination, the widespread poverty and increasing competition for resources such as property and land, legislative solutions to the denial of women’s rights are urgently needed. Reforming existing laws, or adopting new laws where legislation is lacking, is one important aspect of governments’ response to violations of women’s rights. While law reform is never a complete solution to such violations, it is a necessary and often neglected step. However, there exist many challenges to progressive law reform on issues affecting women – including a lack of political will, resistance to legislating on matters characterized as ‘private’ or that are perceived to be in the exclusive domain of customary law – as well as a widespread recognition among women’s rights activists that legal solutions on their own are insufficient to change the pervasive culture of gender inequality that persists in all communities”.*³³

Many customary rules (or practices justified on the grounds that they are based on customary or religious laws) violate basic principles of equality reflected in international, regional and domestic human rights laws. For example under the personal law code of the Sharia, male heirs inherit twice as much as female heirs. A widow receives one-quarter of the estate if there are no heirs and one-eighth of the estate if there are heirs. In polygamous unions, one-eighth of the estate is shared among all wives, which is often not sufficient for the women’s continued survival. Where customary laws have not kept pace with changing social and economic conditions, the original rationale underlying a custom may be lost, and the discriminatory aspect of the law may become more apparent and unjustifiable. Gains made on one aspect of law reform may consequently be undermined by existing rules in any other, or limited in effect because of contradictory rules and processes in other laws. It is therefore imperative to prioritize the harmonization of laws and policies in efforts to legislate for women’s rights.³⁴

These practices as elaborated above are equally applicable in Uganda since the Islamic laws provide for similar estate division mechanisms while on the other hand the Succession Act³⁵ also provides similar percentages for widows.³⁶

³³ Page 1 women and the law the missing link, Sandra ka Hon Chu. July 08 2011 page 30

³⁴ Pg 3 ibid 12

³⁵ Cap 162

³⁶ Sec 27 ibid

The New Vision.³⁷ This article focused on the women in Northern Uganda who are denied the right to own property the article highlights the plight of such women and the substantial causes of such denial.

Though the article zeroed down on Northern Uganda the practice is common across the country where women are deprived of property especially land despite the constitution³⁸ and other statutory provisions' that stipulate that women have equal rights to men which inter alia include the rights to own property either as individuals or in association with others.

1.9 Chapterization

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

Chapter Two: the second chapter will focus on the legal frame work governing succession in Uganda generally with specific emphasis on intestate succession this will encompass a deeper analysis on the effectiveness of the laws or otherwise and it will as well include both municipal and international conventions and other forms of legal system.

Chapter Three: This chapter will analyze the factors that lead to violation of women and children succession rights with a specific reference to intestate succession in Koboko District. It will look at the various cultural, legal and institutional hindrances to the enforcement of women and children's rights to property

Chapter Four: the forth chapter will consider the efforts if any taken by the government, various departments, nongovernmental organizations, and other stake holders in ensuring that the violation of women and children rights in regard to intestate succession are eradicated.

Chapter Five: The Fifth Chapter will contain recommendations and probable steps to be taken to ensure the problem is eradicated and a comprehensive conclusion of the paper will also be set out here.

³⁷ The New Vision, Uganda; women denied property inheritance 14th December 2011.

³⁸ Article 26 of the 1995 constitution of Uganda

CHAPTER TWO

2.0 ACRITICAL ANALYSIS OF THE LAWS/LEGAL FRAME WORK ON INTESTATE SUCCESSION IN UGANDA, ITS EFFECTIVENESS OR OTHERWISE.

2.1 Brief introduction.

This chapter takes a critical analysis of the legal framework of the laws/legal frame work on succession laws with particular emphasis.

The effectiveness or otherwise of the laws shall be dealt with under this chapter. It shall generally analyze international conventions to which Uganda is a signatory, domestic legislations that have a bearing on succession matters especially intestate succession, religious law especially Islamic law and customary law since all this legal frame works operate in Uganda simultaneously.

2.2 Legal Regime:

Uganda's succession system is regulated by three legal systems which include; international conventions, domestic statutory law, religious law(Islamic laws) and customary law. Inheritance dates back to the pre-roman times as individual ownership replaced family ownership, severing the family's rights and obligations to property, thus rules of succession became necessary.

This chapter does not only critically analyze the legal frame work on succession laws especially in regard to intestate succession, but also implores the various provisions and Islamic/religious law which regulate the affairs of women and children viz-a-vie succession particularly intestate succession.

There shall be an analysis' of both international provisions/conventions and municipal law which inter alia include; the 1995 constitution of Uganda as amended, The Succession Act³⁹, The Land Act⁴⁰, The Children Act⁴¹ and Administrator Generals Act.⁴²

³⁹ Cap 162 Laws of Uganda

⁴⁰ Cap 227 Laws of Uganda

⁴¹ Cap 59 laws of Uganda

⁴² Cap 157 Laws of Uganda

2.3 International Conventions and Treaties.

2.3.1 Introduction

Uganda is a member and signatory to a number of international conventions and treaties which have a bearing on the succession laws in Uganda and inheritance rights of women and children in Uganda.

These according to former Supreme Court justice and chairman of the constitutional drafting committee, **Hon justice Kanyeihamba** are regarded as part of Ugandan law under the constitution.⁴³

He cited the 1995 constitution which states that;⁴⁴

" the rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms specifically mentioned in this chapter{devoted human rights} shall not be regarded as excluding others not specifically mentioned. "

According to **Hon justice Kanyeihamba** that is as wide as it can go meaning that the constitution fully incorporates the human rights delineates in international agreements/treaties. And these conventions are as explained below:

2.3.2 UDHR

Uganda has ratified the provisions of **The Universal Declaration of Human Rights**⁴⁵ which *inter alia* provides that *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*⁴⁶

*More so the Universal Declaration of Human rights (UDHR) provides that everyone has the right to own property alone as well as in association with others*⁴⁷. *No one shall be arbitrarily deprived of his property.*

⁴³ In an interview on march 10th 2004

⁴⁴ Article 45 of the 1995 constitution of Uganda

⁴⁵ Paris, 10 December 1948

⁴⁶ Article 2 of UDHR

⁴⁷ Article 17(1, 2) of UDHR

This as it is reechoed in our national laws and especially the constitution gives similar provisions under it.⁴⁸

However we discover that much as the laws are crystal clear in regards to rights as stipulated in the conventions rights of women and children are still breached in regard to intestate succession.

2.3.3 CEDAW

The convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) which recognizes the need to adopt specific legislation that explicitly recognizes and enforces women’s human rights as equal to those of men. CEDAW convention provides for the right to equal treatment of women in land and agrarian reform⁴⁹, more so it gives women the right to ownership, acquisition, administration, management, enjoyment and disposal of property equally with men in a family.⁵⁰ Women are also given the right to adequate living conditions including the right to clean water supply⁵¹

This can be interpreted to include all rights inclusive of property rights without discrimination based on color, sex, religion inter alia.

2.3.4 ICCPR

Uganda also ratified the International Covenant on Civil and Political rights (“ICCPR”) which states that rights should be recognized without discrimination, including gender discrimination and expressly obligates states to ensure that rights of the covenant are applied equally to men and women.⁵² The ICCPR further more implores states to ensure that every child is accorded protection regardless to race, color, sex inter alia required by him/her by him/her status in life as a minor on the part of the family, society and the state.⁵³

⁴⁸ Article 21 and 26 of the 1995 constitution of Uganda as amended

⁴⁹ Article 16 CEDAW

⁵⁰ Article 14 CEDAW

⁵¹ Article 14(2) (h) CEDAW

⁵² Article 3 ICCPR

⁵³ Article 24 ICCPR

2.3.5 ACHPR

The African Charter (Banjul) on Human and Peoples Rights (“ACHPR”)⁵⁴ has also been ratified by Uganda and this endorses the need to eliminate all discrimination against women and to ensure their protection in every way as stipulated in international declarations and conventions.⁵⁵ More so the Banjul Treaty stipulates that the right to property shall be guaranteed unless this is encroached upon on public need /interests.⁵⁶ The convention also stipulates that there is equality before the law.⁵⁷ This therefore means men and women are equal before the law and In regard to succession matters.

2.3.6 ACRWC

In the same vein The African charter on the rights and welfare of the Child⁵⁸ is another piece of convention which provides that any custom, tradition, religious practice that is inconsistent with the rights, duties and obligations contained in the present charter shall to the extent of the inconsistency be discouraged.⁵⁹ More so the convention also provides a protection against harmful social and cultural practices especially those customs and practices discriminatory to the child on the grounds of sex or other status.⁶⁰

2.3.7 ICESCR

Uganda also is a signatory to the International covenant On Economic, Social and Cultural Rights (ICESCR).⁶¹ The ICESCR obligates states to ensure that the rights enshrined in the covenant are enforced without discrimination based on race, race, colour interalia.⁶²

It provides for broad rights for the enjoyment of family rights and it also implores the state to ensure that positive actions are taken to protect children and women.⁶³ A summary analysis of

⁵⁴ Adopted on 27-june-1981 and entered force on 21- October- 1986

⁵⁵ Article 18(3) of the African charter on Human and Peoples rights(Banjul treaty)

⁵⁶ Article 14 ibid 20

⁵⁷ Article 3 ibid 21

⁵⁸ (1990) came into force 1999

⁵⁹ Article 1(3) African charter on the rights and welfare of the child

⁶⁰ Article 21(1)(b) ibid 28

⁶¹ Entered into force on 3-january-1976

⁶² Article 2(2) ICESCR

⁶³ Article 10(1, 2, 3), Article 7 ICESCR

this conventions show that women and men/ male and female children are equal before the law and in all aspects.

They are all entitled to own property individually or in association with others. However the practice in Uganda in regard to succession is quite different particularly when it comes to intestate succession women and children are marginalized owing to customary and religious practices or the patriarchal nature of society where in the girl child is always neglected in matters of succession especially in intestate succession.

Ironically the same provisions' are incorporated into our municipal laws but the enforcement mechanisms and generally the lack of knowledge and sensitization ensure that women and children are discriminated in regard to intestate succession in that often they have nothing to inherit from an intestates estate due to weak laws and discriminative customs despite Uganda being a signatory to all these conventions which bar or prohibit such customary or religious practices.

2.4 Municipal laws/statutes

These include laws that are passed in Uganda and may include both principal and subsidiary legislations Passed by the parliament of Uganda.

2.4.1 The 1995 Constitution of Uganda as Amended

The 1995 Constitution of Uganda as amended guarantees that all persons are equal before and under the law.⁶⁴The said Constitution states that people shall not be discriminated on the basis of sex.⁶⁵

It further guarantees women equal and full dignity of the person with the men⁶⁶ and prohibits any laws, cultures and traditions which are against women's dignity, welfare or interest which undermine their status.

The essence of the provisions cited above is that citizens as individuals or groups shall be treated in the same manner irrespective of their characteristics or background.

⁶⁴ Article 21(1) 1995 constitution of Uganda

⁶⁵ Article 21(2) *ibid*

⁶⁶ Article 33(1) 1995 constitution

The Constitution further obligates the state to protect women and their rights taking into account their unique status and their natural maternal functions in society.⁶⁷

In the same vein the constitution gives people the right to own property either as individuals or in association with others.⁶⁸ This is the major article in the Constitution that caters for the rights of women to own property and it is that article often breached in regard to the rights of women to own property.

Courts have in numerous cases pronounced its self on the issue of women property ownership for example **Uganda vs Jemmima kyanda**⁶⁹ where court held that a woman can own property in her own right.

Similarly in **Moon Light Sengooba vs Administrator General**⁷⁰ Court observed that women had a right to own property in their own right.

This in summation therefore means women have a right to inherit property from their husbands and fathers who die especially those who die intestate.

However the patriarchal nature of society has only ensured that it's the boy child protected more than the girl child especially in matters of succession and inheritance, traceable to the very cultures and practices that the Constitution outlaws.⁷¹

Unlike under testate succession where the estate is divided according to the wishes of the testator under intestate succession women and children are often ignored due to the loopholes in the laws providing for division of such property and much as the constitution ably provides for the rights of women to own property cultural practices tend to deny women the same especially after losing their husbands who as it was earlier shown in the paper die intestate.

In regard to children the Constitution⁷² provides that the law shall accord special protection to orphans and other vulnerable children. However as seen above communities tend to favor the

⁶⁷ Article 33(3) *ibid*

⁶⁸ Article 26(1) *ibid*

⁶⁹ 1977(HCB) 111

⁷⁰ HCCS NO.894 of 1973

⁷¹ Article 2(2) *ibid*

⁷² Article 34(7) of The 1995 Constitution of Uganda.

boy child more than the girl child. These trends of affairs deprive the girl child of the constitutionally guaranteed right to own property.⁷³

Often when children lose their parents and it so happens that they die without leaving a valid will or no will at all the estate is divided in a way that the girl child is not given any portion of the estate. This contravenes the constitutional provisions as stipulated above.

2.4.2 The Succession Act cap 162

Like many laws in Uganda this dates back to 1904 as one of the received laws thanks to the reception clause⁷⁴ and it's the principal legislation that regulates, provides and stipulates for succession both intestate and testate and other related issues in Uganda thus it provides that except as provided by the Act or by any other Law for the time being in Uganda this law shall constitute the law of Uganda applicable to all cases of intestate or testamentary succession.⁷⁵

The 1972 Succession Act amended after the ordinance of 1906 purely was based on English common law.

The Succession Act (Amendment) Decree was an attempt by independent Uganda to put in place a uniform law of succession that would apply to both intestate and testate succession which was hugely influenced by customary law.⁷⁶

Since the amendment aimed at ensuring gender equality it therefore shifted all matters concerning succession from the clan elders/ chiefs to court and consequently new sets of rules were developed to ensure smooth means of succession in Uganda.

The succession Act is divided into two parts, one part deals with properties of persons who die testate and the second part deals with properties of those who die intestate (without leaving a will).

⁷³ Article 26

⁷⁴ In the 1902-order- in- council

⁷⁵ Section 1 of the succession Act cap 162

⁷⁶Wagubi, 2003; Okumu-Wengi, 1994

2.4.2.1 Intestate Succession.

Intestate succession is defined as the method used to distribute the property owned by a person who dies without a valid will.⁷⁷

The legal framework that governs intestate succession is the Succession Act cap 162. The said law spells out how such property is shared among the beneficiary members of the family.

Much as every one of 18 years and above has the power and right to make a will; majority of Ugandans die intestate. Five out of every one hundred cases reported to the Administrator General's offices are for those who die intestate.⁷⁸ This trend is attributable to many factors which inter alia include the superstitious belief that writing a will hastens one's death, lack of awareness of the importance of writing a will and the lack of ability to write one.

Intestacy can also arise where although one had left a will it is invalidated for various reasons like subsequent re-marriage of the testator after writing a will and does not amend it or writes another one.

The Succession Act⁷⁹ deals with the distribution of the residential holdings which are holdings or chattels normally occupied by the deceased person.

Residential holdings are generally not subject to distribution and they are regulated by the regime of rules found under the second schedule to the Act.

It is important to note that any share that accrues to a person with respect to residential holdings cannot be taken into account when that person is claiming his/her share of the rest of the estate under the Act.⁸⁰

The rules aforementioned are reproduced below;

The right of occupancy- the residential holding occupied by the intestate deceased as the principle residence may be occupied by the wife, husband as the case may be and any children under the age of eighteen if male or under twenty one years if female.

⁷⁷ Black's law dictionary 8th edition page 4491

⁷⁸ Kanabahita 2006, Okumu Wengi 1997.

⁷⁹ Section 26 of Succession Act cap 162

⁸⁰ Section 29 of Succession Act cap 162

It is only those who were residents of such a residential holding who are entitled to occupy it and it must have been owned by the deceased.

In case of a residential holding owned by the intestate as a principal residential holding but not occupied by the deceased, any wife, husband, children under the age of eighteen years if male or under twenty one years if female are entitled to occupy it. Similarly these persons must have been residents in that holding.

In case of any other residential holding owned by the intestate deceased the wife/husband, children in the same classification as above and who were residents are entitled to occupy the same.

Finally any other premises owned by the intestate not falling under the above category forms part of the deceased's estate and shall therefore be distributed in accordance with the provisions of sections 27 as afore mentioned.

The Succession Act cap162⁸¹ also provides for the breakdown of the division of the estate of an intestate deceased and it is property other than the residential holding.

Below is the breakdown of the division and classes of persons.

Where the deceased is survived by a customary heir, wife, lineal descendants and other dependant relatives, the wife shall receive 15% of the estate.⁸²

Where the intestate is survived by a customary heir, wife and dependant relatives but no lineal descendants, the wife or dependant relatives shall receive 99% of the estate.⁸³

In **Konde v bulandina nankya and another**⁸⁴, the court applied the aforementioned provision of the law that the deceased woman's mother was the soul dependant of the deceased and was entitled to 99% of the estate.

It should be noted that according to **section 28(1)** of the said Act where the wives are more than one or dependant relatives they are entitled to share equally the share allocated to the wife or

⁸¹ Section 27 *ibid*

⁸² Section 27(2) *ibid*

⁸³ Section 27(c)(2)

⁸⁴ (1985) unreported

dependant relatives and incase of lineal descendants they should get equal shares irrespective whether they are sons or daughters.

In the matter of **Grace Micholo**⁸⁵ court held that the intestacy provisions in the law of succession do not discriminate between sons and daughters and the marital status of the daughter is no bar to the inheritance from the deceased estate.

In addition under the aforementioned **section 27**, a cohabitant widow has a right to inherit her deceased cohabitant's estate as was held in the **matter of the estate of Stephen Wanyoike Muhia**.⁸⁶ Where the dispute was whether a woman who cohabited with the deceased and the child she had brought along with her were a widow and a child for succession purposes. The court stated that both the woman and the child were heirs to the estate of the deceased.

The Succession Act ⁸⁷ also disallows a spouse who has separated from the deceased from taking a share off the estate of the deceased. This will depend on whether in the first place they were legally married.

This does not however apply where the separation was due to a reasonable cause and also where a spouse had not been separated from the deceased for more than six months, he/she may apply to court so that the above section apply to him/her.⁸⁸

In **Mboijana vs Mboijana**⁸⁹ the applicant applied for letters of administration to administer his late father's estate, but the respondent herein lodged a caveat to oppose the grant on the ground that as a lawful wedded wife of the deceased she was entitled to the estate of the deceased.

However the respondent had been separated from the deceased for twenty years till the time of the deceased death.

Court held that the applicant was not entitled to the grant of the letters of administration because the respondent was separated from the deceased at the time of his death.

⁸⁵ HCSC No/1978/2000 Kenya

⁸⁶ HCCA NO/6/2002 Kenya

⁸⁷ Section 30 (1)

⁸⁸ Section 30 (2) (3)

⁸⁹ HCCS NO/8/1990

Court further noted that the respondent was separated from the deceased at the time of his death and she should have filed an application as provided by the said section.⁹⁰ Either during the lifetime of the deceased or within six months of the death of the deceased, praying that the provisions of **section 31(1)** do not apply to her.

An analysis of these sections in regard to intestate succession portrays that the law is unjust in as far as inheritance is concerned.

Whereas women are given a percentage off an intestates estate it is a **dismal 15%** which cannot sustain the widow for a long time after the death of an Intestate.

In the same vein where the intestate was a polygamist as is the case with majority of Ugandans the wives are only entitled to the 15% of the estate, which is a share quite very minimal in as far as maintenance of the family and children is concerned.

Much as the law allows a widow and children to occupy the residential holding these right of occupancy is terminated when the widow re-marries or when the children become of age. This does not take into account the fact that widows have no other places of abode as the case may be since culturally a widow belongs to the husbands clan hence the women are ultimately deprived of property especially land.

It is such indiscriminate provisions of the law that compelled Law and Advocacy Uganda to drag the Attorney general to court.⁹¹ Court subsequently declared various provisions of the succession Act to be inconsistent with constitutional provisions.⁹²

However to date the said sections still remain in ours Succession Act which is quite unfortunate to note.

2.4.5The Administrator Generals Act cap 157

The constitution provides that parliament shall by law establish efficient, fair and expeditious machinery for the administration and management of estates of deceased persons.⁹³ It is in that regard that parliament enacted the Administrator Generals Act

⁹⁰ Ibid 91

⁹¹ Law and Advocacy for Women in Uganda versus A.G const petition No/13/2006

⁹² Sections 2(n) (i) (ii), 14, 15, 26, 27, 29, 49, 43 44 and rules 1, 7, 8 and 9 Of the 2nd schedule to the Succession Act

This Act establishes the office of the Administrator general with a primary duty of administering the estates of deceased persons.

The office plays a key role in the distribution of the estate of the deceased persons thus it is prudent that the office has to be easily accessible and should manage the estates affairs justly and according to the law.

The Administrator Generals Act⁹⁴ provides that upon receiving such report or upon death coming to his/her knowledge, if it appears that the person died intestate the Administrator general may apply to court for letters of administration of the estate of the deceased person, where upon the court shall except for good cause shown make grant to him/ her of the said letters of administration.

The Administrator Generals Act cap 157⁹⁵ gives to the said administrator general powers to dispose of property.

Thus he/she may subject to any wishes which may be expressed by a next of kin of the deceased dispose of the estate under his/her administration either wholly or in part and either by public auction or by private treaty as he/she may deem to be In the best interest of the estate.

The Act further⁹⁶ provides that nothing contained in the succession Act shall be taken to supersede the rights, duties and privileges of the administrator general.

The duties and roles of the Administrator as provided in the Act largely remain unperformed due to a number of factors to wit;

Majority of Ugandans are either ignorant of the said duties or the office largely remains un accessible to majority of them making it hard to perform the said duties, to the lucky few who know the office and its functions, the bureaucratic nature of work at the office often discourages many who prefer not to come back to the office or shun the office which would otherwise be of help to especially women and children.

⁹³ Article 247

⁹⁴ Section 4 (3) (e)

⁹⁵ Section 16

⁹⁶ Section 36

The office therefore needs to carry out sensitization and public awareness campaigns to inform the population about the duties and the roles of the office and improve on its efficiency of service provision otherwise it remains an office that under performs its duties as currently is the case

2.5 Other Legal Frameworks.

This covers the other applicable legal frameworks apart from the mainstream ones discussed above. It covers Islamic laws and cultural practices which by virtue of our constitution have the force of law as long as they are not inconsistent to morality, equity and natural justice.⁹⁷

2.5.1 Islamic Law

Inheritance under Islamic law is governed by the teachings of the Koran.

The shares to be inherited by respective members are clearly spelt out.

As **WM Musyoka**⁹⁸ observes the aspect of inheritance in Islam is a form of worship because deviating from the teachings of the Koran is considered an abomination in the Islamic faith.

In the case of **Chelang vs Juma**⁹⁹ a Muslim widow sought letters of administration of her husband's estate jointly with the brothers of the deceased.

Court held that the intestate estate of a Muslim is shared out in accordance with Islamic law as stated in the Koran.

By virtue of the Koran principles the widow is not solely entitled to the estate and she does not own the whole of the husband's property

2.5.2 Muslim Succession under Ugandan Law

The succession Act does not provide specific provisions for Muslim succession. The Succession Act¹⁰⁰ provides that except as provided by the Act or by any other Law for the time being in Uganda this law shall constitute the law of Uganda applicable to all cases of intestate or

⁹⁷ Article 2 of the constitution of Uganda 1995 as amended

⁹⁸ Law of succession

⁹⁹ (2002) KLR 339 (Kenya)

¹⁰⁰ Section 1 of the Succession Act

testamentary succession. This provision entails that succession and inheritance of Muslims/muhamedan is equally regulated by the succession Act.

The earlier succession Act unlike the present one provided a special provision for Muslim succession which stated that:¹⁰¹

“Noting in this section shall affect the validity of any will made by a Muhamedan or an African according to the provisions of the Muhamedan or Customary Law as the case may be”

This implied that Muslims were free to make wills according to the teachings of the Koran.

However this provision was later revoked in the succession Act cap 162.

It's prudent to note that the current Act gives any one the right (Muslims inclusive) to apply for exemption from the provisions of the succession Act.¹⁰²

This gives the minister power from time to time by statutory order either retrospectively from the passing of the Act or prospectively to exempt from the operation of the whole or any part of this act any class or classes of persons in Uganda.

The 1995 constitution of Uganda as amended states that every person has a right and freedom to practice any religion and manifest such practices which shall include the right to belong to and participate in the practices of any religious body consistent with the constitution.¹⁰³

The said constitution also gives higher priority to the application of Islamic law on matters like marriage, divorce, inheritance and guardianship.

It states that the judicial power of Uganda shall be exercised by courts of judicature which shall consist of subordinate courts including Magistrate courts, quadhis courts for inheritance, marriage, and divorce among other domestic issues.¹⁰⁴

This implies that Islamic law is quite relevant in Uganda especially in matters relating to domestic affairs like inheritance, marriage, and divorce among others.

¹⁰¹ Section 50 (2)

¹⁰² Section 334 (1)

¹⁰³ Article 29 (1) (c)

¹⁰⁴ Article 129 (1) (d)

This becomes even more indispensable owing to the fact that the Ugandan population has 12.1% of Muslims with 8.5% of that number in northern Uganda which falls under my area of study.

2.5.3 Types of Succession in Uganda recognized by Muslims

Under Islamic law just as under statutory law succession is divided into two testate succession and intestate succession.

Whereas testamentary succession gives the testator the right to dispose of his property in away he/she wishes under intestate succession there are rules set laid down for succession for the security of the family of the deceased.

The method of distribution of the estate of a Muslim deceased is geared towards breaking up the concentration of money/wealth in one or a few individuals thereby ensuring the social economic welfare of the family and society at large.

In the case of **Shalik Abdul v Shaik Elias**¹⁰⁵ court observed that the man has power to dispose of by will of not more than a third of his property belonging to him at the time of death.

A third of the property cannot be willed away to the family members who are entitled to the other two thirds as the one third is meant to benefit non family members.

“**wasiyyah**” is an Arabic word which means a gift of property by its owner to another contingent on the givers death.

The two thirds of a Muslims estate available to members of the family of the deceased are disposed of in accordance to the rules of intestacy.

The shares stipulated in the Quran cannot be altered or departed from. A widow is provided with a bequeath on the death of the husband, that is one forth for a widower and one eight for a widow¹⁰⁶

The same provision in the Quran states that male children should receive twice as much as female children.¹⁰⁷

¹⁰⁵ (1915)1 FMSLR 204

¹⁰⁶ Koran 4:12

¹⁰⁷ Koran 4:12

However a study by women and the law in East Africa¹⁰⁸ revealed a conflict between the application of statutory law and religious law.

Some religious practices which discriminate against women in the distribution of property where in females are entitled to half of what their male counterparts receive contravenes the constitution which is the supreme law of the land hence rendering them null and void ab initio.¹⁰⁹

2.5.4 Customary Law.

Customary law is the law consisting of customs that are accepted as a legal requirement or obligatory rules or conduct, it is also defined as practices and believes that are so vital and intrinsic as part of a social and economic system that are treated as if they are laws.¹¹⁰

Prior to the introduction of the English Law of succession in Uganda which came about as a result of the reception clause¹¹¹, inheritance / succession was governed by customary laws and practices on one side and Islamic law depending on the religion and culture of the deceased.

Customary succession/inheritance (law) still exists in Uganda thanks to the 1995 constitution of Uganda where in customs and customary practices are allowed as long as they are not inconsistent with the provisions of the constitution and any written law, natural justice morality equity and good conscience.¹¹²

The Judicature Act cap 13 also empowers High courts to apply customary laws as long as they are not repugnant to natural justice, equity and good conscience.¹¹³

In the case of **The Administrator General vs Swaibu Nyombi and others**¹¹⁴ court observed that the judicature Act provides that no one should be deprived of the benefits of customary law if the same was not inconsistent with statutory law or repugnant to natural justice and good conscience.

¹⁰⁸Tuhaiseet el muslim women in marriage and house hold resource management in Uganda, women and the law in East Africa.

¹⁰⁹Article 33(2) of the 1995 constitution.

¹¹⁰Black's law dictionary 9th edition

¹¹¹In the 1902 Order in Council

¹¹²Article 2(2)

¹¹³Section 15

¹¹⁴(1993) unreported.

Generally under customary law and practice women as shall be explained in latter chapters do not inherit property upon the death of their husbands or fathers as the case may be and this is due to the fact that in Africa and Uganda society is patriarchal in nature ensuring that women are always below the men in all aspects including but not limited to inheritance.

However some few customs/cultures do permit women to inherit property as was the stated in the case of **Bamwite vs Nangobi**¹¹⁵ where it was held that some women in Uganda do inherit land which is the dominant form of property and usually forms the largest portion of the deceased's estate but this largely remains a myth.

2.6 Conclusion of chapter two

In summation a critical analysis of the legal framework above shows that the laws are largely discriminative to women and children in inheritance matters especially intestate succession in as far as it apportions a very small percentage to women to inherit usually 15% of the estate.

Women find themselves at the receiving end of the unjust laws that perpetuate male dominance over women in regard to succession.

The law also does not quite elaborately and adequately provide how the estate of a deceased woman can be shared rather it gives the procedure for sharing the estate of a male intestate.

The Islamic norms/ways of succession are equally discriminative to women as seen above in that women are only given a small portion of the estate compared to men.

It is considered against the teachings of the holy Koran for a girl to inherit more than a boy from the estate of their deceased father.

The various cultural practices are equally not in favor of the women since in most cultures across Uganda and in the area of study women are not allowed to inherit property from their deceased husbands or fathers.

Women are rather allowed to have user rights over land which is often taken away by male relatives to the deceased in often in humane ways.

¹¹⁵(1997) unreported.

The practice of paying bride price or dowry has worsened the condition in that women are viewed as property themselves who in turn cannot own property on their own let alone inheriting the same from relatives and husbands.

Often women are allowed to hold property particularly land in trust for their young children (boys) who on attaining majority age take up the land leaving the women with nothing to resort to for their daily sustenance.

All this practices have resulted into women ending up in prostitution which exposes them to the risks of AIDS/HIV with its associated perils since it is the only viable means of attaining a living for them.

CHAPTER THREE

3.0 FACTORS THAT CONTRIBUTE TO THE VIOLATION OF WOMEN SUCCESSION RIGHTS, ESPECIALLY IN REGARD TO INTESTATE SUCCESSION.

3.1 Brief introduction.

This chapter will put emphasis on the factors that lead to the violation of women and children succession rights in Uganda and specially focus on the causes of such violations in intestate succession.

It will look at broad aspects of the law, cultural practices and also religious imbalances that propagate the violation of the women's right to property.

Having looked at the legal framework governing intestate succession the writer discovered that women and children especially the girl child's rights to inherit property of an intestate deceased husband or father as the case may be are violated.

This chapter will therefore analyze the factors that lead to such violations of the said rights despite the various legal provisions prohibiting the same.

The factors that therefore lead to the violation of the rights are as expounded below.

3.2 The influence of culture/customs and traditions.

This is one of the major causes or reasons women's right to inherit property are violated. Before the advent of colonialism, during colonialism and post-colonial era customs/culture has played a very pivotal role in society including but not limited to aspects of inheritance. From the onset it is worth noting that in Uganda intestate succession is more common than testate succession.

Prior to the introduction of English laws in Uganda society was governed by customs and tradition and such customs were very patriarchal that women were relegated to occupy the second place in that they were not anywhere equal to men in any aspect.¹¹⁶

Women/girls were looked on with suspicion and only considered as wife material. It was not common to find a woman getting formal education since it was a preserve for the boys.

¹¹⁶Nanyena Peter and FM Ssekandi (Eds) A simple Guide to the law of succession in Uganda, kampala, Law Development Center 1977, page 38

Society was patriarchal in nature that women had no say whatsoever in regard to inheritance matters, they could not inherit property of their deceased husbands or fathers as the case may be since customarily they were considered to belong to another tribe usually the tribe she would eventually get married to.¹¹⁷

Upon the intestate death of either the husband or father as the case may be, the in-laws and relatives respectively grab all that is left by the deceased often leaving women with nothing to rely on to fend for the children. Whatsoever property is left is vested in the boys since the girls are always considered to be temporary. In most cases women only had user rights over land left by the deceased which rights are often terminated at will by relatives and in-laws.

The other aspect of bride price payment has only ensured that women are treated as a commodity bought by men. Upon such "purchase" they are expected to be submissive to the man in all aspects since disrespecting or disregarding a man's advice was considered to be a taboo which is often seriously reprimanded.¹¹⁸

They are relegated only to domestic chores without decision making powers let alone making suggestions on how the affairs of the family should be conducted including matters of inheritance, this all occurs because property and power belonged to the man.

The colonialists did not make much of a change in regard to the status quo of women in regard to property inheritance let alone the right to property.

It was not until the early 1990s, when the 1995 constitution was promulgated that a sigh of relief was brought in because it for the first time in Uganda's history recognized the rights of women to property either individually or in association with others,¹¹⁹ it also expressly prohibited customs or cultures that are inconsistent with the provisions of the constitution, morality and natural justice,¹²⁰ and perhaps the more specific article is that which states that

¹¹⁷ Supra 116

¹¹⁸ UWONET 2006: Gender Audit of Key Laws Affecting Women in Uganda sourced from <http://www.uwonet.org.ug/index.php>

¹¹⁹ Article 26 of the 1995 constitution of Uganda.

¹²⁰ Article 2 *ibid*

laws, cultures or traditions which are against the dignity, welfare or interest of women or which undermines their status are prohibited by the constitution.¹²¹

However despite the provisions in the constitution and other pieces of legislation women are still discriminated against in all aspects and particularly in inheritance matters. Women are still denied access to inheritance of property of an intestate deceased and all this is due to the rigid cultures that people still profess and eventually makes women's right to inherit property difficult to enforce despite the vast legal framework that regulates it.

Since cultures have existed for as long society has existed its rigidly in as far as it subjects women to a second class is the major cause of women being denied access to inherit property of an intestate.

3.3 Loopholes in the legal framework.

The principal law that governs intestate succession is the Succession Act.¹²² This law has a lot of flaws that enable discrimination against women.

Much as the estate of an intestate is distributed to all the beneficiaries', women are the only ones who benefit the least from the estate in that they are given a paltry 15% of the total estate.¹²³

Where the deceased was a polygamist as is the case with majority of Ugandans the women are only entitled to share the 15% of the estate. This was successfully challenged by Law and Advocacy of women Uganda in the Constitutional Court where upon court declared this provisions to be null and void.¹²⁴

This piece of legislation is very unfair to the women in that it doesn't take into consideration other factors like the women taking care of the home affairs and the children after the husband has died, it is expected to be sufficient for the women to get the 15% of the estate.

Despite all the pronouncements by the Constitutional Court the Succession Act still remains the way it was enacted without the necessary amendments that should ordinarily have been

¹²¹ Article 33 ibid

¹²² Section 1 Cap 162

¹²³ Section 27(2) ibid

¹²⁴ Law and Advocacy for Women in Uganda versus A.G const petition No/13/2006

undertaken by parliament owing to the fact that the pronouncements were made almost ten years ago.

Be that as the law is, the situation in actual practice is different because most women are literally chased away from even their matrimonial homes upon the death of their husbands; such homes are often occupied by the relatives/in-laws to the woman. It is therefore pertinent to note that what the law provides is contrary to what is practiced because in most instances women are not even given a penny from the estate much as they are entitled to 15% of the estate as by law provided.

The Succession Act is also inadequate in as far as it does not provide for the rights of cohabite to inherit property from the estate of an intestate deceased. I hasten to add that in reality majority of the people in my area of study are not actually married in the strict sense of the word but rather cohabiting and since the Act does not provide for such people to benefit from the estate of an intestate it is not only inadequate but rather unfair. Since the Act in its definition of beneficiaries does not provide for a cohabitant it only implies that they are non beneficiaries with the legal effect that they don't benefit from the estate of the deceased. Often you find such people have lived for years together and have issues gotten from the marriage, thus denying the women access to the estate ensures that the children and the widows' rights are violated because often they rely on the man for all support both morally, financially and spiritually.

The succession Act also provides for the preservation of the residential holding of the deceased.¹²⁵ This however is only applicable to a woman who was with the husband at the time of death. Where a woman had separated from the husband for six months or more at the time of death of the husband such a woman has no right to live in the residential holding or in other words it cannot be preserved for her.

More to that the Act only provides that such property is vested in the personal representative upon trust for the legal heir and it has no mention of the woman/widow.

¹²⁵ Section 26 succession Act

The second schedule to the Act provides for the rights of the widow and children to live in such holdings only if below 18 years for boys and below 21 years for girls and both upon marriage forfeit their rights to live in that holding.¹²⁶

That provision is unfair in as far as it vests the residential holding in the personal representative of the deceased instead of vesting the same in the woman who might happen to live in the same holding at the time of death of the deceased, and the fact that a woman loses her right to live in such holding if she had separated from her husband for a period of six months or more before death only ensures that women are denied property unreasonably.¹²⁷

Be that as it is however the actual situation is quite different since majority of women are evicted from their matrimonial homes even where the law protects and preserve this holding for them. In my humble view the residential holding should vest with the spouse although difficulties would arise if a man was a polygamist like is the case with majority of Ugandans, as to who would be entitled to occupy such a residential holding would be a contentious matter.

Not only that the Succession Act is discriminative in that it only provides for the distribution of the estate of a male intestate.¹²⁸ The Act does not expressly provide for a mechanism of distribution of the estate of a deceased female intestate. This only technically means that upon the death of a female there is no legal framework that governs how her estate is to be distributed. Perhaps this law is a reflection of the customary/cultural norms that existed and still exist wherein a vast majority treats women as people who cannot own property in their own capacity. This state of affairs has often ensured that property belonging to women who die intestate are grabbed by the husbands and the same treated by the husbands as their own property. Such property would be given to the woman's parents or perhaps her own children, thus in that regard the law is lacking and leaves a lot to be desired.

The other piece of legislation that provides for the manner the estate of a deceased is managed is the Administrator Generals Act.¹²⁹

¹²⁶ Second Schedule to the Succession Act.

¹²⁷ Section 30 Succession Act

¹²⁸ Section 27 of cap 162

¹²⁹ Cap 157

This Act establishes the office of the Administrator General¹³⁰ who is the principal person charged with the responsibility of managing the estates of deceased persons especially those who die intestate.

The Act gives the Administrator general wide powers including the power to get letters of administration since it is deemed that the administrator general has a right to letters of administration other than letters pendente lite.¹³¹ The Act further requires notice to be given to the Administrator by an applicant for letters of administration.¹³²

Much as the Act provides a mechanism to be undertaken in running the estate of an intestate deceased through the office of the administrator general the office is so bureaucratic and often officers are so corrupt that women do not approach them or those who do eventually shun them and they usually are not helpful to the desperate women who can easily be duped. Many times women are seen roaming around the offices of the Administrator General located in Amamu house Kampala helplessly because the office that is meant to help them by law does not offer any tangible help to them hence leading to a denial of their rights to property.

Although the Administrator General is represented up country by agents usually through chief administrative officers and sub county chiefs only a handful of people know about the existence of such agents let alone the office of the Administrator General as by law established.

The agents are inefficient in carrying out their duties on behalf of the administrator in order to ensure that the rights of beneficiaries who include women are protected. This only means that the office though legally established to help the beneficiaries and protect their rights is the very office in many instances depriving the beneficiaries especially women of the estates of intestates when the staff indulge in acts of connivance, fraud and an ending demand for bribes in order to get services from the office.

3.4 Religious practices.

This in particular is in regard to Muslims/Islam. One of the practices that is so widely practiced and accepted by Muslims in Koboko district and other parts of Uganda is that upon the death of a

¹³⁰ Section 2 cap 157

¹³¹ Section 4(4) *ibid*

¹³² Section 5 *ibid*

Muslim his children do not get equal shares. Unlike customs that did not have regard to women inheriting property the laws of Islam allow women/the girl child to inherit however she is entitled to a share lesser than what the boys usually get.¹³³

On the other hand women are only provided with a bequeath on the death of her husband. Most if not all the estates of Muslim intestates are dealt with in accordance with the Islamic rules much as they have the will making capacity.

Two thirds of the estate of an intestate Muslim is available to the members of the deceased family with a fraction of it given out by the owner contingent upon his death as “wasiyyah.”

It is also worth noting that the Islamic laws are considered sacred and any deviation from these laws is highly condemned since they are considered to be against the teachings of Allah.

Since the Islamic laws are discriminative against women in as far as property inheritance is concerned it is one of those key factors that lead to violation of women's rights to property inheritance in cases of intestate succession.

3.5 intermeddling with the estate of an intestate

Upon the death of the husband women are usually deprived of property of the deceased, and usually the relatives of the deceased tend to grab all the property from the widow and children. Intermeddling is the act of a person who is neither an executor or administrator deals with the estate of the deceased in a way inconsistent with the rights of the beneficiaries or the administrator or executors. Much as intermeddling is prohibited by the succession Act¹³⁴ it remains one of the most common cause of women inheritance rights abuse.

Once a person dies intestate the widow and children are left with no options since whatsoever property is left by the deceased are taken over by the relatives and this in certain instances happen immediately after burial to the detriment of the women.

In certain instances relatives have intermeddled in the property even after an administrator has been appointed by court and often sell off some of the property left -which would benefit the woman and the children. It is even more unfortunate that some of the property grabbed belongs

¹³³ Koran 4:12

¹³⁴ Section 268 of the succession Act

to the woman who might own it in her name. This eventually leads to women property deprivation hence breach of their rights to inherit from the estate of an intestate.

3.6 Low levels of awareness among the population.

This factor is as a result of poor sensitization about the importance of leaving a will. A vast number of Ugandan die intestate and upon death women are among the beneficiaries who get deprived of property. Ugandans fear writing wills simply because of the superstitious believe that once written it hastens ones death. If people where to write wills perhaps their estates will be managed according to their wishes and it would not be to the prejudice of women though cases of intermeddling in the estates of testate persons waters down that aspect.

Upon the death of an intestate property is vested in the hands of relatives or parents of the deceased who often neglect the women and children in regard to property allocation. In view of the foregoing I contend that people should be sensitized on the importance of writing a will to reduce the prejudice normally occasioned on women although the problem is bigger than merely will writing since the relatives of testate deceased persons have often interfered with the estate of the deceased.

3.7 Limited economic opportunities accorded to women

As earlier stated right from pre-colonial times (from the Stone Age era) up until now women are or have been deprived or accorded limited access to economic activities that would enable them become independent. Property ownership was a preserve of the men and subsequently even property owned by a woman is often taken over by the relatives of the intestate husband.

This lack of economic access to the means of production, male dominance over decision making especially over assets of the family coupled with other factors only ensure that women are deprived of property upon the husband dying intestate.

If women were not deprived of the access to the means of production then perhaps their rights to property ownership could be improved and protected as well.

Because of the patriarchal nature of society women are always relegated and usually have a transient existence in society which usually plays to their disadvantage in all aspects and in this case inheritance under intestate succession.

Recently however women have been accorded access to economic activities thanks to the affirmative action¹³⁵ undertaken by the government. It has increased the participation of women in society in regard to production and income generation, women are nowadays gainfully employed, have their own property unlike before no wonder we have women chief executive officers like **Jenifer Musisi, Maggie Kigozi** among others. This however is the picture in urban Uganda, in rural Uganda the situation is quite the reverse because culture is still dominant in rural Uganda with its associated problem like depriving women of property to inherit. This is not to mean that women who have access to economic activities are not deprived of property to inherit from their deceased intestate husbands’.

3.8 Conclusion

The above mentioned factors among others are the main perpetrators’ of women’s denial of property rights during intestate succession.

The loopholes in our legal framework governing intestate succession coupled with the patriarchal nature of society implanted by customs/culture and other factors have ensured that women are deprived of the right to inherit property from a deceased husband or father as the case may be because they are considered by cultures as people who have no property rights. The affairs of women in regard to property inheritance would have better if and when the legal framework was favorable to them unlike the current state of the legal framework.

¹³⁵ Article 33 of the 1995 constitution as amended

CHAPTER FOUR

4.0 STEPS TAKEN BY THE GOVERNMENT/GOVERNMENT AGENCIES AND OTHER STAKEHOLDERS IN COMBATING THE PROBLEM FACED BY WOMEN ARISING OUT OF INTESTATE SUCCESSION.

4.1 Introduction.

This chapter will cover the steps undertaken by the government, government agencies and the various stake holders in combating the problem of women property deprivation arising out of intestate succession.

There shall be a comprehensive analysis of the efforts undertaken by the various stakeholders and the extent to which such efforts have been successful or otherwise.

4.2 Steps taken by Government Agencies.

4.2.1 Ministry of gender Labour and social development.

This is the ministry tasked with ensuring equality and gender balance in all aspects of life in Uganda. The ministry under its Directorate of Gender and community development and the Directorate of social protection are to ensure that there is protection accorded to the citizenry of Uganda especially those who are marginalized including women and children deprived of a share off an intestates estate.¹³⁶

The ministry has been the champion in undertaking the campaign for women equality in all spheres including succession matters by conducting sensitization, workshops and conferences to ensure people are educated and made aware of the rights of women including the rights to own and inherit property from their deceased husbands or fathers as the case may be.¹³⁷

It is the ministry of labour gender and social development that has been at the fore front of the campaign for affirmative action in favor of women and other marginalized groups in Uganda.

However despite the apparent duty imposed on the ministry there are still rampant cases of women being marginalized in society especially in rural Uganda in matters of succession yet the ministry is the top most organ of government that is supposed to ensure equality in all aspects

¹³⁶ www.mglsd.go.ug

¹³⁷ Supra 136

including but not limited to matters of succession. There is need to change the policies at the ministry to ensure that such policies are enforceable because as it is now the policies of the ministry are not easily enforceable since in rural Uganda women are silently suffering yet the ministry ought to be protecting them.

4.2.2 Courts.

The courts are tasked to interpret the law and ensure quick dispensation of justice to Ugandans. The courts of judicature are established by the constitution¹³⁸ and are empowered to grant remedies and interpret the laws. Court especially the Constitutional Court has made numerous land mark declarations pertaining the rights of women and how some laws are discriminative to women. Cases like Law and Advocacy for Women in Uganda versus A.G, Uganda Association of Women Lawyers versus A.G¹³⁹ speak volumes about the role of courts in protecting the rights of women. In the former court declared various sections of the Succession Act to be inconsistent with provisions of the Constitution in as far as it deprives women of property where as in the latter Court declared section 4 of the Divorce Act to be Discriminatory hence null and void.

In matters relating to succession the magistrate courts and high court have jurisdiction to entertain any matter brought before it subject to the pecuniary jurisdiction of the Court as the case may be.

The high court is vested with unlimited original jurisdiction and in domestic matters such jurisdiction is exercised through the family court division which was established in 2005. This court which is situate within Kampala handles matters of administration disputes over intestates' property among other estate of deceased persons related disputes.

Courts have been the only recourse as required by the law where a person dies either intestate or testate because the executor or administrator has to apply to court for grant of probate or letters of administration respectively.¹⁴⁰

As one of the agencies that help in protecting the rights of those deprived of a share out of an intestates estate, courts have been so indispensable in as far as disputes are resolved by court

¹³⁸ Article 126(1)

¹³⁹ *ibid*

¹⁴⁰ Section 5 of The Administrator Generals Act cap 157

without undue delay and often no technicalities. Women who have been denied property have run to court to benefit from the estates of intestate deceased's and often courts have ordered that women should be granted a share of the estate which was hitherto denied especially residential holdings which are usually occupied by the relatives of the deceased person who do that in total disregard of the law. To that extend courts have been instrumental in protecting the rights of women who are deprived of property.

However despite being the body that is tasked ensure that justice is dispensed without regard to undue delays and technicalities¹⁴¹ courts have been known to be very slow with litigation taking many years yet the rights of people are at stake, officers of court have also been blamed for being corrupt and inefficient. Not only that the payment of court fees is always difficult for specially the rural folks who end up being deprived of their legal rights simply because they cannot take the matter to court due to the lack of funds to pay court fees.

Perhaps the major challenge is the case backlog which arises as a result of in adequate staff and the low funding to the judiciary. More so the strict adherence to the rules of procedure and evidence make it hard for court to dispose of cases expeditiously thus simple succession matters have taken longer than usual. This trend of affairs discourage people from going to court because courts take long to settle disputes yet people's rights are always at stake as the matter pens in court.

4.2.3 Local Council Courts/Local Council.

The local council courts are established by the Local council courts Act 2006 wherein there is established a court in every village, parish, town, division and sub-county.¹⁴²

The executive committee court is usually composed of the area local council chairman and other members including at least two female members for town division or sub-county courts.¹⁴³ This is the first Court of instance because members of society usually report any disputes or matters to the Local council courts, this is because the court is at the grass roots and it's easy to institute a claim in these courts since there is no procedural requirement.

¹⁴¹ Article 126 of 1995 constitution

¹⁴² Section 3 of Local council courts Act

¹⁴³ Section 4(3) *ibid*

Complainants especially women who have been deprived of property find it very easy to bring the matter before these courts since they are not required to pay court fees and often the courts are very fast in disposing of matters brought before them. This has only ensured that women's right to property inheritance and ownership are protected as envisaged by the law.

Despite all the expediency of the local council courts they have been more of a disadvantage to the women than advantage. These courts are mainly dominated by men and as a result the decisions of the court have patriarchal undertones. As men are influenced by culture which is patriarchal in nature, so are their decisions which often tend to deprive women of property even though such cases have overwhelming evidence to ensure that its decided in the woman's favor. The cultural stereo type about women not having property rights have only played against the rights of women. Decisions in the local council courts are therefore heavily influenced by culture, traditions and customary which often tend to be detrimental against women especially in matters of intestate succession.¹⁴⁴

These courts are also very corrupt and vastly composed of lay people who often do not appreciate the valued of dispensing justice. Some of the members of court have actually been cited in intermeddling with the estate of deceased persons.

These practices and a high level of illiteracy coupled with gross incompetence only subjects' women to property inheritance deprivation. Unfortunately all this happens in the watchful eyes of the local council leaders who most times get such cases reported to them.

4.2.4 Uganda police force. (UPF)

This is the main stream law enforcing agency established under the constitution with its power spelt out in the Police Act.¹⁴⁵ Uganda police has been in existence since 1906 and it's the body tasked with the duty to investigate, prevent and combat crimes in Uganda. In so doing the Police force have had cases of women deprived of property reported to them.

The Probation and social welfare officer (PSWO) who in most cases is at every station is the person concerned with the protection of the rights of the marginalized including women and

¹⁴⁴ Lynn Khadiagala, *The Failure of Popular justice in Uganda, Local Councils and Women's property Rights*, school of international service, American University Washington Dc(www.interscience.wiley.com/journal)

¹⁴⁵ Under part v of the police Act as amended.

children. Family disputes over property and other matters arising from families are reported to this officer who undertakes investigation and makes necessary recommendations including charging perpetrators of crimes.

Women find it easy to report cases of abuse that arise out of property disputes of an intestate estate because most of the Probation and social welfare officers are female police officers thus it's easy for women deprived of property to confide in such officers and in the same vein these police officers also come along as people who are easy to find and deal with. These probation officers have thus made it easy for women to get redress from them upon the deprivation of their rights to property which are usually left by their intestate deceased husbands.

There have been shortfalls in ensuring the protection of such rights and generally combating crimes/preventing crimes by the police due to the fact that the police force is prone to corruption and bribes owing to the fact that the officers are paid peanuts which is usually not sufficient to meet their daily needs. The officers are therefore tempted to ask for a bribe from the people who come to report a case including women deprived of property thus this hinders the enforcement of rights. Such has not only hindered the enforcement of such said rights it has in fact led to an increase in the abuse of the rights for women for example where a widow has been chased away from a residential holding and no action is taken by the police officers who demand for a bribe. Such state of affairs mean people will always abuse women deprive them of property and the right to inherit knowing there is nothing that can be done hence they continue doing that with impunity.

4.2.5 Role of Religious leaders.

Religious leaders play a pivotal role in society to the extent that people easily confide in them more than relatives or friends. Religious leaders are so much involved in affairs of people in society especially in regard to deceased person's affairs including the way the estate is shared.

Islamic religious leaders are vested with the power to oversee the distribution of the property of a deceased which often is to the detriment of women/ladies in that male children are usually given a fraction higher than their female counterparts and as for the widow she is only given bequeaths upon the death of the husband.

Where there are disputes arising out of the estate of the deceased Muslim then Imam or Khadi as the case may be has the final say in regard to such disputes and their opinions are not to be challenged because in so doing one is deemed to be disobeying the teachings of Prophet Muhammad

On the other hand Christian religious leaders often follow what cultural/clan elders have decided pertaining the estate of the deceased intestate. Where for example a widow is deprived of property including the matrimonial home religious leaders have often taken the view that what the elders decide is what they go by much as the same is very unfair and discriminatory to women.

To solve this problems and ensure that religious leaders are instrumental in society there has to be vigorous sensitization on the sensitivity of the matter perhaps then would the religious leaders play a key role without social bias and injustice occasioned on women to ensure that their rights to inherit property and to property ownership are protected.

4.2.6 Role of traditional/cultural leaders

As culture and tradition are very important in succession especially intestate succession the role of traditional/cultural leaders cannot be under looked.

The Kakwa people who are the majority of inhabitants of Koboko District do not have a main stream traditional institution unlike other kingdoms like Buganda, Busoga, Bakonzo, to mention but a few. However society is controlled and regulated at clan level by the council of elders/clan heads who play a pivotal role in key issues in the clan including but not limited to succession matters especially intestate succession. Most disputes regarding property of deceased persons are in fact first referred to elders/clan heads after which were on relief is got the complainants often women undertake other steps like going to the local council court, police among other. Depending on the nature of the disputes clan leaders have often tried to solve the disputes between parties usually between the widows in most cases against the relatives of the deceased on the other hand.

The elders deserve credit for solving disputes arising out of the estate of intestates and in many instances the elders have awarded women property despite the protests from the relatives of deceased persons and the elders have been able to do that through dialogue, compromise and

restitution, however majority of the decisions are dictated upon by cultures which tend to undermine the integrity of women and the ability of women to hold and inherit property from deceased husbands since the kakwa custom/ tradition vests the land(usually the only viable economic production tool) with the men and upon death in the children. Women only have user rights and often keep the land in trust for young children especially boys. The existence of such cultures only waters down the effectiveness of the clan leaders because they are hugely influenced by such customs and believes which from the onset are patriarchal against women hence the rights of women are deprived even by those who were meant to protect the same in the name of elders/clan leaders.

4.3Steps undertaken by Non-GovernmentalOrganizations' (NGOS).

These are bodies that are regulated and controlled by government through the law¹⁴⁶ and are totally independent in the way they execute their duties. Most of the NGOs are concerned with equality, freedom, human rights and better governance for all. In this regard the writer shall embark on NGOS that have a bearing on succession matters specifically intestate succession and emphasis shall be on Uganda Association of Women lawyers since it is the only vibrant association championing the rights of women in Uganda.

4.3.1 Uganda Association of Women Lawyers. (FIDA)

FIDA was established in 1974 by a group of women lawyers with the objective of promoting their professional and intellectual growth. FIDA was formed with a vision of ensuring a just and peaceful society where women's rights are realized and enjoyed in all spheres coupled with a mission of advancing gender equality through the promotion of women's rights.

FIDA seeks to lift the status of women using the law as a tool for social change and it seeks to strengthen the institutional framework to champion socio-economic justice for women and gender equality this is elaborated by their vision and motto.¹⁴⁷

FIDA has been instrumental in ensuring that the women rights are protected including the right to own and inherit property and it has been successful in that regard especially by employing the following measures;

¹⁴⁶The Non Governmental Organizations' ACT, as Amended.

¹⁴⁷ www.fidauganda.org

Publications.

Since its inception FIDA Uganda has made a number of publications for example the 2005 publication on inheritance and succession in Uganda, wills in Uganda among others. In the book “simple booklet on the law of inheritance” FIDA makes it simple and basic for even a lay person to understand how matters of succession are concerned. Of equal importance is the fact that the book makes a provision on how wills can be made and the importance of making a will.

Such publications have ensured that people are educated in matters pertaining to succession such that in case a person dies intestate the beneficiaries unlike before now know their rights and privileges thanks to FIDA.

Apart from the books FIDA has also written many journals and magazines touching on the same subject matter such publications have not only educated women about their rights but has also awakened the demand for equal rights for women in matters related to succession in Uganda.

Court intervention.

FIDA has been instrumental in engaging with the grass roots women who have been deprived/denied access to property of intestate deceased persons to get justice from court. Though its country wide branches FIDA legal officers provide pro-bono legal services to such women especially for example those deprived of property and residential holdings.

Not only that FIDA has brought up a number of cases against the Attorney General seeking declarations that certain provisions of the law were unconstitutional and discriminative against women. One of those notable cases portraying that FIDA is at the fore front of fighting for the rights of women is Uganda women Lawyers Association and others versus A.G.¹⁴⁸ where in FIDA was challenging the provisions of The Divorce Act¹⁴⁹ contending that it was discriminatory in as far as it required women to prove two grounds to warrant grant of a divorce where as men had to prove only one. The constitutional court agreed with the arguments of FIDA and declared that section and others unconstitutional and discriminatory in nature. This case among many others has ensured that FIDA is one of the main actors in championing for equality and justice for women in Uganda with a resultant effect that women’s rights to property

¹⁴⁸ Constitutional petition No/2/2003

¹⁴⁹ Section 4

are protected. This among other cases handled by FIDA in its regional offices indicates that they have achieved a lot in as far as the protections of the rights of women are concerned.

Public Lectures and sensitization workshops.

FIDA has gone as far as sensitizing the citizens about the rights of women especially this has been achieved through public lectures at universities, town halls/ district halls wherein they get the chance to have personal interface with the rural women and get to know the problems faced by such women.

With believe in the power of information they have been able to reach a huge audience who do not often know their rights and obligations especially those of women in regard to intestate succession.

One of FIDAS fight is against discriminative cultures and customs which are always detrimental to women especially in as far as it tends to deny women the right to own and inherit property. In so doing FIDA has helped reduce the social menace of women property that was so rampant in the pre 1995 era.

CHAPTER FIVE

5.0 FINDINGS, CONCLUSIONS AND RECOMENDATIONS.

5.1 Introduction

This chapter will expound on the findings of the study, conclusions and recommendations/possible solutions to fill the void left by the inadequacies in the legal framework which eventually affects women by them being deprived of property.

Key reforms need to be undertaken to ensure that women have the same footing when it comes to intestate succession and these needs to be undertaken by the government, reforms in the legal framework, administrator's office and other stake holders.

5.2 Findings.

The writer in the course of the research had the following findings/discoveries:

- (a) That the rights of women to property inheritance are breached this is especially rampant in rural Uganda where women are either less informed or not informed at all about their rights to property, inheritance and how the law is intended to protect them in that regard.
- (b) Such rights of women are mainly abused due to the prevailing cultural practices that exist in society which though discriminative are enforced to the detriment of women.
- (c) The legal framework governing property inheritance generally is discriminative against women; the law is not gender neutral thus it only takes into consideration the rights of men to the disadvantage of women.
- (d) Enforcement mechanisms of the laws in place are inadequate such that the laws remain unenforced more so in some instances those would be enforcers are the abusers of women rights in regard to property inheritance.
- (e) There is also little or no sensitization of the masses about the law generally and the law on succession in particular as a result the masses don't know the importance of making wills for example thus majority die intestate and this comes with its associated problems.

- (f) There was also a problem discovered with the cultural leaders who in many communities have a lot of influence. These leaders are often involved in solving succession disputes arising from families within their area of jurisdiction. However they have tended to be discriminative to women in regard to property allocation and that all arises because they are heavily influenced by cultures/traditions.

5.3Conclusions.

This paper set out to examine the adequacies in the laws governing intestate succession and the effects of such inadequacies or adequacies on women and children in regard to property ownership especially from an intestate deceased. It also set out to assess other causes of women property deprivations, steps undertaken to solve this vice and suggest practical solutions. From the foregoing discussion it is crystal clear that the law in Uganda especially the Constitution protects and provides for women's equal right to inheritance.

However in practice women's inheritance rights are often violated despite the various laws that purport to protect the same. Widows are often denied the right to inherit their deceased husbands property especially land. Sometimes they are even denied the right to look after their own children. Consequently it has been suggested that to be a widow in Uganda is to be an outcast. Too often when a woman loses her husband, she is also cast out of her family, forced from her home, stripped of all property, and separated from her own children.

It is evident that all the above is encouraged expressly by the outdated legal framework on succession In Uganda and cultural practices that have truly outlived their relevancy.

One of the principles of human rights is that all human beings, including women are equal and should not be subjected to any form of discrimination. Uganda is a signatory to key international human Rights instruments including the Universal Declarations of human Rights (UDHR),the convention on Economic, social and Cultural rights (ICESCR), African Charter on Human and Peoples rights (ACHPR) and the Convention on Elimination of All Forms of Discrimination against women (CEDAW). In addition to the foregoing Uganda has one of the best constitutions in sub-Saharan Africa in as far as women affirmative action is concerned; however the actual implementation of the wonderful provisions therein is lacking as discussed herein and to the

detriment of Ugandan women and the nation at large because women are the “backbone” of any society and when they suffer the whole society suffers as well.

If women in Uganda truly have inheritance rights both mandated by the constitution and statutory laws and enforced in practice economic prosperity in the country would increase. For example women would direct their money to the up-bringing and education of their children, thus better preparing the next generation of Uganda citizens. Or women could reinvest their money in their land, thereby increasing the profitability and resources in Uganda. It is that a culture can be a force of liberation or oppression; male dominated ideologies in Africa have tended to use culture to justify oppressive gender relations.

It is clear that there is a big gap that exists in succession and inheritance laws and thus the need for laws that protect and promote the rights of women. However the passing of the laws will not be sufficient to reverse the entrenched beliefs and control attitude that the traditional system possess. Therefore there is thus need to ensure that females and males inherit land equally in law and practice, for the good of the nation.

5.4 Recommendations

5.4.1 Legal Reforms/Reforms to be undertaken by legislature

The gender-discriminatory succession Act should be amended or new laws should be enacted to grant widows and daughters the same rights as widowers and sons of the deceased.

New laws should be enacted in order to speed up the judicial and administrative process of the estates of intestate person's management in order to ensure greater access to courts and uniformity in the administration of justice.

Parliament should provide for training, education and reporting programs for police, magistrates, judges and other government officials as well as initiatives to sensitize the public about women's constitutional rights in inheritance

Parliament should come up with specific legislation to address the issue of intestate succession better than existing the succession Act for example the constitution provides that parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit property of their deceased spouse and to date no law apart from the gender-discriminatory

Succession Act has been passed by parliament which therefore calls for a specific piece of legislation, this is because the constitution provides general guidelines but does not deal with specific laws that govern inheritance matters therefore it's the onus of parliament to pass the relevant bills which specifically look at the detailed aspects of inheritance.

Ugandan parliament has the sole authority to legislate in the realm of personal law and must ensure that personal laws on inheritance do not violate women's fundamental rights thus specifically parliament should provide for the following legal, educational and enforcement reform initiatives:

- (a) Grant the surviving spouse full ownership of the matrimonial/residential holding.
- (b) All heirs should be treated equally, without any preference as to male heirs over females.
- (c) Provide for A procedure for dividing the estate of a female intestate since the current law is not gender neutral in as far as it does only provide for the sharing of an estate of a male intestate but not a female intestate.
- (d) Consider the contribution of spouses when distributing property.
- (e) Occupation of matrimonial home should vest in the spouse even when the spouse chooses to re-marry.
- (f) Increasing the share of the surviving spouse in the rest of the estate other than the matrimonial/residential holding from fifteen percent to fifty percent in order to bring the Succession Act in to conformity with the Children Act and the Constitution.
- (g) Set different distribution schemes for polygamous marriages to protect widows and children's rights, where the distribution of matrimonial property depends on the number of wives and the duration of each wives marriage to the deceased.
- (h) Grant the surviving spouse automatic right to administer the estate of the deceased.
- (i) Promulgate and implement new administrative rules and practices, including the further decentralization of the Administrator Generals office in order to provide greater accessibility and enforcement.
- (j) Amend the jurisdictional requirements in the court system to make the courts more accessible.
- (k) Establish judicial, administrative and law enforcement agencies competent and equipped to provide an effective remedy for injustices suffered by Ugandan women in succession.

- (l) Criminalize the practice of unlawful eviction of widows and widow inheritance and also provide for the investigation and punishment of offences that harm the widows and their children.
- (m) Increase the fine for those who intermeddle in the estate of the deceased persons or alternatively there should be imposed a heavy criminal sanction on such persons.

In addition, the Ugandan legislature must move to create inheritance laws that consider the rights of women and balances the interests of all the parties during inheritance. As aforementioned the Succession Act should be repealed and anew law put in place in order to protect the rights of women in inheritance specifically intestate succession. This is because most of the provisions of the Succession Act are discriminatory towards women and to be specific **section 2(n)** which gives preference to the male heirs over female heirs, **section 27** providing the percentage of division of a deceased's estate is entirely inequitable to women, the **rule 8 of the second schedule** providing rules relating to the occupation of residential holding provides that widows should vacate the home after being remarried but it does not provide the same for widowers.

The Succession Act needs to be amended to provide for the rights of cohabitants. It is not in dispute that a vast number of Ugandans are not married legally but rather cohabiting, thus upon the death of either spouse the law is silent on the rights of the surviving spouse since the Succession Act does not provide cohabitants as beneficiaries from the estates of deceased persons. This loophole in the law need be addressed.

There should be amendments to the Land Act to provide adequate protection to widows and women whose marriages may have ended and also to provide for spousal ownership of land in case of married couple.

The Domestic Relations Bill must be passed, the Bill mandates that women have property rights in marriage, criminalizes wife inheritance and ends the requirement of bride for price for a formal marriage. The Bill also obliges each spouse to maintain the family and determines such maintenance by taking into account both monetary and non-monetary contributions' to the family. The bill has faced enormous resistance because it attempts to re-arrange the power-gender and property relations at households and in communities.

In the same vein courts in Uganda which are the sole entities empowered with the duty to interpret the law should be vigilant enough to interpret the laws in an un-discriminatory way so as to avoid injustice.

5.4.2 Government.

The government should ensure that every woman in Uganda is aware of her constitutional rights, freedoms and responsibilities, how they can obtain redress under the constitution or other law in case such a right or freedom is infringed by either the government or an individual. This is because most women have recognized that if they themselves are unaware of their rights there is little chance that those who violate their rights will be brought to justice.

The government also needs to follow up the good work they had started that is recognizing women's land rights by launching national educational campaigns to transform widespread social values around women's land rights, promoting women's full equality. It's only by doing so that we shall see a real change in women's lives.

The government should train the police, magistrates, and local leaders on the succession law and sensitize the public regarding people's rights under the constitution and the succession law. The government of Uganda should adopt reforms that will transform human rights in the country from rhetoric to reality. International conventions to which Uganda is a party obligate Uganda to provide women whose rights to equality are abused with effective remedy.

The government should also be ready to accept and promote the realization of the rights of women to equal treatment as well as protection by the law. With sufficient and enforced inheritance rights, the devastating plight of women in Uganda would be significantly ameliorated. For example the Ugandan constitution which prohibits "laws, cultures, customs, or traditions which are against the dignity, welfare, or interest of women or which undermines their status has never been enforced owing to the numerous cultures, customs and traditions which are still in practice although they are discriminatory to women.

Similarly while statutory law in Uganda does provide for wills there are numerous barriers preventing wills from being written; there is wide spread superstitious fear that writing a will brings untimely death; there is low literacy; there is limited experience with legal issues in rural areas; and under customary law wills were verbal. There is need therefore by the government to

sensitize the public about the need for wills through public civic education throughout the country. This can be done in collaboration with various stake holders like Non Governmental organizations, the local governments inter alia. Generally there should be initiatives undertaken by the government and other stakeholder's especially civil society to sensitize the public about the law on intestate succession.

Uganda must also start adhering to the treaties it has ratified. Uganda is not only required by international law to adhere to these treaties, but the women's rights recognized and protected in the treaties, if followed would put an end to the discriminatory customary and religious practices perpetuated against women in Uganda today.

5.4.3 Administrator General

The 1995 constitution of Uganda as amended provide that parliament shall by law establish an efficient, fair and expeditious machinery for the administration and management of the estates of deceased persons, it further provides that the services of the department or organization established for the purpose are decentralized and accessible to all persons who may reasonably require those services and that the interests of all beneficiaries are adequately protected.

Thus there should be provisions for making representatives of the Administrator Generals office available at the local level and holding the office accountable for its decisions. It has been suggested that the office of the Administrator General is centralized and recommends a permanent representative at the District level if an agent at the Administrator Generals office mishandles an estate the consequences can be serious and are essentially irreversible. Although a remedy against the Administrator Generals office is technically available under the law, this remedy is of little practical significance because the complainant bears all the costs of suing the office. The office should also establish better networks, feedback channels and supervision mechanisms with its agents to ensure transparency. In the same vein there should be improved modes of obtaining letters of administration with ease and where possible provision of pro-bono services to applicants who cannot afford legal costs.

Therefore the suggested reforms include a proposal to subject the Administrator Generals office and its agents to liability under the penal code. Given its centrality to the operation of succession

laws in Uganda, the government must ensure a transparent, accessible and accountable Administrator Generals office.

5.4.4 Cultural/Religious leaders.

Traditional leaders and women need to join together in a process to identify cultural practices that support the rights of women showcasing best practices around the country and question the ones that do not provide adequate protection to women.

Tribal/ clan elders/ chiefs and religious leaders who determine inheritance matters in many rural societies must be educated about the statutory laws that govern succession in addition customs that undermine and deny women their right to own and inherit property should be abolished. The writer recommends that the operations of the cultural leaders and religious leaders should be regulated by statute which specifically should provide for that purpose.

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