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A Critical Assessment of the Effectiveness of Law of Intestate Succession in Masaka District of Uganda

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ABSTRACT

This study critically assessed the law of intestate succession in Masaka district of Uganda, with the aim of inspiring Ugandan authorities to create a special legal structure to govern the law of intestate succession. The study secondarily sourced its data from textbooks, journals, online blogs and statutory books. At the end, calls for the law to specify the maximum number of executors for a given portion of the deceased's assets. Additionally, the legislative revision should empower the High Court to replace an incompetent executor with an administrator. Retraction of a probate renunciation for particular circumstances should be considered in the legislative amendment. The legislation should be amended to allow rapid remedy if a beneficiary or other interested party proves the grantee breached duty, was fraudulent, or inefficient in estate management. The legislative modification should shield the estate from distribution before letters of administration and probate. Amendments to the statute should expand the avenues for grant revocation, such as application by an interested party and Administrator General Intervention. The government and civil society should develop initiatives to strengthen the administrative system for managing the estates of deceased individuals. Finally, law penalties should be modified to reflect contemporary socio-economic situations and reflect a punitive posture.

Keywords: Assessment, Intestate, Succession law, Testate, Will.

INTRODUCTION

Intestacy law is often refers to the law that governs who inherits estate property. A deceased person's property is distributed intestably without a will. This distribution could be total or partial [1]. However after the constitutional court's ruling in Law and Advocacy for Women in Uganda v. Attorney General [2], Uganda's intestacy law was nullified, leaving a gap in the law. Since it only mentioned distribution on the death of a male intestate, the provision was challenged as sexist that violated the constitutional guarantee of gender equality. Most communities in Uganda have clans, family powers, and value systems that promote male dominance. Thus, most ethnic groups' patriarchal nature determines property ownership patterns and rights because the family is structurally and functionally male-dominated. This governs male inheritance. In Masaka, patricentric land tenure arrangements hinder children and women's land rights assertion in a public for which men are primary players with little sympathy for women [3]. Although Uganda's succession laws apply to all residents and the Registrar and Administrator General are expected to be notified of all deaths, they are commonly ignored. Customary and religious leaders' rulings, albeit not legally obligatory, are accepted by heirs who are unaware of their rights under uniform succession law. Many Ugandans avoid writing wills because they think it will lead to death [4]. This superstitious fear of writing a will hinder execution of the estate law or instrument. An intestate's estate is distributed by clan leaders, religious leaders, or relatives [5]. Tripp [6] argues that many Ugandans usually favour custom over beneficiary rights. Many cultural and religious authorities who handle inheritance concerns are unaware of the succession legislation and its provisions. Thus, inheritance disputes are often settled on an ad hoc basis or according to customary laws, which constitute the tribe's traditional law and require property to be passed down through the male line. And relatives usually hide under the customary law provisions to take over widow's home and land.

Customary visa vis statutory laws

African customary law on marriage and succession has continued to play a central role alongside statutory law, thanks to the 1906 succession ordinance and legal Notice cap 34, which exempted all natives of the protectorate from its effects. The Judicature Act allows existing customs that are not adverse to natural justice, equity, or good conscience to be applied. Such practices should not be conflicting with any written legislation. The 1995 Ugandan constitution outlaws laws, cultures, rituals, and traditions that violate women's dignity, welfare, or interests [7]. While Ugandan law sets standards for customary law, available literature suggests that cultural and customary

practices that are against the dignity, welfare, and interests of women and other marginalised groups like children, as well as discriminatory, continue to be practiced when handling succession matters in different ethnic groups. In Uganda, property goes from the father to the eldest son or the Buganda customary heir upon the death of an intestate. The groom and his family give the bridegroom's family agricultural implements, livestock, or goats to celebrate customary marriage in Uganda. Many husbands believe that after paying the bridal price, their wives are theirs. To satisfy their interests, some males claim to own their wives and their labour. Dissolution or death leaves the wife without any share of the riches she accumulated with the husband. The widow and her children, in severe situations, are often disinherited by the deceased man's kin, which is contrary to the provisions of the law [8]. Majority of the Ugandan men found it difficult to leave lands to their daughters and wives because they believe their daughters and wives will transfer such lands to other tribes upon marriage or remarriage. In some Ugandan societies, the husbands' brothers or families inherit the wives and children of the deceased husbands. Thus, in Ugandan customary law, a woman may have bought land with her husband and spent her adult life cultivating it, but she cannot claim ownership [9]. If the husband dies, the land usually goes to sons but sometimes to daughters. However, the husband may leave the wife without land and no income. Uganda's most valuable resource is land, which people use for agriculture and subsistence. Land inequality is one of the biggest economic disparities between men and women in Uganda and around the world, and it has serious ramifications for women as social and political actors. Women in Uganda perform 70–80% of agricultural and 90% of food production labour.

Legal pluralism

Cultural, customary, and religious norms impact women and men's legal and social succession on death. Walsh [10] observes that a complex mix of cultural, legal, and social factors underlies women's property rights violations. Many countries' customary laws—largely unwritten but influence local norms that coexist with formal laws—are founded on patriarchal traditions in which men inherit and manage land and other property while women are "protected" but have less property rights. Past practices perpetuate modern conventions that deny women property rights and silence them when they are violated.

A related study found that patrilocal and exogamous marriage and community resource ownership contributed to the lack of land rights. This system required women to marry men from other clans and move in with them on clan territory. While many people still live on clan land, the regulations derived from this system are unique and different from common clan land [11].

As daughters marry, they are expected to sell or leave their land to their husbands or children from other clans. Much like the succession Act grants intestate children 75% of his estate in equal shares, the girls are disinherited by the customary practice that they do not inherit from their fathers but are considered outsiders by their husband's families, losing out twice.

Application of the law of succession to foreigners

If the wife or child of a deceased non-Ugandan resident in Uganda for two years or more is ordinarily resident in Uganda, their property is subject to the Uganda law of Succession [1]. First, the legislation restricts to a wife and child. A more inclusive approach would include spouses, children, and dependent relatives as beneficiaries. This provision protects illegitimate children of foreigners who die in Uganda without a will and their other dependants, saving some hardship that was not previously averted [12]. This interpretation is partially correct, however the law limits benefits to Ugandan residents. Ugandan law does not address non-resident beneficiaries. This has been criticized as unfair and restricting. Ugandan legislation should allow foreigners to inherit family estates. Special proceedings should be legal to accommodate these processes. The Foreigners' Act (which allows the government to restrict or prohibit foreign citizens' rights) and the Foreign Exchange and Management Act affect foreigners' succession and inheritance in India. Religious communities in India follow distinct laws. Hindus have the Hindu Succession Act and a part of it uncodified, Muslims have the Islamic Law on Succession, Parsees, Christians, and others fall under the Indian Succession Act [13]. The deceased's personal law determines inheritance law. Foreign citizens inheriting from Indian citizens must follow the law of the appropriate Indian religious group. Foreign citizens die with their religion or nationality's personal law. If the deceased foreigner's nationality at the time of death refers inheritance concerns back to India (i.e., where his/her property is), the Indian inheritance law takes precedence. Personal law of the deceased pertains to inheritance in India. This law may be the deceased's religion's textual law or the deceased's nation's codified law. All inheritance matters are handled by the district civil court [13]. The district judge's court where the property is located or where the deceased lived in India before death or leaving the country handles inheritance matters. The High Court (HC) may transfer a property dispute to one civil court if it is in multiple jurisdictions. The HC may hear two appeals from there. A Successional Leave Petition (SLP) may be allowed to be heard by the Supreme Court of India, the Apex Court, when the second appeal is exhausted and if exceptional legal concerns are involved. Stamp duty and court expenses depend on the property's state. Succession and inheritance disputes can take as long as any other civil matter, depending on the complexity of the claims, the law's interpretation, and the number of appeals [13]. The world is becoming a global village, and Uganda allows dual citizenship. Foreigners often live, work, and own property in Uganda, which may

be part of their estate. Thus, the law must adapt to changing patterns by including cases where a foreigner's estate stays in Uganda, whether or not their intended or de facto beneficiaries are Ugandans.

Entitlement of dependant relatives

The Succession Act defines dependent relatives as those related to the deceased by marriage or blood or who were substantially dependent on him/her for their sustenance [1]. These individuals receive 9% of the intestate's estate. The Commission's report on Domestic Relations [14] argued that the surviving individual has no obligation to support dependant relatives who are not part of the deceased's immediate family. The argument was that the immediate family should not be required to care for others whom the deceased helped out of goodwill. It was also argued that the estate may not be enough for the immediate family. Another study on Muslim Women in Marriage and Household Resource Management in Uganda [15] suggests that a deceased man's estate should benefit his widow/widower and children solely. It is recommended that relatives should not get shares from an inheritance as they may compromise the property rights of the widowers and children. Whether dependent relatives should remain beneficiaries in an intestate will is crucial. Kenyan succession law [16] defines dependants as:

- (a) The deceased's spouses, children, and immediate family members, including those maintained by the deceased prior to death;
- (b) The deceased's parents, step-parents, grandparents, grandchildren, step-children, adopted children, siblings, and half-siblings; and
- (c) The deceased's spouse.

The law empowers a dependant to sue for remedy if the deceased or administrator made unreasonable provision. U.K. law [17] considers "other relatives". These beneficiaries are eligible if no intestate issue has a vested interest, subject to the surviving spouse's beneficial interests. The residuary estate of an intestate is held in trust for their relatives in a certain order. Persons with vested interests in one paragraph exclude those in the next:-

- 1) Parents: surviving parents receive equal shares when only one survives the intestate.
 - 2) The intestate's siblings are beneficiaries of statutory trusts.
 - 3) Half-blood siblings of the intestate on statutory trusts.
 - 4) Grandparents: those who survive the intestate inherit equally, but those who only one survive take absolutely.
 - 5) On statutory trusts, uncles and aunts must be siblings of the intestate's father, excluding their spouses, despite being named aunt or uncle.
 - 6) On statutory trusts, half-blood uncles and aunts must be siblings of a parent of the intestate.
- Protection for dependant relatives is widespread and praiseworthy, but the estate may not be enough to support some of them. This may happen if the dead was a salaried worker or if the inheritance is too little for many dependents. The law should establish under what conditions each beneficiary category can get a share of the estate. Clear priority should be given to immediate family, such as husband and children.

Application for grant of probate and letters of administration

Grants of probate and letters of administration are court documents that authorise the personal representative to administer the deceased's estate and outline the terms of administration. The executor or administrator of a deceased person is his legal agent for all purposes and inherits all of his property under Section 179 of the Succession Act [1]. An executor is a person appointed by the will to manage the deceased's estate. If the deceased dies intestate or leaves a will without appointing executors, the administrator or executor can dispose of his property in any way he deems fit.

If an executor is appointed by the will and seeks probate, their authority begins upon the testator's death and is confirmed by the grant of probate. Other times, the personal representative has no authority before the grant and gets it from the award. Only executors can receive probate, either simultaneously or separately. If a codicil is discovered after probate, the executor may receive a separate probate if it does not revoke the will's executors. If the codicil appoints other executors, the will's probate will be overturned and the will and codicil probated simultaneously.

Letters of administration allow the administrator all intestate powers as if awarded immediately after his death. The high court and magistrate's court have probate and administration jurisdiction under decree 13/72 on the administration of estates (small estates) (specific provisions) [18].

To apply for letters of administration, a beneficiary is expected to submit an English petition stating:

- a. The deceased's time and place of death.
- b. The deceased's family and their residences.
- c. The petitioner's claim.
- d. The dead left property.

Consider the jurisdiction of the high court/district delegate, and the quantity of assets likely to be obtained by the petitioner. For district delegate applications, Section 236 of the succession Act [1] provides that the petition must mention whether the deceased lived in the delegate's jurisdiction at the time of death.

To apply for probate, submit an English petition stating:

- a) The testator's death date.
- b) The execution of the last will and testament.
- c) The amount of assets likely to be transferred to the petitioner.
- d) The petitioner is the named executor.

If the will is not in English, a translation must be attached to the petition. Give notice of the probate/letters of administration application. This notice allows 14 days from application date for claims or grievances to be caveated. This is followed by the petitioner identification. The high court registrar and magistrate's court magistrate do this. Court will award administration/probate letters if satisfied. Under this Act, the high court and a magistrate's court can give probate and letters of administration under the administration of estates (small estates) (special provisions) Act.

There are issues that arise in management of probate:

- a) Number of executors maximum and minimum: Section 185 of the Succession Act allows multiple executors to get probate simultaneously or separately. However, granting powers to multiple people over the same estate section may be unworkable and hinder execution. Therefore, the law may need to define a minimum and maximum number of executors for the same estate part. The Supreme Court Act[19] prohibits granting probate to more than four people for the same portion of the deceased's assets.

A testator can appoint six executors for the same property, but only four can receive probate. Though power will be reserved for others (if not renounced) to apply in any vacancy, probate can be granted to one executor in England, as in Uganda, regardless of minority or life interests under the deceased's will or partial intestacy. Certain situations can make an executor incompetent to handle an estate, even if appointed. Such scenarios include when the named executor is convicted of a crime[19], when the executors deny probate, or other conditions. Under English law, the court can pass over an executor and appoint another administrator if special circumstances warrant it. The unique circumstances need not relate to the estate or its management, but may include any other factors the court deems relevant[19].

- b) Retracting a renunciation: The Succession Law of Uganda does not allow an executor who has renounced probate to take probate. English common law allows this with court permission. However, such a matter may only be entertained if retracting the renunciation will benefit the estate or those interested under the testator's will.

Section 5 of the 1925 Administration of Estates Act[20] allows executor retractions. In rare cases, a registrar may allow an executor to withdraw after granting a letter of administration. Section 6 of the same Act states that if an executor retracts and proves the will, probate will proceed. Other personal representatives who have proven the will or taken out letters of administration may be prejudiced.

- c) Unchecked executor powers: The law vests all property in the administrator or executor without necessary checks, yet such powers can be exploited to the beneficiaries' detriment. No action can be taken by the Administrator General to defend the estate until six months have passed and plunder is proven. In the case of *Malinga v. Malinga* [20] where the deceased, Dr. Stephen Ouma, died testate, choosing his brother as executor and leaving most of his estate to his wife and children. The widow wanted to be consulted on will implementation, which caused miscommunication between the executor and widow. Cars and other personal properties were taken by the executor. The Administrator General applied to protect the family's interests, but the court ruled that the executor needed time to collect the deceased's inheritance under section 28180 before filing an inventory. It was also found that the executor had authority to distribute the estate to the recipients, absolving him of wrongdoing. After eight months, the widow sued the executor for probate revocation and estate preservation. The executor had wasted the estate by then. England's law allows subsequent events to cancel a legally made grant [22]. The legislation allows revocation if a grantee breaches a responsibility.

CONCLUSION

Succession is the transfer of property. It includes testate and intestate succession. The deceased dies without a will, resulting in intestate succession. Fortunately, or unfortunately, most society members support intestate succession. This is mostly due to illiteracy and the belief that writing a will guarantees early death. Hence, the study calls for the law to specify the maximum number of executors for a given portion of the deceased's assets. Additionally, the legislative revision should empower the High Court to replace an incompetent executor with an administrator. Retraction of a probate renunciation for particular circumstances should be considered in the legislative amendment. The legislation should be amended to allow rapid remedy if a beneficiary or other interested party proves the grantee breached duty, was fraudulent, or inefficient in estate management. The legislative modification should shield the estate from distribution before letters of administration and probate. Amendments to the statute should expand the avenues for grant revocation, such as application by an interested party and Administrator General Intervention. The government and civil society should develop

initiatives to strengthen the administrative system for managing the estates of deceased individuals. Finally, law penalties should be modified to reflect contemporary socio-economic situations and reflect a punitive posture. The Administrator General's office should develop measures to enhance district-level agent capacity. The Administrator General's office should address remuneration for extra tasks performed by these agents. Based on the advice, structural modifications are needed within the Administrator General's office to support full operations. To effectively perform this responsibility, the Ministries of Finance Planning and Economic Development and Justice and Constitutional Affairs should invest greater resources.

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