

**MINISTRY OF JUSTICE AND CONSTITUTIONAL
AFFAIRS**

DIRECTORATE OF ADMINISTRATOR GENERAL.

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**TOPIC: ENHANCING THE RULE OF LAW THROUGH LAND AND
FAMILY JUSTICE.**

The Office of Administrator General is created by the law under Section 2 of the Administrator General's Act Cap 157. Under the Act, the Administrator General is given the mandate to administer estates, issue Certificates of No Objections and to verify beneficiaries among other matters. The office is a body corporate.

In carrying out these duties, Administrator General applies the Constitution of Uganda 1995, the Administrator General's Act Cap 157, the Succession Act Cap 162, the Public Trustee Act Cap 161, Administration of Estates (Small Estates) Special Provisions Act Cap 156, Trustee Act Cap 164, the Missing Persons (Management) Act Cap 159 and the Administration of Estates of Persons of Unsound Mind Act Cap 155.

Mandate and functions of Administrator General

The mission of the Administrator General's department is "to ensure that all estates of deceased persons in Uganda are properly managed and administered in accordance with the Laws of Uganda governing succession matters." The Administrator General has several functions, notably, the administration of both testate and intestate estates of deceased persons, acting as Public Trustee; protection and management of the shares of minors; and instituting legal proceedings in courts of law against inter-meddlers, fraudulent administrators of deceased's estates, fraudulent relatives and others for the recovery of estates of deceased persons.

The Administrator General's functions are quasi-judicial, including the authority to dispose off some disputes over estates of deceased persons. The office is thus crucial in ensuring access to justice for some of the most vulnerable members of society in Uganda, mainly widows and orphans hence observation and protection of the rule of law.

The Succession (Amendment) Decree of 1972 consolidated the administration of estates in Uganda. This was a significant hallmark in land and family justice matters because:

- It recognized women's rights to inherit property
- It recognized the rights of all children whether male or female, legitimate or illegitimate, to inherit from parents in equal shares
- It streamlined the application of numerous customary laws by codifying various norms and practices related to inheritance common to most indigenous communities in Uganda
- It preserved the rights of a widow to remain in the principal matrimonial holding of the deceased (in trust for the legal heir) until she remarried, died or voluntarily left the home
- Most importantly, the Succession (Amendment) Decree, 1972 increased the duties of the Administrator General which previously only involved the administration of estates of the expatriate community (the majority of other estates having been dealt with under customary law).
- To ensure uniformity, the law would apply to all persons in Uganda regardless of religion and gender or sex.

Enhancing the rule of law through Land and Family Justice.

Land is one of the most significant parts of estates of deceased persons in Uganda. All land under different land tenure systems like the customary land tenure, mailo, freehold and leasehold including land held by lawful and bonafide occupants is subject to Succession as a major asset to the livelihood of the beneficiaries therefore, it must be handled in accordance with the established laws and procedures to ensure harmony and confidence in the rule of law. The Administrator General deals mainly with transactions involving land and affecting the poor and vulnerable, and has had considerable success in defending vulnerable widows and orphans from being disinherited by their extended families. By virtue of the volume of such cases, the department is a sister institution to the Judiciary.

The office, likewise, works as a sieving mechanism for the Courts in the process of obtaining Letters of Administration. We vet the majority of applicants for Letters of Administration in the High Court hence providing the rightful applicants. We even use the wide machinery of the Chief Administrative Officers across the country to vet applicants. We also use regional offices to bring our services closer to the people.

We also administer estates where we or the Courts think we would be the better option when the family members cannot or are not fit for the purpose.

Challenges:

1. Succession Registers:

Succession registers and Succession certificates are a challenge in ensuring the rule of law because of fraud, difficulty in identifying great grandchildren as the rightful beneficiaries and also the transfer of succession certificates by the first recipients who are now dead to several people without registering them with the lands office.

Succession Registers are records containing details of the Buganda deceased people's estates including details of their property, distribution of the property and the beneficiaries of the estates.

Upon the death of a person from the Buganda Kingdom, his or her Will was proved before the Clan that the deceased belonged to. If the deceased died intestate, his property would be distributed by the Clan. Proceedings from the Clan would be forwarded to the Lukiiko for debate and approval. After approval, the reports of the proceeding from the Lukiiko were forwarded to the Kabaka for his assent. Upon the Kabaka's assent, the records would constitute the final distribution of an estate of a deceased Muganda.

The distributions assented to by the Kabaka would constitute a succession record referred to as a **Succession Register**.

In order to implement the details in a Succession Register, a beneficiary was issued a Certificate of Succession by the Lukiiko. The Certificate of Succession operated in the same way as a transfer of land. The Certificate of Succession also had the same effect as a limited grant of Letters of Administration concerning that specific beneficial share of the deceased's estate.

Following the abolition of the Buganda Kingdom in 1966, the Administrator General was given power to manage the Succession Registers containing estates of deceased Baganda that were formally administered by the Kabaka's Government.¹

The **estate** of any Muganda who died in the early 1900s to 1966 and owned land was **almost always registered with the Kabaka's government**. The properties, children, widows, and how the property was distributed are indicated. Even copies of the Will were usually attached, including an indication whether the Will was disregarded for lack of attestation. The department of Administrator General facilitates beneficiaries to access this land and the properties registered in this succession Register books.

However, because these estates relate back as far as the 1920s, **some land has been the subject of hundreds of transfers**, many of them fraudulent, some legitimate; yet we still have it in the Succession Registers that the property has never been transferred from the deceased's names. **The Registers have been overtaken by events as it were**. The beneficiaries approach us seeking Certificate of No Objection/Letters of Administration yet it is a fact that some of

¹ Local Administration (Performance of Functions) Instrument, Statutory Instrument No.150 of 1967.

their predecessors sold the land but both the sellers and buyers never bothered to cause a transfer of the land to the purchaser.

Once the new administrator is appointed, he or she in most instances does not want to follow the distributions in these Registers, yet that distribution cannot legally be changed. This has led to multiple suits, including the many suits in Courts in which great-grandchildren are suing the Land Office or investors like Madhvani alleging that their land was "stolen"; when records may exist that the first line of beneficiaries took Certificates of Succession in the early 1920s to 1966 and may have sold them off.

In the case of Paulo Kaweesa Vs. Administrator General and 2 others – Civil Suit No. 918 OF 1993, Administration of these estates by Administrator General was challenged and the gist of judgment in this case is that the Administrator General has no power to administer estates that were previously administered by the Kabaka government.

We are currently issuing certificates of no objection the beneficiaries who did not obtain a Succession Certificate in regard to their share from Buganda or Administrator General and whose land/share is still available according to the search statements issued by the land's office.

The consultation with the lands office is ongoing and other stake holders.

2. **Lacuna in the law:**

In the case of **Law & Advocacy for Women in Uganda vs. Attorney General (Constitutional Petitions No. 5 of 2005 and 12 of 2006)**, the court declared Section 27 of the Succession Act amongst others as unconstitutional. This Section is the one that provided that children get 75%, widows/widowers receive 15 %; while the Heir and Dependent relatives would get 1 % and 9%, respectively.

This decision had an impact on other sections in the Act, For instance under Section 202 of the Succession Act, administration of estate shall be granted to

the person who is entitled to the greatest proportion of the estate. This usually translated into a preference for the widow (see for instance **Nyendwoha vs. Nyendwoha Robert, Civil Suit No. 1068 H.C. 1983**). If Section 27 is no more, what happens to such decisions since one cannot tell who has the biggest share? In this case the courts should have invoked Article 274 of the 1995 Constitution to have the section modified to include female because the same section had always applied to the female intestate succession other than creating a lacuna in the law.

What are we doing about the legal lacuna?

- (i) During family meetings, we inform the beneficiaries that there are no provisions as to how to distribute an intestate estate because we are in the process of amending the old law. Then we inform them of the provisions of the old law. We inform them that if they feel that the old Section 27 is fair, they could adopt it.

Sadly, this situation only works where there are no disputes and more so where the bargaining power of the beneficiaries is fairly equal. Otherwise, those in control of the estate before Letters of Administration are obtained have the capacity to drag out the dispute for unreasonably lengthy periods.

Perhaps it is for the Hon. Justices to inform us how they would handle an administrator who says he cannot distribute because there is no formula in the law or who fails to distribute because there is no agreement as to the shares of the different beneficiaries? Can Court force a scheme onto the family seeing that in some families, you may hold even 20 meetings and half end in fighting?

- (ii) **Secondly, to counter this legal lacuna, we have undertaken massive sensitization including printing pamphlets, flyers, brochures and using broadcast media to encourage people to write Wills to have some level of control on distribution of their estates. Admittedly, this is a very hard fight. Statistics will prove that most of us in this room do not have Wills. We are the learned ones and each one of us could easily write our Will in under one hour if we so decided (after all, we regularly write hundreds of complex judgments, so writing is not the problem).**

It is the culture. The fear. The belief that when you write a Will, you are personally requesting the Angel of Death to hurry up and get you. However unreasonable this fear is, it exists. Even 50 years of progressive, repeated sensitization may only dent it a little. Just like some of our communities have refused to give up Female Genital Mutilation despite the best efforts of Government and NGOs over several decades, this one will also not go away.

- (iii) **Lastly, we have partnered with the Uganda Law Reform Commission and successfully prepared Amendment Bills for the Succession Act, the Administrator General's Act; amongst other related laws. These Bills are now with the Secretary to the Cabinet. This would be the more lasting solution in the effort to resolve this uncertainty that's permeated Land and Family Justice in the area of inheritance rights.**

Lastly, in administration of family justice, the office of Administrator General is faced with an eminent threat from beneficiaries whose estates we administer or whose money we hold as public trustee losing confidence in the rule of law because of attempts by court to garnishee Administrator General's accounts holding their pension, death gratuity and other benefits contrary to Section 35 of

Administrator General's Act which is to the effect that the revenues of the Government shall be liable to make good all sums required to discharge any liability against Administrator General. Also refer to the following decided cases i.e Civil Appeal No. 12 OF 1977 Administrator General Vs. Uganda Commercial Bank and Moonlight Sengooba Ssalongo, Miscellaneous Appeal No. 05 OF 2008 (Arising out of Misc Application No. 441 OF 2008) Administrator General Vs. Loy Mirembe and Stanbic Bank Uganda Limited and others.

Accordingly, we hold the money in trust for the benefit of beneficiaries whose deceased parents/spouses estates we administer in accordance with the law. Therefore, this is not Government money but for private person(s) payable on demand i.e paying school fees for orphans, providing for maintenance etc. This will result in increased litigation and lack of confidence in the rule of law.

Thank you, God Bless You all.