

# FOCUS ON THE LATEST LAWS AND AMENDMENTS ON ESTATES AND SUCCESSION MANAGEMENT IN UGANDA

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# INTRODUCTION

- **Succession Law in Uganda deals with the management, administration, distribution and acquisition of property and rights of a deceased person.**
- **This is either in accordance with the deceased person's wishes which are usually expressed in a will or in accordance with statutory laws enacted by parliament like the Succession Act Cap 162 (as amended)**

# RELEVANT LAWS

- **The Succession Act Cap 162**
- **Succession (Amendment) Act 2022**
- **Administration of Estates (Small Estates) (Special Provisions) Act Cap 156 (As amended)**
- **Administrator General's Act Cap 157(as amended)**
- **The Constitution of the Republic of Uganda( Articles 21 and 31)**
- **The Public Trustee Act Cap 161.**
- **The Administration of Estates of Persons of Unsound Mind Act Cap 155.**

# CAUSE FOR AMMENDMENT

- **To bring it in conformity with the Constitution; to provide for gender equality in accordance with Articles 21 and 33 of the Constitution ; to repeal the Sections that were declared unconstitutional by the Constitutional Court ( See *Law Advocacy for Women in Uganda versus Attorney General-Constitutional Petitions Nos 13 Of 2005 and 05 of 2006*) ; to refine the definition of customary heir or heiress to remove discrimination; to provide for the protection of the principal residential property for the benefit of the surviving spouse and lineal descendants; to revise the percentage of distribution of the estate of an intestate; to provide for the appointment of a guardian for a child by either parent; to provide for the powers and duties of a guardian; to provide for the duration of probate and letters of administration and execution of wills of deceased persons etc.**

# ARTICLE 21(1) OF THE CONSTITUTION

- **“All Persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.**
- **(2) without prejudice to clause (1) of this article , a person shall not be discriminated on the ground of sex, race, colour, ethnic origin, tribe , birth , creed or religion , social or economic standing, political opinion or disability.”**

# DOMICILE

- Succession to movable property of a deceased person is regulated by the laws of the country of domicile of the deceased at the time of death. **(S.4 [2]) of the Succession Act Cap 162 (as amended)**
- Succession to immovable property in Uganda is regulated by the law of Uganda regardless of where the deceased had his domicile at the time of death. **(S.4 [1])**

# THE WILL

- Every person of sound mind who is not a minor may by Will dispose of his or her property. **S.36 [1]**

**(2)** A spouse may during the subsistence of a marriage hold property in his or her name and may by will dispose of such property.

**Note: (6)** *“Notwithstanding subsection(2), where a person making a will is married or has children, the residential holding or any other residential holding possessed by that person , including the chattels therein, shall not form part of the part of the property to be disposed of in a the will and shall be held by his or her personal representative upon trust for his or her spouses and lineal descendants subject to the rights of occupation and terms and conditions set out in the second schedule to this Act.”*

# WILL CONTINUED

- ***(7) A person who evicts or attempts to evict a surviving spouse, lineal descendant or dependent relative who is entitled to occupy the residential holding or any other residential holding commits an offence and is liable, on conviction, to a fine not exceeding one hundred and sixty eight currency points(3,360,000/=)or imprisonment not exceeding seven years or both.***
- ***(8) where the residential holding or any other residential holding devolves to the lineal descendants under this section, the lineal descendants shall be deemed to be entitled to the residential holding or any other residential holding as tenants in common.***



# Will Continued

- *(9) Subsection (6) shall not apply where the testator has made reasonable provision for the accommodation of the surviving spouse, lineal descendants or dependent relatives who are entitled to occupy his or her residential holding.*
- *37 (1) A testator shall make reasonable provision for the maintenance of his or her spouse , lineal descendants and dependent relatives.*
- *(2) subsection (1) shall apply to a spouse , a child and*
- *(a) a lineal descendant, who is suffering a mental or physical disability; and*
- *(b) a dependent relative.*

# PROVISION FOR FAMILY

- Where a person by will disposes off all his or her property without making reasonable provision for the maintenance of his dependent relatives, the court may order payment out of the estate of the deceased for maintenance of the dependents. **S.38.**
- **S.43(1)** Testamentary Guardian A parent may by will appoint a guardian for his or her child.
- **(2)** A person shall not , by will deprive another person of parental rights , except where the parental rights were removed by court.

## **S.44 (1) STATUTORY GUARDIAN**

- **Upon the death of either a father , a mother or both parents of a minor , where no guardian has been appointed by the will of the father or mother of the minor or if the guardian appointed by the will of either the mother or father is dead or refuses to act, the following persons shall in the following order or priority , be the guardian or guardians of the minor of the deceased person-**
- **(a) the father or mother of the deceased parent of the minor;**
- **(b) the brothers and sisters of the deceased; or**
- **( c) the brothers and sisters of the father or mother of the deceased person.**

# Continued

- **(2) where there is no person willing or entitled to be a guardian under subsection (1) (a) (b) or (c) the court may, on application of any person interested in the welfare of the minor be appointed a guardian.**
- **(3) For the avoidance of doubt, a person shall not be eligible for appointment as a guardian under this Section unless that person is a Citizen of Uganda.**

# Customary Guardian

- **S.44(1) The family members of a minor may appoint a guardian for the minor in accordance with their customs , culture or tradition.**

# EXECUTION OF A WILL

- **S. 50(1) “Except as provided by this Act or other law for the time being in force, every testator not being a member of the armed forces employed in an expedition or engaged in actual warfare, or a mariner at sea, must execute his or her will according to the following provisions-**
  - a) The testator shall sign or affix his or her mark to the will, or shall be signed by another person in his or her presence and his or her direction;**
  - b) The signature or mark of the testator or the signature of the person signing for him or her shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will;**
  - c) The will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his or her mark to the will, or have seen some other person sign the will in the presence and direction of the testator, or have received from the testator a personal acknowledgement of his or her signature or mark, or of the signature of that other person; and each of the witnesses must sign the will in the presence of the testator, sign and write his or her name and address on every page of the will except that it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.**

## S.50(2)

- **Where a person attesting a will does not write his or her name or address on a page of a will as required in subsection (1) (c), the will shall be valid except that the page of the will which does not bear the name or address of the testator shall unless otherwise directed by Court be void.**
- **Section 337(1) The offices of the Chief Registrar and Deputy Registrar of the High Court are appointed places for the safe custody of the wills of living persons.**

# *Preference of surviving spouse to administer the estate of deceased spouse*

- **Section 201A (1) The surviving spouse shall have preference over any other person in the administration of the estate of a deceased intestate.**
- **(2) The preference of the surviving spouse under subsection (1) may be disregarded by the Administrator General where-**
- **(a) the surviving spouse is not fit and proper person to administer the estate of the deceased spouse; or**
- **(b) the Administrator General finds it necessary, in the circumstances of the estate, to grant the administration of the estate to another person.**



# Preference of administration

- **Section 203 Administration shall not be granted to any relative if there is some relative or an appointed customary heir entitled to a greater proportion of the estate until a citation has been issued and published in the manner hereafter provided calling on that other relative or heir to accept or refuse letters of administration.**
- **Section 202 Subject to Section 4 of the Administrator General's Act and Section 201A of the Act, administration shall be granted to the person entitled to the greatest proportion of the estate under Section 27.**

# GRANT OR LETTERS OF ADMINISTRATION

- When the deceased dies intestate, only the people related to him/her by marriage or consanguinity are entitled to take up letters of administration. **S.201**
- **S.201 A . (1)** The surviving spouse shall have preference over any other person in the administration of the estate of a deceased intestate.
- **(2)** The preference of the surviving spouse under subsection **(1)** may be disregarded by the Administrator General where-
- **(a)** the surviving spouse is not a fit and proper person to administer the estate of the deceased spouse ; or

# CONTINUED

- **(b) the Administrator General finds it necessary in the circumstances of the estate , to grant the administration of the estate to another person.**
- **Section 25 of The Succession Act Cap 162 as amended by the Succession (Amendment) Act 2022 provides that “All property in an intestate estate devolves upon the personal representative of the deceased upon trust for those persons entitled to the property under this Act.”**
- **Section 2 (r) of the said Act defines “Personal representative” as a person appointed by law to administer the estate or any part of the estate of a deceased person.**

# ENTITLEMENT TO ADMINISTRATION

- **Subject to Section 4 of the Administration General’s Act, administration shall be granted to the person entitled to the greatest portion of the estate.**
- **Devolution of residential holdings**
- **Section 26(1) of the Succession Act (as amended) provides that *“The residential holding normally occupied by a person dying intestate prior to his or her death as his or her principal residence or owned by him or her as a principal residential holding, including the house chattels therein , shall be held by his or her personal representative upon trust for his or her spouse and lineal descendants subject to the rights of occupation and terms and conditions set out in the Second Schedule to this Act.***

# Residential holding

- ***(2a) “Upon the death of a surviving spouse, the residential holding or any other residential holding shall devolve to the lineal descendants equally, who shall occupy it subject to the terms and conditions set out in the Second schedule to this Act.***
- ***(2b) A person who evicts or attempts to evict a surviving spouse, lineal descendant or dependent relative who is entitled to occupy the residential holding or any other residential holding commits an offence and is liable , on conviction, to a fine not exceeding one hundred and sixty eight currency points (3,360,000/=) or imprisonment not exceeding seven years or both.***

# Residential holding

- ***( 2c) Where the residential holding or any other residential holding devolves to the lineal descendants under subsection (2a), the lineal descendants shall be deemed to be entitled to the residential holding or any other residential holding as tenants in common” and***
- ***(3) Any dispute arising as to the exact area of any portion of land subject to this section or as to what person has the right to occupy the land or any part of it shall be settled by the personal representative.***
- ***(4) Any person who is aggrieved by any decision of the personal representative under subsection (3) may appeal from that decision to a court of competent jurisdiction.***

# **S.27 DISTRIBUTION ON DEATH OF INTESTATE**

**a) Where the intestate is survived by a spouse, a lineal descendant, a dependent relative and a customary heir-**

- i. The spouse shall receive 20%**
- ii. The dependent relatives shall receive 4%**
- iii. The lineal descendants shall receive 75%**
- iv. The customary heir shall receive 1%**

**b) Where the intestate leaves no surviving spouse or dependent relative under a)(i) or (ii) capable of taking a portion of his or her property the-**

- i. Linear descendant shall receive 99%**
- ii. The customary heir shall receive 1%**

**c) Where the intestate is survived by a spouse, a dependent relative and a customary heir but no lineal descendant-**

- i. The spouse shall receive 50%**
- ii. The dependent relative shall receive 49%**
- iii. The customary heir shall receive 1% of the whole of the property of the intestate**

**d) Where the intestate is survived by a customary heir, a spouse or a dependent relative but no lineal descendant-**

- i. The customary heir shall receive 1%**
- ii. The surviving spouse or the dependent relative, as the case may be, shall receive 99% of the whole of the property of the intestate.**

**e) Where the intestate leaves no person surviving him or her other than a customary heir capable of taking a proportion of his or her property under paragraph a) b) c) or d), the estate shall be divided equally between the relatives nearest in kinship to the intestate.**

**2. Not with standing subsection (1) twenty percent of the estate shall not be distributed, but shall be held in trust for the education, maintenance and welfare of the following categories of lineal descendants until they cease to qualify as such-**

- a) A minor child of the intestate and where he or she attains eighteen years of age, until he or she ceases to qualify under paragraph b) or c)**
- b) A lineal descendant of the deceased who is above eighteen years of age but below twenty five years of age if, at the time of the death of the intestate, was undertaking studies and was not married and**
- c) A lineal descendant of the intestate who has a disability is at the time of death of the intestate not married and was wholly dependent on the intestate for his or her livelihood.**

**(3) Where an estate produces an income by way of periodical payments, the percentage referred to in subsection (2) shall be derived from that income.**

**4. For the avoidance of doubt, the percentage specified in subsection (2) shall be deducted from the gross estate before the distribution of the estate under subsection (1).**



# **S.28 DISTRIBUTION OF PROPERTY BETWEEN MEMBERS OF SAME CLASS**

- 1. All lineal descendants, spouses and dependent relatives of an intestate shall share their proportion of a deceased intestate property referred to in section 27(1), in equal share.**
- 2. Where a lineal descendant entitled to benefit under the estate of the deceased intestate predeceased the intestate person, the portion of the estate that would have accrued to the deceased lineal descendants shall be granted to the lineal descendants of the deceased lineal descendant, if any.**

# **S.29 RESERVATION OF PRINCIPAL AND OTHER RESIDENTIAL PROPERTY**

- **A spouse or lineal descendant of an intestate occupying a principal residential property or any other residential property under section 26 shall not be required to bring that occupation into account in accessing any share in the property of an intestate to which the spouse, lineal descendant or child may be entitled under section 27.**

## S.27(7)

- **A spouse who remarries before the estate of the deceased is distributed shall be entitled to the share he or she would be entitled to under subsection (1).**

# S.30 SEPERATION OF SPOUSES

- (1) A surviving spouse of an intestate shall not take any interest in the estate if at the death of the intestate the surviving spouse was separated from the intestate as a member of the same household.
2. Subsection (1) shall not apply where-
- a) The surviving spouse has been absent on an approved course of study in an educational institution;
  - b) The intestate was, at the time of his or her death, the one who had separated from the surviving spouse as a member of the same household; or
  - c) The intestate is the one who caused the separation.
3. Notwithstanding subsection (1), a court may for good cause, on application made within six months after the death of the intestate, by or on behalf of the surviving spouse declare that subsection (1) shall not apply to the surviving spouse.

# CAN A SPOUSE OWN HIS OR HER PROPERTY?

- **Section 36(2)** provides that a spouse may during the subsistence of a marriage hold property in his or her name and may by will dispose of such property.
- **Section 36 (6)** Notwithstanding subsection (2), where a person making a will is married or has children, the residential holding normally occupied by that person as a principal holding or any other residential holding possessed by that person, including the chattels therein, shall not form part of the property to be disposed of in a the will and shall be held by his or her personal representative upon trust for his or her spouses and lineal descendants subject to the rights of occupation and terms and conditions set out in the second schedule to this Act.

## S.37 MAINTENANCE OF SPOUSE CHILDREN, LINEAL DESCENDANTS AND DEPENDENT RELATIVES TO BE MADE IN A WILL

- **(1) A testator shall make reasonable provision for the maintenance of his or her spouse, lineal descendants and dependent relatives.**
- **(2) Subsection (1) shall apply to a spouse, a child and-**
- **(a) a lineal descendant who is suffering a mental or physical disability; and**
- **(a) a dependent relative**
- **S.38 (1) “Where a person dies domiciled in Uganda and by his or her will, disposes of his or her property without making reasonable provision for the maintenance of his or her spouse, lineal descendant or dependent relative , court may on application, order that such reasonable provision be made out of the estate of the deceased person for the maintenance of the spouse, lineal descendant or dependent relative.”**

## GUARDIANS

**43. Testamentary Guardian**

**44. Statutory Guardian**

**(a) the father or mother of the deceased parent of the minor**

**(b) the brothers and sisters of the deceased; or**

**(c) the brothers and sisters of the father or mother of the  
deceased person**

**(2) Where there is no one willing, on application of any person interested in the welfare of the minor , appoint a guardian.**

**44 A. Customary guardian.**

# **S.255 A CAVEAT AND PETITION TO LAPSE**

- 1. A petitioner for probate or letters of administration in which a caveat has been lodged shall, within six months from the date the caveat was lodged, file a suit for removal of the caveat.**
- 2. Notwithstanding subsection(1), a person who lodges a caveat in respect of a petition for probate or letters of administration shall, within six months from the date of the caveat was lodged, commence proceedings to prove the objections contained in the caveat.**
- 3. Where a person who lodges a caveat or a petitioner for probate or letters of administration does not comply with subsection (1) or (2), the caveat and the petition for probate or letters of administration shall lapse.**
- 4. Where a caveat lodged under subsection (2) lapses, the person who lodged the caveat shall not lodge another caveat in respect of the same estate.**



# **S.258 LAPSE OF PROBATE**

**2. A person to whom probate is granted under subsection (1) shall carry out the duties and functions authorized by the grant of probate for a period not exceeding two years.**

**3. Notwithstanding subsection (2), a court may on application extend the duration prescribed in subsection (2) for a further period of two years or any other reasonable time as determined by court if it is satisfied that-**

- a) It is in the best interest of the beneficiaries to extend the period; and**
- b) The person to whom the grant of probate was made-**
  - i. Complied with the provisions of this Act or any condition on which probate was granted; and**
  - ii. Obtained the consent of all the beneficiaries in the estate for which probate was made.**

# **S.259 LAPSE OF LETTERS OF ADMINISTRATION**

**2. A person to whom letters of administration are granted under subsection (1) shall administer the estate for a period not exceeding two years.**

**3. The court may on application extend the period prescribed in subsection (2) for a further period of two years or any other reasonable time as determined by court where the court is satisfied that-**

- a) It is in the best interest of the beneficiaries to extend the period; and**
- b) The person to whom letters of administration were granted has-**
  - i. Complied with the provisions of this Act or any condition to which the grant of letters of administration is subject to; and**
  - ii. Obtained the consent to apply for the extension of the letters of administration from all of the beneficiaries in the estate to which the letters of administration apply.**

# **S.270 DISPOSAL OF PROPERTY**

- 1. Subject to sections 27 and 36 (6) an executor, executrix or administrator may, with the written consent of the surviving spouse and all the lineal descendants of the deceased person, dispose of the property of the deceased either wholly or in parts.**
- 2. Where a beneficiary of the estate is a minor, the consent required in subsection (1) shall be given by the guardian of the minor and where the guardian of the minor is the executor, the consent shall be given by the court.**
- 3. Where a surviving spouse, lineal descendant or a guardian or minor withholds his or her consent to the disposal of the property belonging to the deceased person, the executor or administrator as the case may be, may apply to a court of competent jurisdiction for redress.**
- 6. In disposing of property under this section, first option shall be given to a beneficiary of the estate to purchase the property.**

## S.270 (8)

- **Any disposal of the property belonging to the estate of a deceased person in contravention of this Section shall be void.(Buyer beware).**

# **DISPUTES BETWEEN EXECUTORS, ADMINISTRATORS AND BENEFICIARIES**

**S. 272 (3) “ Where in an estate with more than one executor or administrator, a dispute arises between the executors and administrators or between the executor or administrator and a beneficiary of the estate, the dispute shall be referred for arbitration to the registrar of the High Court or a Chief Magistrate.**

**S.272 (5) The Chief Justice shall issue Practice Directives to regulate the arbitration proceedings undertaken by a Registrar or Chief Magistrate under this Section.**

# PROCEDURE IN RESPECT OF SHARE OF MINOR IN INTESTATE

- **S.311 (1) Where a person is entitled to a share in the distribution of the estate of the deceased person is a minor, the executor or administrator shall deliver the share of the minor to the guardian of the minor.**
- **S.279 (2) Debts incurred by the deceased against the Principal residential property or any other residential property during marriage without the written consent of the spouse who prior to the death of the deceased person shared that principal residential property or any other residential property with the deceased, shall be void and excluded from the payment from the estate of the deceased person.**

# SAVINGS AND TRANSITIONAL

- **S.341 (2)** A grant of probate or letters of administration issued by a court of competent jurisdiction before the coming into force of this Act, shall remain valid for a period of three years after the coming into force of this Act.
3. A grant of probate or letters of administration issued to the Administrator General before the coming into force of this Act, shall remain valid for a period of five years after the coming into of this Act.
  4. A grant of probate or letters of administration referred to in subsection (2) and (3) may, on application to court by the executor or an administrator of an estate, be extended for a reasonable period determined by court.

# INVENTORY AND ACCOUNT

- **S.278 (1) An executor or administrator shall within six months from the grant of probate or letters of administration, or within such further time as the court which granted the probate or letters may from time to time appoint, exhibit in that court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner within one year from the grant, or within such further time as the court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his or her hands, and the manner in which they have been applied or disposed of.**

**2. On the completion of the administration of an estate, other than an estate administered under the Administration of Estates (Small Estates) (Special Provisions) Act, an executor or an administrator shall file in court the final accounts relating to the estate verified by an affidavit two copies of which shall be transmitted by the court to the Administrator General.**



# LIABILITY OF EXECUTOR OR ADMINISTRATOR

- **Section 332(1) An executor, executrix, administrator or administratrix who-**
- **(a) misapplies the estate of the deceased person;**
- **(b) Misappropriates or fails to account for the proceeds accruing to the estate of a deceased person or to a beneficiary of the estate;or**
- **(c) subjects the estate or a beneficiary to loss or damage, commits an offence and is liable, on conviction, to imprisonment for a term of three years or to a fine not exceeding one thousand currency points (20,000,000/=), or both.**
- **(2) The Court shall in addition to the penalty under subsection (1) order the person to make good the loss or damage occasioned to the estate or beneficiary.**

# LIABILITY CONTINUED

- **SECTION 333 (1)** An executor , executrix or administrator who occasions loss to the estate by neglecting to do an act or omission which causes loss to the estate of a deceased person or to a beneficiary under the estate of a deceased person commits an offence and is liable , on conviction to imprisonment for a term of three years or to a fine not exceeding one thousand currency(20,000,000/=) points or both
- **Section 333A. (1)** A person who acts on behalf of a beneficiary of an estate in any matter shall not acquire any part of the interest of the beneficiary in the estate as payment of services rendered.
- **(2)** A person who contravenes subsection (1) commits an offence and is liable on conviction , to a fine not exceeding one hundred twenty currency points (2,400,000/=)or imprisonment not exceeding five years , or both.

# The Administration of Estates (small estates)(Special Provisions ) Act. Cap 156

- **An Act to confer jurisdiction on magistrates courts to grant probate or letters of administration in respect of small estates of deceased persons and for other matters connected therewith.**
- **The Administration of Estates (Small Estates) (Special Provisions )(Amendment of Jurisdiction of Magistrates Courts) Order, 2009.**
- **Amendment of jurisdiction of magistrates courts under section 2(1) of Cap 156**
- **(a) in the case of a Magistrate Grade 1, it shall be where the total value of the estate does not exceed the maximum financial limit of the civil jurisdiction of a Magistrate Grade 1 under Section 207 of the Magistrates Courts Act;**
- **In case of a Chief Magistrate , it shall be where the total value does not exceed the maximum financial limit of the civil jurisdiction of the Chief Magistrate under Section 207 of the Magistrates Courts Act.**

# **The Administration of Estates (Small Estates) (Special Provisions )(Amendment) Act,2019**

- **An Act to amend the Administration of Estates (Small Estates ) (Special Provisions), Cap 156, to revise the monetary jurisdiction of Magistrates courts to conform to the jurisdiction in the Magistrates Courts Act Cap 16, and to provide for the revocation of a grant of probate or letters of administration for want of jurisdiction.**

# The Administration of Estates (Small Estates) (Special Provisions)(Amendment) Act, 2019



