

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

PRESENTATION BY INNOCENT  
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# THE FOLLOWING ARE THE LAWS AND AMENDMENTS CONCERNING ESTATES AND SUCCESSION MANAGEMENT IN UGANDA

- The Succession Act together with the Succession (Amendment) Act, 2022.
- The Mental Health Act, No.5 of 2019, in regard to managing Estates of persons of unsound mind.
- The Children Act, Cap 59, section 53.

The Succession Act as Amended is however the major Law on estates and succession management in Uganda.

It should be noted that the decision in **Law Advocacy for Women in Uganda V Attorney General, Const. Petition Nos 13/2005 & 05/2006**, the constitutional Court rule that sections 2 (n) (i) and (ii), 14, 15, 26, 27, 29, 43 and 44 of the Succession Act Cap162 and rules 1,7,8 and 9 of the second Schedule of the same Act were inconsistent with and contravened articles 21(1), (2), (3), 31 and 33(6) of the Constitution and as such was null and void.

The Succession Act was therefore amended by the Succession Amendment Act, 2022 with the aim of addressing the lacunas in the Succession Act which included to repeal the provisions that were declared unconstitutional by the Constitutional Court, to do away with gender inequality, to set clear principles for the distribution and management of the estate of deceased persons in Uganda, to provide for the protection of the principal residential property for the benefit of the surviving spouse and lineal descendants, to revise the percentages of distribution of the estate of an intestate, to enhance penalties for certain offences and to prescribe penalties for contravention of the Act, and to provide for related matters as pointed out in the long title of the Succession Amendment Act.

## **Below is an analysis of the key Amendments of the Succession Amendment Act on Succession Management in Uganda.**

- *Distribution of property in the event that a spouse dies intestate.*

The Succession Amendment Act in section 13 streamlines the distribution of property in the event a spouse dies intestate

Sections 14 which amends section 27 of the principal Act and 15 of the Succession Amendment Act streamline distribution of an intestate's property.

An intestate is a person who dies without making a valid will disposing of his or her property. Intestacy can be either total or partial. Intestacy is said to be total where the deceased does not effectively dispose of any beneficial interest in any of his property by a will while a partial intestacy exists where the deceased effectively disposes of the same, but not all of the beneficial interest in his or her property by a will.

- *Residential holding*

Under section 13 of the Succession Amendment Act, the residential holding shall be held by the intestate's personal representatives in trust for his or her spouse and lineal descendants. This section was amended to substitute the words legal heir for the words spouse and lineal descendants.

The amendment also devolves the residential holding to the lineal descendants equally upon the death of a surviving spouse and in accordance with the terms and conditions set out in the second schedule to the Act.

- *Eviction from the residential holding.*

The amendment further protects the spouse, lineal descendants and dependents, and relatives from eviction by any person from the residential holding in section 13.

Any person who attempts to evict or evicts the spouse, lineal descendants, and dependents from the residential holding commits an offense and is liable to one hundred and sixty-eight currency points (equivalent to UGX. 3,360,000 Three Million Three Hundred Sixty Thousand Shillings) or imprisonment not exceeding seven years or both.

This provision has the objective of aligning the Succession Act with **Article 32 of the Constitution** which provides for affirmative action in favor of marginalized groups.

Under the amendment Act, where the residential holding devolves to the lineal descendants, each of the lineal descendants shall be entitled to it in the same right as tenants in common.

Any person aggrieved by a decision of the personal representative may appeal to any court of competent jurisdiction.

*The purpose of this provision is to accord protection and security of occupancy to the surviving spouse, lineal descendants, and dependent relatives.*

*The effect of this provision is that now, the residential holding of a person does not form part of their estate to be distributed. It goes to the surviving spouse and lineal descendants.*

- *Distribution of property upon the death of an intestate.*

Section 27 of the Succession Act which previously indicated the distribution of the property of only a male intestate, now covers both male and female.

This follows the Constitutional court decision of **Law Advocacy for women in Uganda V Attorney General Constitutional Petitions No.s 13/05 & 05/06[2007]**.

The Succession Amendment Act also revises percentages for the distribution of an intestate's estate, with exception of the residential holding which as we have already seen is protected for the spouse and lineal descendants.



- *The property of the intestate shall be distributed as follows:-*
- *Where the intestate is survived by a spouse, a lineal descendant, a dependent relative and a customary heir, his or her property shall be distributed as follows; The spouse- 20%, The dependent relatives- 4% and the Lineal descendant- 75%.*
- *Where the intestate leaves no surviving spouse or dependent relative; the distribution shall be as follows:- Lineal descendants- 99%, Customary heir-1%.*
- *Where there are no lineal descendants but the intestate is survived by the spouse, dependent relative and customary heir, the distribution shall be as follows:- The spouse- 50%, Dependent relative- 49%, Customary heir-1%.*

- *Where the intestate is survived by a customary heir, a spouse or dependent relative but no lineal descendant, his or her property shall be distributed as follows:- Customary heir-1%, Surviving spouse or the dependent relative as the case may be- 99%.*
- *Where the intestate leaves no person surviving him or her other than a customary heir, his or her property shall be distributed equally between the relatives nearest in kinship to the intestate.*
- *The above distribution has the effect of streamlining the orderly distribution of an estate of an intestate with little or minimum struggle.*
- **Most importantly, section 42 of the Amendment Act introduces section 201A** which gives priority to a surviving spouse in the administration of an intestate's estate.
- The Administrator General however has to determine that such a surviving spouse is a fit and proper person.

Section 36 and 37 of the Succession Amendment Act also went ahead to streamline some provisions in regard to a Will by providing for the following changes;

- *Replacement of derogatory language.*

The Act repeals phrases like dump, deaf, blind or lunatic and replaces them with suitable terms like person with a hearing impairment, speech impairment, visual impairment and a person with mental illness or mentally impaired.

*Residential holding.*

The Act prohibits the distribution of the residential holding in the will and such property shall not form part of the property to be disposed of by the person making the will.

In terms of witnessing a will, the Principal Act is amended such that the Witness is not disqualified by interest or by being an executor. A person shall not by reason of interest in, or by his or her being an executor of a will be disqualified as a witness to prove the execution of a will or to prove the validity or invalidity of a will.

Under the Amendment Act, spouses, children, lineal descendants, and dependent relatives who are left out in a will can now apply to the court for maintenance. (Financial support).

- Factors that make a will invalid have also been incorporated in the Amendment Act, these include; fraud, undue influence, duress, coercion, mistake of fact, and abuse of a position of trust or vulnerability

- *Attestation.*

Witnesses to a will are now required to write their names and addresses on each page of the will in the presence of the testator.

In terms of attestation of wills, the amendment provides for a beneficiary of a will to be able to attest/witness it without invalidating it.

### *Mental Incapacity*

- Whereas the Principal Act provided that Probate shall not be granted to any person who is a minor or is of unsound mind, this was amended by adding a provision such that now the Court has the mandate to determine whether or not a person who is otherwise qualified to be granted probate, is fit and proper and the court may defer the appointment of an executor or executrix to a later date or refuse to grant probate where an applicant is not suitable.

### *Mismanagement of an estate*

- The Amendment provides that any person who before granting of letters of administration or probate, misapplies the estate of a deceased and subjects it to loss or damage commits an offence and is liable to imprisonment for 2 years to a fine not exceeding forty-eight currency points which is (UGX. 960,000 Nine Hundred and Sixty Thousand Shillings) .
- In addition to the above penalty, the person convicted shall be liable to make good, to the estate and to the beneficiaries of the estate, the loss or damage so occasioned.

### *Administration of estate.*

- Section 42 of the Amendment Act introduces section 201A which gives priority to a surviving spouse in the administration of an intestate's estate.
- The Administrator General however has to determine that such a surviving spouse is a fit and proper person.

### *Limitation period for petitions for probate*

- Section 55 of the Amendment amends section 244 of the principal Act by requiring applications for probate to be brought within a period of one year from the date of death of the testator.
- The Act further provides that where the named executor or executrix does not apply within the aforesaid period, a beneficiary under the will may with the will annexed apply for letters of administration.
- Furthermore, a person to whom probate or letters of administration is granted shall carry out his or her duties and functions authorized by the grant for a period not exceeding two years.

- Section 53 of the Succession Amendment Act amends the Principal Act by inserting section 255A which introduces the following
- It requires the petitioner for letters of probate or letters of administration to file a suit for removal of a caveat within six months from the date the caveat was lodged.
- Under the same section, the person who lodges a caveat in respect of a petition for probate or letters of administration shall within six months from the date the caveat was lodged, commence proceedings to prove the objections contained in the caveat.
- If the person who lodges a caveat or the petitioner do not file a suit in that regard, the caveat lapses.
- A person who lodged the lapsed caveat has no right to lodge another caveat in respect of the same estate.



## *Intermeddling*

- Section 57 of the Succession Amendment Act amends section 268 of the principal Act by making it an offence for any person not being in possession of probate or letters of administration to intermeddle in the estate of the deceased and such a person shall on conviction be liable to a fine not exceeding one thousand currency points (20,000,000) or imprisonment for ten years or both.
- *The import of this section is that no one other than those to whom letters of Administration or Probate have been granted can make decisions regarding the estate of a deceased person.*
- Intermeddling includes children and other relatives who may want to deal with the estate of a deceased person according to their wishes.

## *Consent*

- Section 58 of the Succession Amendment Act amends section 270 of the principal Act by, introducing a requirement for the written consent of spouses and lineal descendants prior to disposal of the estate property by the administrators or executors/executrix .

## *Conclusion*

In conclusion, whereas there was an effort taken by the legislators in addressing the lacunas in the Succession Act, the Amendment Act, some of the amendments are not practicable enough, the Act did not address some important aspects like the issue of cohabiting partners who acquire properties together and how this would affect the estate of a deceased person.