

**MINISTRY OF JUSTICE AND CONSTITUTIONAL
AFFAIRS**

DEPARTMENT OF ADMINISTRATOR GENERAL.

A PAPER PRESENTED AT THE 17TH ANNUAL JUDGES' CONFERENCE HELD AT IMPERIAL GOLF VIEW HOTEL, ENTEBBE ON 22ND -26TH FEBRUARY, 2015 BY CHARLES KASIBAYO (Ag. ADMINISTRATOR GENERAL).

TOPIC: THE MANDATE OF THE OFFICE OF ADMINISTRATOR GENERAL IN REGARD TO SUCCESSION MATTERS CONCERNING FAMILY, LAND AND CHILDREN.

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.

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. There are several other laws having a bearing on the work of the Department but time is not on our side to allow a discussion of all of them.

The Administrator General is given mandate in several pertinent areas;

LAND

Land is one of the most significant parts of estates of deceased persons. All land under different land tenure systems like the customary land tenure, mailo, freehold, leasehold and land held by lawful and bonafide occupants is subject to succession. The Office of Administrator General has a land section which is the place where Wills, land titles, land sale agreements and Succession Registers are kept.

MANDATE

The mandate of the Administrator General regarding land issues is wide but in summary includes;

1. Safely storing Wills, Duplicate Certificates of Title, Land Sale agreements and other important documents pertaining to land and succession matters.
2. In estates being administered by the Administrator General, the Office has the mandate to distribute the land equitably among beneficiaries or according to wishes of deceased persons as indicated in their Written Wills.
3. Furthermore, the Office of Administrator General signs transfers for beneficiaries of a deceased person if the estate is being administered by the Administrator General.

CHALLENGES

When dealing with land, the Office of Administrator General has faced several challenges including:

1. The law on land matters is silent on the fact that a transfer by the Administrator General does not constitute a sale of the land but a mere distribution of the deceased's estate to his or her beneficiaries. The Office is in court in several cases where lawful and

bonafide occupants are suing the department for not having given them the first option to buy a deceased person's land before transferring the land to the beneficiaries.

2. Fraud and misrepresentation. Some clients misrepresent themselves as beneficiaries of a deceased person in order to claim a beneficial interest in a deceased person's land. The office undertakes several and sometimes expensive checks to ascertain the rightful beneficiaries on a deceased person's estate.

3. Most clients are ignorant about Succession Laws. They claim, distribute and sell the land before appearing in the Office of Administrator General. By the time they do appear, so much has been done on the land and there are several disputes arising from the land at the time. Little can be done to rectify such situations to the detriment of the deceased's beneficiaries.

4. The Department loses a lot of time in courts of law. There are cases that take over ten years to conclude despite the fact that most cases are frivolous.

5. The law states that an estate should meet its own costs. However, most estates are small and cannot afford or are unwilling to meet their own costs. The meager resources of the Department are, in such circumstances, used to meet costs of the Department.

SUCCESSION REGISTERS AND SUCCESSION CERTIFICATES IN UGANDA

Considering the generally limited knowledge on Succession Registers and Succession Certificates, there is a need for a more detailed in depth discussion of the topic.

ORIGINS OF SUCCESSION REGISTERS

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.

LAWS APPLICABLE

The laws applicable to the Succession Registers can be traced back to the **Land Succession Law of the Kingdom of Buganda** of 31st October 1912. The law stated in Luganda,

“2. Omuganda bw’anafanga ng’alina ettaka

Mu Buganda tewali muntu anayinzanga okukola ku ttaka eryo ekintu kyonna wabula ng’amaze okufuna okuva eri olukiiko olupapula olw’obusika olugamba nti y’asanira okulifuna.

3. **Empapula ezo ez’obusika zinayinzanga okuweebwa omuntu alaamiddwa ettaka, oba nga tewali kulaama, zinawebwenga ng’empisa ez’obusika bwe ziri mu Buganda, oba zinaawebwanga omukuza, oba omuntu omulala ku lwaabantu abasaanira okufuna ettaka eryo”.**

The Law states in **Section 2 of the Land Succession Law of Buganda** that no person shall deal with a deceased person's land except upon being issued with a document (Succession Certificate) from the Lukiiko confirming that he is the proper person to receive the land.

In Section 3 of the Land Succession Law of Buganda, it states that the Succession Certificate will be issued to; someone who has been bequeathed land in the Will; in case of intestate succession, it shall be given according to succession matters in Buganda; the Guardian; or to someone on behalf of the people entitled to receive that land.

The Succession Certificates were issued from information contained in the Succession Registers.

The Succession Certificates were a limited grant of Letters of Administration to the beneficial share of a beneficiary received from a deceased person's estate. This is clearly stated in the

definition of Letters of Administration in the **Registration of Titles Act Cap 230** which commenced on 1st May 1924. **Section 1(j)** states,

““letters of administration” includes, in the case of the estate of a deceased African of Uganda, a certificate of succession or other document from a competent authority declaring the right of any person to deal with that estate, and “administrator” includes that person; ”

HOW AND WHEN THE SUCCESSION CERTIFICATE AND THE SUCCESSION REGISTER CAME UNDER THE ADMINISTRATOR GENERAL

The Administrator General was granted powers to issue Succession Certificates that were originally being issued by the Lukiiko in the **Local Administrations (Performance of Functions) Instrument, S. I No. 150 of 1967**. The Statutory Instrument was enacted under the **Local Administrations Act, 18/1967**.

Paragraph 2, of the **Local Administrations (Performance of Functions) Instrument, S. I No. 150 of 1967** which grants the powers to the Administrator General states as follows

“ The power vested in the Lukiiko by section 2 of the Land Succession Law to issue certificates of succession in respect of estates administered according to customs of succession in the Kingdom of Buganda prior to the 18th August, 1967, shall be exercised by the Administrator General” .”

After 18th August 1967, the Administrator General started issuing Succession Certificates instead of the Lukiiko. The Succession Certificates were issued by the Administrator General referring to information in Succession Registrars that was proved by the Clan, the Lukiiko and the Kabaka.

WHEN THE OFFICE OF ADMINISTRATOR GENERAL LAST ISSUED SUCCESSION CERTIFICATES AND WHY

The **Local Administrations Act, 18/1967** was the Act under which the **Local Administrations (Performance of Functions) Instrument, S. I No. 150 of 1967** was enacted.

The Local Governments Act Cap 243 which replaced the Local Administrations Act, 18/1967 is silent on the matter of Succession Certificates. The Local Governments Act Cap 243 repealed the Local Administrations Act, 18/1967 under which the Local Administrations (Performance of Functions) Instrument, S. I No. 150 of 1967 was enacted. So the law providing for Succession

Certificates was repealed. At the moment, the law does not provide for Succession Registers and Succession Certificates.

Because the Local Governments Act Cap 243 was amended without saving the provision providing for Succession Certificates, the Office of the Administrator General stopped issuing Succession Certificates. The Administrator General now issues transfers of land to beneficiaries of such estates because as earlier stated, a Certificate of Succession is comparable to a transfer of land.

MANDATE

The mandate of the Office of Administrator General in Succession Registers and Succession Certificates includes;

1. Verifying beneficiaries of the deceased to ascertain that they are entitled to a share as stated in the Succession Registers.
2. Issuing beneficiaries of the deceased with a Certificate of No Objection to enable them petition for Letters of Administration to the deceased's estate.
3. Administering the deceased's estate where the Administrator General is the administrator of the Estate.
4. Distributing the deceased's estate to his or her beneficiaries in accordance to the distribution made in the Succession Register where the estate is administered by the Administrator General.

CHALLENGES

The Office of Administrator General has faced numerous challenges when using the Succession Registers and when issuing Succession Certificates

1. There is no law pertaining to issuing of Succession Certificates since the Administrations Act, 18/1967 and the Local Administrations (Performance of Functions) Instrument were repealed by the Local Governments Act Cap 243.
2. Most beneficiaries cannot be properly verified. Since most records contain deceased person's estates between 1912 and 1967, most of the beneficiaries are long dead. Their relatives who come to our offices do not know the deceased but have just been informed that they are somehow related.
3. There are many people who fraudulently misrepresent themselves as relatives of deceased people. They come and claim beneficial shares fraudulently.

4. Some Succession Registers have information pertaining to a deceased's estate which is insufficient. It lists beneficiaries but no further details like their ancestors, their place of residence at the time the Registers were made and others. This makes it easy for unscrupulous members of the public to impersonate the beneficiaries.

FAMILY

The Office of the Administrator General considers close blood relatives when dealing with a deceased person's estate. When considering family members entitled to take a beneficial interest in the estate of a deceased person, the Office refers to the **Succession Act Cap 162, Section 23** and the **First Schedule of the Succession Act** which provides the method for computing degrees of kindred. There is an exception to consanguinity whereby the spouses and adopted children to the deceased who have a legal relationship to the deceased are considered when distributing the estate. Furthermore, the Department is involved in administering estates on behalf of children. The laws governing children are diverse and include the **Constitution 1995**, the **Children's Act Cap 59**, the **Public Trustees Act Cap 161** and the **Succession Act Cap 162**.

MANDATE

The mandate of the Administrator General in family matters includes;

1. Verifying the beneficiaries of deceased persons by analyzing their family relationship to the deceased.
2. Issuing the family members with a Certificate of No Objection after ascertaining that they are capable of administering the deceased's estate.
3. Distributing the estate of the deceased person, that is being administered by the Administrator General, to his or her true beneficiaries after they have been verified.
4. Appearing in court on behalf of the deceased's estate and on behalf of his beneficiaries in cases where the estate is administered by the Administrator General.
5. Holding, protecting and preserving a gift, legacy or share of a deceased person that an infant is entitled to as a **Public Trustee** on behalf of the infant under **Section 8** of the **Public Trustees Act Cap 161**.
6. The Administrator General, in **Section 27** of the **Administrator General's Act** can transfer a minor's beneficial share to a mother, father, public trustee or other suitable person to hold it on behalf of the infant upon application from court.
7. To mediate family disputes regarding succession matters.

CHALLENGES

Some challenges faced by the Office of the Administrator General when implementing its duties in family matters include;

1. The absence of the law on how an estate should be distributed in case of intestate succession is a key challenge. Section 27 of the **Succession Act** which provided for the distribution of a male (person) intestate was declared contrary to the Constitution and struck out of the Act. No law has been enacted to fill the gap in the law. Presently, an estate is being distributed following the consensus of all the deceased's beneficiaries. It is usually an impossible task to get all the beneficiaries to agree to a distribution scheme.
2. The customary laws and religious laws which are mostly contrary to the Law of Succession are widely practiced. Despite efforts by the Office to handle matters of succession under the Succession Act, some clients prefer to follow their cultural and religious practices usually to the detriment of the deceased's actual beneficiaries especially widows, children, female beneficiaries and others.
3. Many cases of fraud and misrepresentation arise where unscrupulous members of the public hold out as family members of a deceased person to receive a beneficial share of the deceased's estate to the detriment of the actual beneficiaries.
4. It is difficult to verify beneficiaries of a deceased person especially relying on information provided by aspiring beneficiaries.
5. The main challenge of the Office of Administrator General when dealing with children is the loophole in definition of children under the law. The contrast is in the definition of a child as a person below 18 years in the **Constitution** and in the Children's Act whereas in the Succession Act, a child is defined as a person below 21 years. There is a need for law to reconcile the position of the **Succession Act** with that of the **Constitution** and the **Children's Act**.
6. Another challenge is as to whether a child at eighteen is mature enough to administer a deceased's estate responsibly. It is legal for an eighteen year old to administer a deceased's estate but in most cases impractical.
7. The law states that a widow is best entitled to administer a deceased's estate as she can petition for Letters of Administration without verification from the Administrator General. However, this has proved challenging as the deceased usually is survived by children who are not biological children of the legal widow. Sometimes the legal widow has few or no children with the deceased despite the fact that the deceased has children with other ladies. In different circumstances, the legal widow cannot distribute the estate equitably to the satisfaction of all the deceased's beneficiaries.

PERSONS OF UNSOUND MIND

A person of unsound mind is defined in Section 1 (c) of the Administration of **Estates of Persons of Unsound Mind Act Cap 155** as a person adjudged to be of unsound mind under **Section 4** of the **Mental Treatment Act** or any person detained under **section 113 or 117** of the **Magistrates Courts Act**;

MANDATE

Under **Section 3 (3)** of the **Administration of Estates of Persons of Unsound Mind Act**, the mandate of the Administrator General is to manage the estate of a person of unsound mind in case there is no one suitable to manage such estate. This appointment to manage the estate is made by the court.

CHALLENGE

The challenge of the Administrator General when managing estates of persons of unsound mind is that a lot of time is spent mediating and counseling to end disputes that come up before management orders have been issued by court.

MISSING PERSONS

Under **Section 1(1)(f)** of the **Estates of Missing Persons Management Act Cap 159** a missing person is defined as a person who disappears from Uganda without making provision for the administration of his or her estate and investigations have shown that his or her whereabouts are not known.

A missing person is presumed dead after three years from the date of disappearance under **Section 20** of the **Estates of Missing Persons Management Act Cap 159**.

MANDATE

1. The mandate of the Administrator General under **Section 2(6)** of the **Estates of Missing Persons Management Act Cap 159** is to apply for a management order and manage the estate of a missing person if no one has applied to manage the estate after a period of twelve months following the missing person's disappearance.
2. Upon the evidence of death of a missing person or a presumption of death after his or her disappearance for three years, the Administrator General has the mandate to administer the person's estate in accordance with **Section 21 (1)** of the **Estates of Missing Persons Management Act Cap 159**.

CHALLENGE

The challenge of the Administrator General when managing estates of missing persons is that a lot of time is spent mediating and counseling to end disputes that come up before management orders have been issued by court.

Thank you, God Bless You all.