

Amendment of the Succession Act

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Overview of Presentation

- LAW- Uganda Research on Succession Law
- Constitutional Provisions on Succession Law;
- Strategic Litigation on the Succession Act under Article 137(3) of the Constitution-
 - Constitutional Court Declarations of Constitutional Petition 05/06;
- Proposed Action.

LAW-Ziganda Research ...

- Article 292 provides for modification of laws;
- Since 1995 when constitution was promulgated up to 2006 when case was lodged- laws on succession had not been modified.
- Some judges applied the succession act as was under “my hands are tied” justification; others creatively applied “equal rights”.
- Jurisprudence differed, justice was not certain.

Constitutional Provisions on Succession Law

- Article 31(2)- Rights of the family:
Parliament shall make appropriate laws for the protection of the rights of widows and widowers to inherit property of their deceased spouses and to enjoy parental rights over their children.

Constitutional Provisions

- Art. 129. The courts of Judicature

The judicial power of Uganda shall be exercised by courts of judicature which consists of;

...such subordinate courts as Parliament may by law establish, including quad his courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament.

Constitutional Provisions contd.

- Article – 247 Administration of estates:

Parliament shall-

- (a) By law establish an efficient, fair and expeditious machinery for the administration and management of the estates of deceased persons; and
- (b) Under the referred to under paragraph (a) of this article, ensure that the services of the department or organization established for the purpose are decentralized and accessible to all persons who may reasonably require those services and that the interests of all beneficiaries are adequately protected.

Constitutional Provisions contd.

- Art. 2 Supremacy of the Constitution; Supreme law with binding force on all authorities and persons throughout Uganda;
- If any other law or any custom is inconsistent, the Constitution prevails...
- Article 29 (c) Freedoms practiced in a manner consistent with the Constitution

Strategic Litigation Succession Act

- Issue: Whether sections 2 (n) (i) (ii), 23, 26, 27, 29, 43, 44 of the Succession Act are inconsistent with Articles 20, 21, 24, 26, 31, 33, and 44 of the Constitution.
- Preference for males;
- No provision for female intestacy

Constitutional Court Declaration

1. All heirs be treated equally; no preference for male heir;
2. Provide for female intestate under the law;
3. Consider contribution of spouses when distributing property;
4. Appointment of testamentary guardians should be done by both spouses;
5. Persons appointed guardians should include female relatives;
6. Right to domicile should not be dependant on marriage and should left to the choice of a spouse;
7. Occupancy of matrimonial home should not terminate when spouse chooses to re-marry.

Proposed action – why act now?

- Declarations made in 2007- no action has been taken on lacuna created;
- There are inconsistencies in judgment on issues of succession which may perpetuate abuse of rights;
- Notify Attorney General?
- Notify Speaker of Parliament?
- Move a Private Member's Bill?
- Continue with awareness as work on amendment progresses...

We have a duty to alleviate the plight of widows, widowers and orphans...

Way forward...

- Orientation of new members of Parliament on issues of amendment of Succession.
- Provide for percentages for distribution of property amongst polygamous marriages.
- Understand social issues, tenure issues before amending law on Succession
- Document customary transactions.
- Definition of matrimonial property and non matrimonial property.

- Lack of awareness in the rural communities thus improvise a strategy on creating awareness of the declaration and the need for amending the law on Succession.
- Practicability of the law when it comes into place.
- Computing a woman's contribution and time spent in a home. (non monetary contribution)
- Securing children's rights under succession.
- Apply the same principle of definition of matrimonial home as provided for under the Land Act.
- Laws are enacted for governance, security and justice

- Change attitude of rural communities.
- Insist on registration of all the different types of land tenure systems. A form whereby name of spouse, number of children and reason as to why the spouse does not want to be mentioned on the land registration.
- Challenges from the Islamic community cause Quran has a provision for distribution of property thus the need for involvement of Muslim women.
- Need to involve women in the process thus a more vigorous approach.
- IEC materials to be distributed amongst Members of Parliament.

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- Progressive men in Parliament to be involved in moving legislations.

Succession Bubbles

- Customary law
- Cohabitation
- Matrimonial property
- Issue of polygamy