

## AMENDMENTS TO THE SUCCESSION (AMENDMENT) BILL, 2018

### CLAUSE 1: AMENDMENT OF SECTION 2

Clause 1 is amended-

**(a) by substituting for paragraph (a) of the Bill, with the following -**

“by repealing the words "legitimate, illegitimate and" appearing in paragraph (b);”

**(b) in the definition of ‘currency points’ by substituting for the word ‘fifth’ the word ‘first’;**

**(c) in paragraph (d), in the definition of “daughter”, by inserting the words “first degree” immediately before the word “lineal”;**

**(d) by inserting immediately after paragraph (e), the following new paragraph-**

“by inserting immediately after paragraph (g) the following-

“(ga) “disability” has the meaning assigned to it under the Persons with Disabilities Act;”;

(e) in paragraph (f), in the definition of the word “guardian” by inserting immediately after the words “customary guardian” the following-

“testamentary guardian, statutory guardian and a guardian by agreement of the parents of the child”;

(f) by inserting a new paragraph immediately after paragraph (f) as follows-

“by substituting paragraph (k) (ii) with-

(ii) married to the deceased in another country by a marriage recognised as valid under the laws of Uganda;”;

(g) by deleting paragraph (i) of the Bill;

(h) by deleting paragraph (k);

(i) by deleting paragraph (L);

(j) by deleting paragraph (o);

(k) In paragraph (p) of the Bill, in the definition of the word “spouse”, by inserting the word “valid” immediately before the word “marriage” appearing in the last line;”

(l) In paragraph (q) of the Bill, in the definition of the word “son”, by **inserting** the words “first degree” immediately before the word “lineal”;

(m) by inserting the following new paragraphs in the Bill as follows

(i) By repealing paragraph (l);

(ii) By repealing paragraph (n);

(iii) By repealing paragraph (u);

(iv) by substituting paragraph (w) (ii) with-

(ii) married to the deceased in another country by a marriage recognised as valid under the laws of Uganda;”;

**Justification:**

- *the use of the word “child” in the succession Act is unique and separate from the way the same is defined under other laws. The word child under the succession Act is used to define all the children of the*

*deceased person, irrespective of age. Attaching age to the definition will mean that a person above 18 years cannot benefit from the estate of a deceased person since this will be reserved for persons below 18 years of age.*

- *The definition of the words “daughter and Son” are confusing in the Bill since it uses the word lineal descendant, a term that includes all persons that share a common stock or ancestor. The insertion of the words “first degree ascending” is intended to ensure that only the children of the deceased person can be referred to as daughter or son and not to extend it to other people such as grandchildren, as the Bill had proposed.*
- *The deletion of paragraph (i), (defining lineal descendant) is for consistency since the proposed definition conflicts with section 20 of the principal Act;*
- *The deletion of paragraph (o) (definition of separation) is for consistency with the amendment made to the section 30, making the proposed definition redundant.*
- *The proposal to delete the proposed definitions of the words “land or house from which the deceased person or surviving spouse was deriving his or her sustenance”, “other residential property” and “principal residential property” are intended to protect customary land as well as for removing a conflict between the definitions and amendments made to section 26 of principal Act. The definitions had the unintended consequences of extending the residential holding*

*beyond merely the homestead, thereby making section 26 of the Principle Act redundant.*

- *to consolidate the definitions contained in the succession (amendment) Bill, 2019 with those in the succession (amendment) Bill, 2018.*
- *To remove redundant words which are no longer used such as Husband, illegitimate child,, legal heir, senior wife, etc.*
- *To remove in the definitions, any inequality based on gender.*

## **CLAUSE 2: REPEAL OF SECTION 3 OF THE PRINCIPAL ACT**

### **Considered and passed**

## **CLAUSE 6: REPLACEMENT OF SECTION 13 OF THE PRINCIPAL ACT.**

In clause 6, the proposed section 13 is redrafted as follows-

### **"13. Domicile of origin of a child.**

“(1) The domicile of a child follows the domicile of the child’s parent or the child’s guardian from whom the child derives his or her domicile of origin.

(2) Where the parents of a child have different domicile, the domicile of a child shall follow the domicile of the parent who has custody of the child”

### **Justification**

- *To make provision for a child’s domicile where the parents of a child have different domicile.*

- *To make the provision broadly apply to any child in Uganda regardless of the domicile of the parent since the 2018 Bill proposes to restrict it to situations where the parent of a child is domiciled in Uganda.*

#### **CLAUSE 7: REPLACEMENT OF SECTION 14 OF THE PRINCIPAL ACT**

In clause 7, insert the following new subsection in the proposed section 14 as follows and re-number the current provision accordingly-

*“(2). A spouse may upon dissolution of a marriage or upon judicial separation or any other separation recognised under customary law acquire any other domicile”*

#### **Justification**

- *For completeness, to grant a person the right to acquire another domicile upon the dissolution of a marriage.*

#### **CLAUSE 9: REPEAL OF SECTION 16 OF THE P RINCIPALACT**

Delete clause 9

#### **Justification**

- *The proposal to delete section 16 of the principle Act will create an ambiguity in the law as to whether a child can acquire another domicile otherwise as provided in section 13.*

## **CLAUSE 11: REPEAL OF PART III OF THE PRINCIPAL ACT**

Delete clause 11

### **Justification**

- *The deletion of part III of the succession Act as proposed in the 2018 Bill is rejected with the justification that it will create a lacuna in the law, thereby creating an absurdity. Part III deals with how a person is related to another person descending from the same stock or common ancestor.*
- *This is important in succession to determine inheritance, beneficiaries and grant of letters of administration and probate since proof of relation to the deceased is a requirement in most if not all succession processes under the Act.*

## **INSERTION OF NEW CLAUSES IMMEDIATELY AFTER CLAUSE 11**

Insert the following new clauses immediately after clause 11-

### **“REPLACEMENT OF SECTION 20 OF THE PRINCIPAL ACT**

For section 20, there is substituted the following

#### **20. Lineal consanguinity.**

- (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other.
- (2) For avoidance of doubt, every generation constitutes a degree, either ascending or descending”

## **“AMENDMENT TO SECTION 22 OF THE PRINCIPAL ACT**

Section 22 should be amended by insert a new paragraph after paragraph (b) as follows-

“(c) male or female relatives of a deceased person”

## **“AMENDMENT OF SECTION 23 OF THE PRINCIPAL ACT**

Section 23 of the principal Act is amended-

(a) in subsection (2), by inserting immediately after the word-

- (i) “father”, the words “or mother”;
- (ii) “grandfather” the words “or grandmother”; and
- (iii) “uncle” the words “or aunty”;

(b) in subsection (3) by inserting immediately after -

- (i) the word “grandson” the words “or granddaughter”;
- (ii) the word “brother” the words “or sister”;
- (iii) the word “son” the words “or daughter”;
- (iv) the word “uncle” the words “or aunty”; and
- (v) the words “great nephew” the words “great niece”;



(c) in subsection (4) by inserting, immediately after –

- (i) the word “grandson” the words “or granddaughter”; and
- (ii) “great uncle” the words “or great aunty”;

### **Justification**

- *To remove matters that conflict with article 21 of the Constitution since in their current form, sections 20, 22 and 23 conflict with article 21 (1) in so far as not applying equally to females persons.*

### **CLAUSE 12: REPLACEMENT OF SECTION 26 OF THE PRINCIPAL ACT**

For clause 12, there is substituted the following-

#### **“12. Amendment of section 26 of principal Act**

Section 26 of the principal Act is amended-

- (a) in subsection (1), by substituting for the term "legal heir" the words "spouse and lineal descendants";
- (b) by inserting immediately after subsection (2) the following-

“(2a) Upon the death of the surviving spouse, the residential holding or any other residential holding shall devolve to the lineal descendants equally and shall occupy it subject to terms and conditions set out in the Second Schedule to this Act.

(2b) A person who evicts or attempts to evict a lawful occupant of the residential holding or any other residential holding commits an offence and is liable to a fine not exceeding one hundred sixty eight currency points or imprisonment not exceeding seven years or both.

(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 joint tenants .“

(c) in subsection (4) by substituting for the term “a magistrate” the word “court of competent jurisdiction”;

### **Justification**

- *to require the residential holding or any other residential holding to devolve to the surviving lineal descendants upon the death of the surviving spouse.*
- *To protect the surviving spouse and lineal descendants from being evicted and to clarify the nature of ownership between the persons to whom the residential holdings devolves to.*

- *The proposal to refer to “court of competent jurisdiction” is borne out of a realization that not all matters under succession law go to a magistrate court given its limited pecuniary jurisdiction. Since some matters can be handled by the High Court, the reference to only a magistrate court is a misnomer.*

### **CLAUSE 13: REPLACEMENT OF SECTION 27 OF THE PRINCIPAL ACT**

Clause 13 is amended-

**(a) by substituting for the proposed sub clause (1) (a) the following-**

“(a) where the intestate is survived by a spouse, a lineal descendant and a dependent relative-

- (i) the spouse shall receive 20 percent;
- (ii) the dependent relatives shall receive 4 percent; and
- (iii) the lineal descendants shall receive 75 percent;
- (iv) the customary heir shall receive 1 per cent ;”

**(b) by inserting immediately after the proposed sub clause (1) the following new sub clauses-**

“(2) Notwithstanding 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 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, if at the time of the death of the intestate was 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).
- (5) Where the lineal descendants specified in subsection (2) do not require all the twenty percent that is held in trust for their education, maintenance and welfare, the balance of that percentage that is not required shall be part of the estate to be distributed to all the beneficiaries under subsection (1).

(6) A lump sum settlement may be made for the maintenance and welfare of a lineal descendant who has a disability, specified in subsection (2) (c).

(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).

(8) When distributing property among the customary heir and dependant relatives, priority shall be given to the parents of the deceased.

**(c) delete subsections (2) and (3).**

### **Justification**

- *To ensure that the children of deceased person who are school going continue to be provided from the estate of the deceased person;*
- *To reduce the entitlement of the surviving spouse from 50 per cent as proposed in the Bill to 20 per cent since 20% of the estate is already reserved for the spouse and lineal dependents, thereby increasing the entitlement of such persons. This will increase the entitlement of lineal descendants (children of the deceased) to 75% from 41%. This is intended to ensure that a large percentage of the estate goes to the children of the deceased person since, in most cases, they are the neediest of all the beneficiaries under the estate and they constitute about 70% of the total population of the Uganda.*

- *To ensure equity and fairness in the distribution of the estate of the deceased person by taking into account the unique circumstances of the beneficiaries, especially those are infant and those persons with disabilities.*
- *To incorporate proposals contained in clause 7 of 2019 Bill into clause 13 of the 2018 Bill.*

#### **CLAUSE 14: AMENDMENT OF SECTION 28 OF THE PRINCIPAL ACT**

**For clause 14, there is substituted the following-**

*“Replacement of section 28 of the Principal Act*

*The Principal Act is amended by substituting for section 28, the following-*

***‘28. Distribution of deceased property between members of the same class***

- (1) Where a lineal descendant entitled to benefit under the estate of a deceased person predeceased the intestate person, the portion of the estate that would have accrued to the deceased beneficiary shall be granted to the lineal descendants of the deceased beneficiary if any.*
- (2) A person aggrieved by the distribution of property under this section may appeal to the High Court within fourteen days from the date of the decision of the administrator.”*

#### **Justification**

- *The discretion proposed in sub clause (1) of clause 28 of the Bill-*

- (a) gives too much power to an administrator to make a decision as to what each beneficiary's share should be. This will be abused and will create a conflict of interest since, in most cases, the administrator is one of the beneficiaries under the estate.*
- (b) Is redundant since we have already reserved 20% of the estate for the benefit children, lineal descendants with disability and the surviving spouse;*
- (c) will have implementation challenges, especially in determining the contribution made by persons to the estate. This will instead increase powers of administrators to determine which widow for instance gets a bigger share. It is very tough business to allege that one can easily determine contributions made by surviving spouses in the estate. Our society is poor at financial record-keeping. Then again, how do you determine non-monetary contributions if you were not there and the other spouse is dead? It may easily lead to a situation where widows compete for favors from the administrator.*
- *To grant a right to the lineal descendants of a deceased beneficiary to inherit the portion of the estate that who have accrued to their deceased parent.*
  - *To incorporate proposals in clause 8 of the 2019 Bill into clause 14 of the 2018 Bill.*

## **CLAUSE 15: REPLACEMENT OF SECTION 29 OF THE PRINCIPAL ACT**

Clause 15 is amended-

(c) in the proposed sub clause (1) by inserting the word 'lineal descendant' immediately after the word "spouse" wherever the word appears in the provision.

(d) by deleting subsection (2);

### **Justification**

- *To expand the provision to include other persons who are entitled to occupy the principal residential property as enumerated in section 26.*
- *The proposed sub clause (2) is deleted since it is misplaced and has instead been inserted in clause 12 where it is most appropriate.*

## **CLAUSE 16: AMENDMENT OF SECTION 30 OF THE PRINCIPAL ACT**

For clause 16, there is substituted the following-

### **"Replacement of section 30 of Principal Act**

The principal Act is amended by substituting for section 30, the following-

#### **"30. Separation of spouse**

(1) A surviving spouse of an intestate shall not take any interest in the estate of an intestate if, at the death of the intestate,-

- (a) the surviving spouse was separated from the intestate as a member of the same household; or



(b)the marriage between the surviving spouse and the intestate was suspended either by agreement or by judicial order.”

(2) Subsection (1) shall not apply where –

(a)the surviving spouse has been absent on an approved course of study in an educational institution; or

(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.

(3) Notwithstanding subsection (1), a court may, within six months after the death of the intestate, on application made by or on behalf of a surviving spouse, declare that subsection (1) shall not apply to the surviving spouse.

(4) A declaration made under subsection (3) shall authorize the applicant to take no more than-

(a) a proportion of the intestate’s property entitled to him or her under section 27; or

(b) a proportion of the property that was acquired before the spouse separated from the intestate as a member of the same household.

(5) For the avoidance of doubt, a child or lineal descendant sired by the surviving spouse and intestate shall be entitled to benefit from the estate of the intestate notwithstanding the separation of the surviving spouse from the intestate as a member of the same household.

## Justification

- *To consider as material, the spouse at whose instance the separation occurred and ensure that the spouse who was not at fault for the separation benefits from the estate of a deceased spouse notwithstanding the separation of the parties prior to the death of the other spouse.*
- *To bar persons who separate from their spouses and contract other marriages from benefiting from the estate of a deceased spouse;*
- *To empower a spouse who had separated from the intestate as a member of the same household to inherit portion of the property that was acquired before the spouse separated from intestate as a member of the same household*
- *To incorporate proposals made in clause 9 of the 2019 Bill with those made in clause 16 of the 2018 Bill.*
- *To clearly allow children arising out of the marriage of the surviving spouse and the intestate to benefit from the estate notwithstanding the separation of the surviving spouse from the intestate as a member of the same household.*

## **INSERTION OF NEW CLAUSES IMMEDIATELY AFTER CLAUSE 16**

Immediately after clause 16, there is inserted the following new clause-

### **“Repeal of section 31 of principal Act**

Section 31 of the principal Act is repealed.

## **Repeal of section 34 of principal Act**

Section 34 of the principal Act is repealed”

### **Justification**

- *Sections 31 and 34 are obsolete and need to be removed from the principal Act.*
- *Section 31 currently requires the customary heir to give notice of his or her appointment to the administrator General and the deceased person’s personal representative. This provision is redundant.*
- *Currently section 34 of the Succession Act bars a person not domiciled in Uganda and contracts a marriage with a person equally not domiciled in Uganda from acquiring interest in the property of their spouse unless they have a settlement providing otherwise. This section reverses the rights acquired at marriage and where it applies to Ugandan citizens, it is open to challenge for infringing on article 21 (1).*
- *To adopt proposals made by the 2019 Bill in clauses 10 and 11 of the Bill.*

## **CLAUSE 18: AMENDMENT OF SECTION 36 OF THE PRINCIPAL ACT.**

Clause 18 is amended-

**(a) by substituting for paragraph (a) the following-**

“(a) by substituting for subsection (2) the following-

“(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.”

**(b) In paragraph (b), in the proposed sub section (3),-**

(i) by substituting for the words “not incapacitated from” the words “capable of”

(ii) by inserting immediately before the word “hearing” the words “physical impairment ;” ;

**(c) in paragraph (c), the proposed sub section (4), by substituting the words “ is of sound mind” with “ does not have a mental illness”**

**(d) By inserting a new sub clause (7) as follows-**

“(7) Subsection (6) shall not apply where the testator has made provision for the accommodation, at the same station in life, for the spouse and the lineal descendants referred to in section 26 (1), who are entitled to occupy the principal residence at the time of his or her death..”

## **Justification**

- *The proposal to delete subsection (2) of section 36 will create a lacuna in the law as to whether spouses can, during the substance of a marriage hold property in his or her individual name and dispose of such property by will.*
- *To cater for persons who have physical impairments, such as missing limbs, who may not be able to write wills, witness will or attest to wills to be able to do all those acts without hindrance.*
- *To expand subsection (2) of the section 36 to all to spouses, regardless of gender.*
- *To empower the provision of alternative accommodation by the testator as proposed in clause 14 of the 2019 Succession (amendment) Bill.*
- *To incorporate the proposals made in 2019 Succession (amendment) Bill.*
- *For clarity*

## **INSERTION OF NEW CLAUSE IMMEDIATELY CLAUSE 18**

Immediately after clause 18, there is inserted the following new clause-

### **“Replacement of section 37 of the Principal Act**

The principle Act is amended by substituting for section 37, the following

**37. Preservation of principal residence and maintenance of spouse, children, lineal descendants and dependants to be made in a Will.**

- (1) A person who makes a will shall make reasonable provision for the maintenance of his or her spouse, children, lineal descendants and dependent relatives.
- (2) The principal residence of a testator shall not form part of the property to be disposed of in a will, except where the testator makes reasonable provision for the accommodation, at the same station in life, for the spouse, children and the lineal descendants referred to in section 26 (1), who occupy the principal residence at the time of his or her death.
- (3) Section (1) shall apply to a spouse, a child and-
  - (a) a lineal descendant, who is unmarried, or who is suffering a mental or physical disability; and
  - (b) a dependent relative, who is wholly or substantially dependant on the deceased person.
- (4) Section 38 shall apply where a deceased person, by his or her will, disposes of all his or her property without making reasonable provision for the maintenance of his or her for spouse, lineal descendant or dependant relative."

### **Justification**

- *To impose a specific obligation on the testator to make provision for the maintenance of the surviving spouse, children, dependent relatives and lineal descendants as proposed in the 2019 Succession (amendment) Bill.*
- *Consequential amendment arising from the amendment of section 38, wherein it was expanded to cater not only for not only dependent relatives but also a spouse and lineal descendants"*

- *To incorporate proposals made in clause 14 of the 2019 Bill save for the proposed sub section (2) of the proposed section 37 in the 2019 Bill is was incorporated in the amendments proposed to subsection 36 in clause 18 of the 2018 Bill.*

## **CLAUSE 19: AMENDMENT OF SECTION 38 OF THE PRINCIPAL ACT.**

Clause 19 is amended-

**(a) By inserting a new paragraph as follows-**

“(a). Substituting for the head note the following-

38. Power of court to order Maintenance

**(b) in paragraph (a), by substituting for the proposed subsection (1) the following-**

“(1) Where a person dies domiciled in Uganda and by his or her will, disposes of all his or her property without making reasonable provision for the maintenance of his or her spouse, lineal descendant or dependant relative, court may on application, order that such reasonable provision be made out of the deceased’s estate for the maintenance of the deceased person’s spouse, lineal descendant or dependant relative.”

**(c) In paragraph (b), by substituting for the proposed subsection (2), the following-**

“(2) The provision for maintenance to be made by an order under subsection (1) shall—

(a) where the deceased's estate produces an income, by way of periodical payments, the order shall provide for their termination not later than-

(i) in case of a spouse, until he or she remarries;

(ii) in case of a child, until the child completes his or her education or attains the age of 25 years, whichever first occurs;

(c) in the case of a lineal descendant who has not been married, or who is, by reason of mental or physical disability, incapable of maintaining himself or herself, until he or she marries or upon the cessation of the disability, whichever first occurs; and

(d) in the case of other dependent relative, as the court may determine.”

**(d) By substituting for "dependents" appearing in subsection (4) and "dependents" appearing in subsection (5) the words "spouse, lineal descendants or dependent relative";**

## **Justification**



- *To limit the termination of maintenance order to only where the surviving spouse remarries.*
- *To limit the receipt of maintenance by a child to when the child completes his or her education or attains the age of 25 years, whichever first occurs.*
- *To make provision for the maintenance of the deceased off springs who are above the age of majority*
- *To incorporate proposals made in clauses 15 of the 2019 Bill.*

**CLAUSE 21: REPLACEMENT OF SECTION 44 OF THE PRINCIPAL ACT.**

In the proposed section 44,

(a) substitute for the word “infant” the word “child” wherever the word is used in the provision;

(b) In paragraph (b), delete the words “if the father and mother of the deceased parent of the infant are dead”

(c) In paragraph (c), delete the words “if the brothers and sisters of the deceased are dead,”

(d) delete paragraphs (d) and (e);

(e) Renumber the current provision as sub clause (1) and insert immediately after it, the following new subsections

“(2) Where there is no person willing or entitled to be a guardian under subsection (1) (a) to (c), the court may, on the application of any person interested in the welfare of the infant, appoint a guardian.

(1) For 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.”

### **Justification**

- *For consistency since the nomenclature used in the Bill has been child and not infant and to require a person appointed guardian to be a citizen of Uganda as required in the children Act.*
- *completeness to make provision for the court to appoint a guardian where any of the persons with priority are not eligible for appointment.*

### **INSERTION OF NEW CLAUSE IN THE BILL**

Insert the following new clauses immediately after clause 21-

#### **Customary guardian**

(1) Family members of a child may appoint a guardian of a child in accordance with their customs, culture or tradition where-

(a) both parents of the child are dead or cannot be found;

(b) the surviving parent of a child is incapable of being a guardian or is ineligible of being appointed guardian; or

(c) the child has no guardian or any other person having parental responsibility over him or her.

(2) For the purpose of this section “customary guardianship” means having parental responsibility of a Ugandan child by a Ugandan citizen, resident in Uganda, in accordance with the customs, culture or tradition of an indigenous community in Uganda.”

### **Justification**

*To make provision for the appointment of a customary guardian of a child by a family, in accordance with the customs, culture or tradition of an indigenous community in Uganda*

### **CLAUSE 22: INSERTION OF NEW SECTION 44A IN PRINCIPAL ACT.**

The proposed section 44A is amended-

- (a) **In the proposed subsection (1),** by deleting the words ‘appointed under section 43’
- (b) **by inserting the following new subsection immediately** after the proposed subsection (2) and re numbering the provision accordingly-

“(3) A person shall be eligible for appointment as a guardian in subsection (2) if he or she is above eighteen years of age and is a citizen of Uganda.

(4) A person appointed under subsection (2) shall before taking up guardianship of a child apply to court to confirm or reject the guardianship.

### **Justification**

- *The proposal to amend the proposed subsection (1) is to expand the provision to apply to all circumstances where a guardian is appointed in the Act and not to limit it to appointments made in section 43;*
- *The prescription of qualifications is to comply with part VIA of the Children's Act on qualification of a guardian.*
- *The proposal to require a person appointed guardian by another guardian to apply to court is to prevent the provision from being abused and to comply with the appointment of a guardian under Part VIA of the Children Act.*

### **CLAUSE 23: AMENDMENT OF SECTION 45 OF THE PRINCIPAL ACT**

For clause 23, there is substituted the following-

#### **“Replacement of section 45 of Principal Act**

The Principal Act is amended by substituting for section 45, the following-

#### **“45. Power of the court to remove a guardian**

- (1) A person may apply to the High Court to remove a guardian appointed under this Act.
- (2) Court may only remove a guardian where it is satisfied that-

- (a) it is in the best interest of the child to remove the guardian;
  - (b) the guardian has failed, refused or neglected to act as guardian;
  - (c) the guardian has neglected his responsibilities as a guardian;
  - (d) the guardian has not complied with the conditions of the guardianship; or
  - (e) the guardianship was obtained by fraud or misrepresentation.
- (3) Court shall upon issuing an order for the removal of a guardian, appoint another person to act as a guardian of the child.”

### **Justification**

- *To comply with grounds for removal of a guardian under the children’s Act.*
- *To specify which court may remove a guardian.*

### **CLAUSE 24: REPLACEMENT OF SECTION 46 OF THE PRINCIPAL ACT**

In clause 24, substitute for the proposed section 46 with the following-

#### **“46. Powers and duties of a guardian.**

- (1) A guardian appointed in this Act shall be the personal representative of the child for purposes of managing the child’s share in the estate of a deceased person.
- (2) A guardian shall apply to court to exercise any of the following powers and duties-

- (a) to have custody of the child;
  - (b) to administer the property of the child;
  - (c) to receive, recover or invest the property of the child; and
  - (d) to dispose of the property of the child;
- (3) A guardian shall take all reasonable steps to safeguard the property of the child from loss or damage and shall annually account, in respect of the child's property, to the surviving parent, court or custodian of the child or to any other person as the court may direct.
- (4) A guardian who misappropriates the property of a child commits an offence and is liable upon conviction to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred and fifty currency points.
- (5) A guardian who misappropriates the property of a child shall in addition to the punishment in subsection (4) make good the loss occasioned to the child.

## **Justification**

- *For completeness, to ensure that the provision applies to all guardians appointed under the Act;*
- *To specify the duties and functions of a guardian*
- *To ensure prudent administration of the property of a child by appointing the guardian a personal representative of the child, requiring the guardian to account for the property of the child and if he or she misapplies that property, he or she makes good the loss occasioned and may also face criminal sanctions.*

## **INSERTION OF NEW CLAUSE IMMEDIATELY AFTER CLAUSE 24**

Insert the following new clause immediately after clause 24-

### **“Insertion of section 46A and 46B in principal Act**

The principal Act is amended by inserting immediately after section 46 the following new sections-

#### **“46A. Termination of guardianship**

(1) The guardianship of a child shall automatically terminate upon the occurrence of any of the following circumstances, whichever occurs first-

- (a) the death of a child;
- (b) the death of the guardian; or
- (c) upon the child turning eighteen years.

(2) When guardianship terminates, all the property which the guardian administered shall-

- (a) in case of termination under subsection (1) (a), vest in the surviving parent of the child if any or in the administrator of the estate of the deceased child;
- (b) in case of termination under subsection (1) (b), in the vest in the surviving parent of the child if any or the child until a new guardian is appointed; or
- (c) in the case of termination under subsection (1) (c), vest in the child.

#### **46B. Application of Cap 59 to guardianship under this Act**

- (1) Part VIA of the Children Act shall apply to the grant, revocation and exercise of the powers of a guardian appointed under this Act.
- (2) Where any provision of this Act conflicts with a provision in the children Act in regard to the appointment, revocation and exercise of powers of a guardian under this Act, the provisions of the Children Act shall take precedence over the provisions of this Act and shall in such circumstance apply.

#### **Justification.**

- *For completeness, to provide for the termination of guardianship of a child.*
- *To harmonize the provisions of this Act with those of the children's Act in regard to the appointment and operation of a guardian.*

#### **CLAUSE 25: REPLACEMENT OF SECTION 47 OF THE PRINCIPAL ACT.**

In the proposed amendment to section 47, replace the word 'importunity' with

"abuse of position of trust, abuse of position of vulnerability...."

#### **Justification:**



- *To expand the provision to ensure that a will obtained by abuse of position of trust or vulnerability are also void.*
- *To use simple words*

## **INSERTION OF NEW CLAUSES IMMEDIATELY AFTER CLAUSE 25**

Immediately after clause 25, insert the following new clauses as follows-

### **“Amendment of section 50 of principal Act**

Section 50 of the principal Act is amended in paragraph (c) by inserting immediately after the words "each of the witnesses must", the 'words, "in the presence of the testator, write his or her name and address on the last page of the will and;”

### **Replacement of section 54 of principal Act**

The principal Act is amended by substituting for section 54 the following-

#### **“54. Effect of gift to attesting witnesses**

(1) A will shall not be considered as insufficiently attested by reason of any benefit given by the will, either by way of bequest or by way of appointment, to any person attesting it, or to his or her spouse, and the bequest or appointment shall not be void so far as

concerns the person so attesting, or the spouse of that person, or any person claiming under either of them where the will-

(a) meets the requirements of section 50 (c): and

(b) would be sufficiently attested if the signature of that person who attests, is not included in the number of the required under section 50 (c).

(2) A legatee under a will shall not lose his or her legacy by attesting a codicil which confirms the will.

(3) Where a will is hand written or produced in a typed format on the instructions of the testator by a person other than the testator and that person who writes or produces the will has a benefit given by the will either by way of bequest or by way of appointment, the bequest or appointment shall be void, so far as concerns the person who wrote or produced the will, or the spouse of that person or any other person who would claim under that person or under the spouse of that person.

(4) Subsection (3) shall not apply to the surviving spouse, lineal descendants or dependent relatives of the testator where the will meets the requirements of section 50 (c). “

### **Justification**

- *in section 50, to make an addition to the legal requirements of making a will that is valid in law, by requiring for each of the witnesses to write his or her*

*name and address on the last page of a will in order to ensure easy authentication of the persons who witnessed a will.*

- *In section 54, to ensure that a person who witnesses a will is not unreasonably precluded from getting a benefit under the will if the other signatures are sufficient to prove the authenticity of a will as required in section 50.*
- *The proposal to bar persons presenting handwritten or typed wills from benefiting from the will presented by any other person other than the testator is intended to ensure the authenticity and validity of such a will is not questionable and to ensure that there is no conflict of interest in proving such wills.*
- *To adopt the proposal made in clause 20 and 21 of the 2019 Succession (amendment) Bill*

**CLAUSE 27: REPLACEMENT OF SECTION 86 OF THE PRINCIPAL ACT.**

In the proposed amendment to section 86, replace the proposed subsection (2) with the following-

“(2) Words in a will expressive of relationship shall be taken to include-

- (a) a person who is related to the deceased by the full blood or half-blood;

- (b) a person born during the deceased's lifetime and those who are conceived in the womb on the date of the deceased person's death and subsequently born alive; and
- (c) male and female relatives of the deceased person."

**Justification:**

- *This is for clarity, better drafting and completeness.*

**CLAUSE 29: REPLACEMENT OF SECTION 179 OF THE PRINCIPAL ACT.**

The proposed section 179 is amended as follows-

- (a) **In the proposed subsection (1), insert the figure "36 (6)" immediately after figure "29;"**
- (b) **In the proposed subsection (3), insert after the word "may", the following-**

*"within six months of the recovery of the donor,"*

**Justification**

- *To subject the provision to section 36 (6) which exempts residential holding, including the chattels from being given away in contemplation of death.*
- *To impose a timeline within which a donor may redeem the property he or she has granted to a person in contemplation of death.*

**INSERTION OF NEW CLAUSES IMMEDIATELY AFTER CLAUSE 29  
OF THE BILL**

Immediately after clause 29, insert the following new clauses-

**“Amendment of section 183 of principal Act**

Section 183 of the principal Act is amended by numbering the existing provision as subsection (1) and inserting immediately after the subsection, the following-

"(2) Where a testator is survived only by a child and does not expressly appoint an executor but appoints a guardian for the child, the guardian so appointed shall be the executor of the will of the deceased person."

**“Amendment of section 184 of principal Act**

Section 184 of principal Act is amended by-

(a) **numbering the existing** provision as subsection (1) ;

(b) substituting for the words "is of unsound mind" appearing in the provision, the words "who has a mental illness"; and

(c) **inserting immediately alter subsection (1), the following-**

"(2) Notwithstanding anything in this Act, court shall have the discretion to determine whether a person who is otherwise qualified

to be granted probate, is fit and proper and a court may differ the appointment of an executor or executrix to a later date or refuse to grant probate where an applicant is not suitable."

### **Amendment of section 189 of principal Act**

Section 189 of the principal Act is amended by-

**(a) numbering the existing provision as subsection (1);**

**(b) by inserting immediately after subsection (1) the following new sections-**

"(2) An executor or executrix who, before the grant of probate, misapplies the estate of the deceased person or subjects it to loss or damage, is guilty of an offence and is, on conviction, liable to imprisonment for a term of two years or to a fine not exceeding forty eight currency points, or both.

(3) In addition to the penalty in subsection (2), the person convicted shall be liable to make good, to the estate and the beneficiaries of the estate the loss or damage so occasioned."

### **"Amendment of section 190 of Principal Act**

Section 190 of the principal Act is amended by-

(a) numbering the existing provision as subsection (1) and substituting for the words "is of unsound mind" appearing in the provision, the words "who has a mental illness"; and

**(b) inserting immediately after subsection (1) the following-**

"(2) Notwithstanding anything in this Act, court shall have the discretion to determine whether a person who is otherwise qualified to administer an estate under this Act, is fit and proper to do so and the court may differ the appointment of an administrator to a later date or refuse to grant letters of administration where an applicant is not suitable.

### **Amendment of section 192 of principal Act**

Section 192 of the principal Act is amended by numbering the existing provision as subsection (1) and inserting immediately after subsection (1), the following new subsections-

"(2) An administrator who before the grant of letters of administration misapplies the estate of the deceased or subjects it to loss or damage, shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of two years or to a fine not exceeding forty eight currency points, or both.

(3) In addition to the penalty in subsection (2), the person convicted shall be liable to make good, to the estate and the beneficiaries of the estate, the loss or damage so occasioned."

## “Amendment of section 200 of principal Act

Section 200 of the principal Act is amended by substituting for "next of kin" the words "the spouse and lineal descendants of the deceased person".

### Justification

- *The amendment proposed to section 183 is in recognition of the current position of the law as far as the appointment of guardians and the execution of estates of children is concerned.*
- *In section 184 and 190, for consistency, to change the nomenclature used from “unsound mind” which condition may not be ascertainable to “mental illness”, a condition that is ascertainable under the laws on mental illness.*
- *The term “next of kin” was not defined in the principal Act and is therefore impossible to determine considering that there is no provision requiring the appointment of a next of kin. Therefore for consistency, the term needs to be replaced with words which are used ordinarily and in this case, given the centrality of the spouse and lineal descendants in the grant of letters of administration then it is imperative that the notification required in this section is given to the persons proposed in the Bill.*
- *To impose a fit and proper person test in the appointment of administrators and executors.*
- *It also incorporates the proposal made in the 2019 Succession (Amendment) bill, particularly clause 24, 25, 26 27, and 29.*



## CLAUSE 30: INSERTION OF NEW SECTION 201A TO THE PRINCIPAL ACT

In clause 30, the proposes section 201A is redrafted as follows-

**“201A. Preference of surviving spouse to administer the estate of a deceased spouse**

- (1) The surviving spouse shall have preference over any other person in the administration of the estate of the 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
  - (b) the administrator General finds it necessary, in the circumstances of the estate, to grant the administration of the estate to another person.”

### **Justification**

- *To codify a practice developed by court to wherein, widows and widowers are no longer given priority over the administration of estates of their deceased partners due to the reality of our complex family structures. Judges are uncomfortable with such applications where a deceased person is survived by children from different women or in polygamous families since court is not sure of the number of partners or children the deceased had at the time of death. In order to protect the interests of all the beneficiaries of such estates, there are instances where it may be preferred that*

*administration is granted not to the surviving spouse alone but to any other person alone or a group of people, with or without the surviving spouse.*

- *The proposal to give preference and not priority to the surviving spouse is to protect other beneficiaries of the estate, especially in polygamous relationships, where spouses have obtained administration without the knowledge of their stepchildren and have disinherited them. It is for this reason that the Courts themselves are reluctant to issue grants to widows applying alone; unless there is proof that all the children are born of the widow and the deceased.*

## **CLAUSE 32. REPLACEMENT OF SECTION 203 OF THE PRINCIPAL ACT.**

Delete clause 32

### **Justification**

- *Its redundant since 201A already gives preference to letters of administration, whether or not she has the least share of all the beneficiaries.*

## **CLAUSE 34: INSERTION OF A NEW SECTION 204A TO THE PRINCIPAL ACT**

Delete clause 34

### **Justification**

- *The proposal is redundant since the beneficiaries under the estate participate in the process of choosing the administrator and sign a consent for the person after which the administrator General issues a certificate of no objection to the applicant or applicants to apply for letters of administration.*
- *Even after a person has been granted a certificate of no object, it is a requirement for the person to advertise the notice of application in a newspaper of wide national circulation, thereby further notifying any person interested in objecting to the grant.*

**CLAUSE 35: REPLACEMENT OF SECTION 215 OF THE PRINCIPAL ACT**

In clause 35, redraft the proposed section 215 as follows-

**“215. Administration when child is sole beneficiary or residuary legatee.**

(1) Where a child is the sole beneficiary or sole residuary legatee, letters of administration with the will annexed may be granted to the guardian of the child or to such other person as court determines fit, until the child attains the age of majority.

(2) Notwithstanding subsection (1), where the sole beneficiary or sole residuary legatee is eighteen years and above, court may on the application of the sole beneficiary or sole residue legatee-

(a) grant the sole beneficiary or sole residue legatee letters of administration or probate where court considers the sole beneficiary or sole residue legatee a fit and proper person; or

(b)grant the sole beneficiary or sole residue legatee letters of administration or probate under the supervision of court or the Administrator General where applicant is not a fit and proper person,."

### **Justification**

- *The currently, section 215 conflicts with section 184 of the succession act in so far as allowing the appointment of a minor as executor. The amendment is therefore to ensure section 215 is in conformity with section 184;*
- *To remove the ambiguity in the amendment proposed in the 2018 Bill in so far as it allows the appointment of the guardian of the child as administrator of the estate when a child is the sole executor. As noted, a child cannot be appointed executor as required in section 184 and also it assumes that the guardian of the child will be appointed to administer the estate on behalf of the child yet court may appoint any other person in spite of the presence of a guardian.*
- *To expand the provision to allow for the supervised administration of the estate of where a young person is appointed administrator. This will safeguard the estate from abuse.*
- *To limit the provision to a situation where there is a sole beneficiary or residuary legatee.*

### **INSERTION OF NEW CLAUSE IMMEDIATELY AFTER CLAUSE 35 OF THE BILL**

Immediately after clause 35, insert the following new clause-

## “Repeal of section 216 of principal Act

Section 216 of the principal Act is repealed.”

### Justification

- *Consequential amendment arising from the amendment of section 215 as proposed in clause 35;*
- *To incorporate proposals made by the 2019 succession (amendment) Bill, specifically in clause 31;*
- *For consistency, to remove matters that conflict with section 184 wherein the appointment of minors as executors is specifically barred.*

## CLAUSE 36: AMENDMENT OF SECTION 234 OF THE PRINCIPAL ACT.

In clause 36, replace the proposed amendment to section 234 with the following-

“Section 234 of the principal Act is amended-

**(a) in subsection (2) by inserting immediately after paragraph (e) the following-**

“(f) the person to whom the grant was made has grossly mismanaged the estate;

**(b) by inserting immediately after subsection (2) the following-**

“(3) Where a grant of probate or letters of administration is revoked under subsection (2) (b) or (f) of this section, the executor, executrix or person to whom letters of administration were granted, as the case may be, shall be guilty of an offence and shall on conviction, be liable to imprisonment for a term of three years or to a fine not exceeding seventy two currency points or both.

(4) In addition to the penalty in subsection (3), the person convicted in subsection (3) shall be liable to make good to the estate and the beneficiaries of the estate, the loss or damage so occasioned.

(5) Court may, in the same process for revocation of letters of administration, grant letters of administration to another to grant where court determines that such a person is a fit and proper person to be granted letters of administration under this Act.

### **Justification**

- *to create criminal offences against persons who obtain letters of administration through fraud and untrue allegations as prescribed in sections 234 (2) (b), and (f). Imposing such an offence against a person who fails to file an inventory would scare would be administrators or executors and make the administration of estates hard. Criminal sanctions should be left for serious offences related to wastage, theft, conversion, deliberate misapplication of estate property or forgery of documents during or before the process of administration of the estate.*

- *to adopt proposals made by Government in clause 32 of the Succession (Amendment) Bill, 2019 wherein Government proposes to impose criminal sanctions against the executor, executrix or person granted letters of administration where letters or probate are revoked by court.*
- *To save time and resources, to empower court to grant letters of administration in the same process as the process for cancellation of letters of administration.*

### **INSERTION OF NEW CLAUSES IMMEDIATELY AFTER CLAUSE 36**

Insert the following new clauses immediately after clause 36 as follows-

#### **“Amendment of section 235 of principal Act**

Section 235 of the principal Act is amended by repealing subsection (2).”

#### **“Amendment of section 236 of Principal Act**

Section 236 of the principal Act is amended by replacing the term "district delegate" with "chief magistrate and a magistrate"

#### **Justification**

- *This is a consequential amendment arising from the deletion of the word “delegate”, which makes the provision redundant.*
- *To adopt amendments proposed in clause 33 and 34 of the 2019 Bill*

**CLAUSE 38: AMENDMENT OF SECTION 258 OF THE PRINCIPAL ACT.**

In clause 38, in the proposed amendments to section 258, substitute for the proposed subsection (2) and (3) the following-

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

(3) Notwithstanding subsection (2), court may on application extend the duration prescribed in subsection (2) for a further period of two years 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 has-

(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.

(4) Subsections (2) and (3) shall not apply to-

(a) probate granted to a guardian under section 215 except that for cases falling under subsection 215, probate shall terminate automatically as required in section 215 of this Act;  
or



(b)probate granted to the Administrator General under the Administrator General's Act."

### **Justification**

- *The imposition of a validity timeline will result in additional costs on the estate to renew probate which will expose the estate to additional costs thereby eroding the beneficiaries' legacy.*
- *To limit the functions of the executor to 2 years since, in majority of estates, the functions of executor, being the collection and distribution of the estate to persons entitled to it, can be carried out in within 2 years and any attempt at increasing it beyond that time will delay the beneficiaries from accessing their entitlements and will result in the executor unreasonably holding onto the estate for personal gain. Limiting the grant to two years would put the executor on notice that their role is much limited and they should execute their duties as soon as possible. Providing a total term of six years as proposed in the Bill would be counterproductive when what is needed is for administration to be concluded as fast as possible.*
- *The provision also did not take into account estates of minor children as prescribed in section 215 wherein the office of the executor does not terminate until the child, who is the sole legatee or residue legatee has reached the age of majority.*
- *In order to reduce on the cost of the administering the estate, the Administrator General need not give consent to applications made under subsection (3).*
- *To impose grounds upon which court may extend the duration of grant;*

- *To limit the application of the provision to guardians since they are looking after the interests of children;*
- *To prescribe the duration of the extension*

**CLAUSE 39: AMENDMENT OF SECTION 259 OF THE PRINCIPAL ACT.**

In clause 39, substitute for the proposed amendment to section 259 with the following-

“(2) A person to whom letters of administration are granted under subsection (1) shall carry out the duties and functions authorised by the letters of administration for a period not exceeding two years.

(3) Notwithstanding subsection (2), the court may on application extend the duration prescribed in subsection (2) for a further period of two years 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 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 of all the beneficiaries in the estate to which the letters of administration apply.

(c) Subsections (2) and (3) shall not apply to letters of administration granted to-

- (i) a guardian under section 215 except that for cases falling under subsection 215, letters of administration shall terminate automatically as required in section 215 of this Act; or
- (ii) the Administrator General under the Administrator General's Act."

### **Justification.**

- *The imposition of a validity timeline will result in additional costs on the estate to renew which will expose the estate to additional costs thereby eroding the beneficiaries' legacy.*
- *To limit the functions of the executor to 2 years since, in majority of estates, the functions of administrator, being the collection and distribution of the estate to persons entitled to it, can be carried out in within 2 years and any attempt at increasing it beyond that time will delay the beneficiaries from accessing their entitlements and will result in the executor unreasonably holding onto the estate for personal gain. Limiting the grant to two years would put the executor on notice that their role is much limited and they should execute their duties as soon as possible. Providing a total term of six*

*years as proposed in the Bill would be counterproductive when what is needed is for administration to be concluded as fast as possible.*

- *The provision also did not take into account estates of minor children as prescribed in section 215 wherein the office of the executor does not terminate until the child, who is the sole legatee or residue legatee has reached the age of majority.*
- *In order to reduce on the cost of the administering the estate, the Administrator General need not give consent to applications made under subsection (3).*
- *To impose grounds upon which court may extend the duration of grant;*
- *To limit the application of the provision to guardians since they are looking after the interests of children;*
- *To prescribe the duration of the extension*

### **INSERTION OF NEW CLAUSE IMMEDIATELY AFTER CLAUSE 39**

Insert the following new clause immediately after clause 39 as follows-

#### **“Amendment of section 265 of principal Act**

Section 265 of the principal Act is amended by-

- (a) **numbering the existing provision as subsection (1) and substituting for the words "the petitioner for probate or letters or administration, as the case may be, shall be the plaintiff, and the person who may have appeared to oppose the grant shall be the defendant.",**

appearing in the provision, the words "either the petitioner for probate or letters of administration or the person who may have appeared to oppose the grant for probate or letters of administration, may be the plaintiff in the suit."; and

**(b) inserting immediately after subsection (l), the following new subsections**

"(2) The High Court may refer the parties to a suit under this section to the Administrator General, where the party whose application is the cause of the suit was not required to, and therefore did not give the Administrator General notice of the application for a grant under section 5 of the Administrator General's Act.

(3) The High Court shall in all matters before the Court under this section, issue summons to all the persons mentioned in the application for probate or letters of administration to appear before the Court as witnesses."

## **Justification**

- *To incorporate the proposals contained in the 2019 Succession (Amendment) Bill, especially clause 37.*

**CLAUSE 40: INSERTION OF NEW SECTION 267A TO THE PRINCIPAL ACT.**

Delete clause 40

**Justification**

*Redundant since its already a court practice*

**CLAUSE 41: REPLACEMENT OF SECTION 268 OF THE PRINCIPAL ACT**

In clause 41, substitute for the proposed section 268 the following-

**“268. Intermeddling and other acts**

- (1) A person who intermeddles with the estate of a deceased person commits an offence and is liable, on conviction, to a fine not exceeding one thousand currency points or imprisonment not exceeding ten years, or both.
- (2) A person is taken to intermeddle in the estate of a deceased where that person, while not being the administrator General, an agent of the Administrator General or a person to whom probate or letters of administration have been granted to by court-
  - (a) takes possession or disposes of a deceased person’s property; or
  - (b) does any other act which belongs to the office of executor or administrator.

- (3) Notwithstanding subsection (2), a person shall be taken to intermeddle in the estate of the deceased person where that person, although designated by the beneficiaries of the estate as administrator or appointed in the will as executor, does any other act which belongs to the office of executor or administrator before he or she has been granted probate or letters of administration by court.
- (4) Subsection (1) shall not apply in cases where the intermeddling is by a spouse or lineal descendant of the deceased person and it happens before grant of letters of administration or probate, in circumstances prescribed in subsection (5).
- (5) The circumstances referred to in subsection (4) are where the intermeddling is for the purpose of,-
  - (a) preserving the estate;
  - (b) providing for the deceased's funeral;
  - (c) providing immediate necessities of the deceased's family;
  - (d) preserving and prudent management of the deceased person's business, including preserving the deceased person's goods of trade; or
  - (e) receiving money or other funds belonging to the deceased.
- (6) The duration for which a person referred to in subsection (4) may intermeddle in the estate of the deceased person, is six months from the date of the deceased person's death or until the grant of letters of administration or probate, whichever first occurs.

- (7) A person who intermeddling with the estate of the deceased person pursuant to subsection (4) shall immediately report particulars of the property and of the steps taken to the Administrator General or its agent.
- (8) A person who has reason to believe that the person intermeddling in the estate of a deceased person pursuant to subsection (4) has caused loss or damage to the estate or that there are reasonable grounds for ending the intermeddling may to the Administrator General or its agent for redress.
- (9) A person who intermeddles in the estate of a deceased person pursuant to subsection (4) shall be personally liable for any loss occasioned to the estate arising from the intermeddling and shall make good the loss caused to the estate.
- (10) Notwithstanding subsection (9), a person who intermeddles with the estate and causes loss shall make good the loss occasioned to the estate except that where the person who causes the loss is a beneficiary under the estate, a portion of that person's entitlement, representing the loss occasioned to the estate, shall be applied towards making good the loss occasioned to the estate.
- (11) A person who intermeddles in the estate of a deceased person beyond the time prescribed in subsection (6) commits an offence and is liable to a fine not exceeding one thousand currency points or imprisonment not exceeding ten years, or both.

**Justification:**



- *To expand the definition of intermeddling to include instances where court has appointed an administrator or executor. Currently and even in the proposed amendment, intermeddling can only happen before grant of letters or probate yet we know that intermeddling can happen even after grant of letters of administration or probate.*
- *in order to preserve the estate from abuse before letters or probate is granted, to expand the provision to allow the intermeddling in the estate by a spouse, children or partner of the deceased*
- *To limit the intermeddling to six months or until letters or probate is granted;*
- *To create an offence against a person who intermeddles beyond the time prescribed;*
- *to empower a person to make an application to court to end intermeddling where the estate is being mismanaged.*
- *To require a person who intermeddles in the estate of a deceased person to make good the loss caused to the estate;*

**CLAUSE 42. REPLACEMENT OF SECTION 270 OF THE PRINCIPAL ACT.**

In clause 42, substitute for the proposed section 270 with the following-

**“270. Disposal of property.**

- (1) Subject to sections 27 and 36 (6), an executor or administrator may, with the written consent of the surviving spouse and all the lineal

descendant of the estate, dispose of the property of the deceased either wholly or in part.

- (2) Where a beneficiary of the estate is a child, the consent required in subsection (1) shall be given by the guardian of the child and where the guardian of the child is the executor or administrator, the consent shall be granted by court.
- (3) The executor or administrator shall account to the estate the proceeds of sale.
- (4) In disposing of property under this section, first option shall be given to a beneficiary of the estate to purchase the property.
- (5) An executor or administrator shall not be eligible to purchase property of the estate, except where such executor or administrator is a surviving spouse or lineal descendant.
- (6) Any disposal of the property belonging to the estate of a deceased person in contravention of this section shall be void.

### **Justification**

- *To exempt the disposal of matrimonial homes from sale,*
- *To impose restrictions on the sale of property of the deceased person;*
- *To bar the executor or administrator, as the case may be, from purchasing the property belonging to the estate he or she is administering or executing.*
- *To impose an obligation on the executor or administrator to account to the estate, for the proceeds arising from the sale of property.*
- *To grant a pre-emption rights to a beneficiary of the estate to purchase the property before it is offered to a third party.*

- *To incorporate the proposal made to section 270 under the 2019 Succession (amendment) Bill.*

### **INSERTION OF NEW CLAUSE**

Immediately after clause 42, insert the following new clause

#### **“Repeal of section 271 of the principal Act**

Section 271 of the principal Act is repealed.

#### **Justification**

- *Repeal section 271 is to ensure that the executor or administrator cannot sale to him or herself property belonging to an estate he or she is executing or administering since this will be a conflict of interest.*
- *Consequential amendment arising from the amendment of section 270 of the succession Act, in clause 42.*

### **CLAUSE 43: REPLACEMENT OF SECTION 272 OF PRINCIPAL ACT**

For clause 43, there is substituted the following-

#### **“Amendment of section 272 of principal Act**

The principal Act is amended by-

(a) renumbering the current provision as subsection (1); and

(b) inserting immediately after, the following-

“(2) Notwithstanding subsection (1), where there are more than one executor or administrator, probate or letters of administration may, with the consent of all the other executors or administrators, be granted to a sole executor or administrator or any other number of executors or administrators as the case may be.”

### **Justification**

- *To require the consent of all executors or administrators in a situation where there are more than one executor or administrators but one or a few of them are interested in obtaining probate or letters of administration.*

### **CLAUSE 44: REPLACEMENT OF SECTION 273 OF THE PRINCIPAL ACT**

In clause 44, substitute for the proposed section 273, the following-

#### **273. Survival of executors or administrators**

Upon the death of one or more executors or administrators, the surviving executor or administrator shall-

- (c) in the case of an estate with immovable property, with the consent of beneficiaries of the estate and with leave of court, continue as executor or administrator of the estate; and
- (d) in the case of an estate with movable property only, continue as executor or administrator of the estate.

**Justification:**

- *For clarity*
- *To allow an executor or administrator to continue, notwithstanding the death of one or more executors or administrators, save for estates with immovable property, where they need an order of court.*
- *To ensure that a surviving executor and administrator should seek the consent of the beneficiaries before applying for leave of court to continue in administration of an estate.*

**CLAUSE 47: AMENDMENT OF SECTION 311 OF THE PRINCIPAL ACT**

For clause 47, there is substituted the following-

**Replacement of section 311 of Principal Act**

The Principal Act is amended by substituting for section 311, the following-

**“311. Procedure in respect of the share of a child in intestacy**

(1) Where a person entitled to a share in the distribution of the estate of a deceased person is a child, the executor or administrator shall deliver the share of the child to the guardian of the child.

(2) The guardian of the child shall manage the property delivered to him or her in subsection (1) in a prudent manner and shall-

- (a) apply the property for the benefit of the child;
  - (b) take reasonable steps to safeguard the property of the child from loss or damage; and
  - (e) annually account in respect of the child's property to the surviving parent in any, court or any other person as court may direct.
- (3) Except where there is an order of court to the contrary, the guardian shall within six month of the child attaining the age of eighteen years, transfer all the property in his or her custody to the child.
- (4) Notwithstanding subsection (3), a guardian or any other person who considers that a person to whom property will be transferred to pursuant to subsection (3) is not fit administer his or her property, the guardian or such other person may apply to court to determine the suitability of the person to manage his or her property.

### **Justification.**

- *To align the provision with the provisions of the children Act which require the appointment of a guardian to take charge of the child's property and to administer the same.*
- *To provide for a time within which a guardian shall transfer property to a child upon attaining the age of majority;*
- *To allow court determine the suitability of a person to manage his or her property.*

**CLAUSE 48. SUBSTITUTING OF SECTION 331 OF THE PRINCIPAL ACT.**

In clause 48, substitute for clause 48 the following-

**“Amendment of section 331 of principal Act**

Section 331 of the principal Act is amended-

- (a) by substituting the reference to "Tanzania or Kenya" appearing in the head note and in the section with "a country other than Uganda" and
- (b) by substituting for "the Supreme Court of Kenya or a High Court of Tanzania and" appearing in subsection (3) with "a court of a country other than Uganda”

**Justification**

- *For clarity and better drafting since the whole section 331 of the principal Act need not be amended. The areas that a need of amendment are those outlined in clause 40 of the 2019 Government Bill and these should be adopted.*

**CLAUSE 49: REPLACEMENT OF SECTION 332 OF THE PRINCIPAL ACT**

In clause 49, substitute for the proposed amendment to section 332 the following-

**“332. Liability of executor or administrator for damage or loss to estate**

(1) An executor, executrix or administrator who-

(a) misapplies the estate of the deceased person;

(b) misappropriates or cannot account for the proceeds accruing to the estate of a deceased person or to a beneficiary of the state,  
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, 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."

**Justification:**

- *To extend the provision to cater for beneficiaries, thereby imposing a duty of care towards the individual members of the estate of a deceased person.*
- *To expand the circumstances under which a person will be criminally liable for loss.*
- *To adopt the proposal made in clause 41 of the 2019 Succession (amendment) Bill especially on the penalty for breach.*



**CLAUSE 50: REPLACEMENT OF SECTION 333 OF THE PRINCIPAL ACT**

In clause 50, redraft the proposed subsection (1) as follows-

“(1) An executor or administrator who occasions loss to the estate by neglecting to do any 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 points, or both.”

**Justification**

- *to expand the provision to include beneficiaries in addition to the general estate, thereby imposing a duty of care towards the individual members of the estate of a deceased person.*
- *To expand the provision to include all negligent acts or omissions done by the executor or administrator;*
- *For consistency, to harmonise the penalties prescribed in section 332 and 333 of the succession Act;*
- *To adopt amendments proposed to section 333 under the 2019 Bill.*

**CLAUSE 52: AMENDMENT OF SECTION 335 OF THE PRINCIPAL ACT.**

In clause 52, in the proposed subsection (2), substitute for the words “to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both” the words “imprisonment for a term of three

years or to a fine not exceeding one thousand seventy two currency points, or both....”

### **Justification**

- *To enhance the penalty imposed to make the provision deterrent enough*
- *To harmonize the prescribed penalty with similar penalty prescribed in the proposed amendment to sections 331, 332 and 333 of the Succession Act.*

### **CLAUSE 53: MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT**

Clause 53 is amended-

**(a) In paragraph (a), by inserting the following-**

‘minor’ a reference to ‘child’

**(b) By inserting immediately after paragraph (b), the following-**

‘(c) by substituting for the term -

(a) "district delegate" appearing in Part XXXI of the Act and in any other Part of the Act, the term, "Chief Magistrate or Magistrate";

(b) "lunatic" wherever it appears in the Act, the term "person with mental illness";

(c) "Minister" wherever it appears in the Act, the term "Attorney General" and

(d) "First Schedule", "Second Schedule" "Third Schedule" and "Fourth Schedule" wherever it appears in the Act, the term "Schedule 2", "Schedule 3" "Schedule 4" and "Schedule 5" respectively."

### **Justification**

- *For clarity and completeness*
- *To adopt the proposals in clause 53 of the 2019 Bill*

### **INSERTION OF NEW CLAUSES IN THE BILL**

Insert the following new clauses immediately after clause 53 as follows-

#### **"Insertion of a new section 340, 341 and 342 in Principal Act**

The principal Act is amended by inserting immediately after section 339, the following new section-

#### **"Amendment of Schedule I to this Act**

The Attorney General shall with the approval of the Cabinet, by statutory instrument, amend Schedule I to this Act."

The principal Act is amended by inserting immediately after section 340, the following new sections-

**“Transitional provision**

Sections 6, 7 and 46 of this Act shall apply to an estate of a deceased person who died on or after 5th April 2007, where the estate of that deceased person is not distributed at the date of commencement of this Act.”

**Insertion of a new Schedule 1 in principal Act**

The principal Act is amended by inserting the following Schedule appropriately-

**"Schedule 1**

*Section 2*

**CURRENCY POINT**

A currency point is equivalent to twenty thousand Uganda shillings"

**Justification**

- *To prescribe a currency point.*
- *To harmonize the proposed amendment in the 2018 Bill and 2019 Bill on the position of the schedule on currency points.*

- *To empower the AG to amend the first schedule to this Act wherever it is necessary.*
- *To provide a transitional provision*
- *For clarity, consistency and better drafting*

## **CLAUSE 54: REPEAL OF THE FIRST SCHEDULE TO THE PRINCIPAL ACT**

For clause 54, there is substituted the following-

### **“Amendment of First Schedule to principal Act**

The First Schedule to the principal Act is amended by renumbering the Schedule as Schedule 2.

### **Justification**

- *It is a consequential amendment arising from the rejection of the proposal to delete Part III of the principal*
- *Consequential amendment arising from the insertion of new schedule on currency points as schedule 1.*
- *To adopt the proposed amendment in the 2019 Bill.*

**CLAUSE 55: REPEAL OF THE SECOND SCHEDULE TO THE PRINCIPAL ACT**

For clause 55, there is substituted the following-

**“Amendment of Second Schedule to principal Act**

The Second Schedule is amended-

**(a) by renumbering the Schedule as Schedule 3-**

**(b) in paragraph 1, by substituting for subparagraph (1), the following -**

"(1) In the case of a residential holding occupied by an intestate prior to his or her death as his or her principal residence, the following categories of persons, who were normally resident in the residential holding shall be entitled to occupy it-

- (a) the spouse of the intestate person;
- (b) a minor child of the intestate person, and where the child attains eighteen years of age, he or she shall be eligible under paragraphs (c), as may be applicable;
- (c) a lineal descendant who is above eighteen years of age, who is undertaking studies or is un-married;
- (d) a lineal descendant who has not been married, or who is, by reason of mental or physical disability, incapable of maintaining himself or herself, until he or she marries or

upon the cessation of the disability, whichever comes first.

**(c) in paragraph 8, by numbering the provision as subparagraph (1);**

**(d) by substituting for subparagraph (1) (a) of paragraph 8, the following-**

“where the occupant is a spouse, upon remarriage or upon the spouse voluntarily leaving the principal residence or misusing it and putting it in disrepute;”

**(e) by substituting for subparagraph (1) (c) of paragraph 8, the following-**

"(c) where the occupant is a minor child of the intestate person, upon the attainment of eighteen years of age and on attainment of eighteen years of age, where applicable, subparagraph (l) (ca) or paragraph 8 (2) shall apply, as the case may be;”

**(f) by inserting immediately after subparagraph (1) (c) of paragraph 8, the following-**

"(ca) where the occupant is a lineal descendant of the intestate person and is above eighteen years of age but below twenty five years of age at the time of the death of the intestate person, upon the attainment of 25 years of age, ceasing to undertake studies or on becoming married, whichever is the earliest;”

**(g) in paragraph 8, by inserting a new subparagraph (2) as follows-**

"(2) Where the intestate person is survived by a lineal descendant who has a disability specified in paragraph 1(1) (d), and who is dependent on the intestate person for his or her livelihood, the lineal descendant who has a disability shall be entitled to occupy the principal residential holding for the duration of his or her lifetime, except where provision for the accommodation of that lineal descendant, at the same station in life, is made.";

(h)in paragraph 10, by substituting the words "not exceeding six months or a fine not exceeding one thousand shillings or both" with "not exceeding three years or a fine not exceeding seventy two currency points, or both"

### **Justification**

- *the proposal to delete the second schedule is rejected since it is overtaken by the amendments proposed in section 27 which included female intestates who had previously been excluded and to revise the percentages of distribution of the estate of an intestate.*
- *To include the proposals made in the 2019 Succession (amendment) Bill, as prescribed in clause 46.*

### **INSERTION OF NEW CLAUSES IMMEDIATELY AFTER CLAUSE 55**

Insert the following new clause immediately after clause 55-

#### **"Amendment of Third Schedule to principal Act**



The Third Schedule to the principal Act is amended by renumbering the Schedule as Schedule 4 and repealing Form A.

**“Amendment of Fourth Schedule to principal Act**

The Fourth Schedule to the principal Act is amended by renumbering the Schedule as Schedule 5.”

**Justification**

- *Consequential amendment arising from the insertion of a schedule on currency points.*
- *To adopt the amendments contained in the 2019 Bill.*

**CLAUSE 56: INSERTION OF FIFTH SCHEDULE TO THE PRINCIPAL ACT'**

Delete clause 56

**Justification.**

- *Consequential amendment arising from the insertion of the schedule on currency points as schedules 1 instead as proposed in the Bill.*

**-END-**