PARLIAMENT OF UGANDA

CONSOLIDATED REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE SUCCESSION (AMENDMENT) BILL, 2018 AND THE SUCCESSION (AMENDMENT) BILL, 2019

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1.0. INTRODUCTION

On the 9th of November 2018, Hon. Kajungu Mutambi R.C. (Mbarara District Woman MP) introduced in Parliament, the Succession (Amendment) Bill, 2018 and the Bill was accordingly referred to the Committee on Legal and Parliamentary Affairs pursuant to Rule 128 of the Rules of Procedure of Parliament.

Later on, the Government, on the 12th August, 2019, introduced in Parliament, five Bills namely, the Succession (Amendment) Bill, 2019, the Administration Of Estates (Small Estates) (Special Provisions) (Amendment) Bill, 2019, the Probate Resealing (Amendment) Bill, 2019, the Estate Of Missing Persons (Management) (Amendment) Bill, 2019, the Administrator General's (Amendment) Bill, 2019. The above Bills were accordingly referred to the Committee on Legal and Parliamentary Affairs pursuant to Rule 128 of the Rules of Procedure of Parliament.

2.0. METHODOLOGY

In considering the the Succession (Amendment) Bill, 2018 and the Succession (Amendment) Bill, 2019, (herein after referred to as the Bills), the Committee was faced with having to consider two Bills that were both proposing to amend the succession Act Cap 162 variously.

The Committee's work was made difficult by the fact that the Rules of Procedure were silent on the procedure to be adopted by a committee that is faced with the scenario of having to consider and report back on two or more Bills proposing to amend a single piece of legislation.

The Committed adopted the following procedure in disposing of the Bills. The Committee carried out an analysis of the Bills to examine the extent to which each Bill proposed to amend the Succession Act. The analysis revealed that;-

(a) both Bills proposed to amend the succession Act by deletion, variation or addition by

(i) amending 75 sections out of 339 sections currently in the Succession Act; and

(ii) inserting 8 additional sections in the Succession Act either.

(b) both Bills proposed to amend the following sections of the Succession Act, -

- Section 2: Interpretation;
- Section 3: Interests and powers not acquired nor lost by marriage.
- Section 6: Domicile of origin of a person of legitimate birth.
- Section 7: Domicile of origin of an illegitimate child;
- Section 26: Devolution of residential holdings.
- Section 27: Distribution on the death of a male intestate.
- Section 28: Distribution between members of the same class.
- Section 30: Separation of husband and wife
- Section 35: Settlement of minor's property in contemplation of marriage.
- Section 36: Persons capable of making wills.
- Section 38: Power of the court to order payment out of the estate of the deceased for maintenance of dependents
- Section 43: Testamentary guardian.
- Section 44: Statutory guardians.
- Section 45: Power of the court to remove a guardian.
- Section 46: Powers of guardians
- Section 87: Implied inclusion of illegitimate and adopted children.
- Section 179: Property transferable by gift made in contemplation of death.
- Section 215: Administration during minority of sole executor or residuary legatee.
- Section 234: Revocation or annulment for just cause.
- Section 258: Grant of probate to be under seal of court.
- Section 259: Grant of letters of administration to be under seal of court.
- Section 270: Disposal of property.
- Section 272: Powers of several executors, etc. exercisable by one.

- Section 331: Procedure where deceased has left property in Tanzania or Kenya.
- Section 332: Liability of executor or administrator for devastation.
- Section 333: Liability of executor or administrator for neglect.
- Section 335: surrender of revoked probate or letters of administration;

(c) The Succession (Amendment) Bill, 2018 proposed the following unique amendments to the succession Act-

1. Section 9 on Acquisition of a new domicile;
2. Section 13 on Minor's domicile.
3. Section 14 on Domicile of a married woman.
4. Section 15 on a Wife's domicile during marriage.
5. Section 15 on Minor's acquisition of a new domicile.
6. Section 18 on Succession to movable property in Uganda.
7. Delete part III of the succession Act;
8. Section 29 on Reservation of a principal residential holding from distribution
9. Insertion of new section 44A on relationship between a surviving parent and appointed guardian.
10. Section 47 on a Will obtained by fraud, coercion or importunity.
11. Section 55 on witness not disqualified by interest or by being executor;
12. Section 86 on Construction of terms.
13. Section 202 on Entitlement to administration.
14. Section 203 on citation of persons entitled in priority to administer;
15. Section 204 on Entitlement between members of the same class.
16. Section 249 on punishment for false averment in petition or declaration;
17. Section 268 on Intermeddling
18. Section 273 on survival of executors or administrators.
19. Section 276 on Married executrix or administratix.
20. Section 279 on Property of deceased.

21. Section 311 on Procedure in respect of share of minor in intestacy.
22. Section 311 on Procedure in respect of share of minor in intestacy.
23. Insertion of new section 333A on beneficiary's estate not to form part of any payment
24. Repeal of the First schedule to the principal Act
25. Repeal of the second schedule to the principal Act
26. Insertion of Fifth schedule to the principal Act

(d) The Succession (Amendment) Bill, 2019 proposed the following unique amendments-

- Insertion of new section on the short title and commencement;
- Section 31 on Notice to be given by a customary heir.
- Section 34 on effect of marriage between persons only one of whom is domiciled in Uganda;
- Section 37 on Provision for the maintenance of dependents to be made in every will.
- Section 50 on execution of unprivileged will
- Section 54 on effect of gift to attesting witnesses.
- Section 183 on Appointment of executor.
- Section 184 on persons to whom probate cannot be granted.
- Section 189 on Effect of probate.
- Section 190 on to whom administration may not be granted.
- Section 192 on Effect of letters of administration
- Section 200 Citation before grant of administration to legatee other than universal or residuary.
- Section 216 on Administration during minority;
- Section 235 on jurisdiction to grant probate and letters of administration;
- Section 236 on general powers of district delegate.
- Section 265 on procedure in contentious cases.
- Insertion of a new schedule 1, on currency points
- Amendment of First Schedule.
- Amendment of schedule 2;

- Amendment of schedule 3;
- Insertion of new section 340;
- Insertion of new section 341;
- Insertion of new section 342;

From the analysis and owing to the fact that the private member's Bill was first to be referred to the Committee, the Committee decided to use the Succession (Amendment) Bill, 2018 as the basis of the amendment to the Succession Act and to review and adopt proposals contained in the Succession (Amendment) Act 2019 to amend the 2018 Bill. The private member's Bill is also broader in scope comparatively, in its proposal. This means that the proposals in the Government Bill, which largely proposes similar amendments to that of the private member's Bill is incorporated in the Private Member's Bill, so that only one consolidated report and amendments are proposed to the House for consideration and adoption. The procedure adopted by the Committee in this instance was utilized and adopted by the Committee on Gender when it faced a similar scenario during the Committee's consideration of the Children (Amendment) Bill, 2015.

The Committee, guided by the provisions of Rule 128 of the Rules of Procedure examined the Bill in detail, made inquiries in relation to it and received views and memoranda from the following people;-

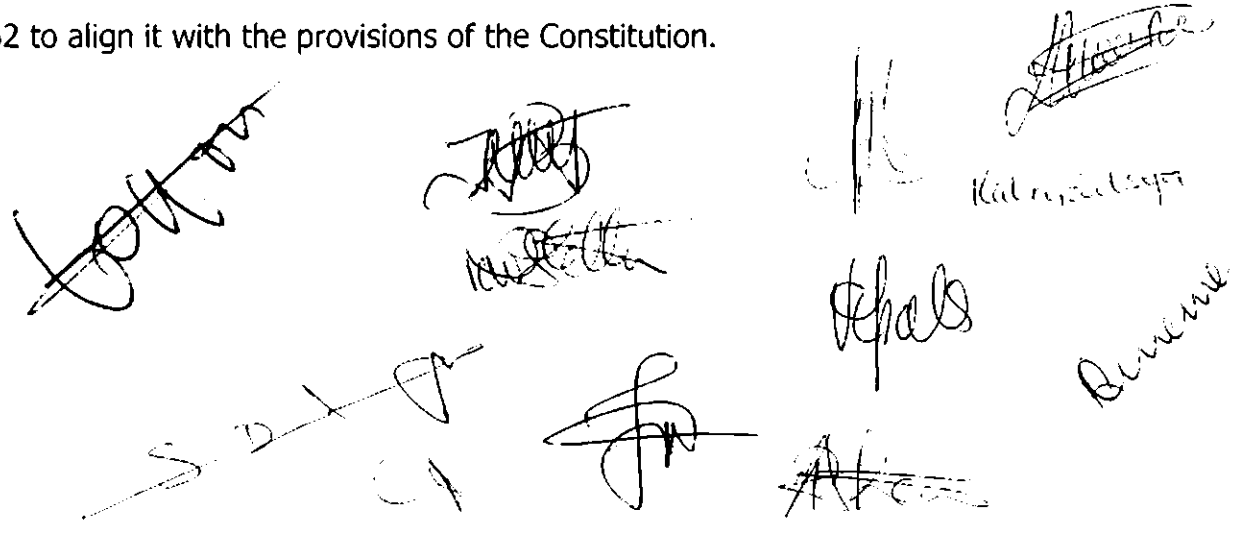
a. The Mover of the Private Member's Bill, Hon. Kajungu Mutambi R.C
b. The Minister of Justice and Constitutional Affairs
c. The Attorney General
d. Uganda Law Reform Commission
e. Uganda Women Parliamentary Association
f. The Equal Opportunity Commission
g. Uganda Muslim Supreme Council
h. The Justice Center Uganda
i. Foundation for Human Rights Initiative
j. Apio Byabazaire Musanese & Co. Advocates

3.0. OBJECTIVES OF THE BILLS

The objective of the Succession (Amendment) Bill, 2018 is to amend the Succession Act, Cap. 162 to bring it into conformity with the Constitution of the Republic of Uganda and internationally accepted human rights standards and provide for gender equality in accordance with Articles 21 and 33 of the Constitution; to repeal sections that were declared unconstitutional by the Constitutional Court; to streamline the definition of child to conform to Article 34 of the Constitution; to refine the definition of customary heir or heiress to eliminate discrimination; to clearly provide for the protection of principal residential property for the benefit of the surviving spouse and lineal dependents; to revise the percentages of distribution of the estate of an intestate; to provide for the appointment of a guardian for a child by either parent; to provide for the powers and duties of guardians; to repeal repugnant terms such as "lunatics" and "insane"; to provide for the lapse of probate or letters of administration; to enhance certain offences and penalties; and to provide for related matters.

On the other hand, the objective of the Succession (Amendment) Bill, 2019 is to amend the Succession Act, Cap. 162 to align it with the Constitution of the Republic of Uganda, to provide for distribution of the estate of intestate deceased person in accordance with Article 33 of the Constitution, to provide for guardianship of minor children of deceased persons, to provide for discretion of courts in the grant of probate and letters of administration, to provide for the expiry of letters of administration, to provide for spousal consent and lineal descendants prior to disposal of estate property and to repeal obsolete terms in Act in the Act and to provide for related matters.

From the objectives of both Bills, it is clear that they both seek to amend the Succession Act, CPA 162 to align it with the provisions of the Constitution.



NEED FOR THE AMENDMENT TO THE SUCCESSION ACT

The Committee notes that the Succession Act, Cap 162, which is the current law on succession in Uganda commenced on 15th February 1906. Due to passage of time, some aspects of the Succession Act have become outdated, especially in light of the Constitution, Government policies, emerging international best practices and the legal environment. The Act therefore is in need of urgent modernization in order to guide the processes that accrue upon a person's death and to enhance the protection of the rights of children and women.

The Committee further notes that the Succession Act is a reflection of the colonial influence which largely continued to uphold the principles of English Law and as such failed to reflect the different customary and cultural practices of the people of Uganda which are central to their existence.

It should be noted that the last official review of the law of Succession was the Kalema Commission Review of 1965 that culminated into the 1972 Succession (Amendment) Decree. As such, the provisions in the current laws are outdated and do not reflect the contemporary social and economic changes of the day and the changes in other laws specifically the equality and non-discrimination guarantees enshrined in the 1995 Constitution of the Republic of Uganda.

Some of the provisions within the various enactments pertaining to succession are outdated. The fines in the laws are outdated in terms of the prevailing socio-economic circumstances and thereby require review to reflect the intended punitive aspects of the provisions at the time they were enacted.

There are also several court decisions that progressively interpreted the Succession Act, while taking into account values and trends in developments and aspirations of the Ugandan society. However, such comprehensive and well thought out jurisprudence has not been reflected in the provisions of the law to reflect the developing trends and interests of the people.

The Committee notes that the Succession Act has been affected by recent Constitutional Court pronouncements which declared some of its provisions unconstitutional, thereby creating enforcement challenges and legal uncertainty.

For instance, in the case of *Law & Advocacy for Women in Uganda Vs. Attorney General of Uganda*, Constitutional Petition No. 13 of 2005, the Constitutional Court held that sections 2(n) that provides for legal heir, (L) (ii) that defines illegitimate child, 23 that provides for mode of computing degrees of Kindred, 26 that provides for devolution of residential holdings, 27 that provides for distribution on the death of a male intestate, 29 that provides for reservation of a principal residential holding from distribution, 43 that grants rights of appointment of testamentary guardianship to only the father, and 44 that provides for appointment of Statutory guardians only upon death of a father of the Succession Act are inconsistent with Articles 20,21,24,26,31 and 44 of the Constitution.

The Succession Act contains some gaps which need to be closed if the Act is to be efficacious. The Committee notes that one such gap was found by court in the case of *Administrator General Vs. Charles Acirer & Another. HCCS. 235/1994*, Court pointed out the fact that section 311 of the Succession Act which provides that, "where any person entitled to a share in the distribution of the estate of an intestate is a child, the Succession law does not make provisions specifying the duties of the person holding the property, manner of investing the property, provisions for account to the child when he or she becomes of age and does not provide penalties for breach of these duties.

Some provisions of the Succession Act were affected by the recent amendment to the Children Act, especially the provisions relating to the appointment of guardians, their removal, conduct and holding of property belonging to children. Part VIA of the Children Act specifically-

- Prohibits the grant of guardianship to a person other than the Citizen of Uganda (see section 43A);
- requires an application for legal guardianship to be made to the High Court, by a person above 18 years; (see section 43B)

- Allows family members of a child to appoint a customary guardian for a child in accordance with their custom, culture or tradition. (see section 43C)
- provides for the appointment of a guardian by agreement or deed by the parents of a child;
- provides the conditions upon which guardianship may be granted by court;
- revocation of guardianship order;
- Registration of guardian order; and
- Grant of probate or letters of administration for estates of children where a guardian is already appointed;

The above changes mean that sections 43, 44, 45, 46, 183, and 270 are no longer good law as far as the appointment, powers and removal of a guardian of a Child are concerned.

The Committee is aware that Uganda Law Reform Commission carried out a study on the law of succession and produced a report titled, Uganda Law Reform Commission Study Report on the review of laws on Succession in Uganda, 2014 which established several challenges within the law and practices of succession including the discriminatory nature of the provisions of the Succession Act and obsolete fines and Penalties.

There is therefore need for radical change in the law to bring it in line with the Constitution, emerging international best practices and current Government Policy.

4.0. GENERAL ANALYSIS, OBSERVATIONS, FINDINGS AND RECOMMENDATIONS

This part of the report examines the amendments proposed by the Succession (Amendment) Bills, 2018 and 2019, its legality, effect and effectiveness in light of the Constitution, existing public policy, court decisions, other laws and the mischief it intends to cure. The analysis is on the thematic areas touched on by both Bills, as well as new proposals made in each Bill. It also deals with the proposals that are similar in both Bills and considers the proposals that are unique to each Bill.

PART A- PROPOSALS THAT ARE SIMILAR IN BOTH THE 2018 AND 2019 BILLS

4.1.1. Ownership of property before and during marriage

Clause 1 of the Succession (Amendment) Bill 2018 and clause 2 of 2019 Bill **both** propose to delete section 3 of the Succession Act. Section 3 of the Succession Act provides as follows-

> *"**3. Interests and powers not acquired nor lost by marriage.***
> ***No person shall, by marriage, acquire any interest in the property of the person whom he or she marries, nor become incapable of doing any act in respect of his or her own property which he or she could have done if unmarried."***

The above provision prohibits a person from acquiring interest in property of a person he or she marries but at the same time empowers a married person to hold property exclusively during the substance of a marriage.

The effect of this provision is that property that married persons have acquired before marriage doesn't become matrimonial property. Furthermore, a married person may, during the substance of the marriage acquire and deal with property in his or her right without the same becoming matrimonial property.

The principle that a married person can, during the subsistence of a marriage, own property exclusively, without the same constituting matrimonial property was recognized in the decided case of ***Julius Rwabinumi Vs Hope Bahimbisomwe Civil Appeal No. 30/2007 wherein*** Justice Twinomujuni held that:

> *"Matrimonial property is joint property between husband and wife and should be shared equally on divorce, irrespective of who paid for what and how much was paid... However, the application of the principle may vary depending on the nature*

of the marriage contract the spouses agreed to contract. Like in all other contracts, parties to a marriage have a right to exclude any property from those to be deemed as matrimonial property. This can be made expressly or by implication before marriage or at the time of acquisition of the property by any spouse. Otherwise the joint trust principle will be deemed to apply to all property belonging to the parties to the marriage at the time of the marriage and during its subsistence.'

The deletion of the provision as proposed in both Bills will make every property acquired by married persons, before and during the substance of a marriage matrimonial property. It will also outlaw the individual holding of property during the substance of a marriage by either spouse.

The Committee notes that the justification for the proposed deletion of section 3, being that it is discriminatory, is not supported since the provision equally applies to both men and women and does not discriminate.

The Committee also observes that married people should be allowed to own property in their individual right during the substance of marriage. A spouse should not lose his or her proprietary rights granted under Article 26 of the Constitution merely because he or she is now married. It should be noted that Article 26 of the Constitution guarantees a person's right to own property individually or in association with others. The proposal to delete section 3 will therefore infringe Article 26 and might be challenged for being discriminatory in light of its application on married persons.

The Committee however notes that section 3 currently appears to exclude persons from acquiring interest in the property of the persons they marry contrary to legal principles on marriage and available laws.

It should be noted that upon marriage, property acquired by spouses is taken to be matrimonial property, thereby allowing a spouse to acquire interest in the property, irrespective of whether that spouse contributed in its acquisition or not. Furthermore, the land Act also recognizes this right by requiring spousal consent during disposal of matrimonial land.

This principle that a spouse acquires interest in the property upon marriage was recognized in the case of ***Julius Rwabinumi Vs Hope Bahimbisomwe Civil Appeal No. 30/2007*** *wherein court found that the joint trust principle will be deemed to apply to all property belonging to the parties to the marriage at the time of the marriage and during its subsistence.*

Therefore, it appears to the Committee that, section 3 was intended to exclude a spouse from acquiring interest in the property owned by a spouse acquired before marriage and not to exclude a spouse from acquiring interest in the property as is currently prescribed in that section. The Committee is of the view that the provision should be amended to reflect that principal.

Recommendation:

The Committee recommends that-

(a) the amendment to section 3 proposed in both the Succession (Amendment) Bills of 2018 and 2019 be rejected.

(b) Section 3 as it stands now should be amended to preclude a spouse from acquiring interest in the property owned by the other spouse if the property is acquired prior to marriage.

4.1.2. Domicile of origin of a person

Clauses 3 and 4 of the Succession (Amendment) Bill, 2018 and clause 4 and 5 of the Succession (Amendment) Bill, 2019 propose to amend sections 6 and 7 of the Succession Act.

The 2018 Bill proposes to delete sections 6 and 7 of the Succession Act while the 2019 Bill proposes to make amendments to the provisions of section 6 and 7 by removing the words, illegitimate or legitimate child from the provision but maintain the distinction between children born out of wedlock and those that are not.

The Committee observes that the Succession Act provides for domicile for purposes of determining the law applicable in succession matters. In determining the domicile of origin, the Succession Act distinguishes between persons of legitimate birth and illegitimate birth whereby, the former acquire the domicile of their mothers while the latter acquire the domicile of their fathers.

The Bills make divergent proposals to sections 6 and 7 of the succession Act. On one part, the 2018 Bill proposes to delete sections 6 and 7 of the succession Act. Section 6 and 7 of the succession Act are reproduced below-

> ***"6. Domicile of origin of a person of legitimate birth.***
> *The domicile of origin of every person of legitimate birth is in the country in which, at the time of his or her birth, his or her father is domiciled, or, if he or she is a posthumous child, in the country in which his or her father was domiciled at the time of the father's death.*
>
> ***7. Domicile of origin of an illegitimate child.***
> *The domicile of origin of an illegitimate child is in the country in which, at the time of his or her birth, his or her mother was domiciled."*

On the other hand, the 2019 Bill proposes to change the reference to illegitimate or legitimate children but maintain the distinction between children born out of wedlock and those that are not when determining domicile.

The Committee notes that the amendment proposed in the 2018 Bill should be supported since it removes the distinction between children of legitimate and illegitimate birth when determining domicile, which had made the current provision discriminatory and contrary to the decision of court in the case of Kabali vs. Kajubi [1944] 11 EACA where court declared that there are no illegitimate children.

The Committee does not support the amendment in the 2019 Bill since it will maintain a repugnant distinction between children in determining their domicile based on their parent's marital status. It should be noted that clause 5 requires that in determining the domicile of a child of legitimate birth, the father's domicile is taken and for the children borne out of wedlock in clause 6, then the mother's domicile prevails. This proposal creates a distinction between children borne out of wedlock and those that are not yet there is no distinction between such children under the laws of Uganda, especially as commanded by Article 21 (1) of the Constitution.

The Committee further notes that the amendments proposed in the 2019 Bill will maintain redundant provisions on the law book. The Committee observes that section 13 of the Succession Act already makes provision for the domicile of minors and it requires that the domicile of a minor is derived from the parent from whom the minor derived his or her domicile of origin. Section 13 is reproduced below-

"13. Minor's domicile.

(1) Subject to subsection (2), the domicile of a minor follows the domicile of the parent from whom the minor derived his or her domicile of origin.

(2) The domicile of a minor does not change with that of the minor's parent if the minor is married, or holds any office or employment in the service of the Government, or has set up, with the consent of the parent, in any distinct business."

The above provision generally deals with the domicile of a minor and it requires that minor takes the domicile of the parent from whom the minor derived his or her domicile of origin.

This provision broadly deals with domicile of minors, generally, irrespective of the marital status of the parents. This means that the removal of the distinction in section 6 and 7 as well as the amendment proposed to the definition of the word "minor" make the

provisions similar to section 13, thereby making the provision in sections 6 and 7 redundant.

Recommendation

In light of the above, the Committee recommends that;

i. Clauses 3 and 4 of the Succession (Amendment) Bill, 2018 are adopted and stand part of the Bill, and

ii. clauses 4 and 5 of the Succession (Amendment) Bill, 2019 be rejected since they will maintain a repugnant distinction between children in determining their domicile based on their parent's marital status and is redundant in light of the provisions of section 13 of the Succession.

4.1.3. Devolution of residential holdings.

Clause 12 of the 2018 Bill and clause 6 of the 2019 Bill proposes to amend section 26 of the Succession Act by making provision for the devolution of residential holding.

The 2018 Bill proposes to reserve the principal residential property and any other residential property including the chattels therein to devolve to the surviving spouse and lineal descendants of the deceased.

On the other hand, the 2019 Bill proposes to reserve the residential property for the spouse and lineal descendants.

Section 26 of the succession Act deals with devolution of the residential holding and requires that the residential holding normally occupied by a person dying intestate prior to his or her death as his or her principal residence or owned by him or her as a principal residential holding, including the house chattels therein, shall be held by his or her personal representative upon trust for his or her legal heir subject to the rights of occupation and terms and conditions set out in the Second Schedule of the Act.

By implication therefore, section 26 reserves the residential holding for the legal heir and relegates the Spouses, Children of the deceased and other persons who might stay there subject to the rights and authority of the heir.

The Committee notes that this provision should be amended since it is currently unfair to the surviving spouse and his or her children who lose interest in the residential holding upon the death of the other spouse. This means that a person's proprietary interest is lost, contrary to Article 26 of the Constitution. The Committee further notes that this provision has been abused to deprive surviving spouse, especially women, of their entitlement in what would otherwise be matrimonial property. This had led to the eviction of such spouses and children by the heir or the disposal of the residential holding without making provision for the spouse or children.

The Committee observes that both Bills propose to amend section 26 by reserving the residential holding for the spouse and lineal descendants. It also removes an absurdity in the law which empowered the legal heir to take the residential property instead of the deceased's spouse or children. It also recognises that the customary heir have been abusing this provision to exclusively occupy the principle holding and to indeed, exclude the surviving spouse and lineal descendants.

The Committee however notes that the proposal contained in the 2018 Bill is limited in scope since it proposes to entirely replace section 26 with a single provision. This will create a lacuna in the law as to-

(a) what happens to their residential holding owned by the intestate;
(b) How are the disputes that arise as to the occupancy of the residential holding resolved.

The Committee notes that the current section 26 extensively caters for the above thereby making the amendment as proposed in the 2018 Bill insufficient.

The Committee observes that the proposed amendments as contained in the 2019 is more suitable to deal with the mischief at hand since it removes only the offending words rather than amending the provision beyond what is necessary.

Recommendation

The Committee therefore recommends that the proposal in the 2018 Bill be rejected.

Instead, the proposal in the 2019 be adopted with the justification that the proposal in clause 12 goes beyond what is necessary to deal with the mischief and therefore amending section 26 as proposed in the 2018 Bill will result in a lacuna in the law since it is not as broad as the provision it seeks to replace.

4.1.4. Distribution of property of an intestate

Clause 13 of the Succession (Amendment) Bill, 2018 and clause 7 of the Succession (Amendment) Bill, 2019 propose to amend section 27 to make changes to how the property of a deceased person who dies without leaving a will is to be distributed.

Clause 7 of the 2019 Bill proposes to amend section 27 of the Succession Act to-

(a) Maintain the distribution scheme under section 27 as it is;
(b) Expand the provision to apply to both male and female intestates as well as to spouses in a marriage;
(c) reserve 20% of the estate to be held in trust for the education, maintenance and welfare of the lineal descendants and minor children.

The 2018 Bill on its part proposes to amend section 27 as follows-

(a) where the intestate is survived by a spouse, a lineal descendant (children) and a dependent relative (other relatives)

Class	Percentage entitlement
Spouse	50
dependent relatives	9
Lineal descendants (Children)	41

(b) **where the intestate leaves no surviving spouse or dependent relative (other relatives) capable of taking a proportion of his or her property,**

Class	Percentage entitlement
Lineal descendants (Children)	100

(c)where the intestate is survived by a spouse and a dependent relative (other relatives) but no lineal descendants (children)

Class	Percentage entitlement
Spouse	80
dependent relatives	20

(d) where the intestate is survived by a spouse or a dependent relative (other relatives) but no lineal descendants (children)

Class	Percentage entitlement
Spouse	100

Class	Percentage entitlement
dependent relatives (Children)	100

(e) **where the intestate leaves no person surviving him or her, capable of taking a proportion of his or her property**

Class	Percentage entitlement
relatives nearest in kinship to the intestate	100

(f) where the intestate leaves no person surviving him or her, including any living relative capable of taking a proportion of his or her property

Class	Percentage entitlement
Administrator General	100

The Committee notes that intestacy occurs where a deceased person did not make a will or leave a valid will disposing of his property. Intestate succession can be either total or partial. Intestacy is said to be total where the deceased does not effectively dispose of any beneficial interest in any of his property by will while a partial intestacy exists where the deceased effectively disposes of some, but not all of the beneficial interest in his property by will.

The Committee observes that where this happens, the intestacy rules take effect subject to the provisions contained in the will. The law on intestacy in Uganda was contained under section 27 of the Act.

The Committee further observes that following the constitutional court pronouncement in the case of *Law and Advocacy for Women in Uganda vs. A.G*, the provisions on intestacy were pronounced null and void, leaving a lacuna in the law. Section 27 was challenged on the fact that it was discriminatory on the basis of sex since it made reference to distribution on the death of a male intestate and not to a female intestate. As such it fell short of the guaranteed Constitutional standard of equality between men and women.

The Committee has considered the proposed amendments contained in both Bills as well as the challenges in the current section 27 and reports as follows-

(a) the 2019 Bill makes reference to the phrases "minor child" and "lineal descendants"; phrases that are used interchangeably and ambiguously. These phrases are not defined in the Bill and the principal Act. The Committee agrees that the principal act defines minor to mean a person below 21 years of age. The Bill on its own proposes to amend this definition so that a minor means a person below 18 years. The principal Act already contains a definition of the word "child" to mean "children", "issue" and "lineal descendant" including legitimate, illegitimate and adopted children. This means that a child, according to the principal Act includes a lineal descendant although sub clause (1a) appears to suggest that there minor children are at the same time lineal descendant. This provision therefore is confusing as to who exactly is a minor child and lineal descendant and unless these people are clearly defined, the provision may not be effective.

(b) The 2018 and 2019 Bills further maintains a distribution scheme that stipulates percentage entitlements to beneficiaries instead of granting them a defined legacy or entitlement. This may be cumbersome in implementation since it requires the valuation of all of the property of the deceased and a total value sought before distributing the estate amongst the beneficiaries based on their percentage entitlement. This can only work where the deceased left property that can be quantified in value.

(c) The distribution scheme does not take into account religious requirements, especially of the Muslim faith, during distribution of property. It should be noted that whereas Uganda is a secular state, Article 29 (1) (c) of the Constitution guarantees a person's freedom to practice any religion and manifest such practice which shall include the right to belong to and practice the practices of any religious

body or organization. The Committee further notes that religious practices have been recognized as an influential factor in determining succession matters among certain sects of people. The Committee observes that Muslims in Uganda follow religious provisions of 'Sharia law and hadith as stipulated in the Koran' in determining succession matters. The Committee also notes that Article 129 (1) (d) of the Constitution directs Parliament to establish Qadhi Courts for purposes of dealing with matters involving marriage, divorce, and inheritance of property and guardianship.

It is the committee's considered opinion that the distribution scheme as prescribed in section 27 is not in accordance with the Koran and hadith and is further a contravention of Article 129 (1) (d) which directs Parliament to prescribe a separate courts to handle matters of Islamic inheritance.

The Committee was reliably informed by the Muslim Supreme Council that the distribution of property of a deceased among the Muslims is believed to have been determined by God in such a way that a widow is entitled to a quarter of the man's wealth, in case the couple did not have children. Where there are children, the wife is entitled to one eighth of the husband's wealth. The girl child receives half of what the boys receive. This distribution takes place after settlement of a deceased's debts. Property distribution is done by an experienced Sheikh who is appointed by the Uganda Muslim Supreme Council. The recipients are expected to sign an agreement showing that they are contented with the distribution of property. In cases where a Moslem believer makes a will and it is deemed to favour some children, the will is disregarded (destroyed) and the property is distributed according to Sharia law.

The Committee is of the considered opinion that, given the differences between distribution of property of a deceased professing the Islamic faith in the Quran and the distribution scheme in the Succession Act, the provision should not apply

to the distribution of the estate of an intestate professing the Islamic faith as is the case in other countries such as Kenya, Tanzania, Malaysia, India, Pakistan, Singapore, Sri Lanka, Sudan and Nigeria where Islamic succession has its own distinct legislation.

The Committee is aware that the proposal to have a distinct legislation to cater for intestate succession of persons professing the Islamic faith will not be unique in Uganda considering that Mohammedans were excluded from the operations of part V of the Succession Ordinance of 1906 which provided for distribution of an intestate's property and were entirely left to rely on the Sharia law in cases of intestate. Therefore, unless the distribution scheme is structured in a manner that takes into account the views and aspirations of persons professing the Muslim faith, the distribution scheme will continue facing challenges of implementation.

(d) The committee also notes that the distribution schemes proposed in the Bills as well as prescribed in section 27 of the succession Act only reserves the distribution of property of a deceased person by persons who are related to the deceased by blood or marriage, thereby making un-married partners of a deceased person ineligible to inherit property irrespective of their contribution to the acquisition of the property in question. Whereas the issue of cohabitation is not legislated for in Uganda, the reality is that there are many people who live under this arrangement. The Committee observes that Government has taken steps to recognize such arrangements and offer protection to persons who are cohabiting under the Marriage and Divorce Bill thereby signifying a shift in Government policy, which the succession Bills does not recognize. This might be crystalized when the Bill passes.

The Committee is concerned that if cohabiting partner dies without leaving a will, the surviving person does not inherit any property from the estate of the deceased since the inheritance is limited to the legal wife, children and dependent relatives.

The lack of legal protection to persons who are cohabiting has led to the loss of proprietary rights by the surviving cohabiting partner of the deceased person. Usually the property of the deceased is taken by the deceased's relatives who normally argue that no marriage existed between the deceased person and the surviving cohabitee thereby not only depriving the surviving partner the right to property and welfare but also the children from such a relationship are not protected contrary to the dictates of Article 34 of the Constitution.

In light of the foregoing, the Committee notes that it may be necessary to make specific provisions for devolution of property at death of a cohabitant to the surviving cohabitant and children. The Committee is of the considered view that the failure to make provision for unmarried partners of a deceased person leaves out a big chunk of Uganda's population from application of the law and protection, thereby going against the dictates of Article 21 (1) on equality of all persons before the law.

(e) The Committee also notes that the Bills and the Succession Act currently does not take into account the wishes of individual family members in the distribution of a person's property. The distribution scheme assumes that all families are the same and the law should be applied on them equally. The distribution scheme as currently is proposed in the Bills and the Succession Act does not allow family members to agree to share the property of the deceased person based on the special circumstances of each family. The Committee is of the considered view that there is need to provide for a mechanism for allowing persons who are entitled to benefit from the estate of the deceased to have a say in how the property is distributed rather than the law imposing a distribution scheme which does not take into account the special needs of each beneficiary, their contribution to the acquisition and protection of property as well as other considerations which might be unique to the family in question.

The Committee notes that whereas section 27 of the Succession Act was annulled because of discrimination, it had many other shortcomings which made implementation difficult. These shortcomings affected the implementation of section 27 of the Succession Act are still embedded in the proposed amendment as contained in the 2018 and 2019 Bills. The Committee found the following-

(a) Presently, the entitlement of spouse under the intestate distribution schedule is meager in light of the fact that in most instances, especially where the deceased was a man with more than one partner or wives, the wives are all entitled to 50% of the estate, irrespective of their individual contribution to the acquisition of the property being distributed. The Committee observes that the provision ostensibly overlooks the fact that the spouse (s) may have made a considerable contribution to the estate in question and is even more inequitable where the deceased male was in a polygamous marriage because all the wives share a specified percent of his estate regardless of its size, the length of the marriage or contributions made towards its acquisition and preservation of the property being distributed. The current distribution scheme and the proposal in the 2019 Bill assume that the deceased acquired all the assets without the surviving spouse's contribution.

(b) The role of the customary heir has been abused over time and the Bill should provide a solution. Whereas the appointment of a customary heir is recognized at law and such a person is granted some rights, the functions of a customary heir need to be clarified if that office is to be shielded from abuse. Currently, there are a number of conflicts that arise from the subjugation of the functions and roles of the administrator by the customary heir. In other cases, the customary heir takes over the property of the deceased as his property in total disregard of the entitlements and wishes of other beneficiaries under the will. Unless the role of the customary heir is clarified, the distribution scheme will not be effectively complied with.

Recommendation

In light of the above, the Committee recommends as follows-

(a) The role of customary heir should be maintained as it is a central tenet of Succession practice within most cultures within Uganda. For the avoidance of doubt, the law should stipulate clearly that a customary heir is a ceremonial role that does not entitle one to administer the estate unless otherwise elected by law.

(b) The government should study and make provisions for distribution of property of persons who are cohabiting.

(c) The law should make provision for fair distribution of an intestate in the case of polygamous unions;

(d) Persons professing the Islamic faith be exempted from the provisions of section 27 and special provision is made for distribution of their property based on the Quran and hadith with the option for parties under Islam who may wish to opt out of Sharia practice to apply the succession Act.

(e) In designing the distribution scheme,

(i) Prioritize the surviving spouse as the chief beneficiary of an intestate's estate. Children should follow in order of priority, and where there is no spouse or children or where there is a residue available after the surviving spouse or children have obtained their entitlement, then other dependants can take;

(ii) ensure that the provisions do not promote discrimination on the basis of gender especially in regard to subjecting a widow's entitlement to remarriage;

(iii) ensure that the personal effects and household chattels are left to the surviving spouse and children of the deceased;

(iv) consider revisiting and doing away with the entitlement of the categories provided for in the former distribution schedule so that the beneficiaries under the estate of a deceased person have a say in the way the property of the deceased is distributed and the distribution scheme should only be reverted to in case of disagreement;

In that regard therefore, the Committee recommends for the adoption of the distribution scheme prescribed in clause 13 of the 2018 Bill with an amendment as proposed in paragraph (d) of clause 7 of the 2019 Bill.

4.1.5. Distribution of property among members of the same beneficiary/class

Clause 14 of the 2018 Bill and clause 8 of the 2019 Bill propose to amend section 28 of the Succession Act.

Section 28 of the succession Act requires the equal distribution of property among members of the same class.

The 2018 Bill proposes to amend section 28 by imposing an obligation on the person distributing to members of the same class to take into account the circumstances of each case including the age, contribution, duration of marriage or degree of dependency of the beneficiary. The Bill proposes to grant a person aggrieved by the distribution to appeal to court.

On its part, the 2019 Bill proposes to amend sub section (2) of section 28 to allow a lineal descendant to take a portion of what that person's parent would be entitled to, had he or she predeceased the deceased person.

The Committee has examined the proposals in the 2018 and 2019 Bills and found them to be necessary and should be supported. The Committee notes that both proposals close a lacuna in section 28 which had required that all beneficiaries get an equal share of the

estate. This was not practical since the different beneficiaries have their own uniqueness which might entitle one beneficiary to benefit more compared to the other.

The Committee notes that section 28 did not take into account the individual contribution in acquiring and keeping the property that is being distributed, meaning that granting them equal rights during distribution does not take into account their unique contribution to the property. The Committee observes that the unfairness of the provision is exhibited by equating a surviving spouse to a dependent relative or lineal descendant who might not have contributed to the acquisition of the property but is entitled equally during distribution of the property of the estate. Therefore the amendments proposed in both 2018 and 2019 Bills will bring equity and fairness in the distribution of property of the deceased person.

Recommendation

The Committee recommends that the amendments proposed in clause Clause 14 of the 2018 Bill and clause 8 of the 2019 Bill be adopted and merged into one amendment to section 28.

4.1.6. Separation and its effect on inheritance of a spouse

Clause 14 of the 2018 Bill and clause 8 of the 2019 Bill propose to amend section 30 of the Succession Act. Section 30 of the succession Act bars a spouse who has separated from a deceased person at the time of death from inheriting from that estate.

The 2019 Bill proposes to limit the application where it's the deceased intestate who separated from the surviving spouse at the time of his or her death and directs that in such a situation, the estate is considered as if there was no separation. The Bill also proposes to limit when a person may apply to court for an order excluding the applicant from the application of the section. The Bill proposes that a person may only apply within six months from the death of the spouse and not any time before death as the current

provision provides. The 2018 Bill proposes to amend section 30 by expanding the provision to include both spouses and to allow a spouse to apply to court to be excluded from the application of the section.

The proposed amendment will have the effect of allowing a surviving spouse to benefit from the estate of a deceased person where the deceased person is the one that separated from the surviving spouse.

It is the committee's considered opinion that the proposed amendments in both Bills be supported since it deals with one of the most common challenges that faced the implementation of section 30.

Section 30 has always been criticized for not taking into account or considering as material, the spouse at whose instance the separation occurred. The Committee notes that separation may be actual, where a person abandons the other spouse, or constructive, where a spouse is forced, due to torture or actions of the other spouse, to abandon the matrimonial home. Section 30 as currently is doesn't take into account constructive abandonment, thereby punishing the victim of the abandonment by preventing him or her from benefiting from the estate of the other spouse.

The Committee observes that the amendment to section 30 as proposed in both Bills does not go far enough to bring clarity to what separation should be considered in excluding a person from benefiting from the estate of a deceased spouse.

Currently, section 30 is intended to ensure that a surviving spouse benefits from the estate of the deceased person only where he or she was, at the time of death of the other spouse, a member of the same household. That principle is based on the fact that a person can only benefit from the estate of a deceased intestate only where such a person is married to the deceased or is related to the deceased by blood.

Whereas separation is not a ground for divorce or indeed does not extinguish a marriage, section 30 currently prohibits a person from benefiting from the estate, irrespective of the fact that a marriage still subsists between the deceased and the surviving spouse. By

section 30, separation would in itself extinguish marriage whereas that is not true as far as the current laws on divorce are concerned. Under the Divorce Act, one of the grounds upon which a marriage may be ended by court is desertion, wherein, a spouse deserts, without reasonable excuse, for two years or upwards, the company of the other spouse.

Since separation in its self does not end a marriage, there is no justifiable reason why a spouse who separates from the deceased is precluded from benefiting from the estate of a deceased person since there still exists a marriage between the two people. Indeed, the Committee observes that Section 30 is no longer an international best practice since countries such as the United Kingdom have moved away from the strict nature akin to section 30 and now require a judicially recognized separation before a person can be barred from benefiting from the estate of the deceased. This means that a surviving spouse is only barred from benefiting from the estate of the deceased only if the parties have undergone a formal process such as judicial separation or the actual termination of the marriage through divorce.

Furthermore, the section is too broad since it does not have a minimum number of days before which a person will not be taken to have separated. For instance, section 30 currently bars a person from benefiting if such a person has separated from the other spouse, irrespective of the time. This does not take into account the normal wear and tear of marriage wherein, parties may separate for a time to allow a cooling off of the issues causing separation. This is unfair and does not take into account the duration of separation since it is more concerned with the act of separation and not the duration.

The unfairness in section 30 was exposed in the case of *Nyendwoha Lucy vs. Nyendwoha Robert and Anr HCCA 1068/83*, where the wife left the husband on account of insecurity on 21st May 1982, the husband was subsequently gunned down on 2nd June 1982. Court held that such separation (as in section 30) did not mean any physical separation for a given reason and barred the wife from benefiting from the estate of the deceased husband.

The Committee further observes that section 30 does not take into account the contribution the separating spouse had made to the property of the deceased prior to the separation from which he or she is prohibited to inherit.

Recommendation

From the foregoing, the Committee recommends that-

(a) Section 30 is amended to recognize only judicial separation and separation recognized under customary law as the only bar to spouse from benefiting from the estate of a deceased spouse who at the time of death, was separated from the surviving spouse.

(b) Also require that a surviving spouse should not have remarried to another person after separation.

(c) A spouse's contribution to the property constituting the estate of the deceased should be taken into account, irrespective of the separation.

(d) The proposal contained in both Bills should be adopted and harmonized into one provision.

4.1.7. Persons capable of making wills

Clause 18 of the Bill of 2018 and clause 13 of the Bill of 2019 propose to amend section 36 of the Succession Act.

Section 36 of the Succession Act outlines persons who can make wills. This section empowers a person of sound mind to make a will disposing of his or her property. The provision further grants a married woman the right to dispose of his or her property which she could alienate by her own act during her life. The provision grants the person who is insane or of unsound mind the right to make a will during periods where he or she is lucid.

The 2018 Bill proposes, in clause 18 to, among others, amend section 36 of the Bill by deleting the subsection that empowered married women to make wills and to dispose of property which they could alienate during their life time. The Bill further proposes to the reserve the principal residential property or any other residential property from being disposed of by will by either spouses and reserves it for the welfare of the testator's spouse and lineal descendants.

On its part, clause 13 of the 2019 Bill proposes to amend section 36 of the Bill to allow the making of a will by any person other than a minor, to allow a married woman to dispose of property which she would be entitled to dispose of during her life or which she is entitled to by a will of testator and change the nomenclature used in the Bill, from "is ordinarily insane" to "has mental illness."

Whereas the Committee is in agreement that section 36 is in need of modernization in terms of the nomenclature used, the Committee notes that the proposal in the 2019 Bill to specifically allow a married woman to dispose of property by will, without giving the same right to a married man, may be interpreted to mean that this right is only applicable to a married woman exclusively, thereby affecting the proprietary rights of married men as guaranteed in Article 26 of the Constitution. Furthermore, the proposal will have the unintended consequence of making every property owned by a married man matrimonial property but that owned by a woman not form part of matrimonial property.

The Committee is of the considered view that spouses should, irrespective of their gender, have the right to hold property individually and dispose of it by will as the spouse deems fit.

Recommendation

The Committee therefore recommends that-

(a) The proposals contained in the 2018 and 2019 Bills should be adopted and merged into one amendment;

(b) In accordance with Article 21(1) of the Constitution, the right to hold and dispose of property for spouses individually through a will should apply to all spouses, irrespective of gender.

4.1.8. Power of court to order maintenance of spouse and lineal descendants

Clause 19 of the 2018 Bill and clause 15 of the 2019 Bill propose to amend section 38 of the Succession Act.

Section 38 makes provision for court to order payment out of the estate of the deceased person for maintenance of dependents where a person makes a will and does not make provision for the maintenance of dependent relatives.

The 2018 Bill propose to amend section 38 to expand the provision to include spouse, lineal descendant and dependent relatives. The Bill also proposes to include in the grounds upon which maintenance of a spouse may be terminated by the estate of the deceased to include misuse of the principal or other residential property. The Bill also proposes to expand the provision to include all children of the deceased person irrespective of gender.

On its part, the 2019 Bill proposes to include spouse, lineal descendant and dependent relatives in the provision and to limit the grant of maintenance to include spouse, lineal descendant and dependent relatives in specified circumstances.

The Committee welcomes the amendment to section 38 in the terms proposed in both Bills since it is intended to remove an absurdity in the law wherein, the law had empowered court to alter a will to provide for the maintenance of a dependent relative and not a spouse or children of a deceased person. The provision is absurd since it assumed that a person has an obligation to provide maintenance for his or her relatives and not his or her own children or spouse.

The Committee however notes that whereas the proposal to expand the provision to include spouse and lineal descendant should be supported, the proposed amendments in both Bills need to be refined. For instance, when it comes to a spouse, the Bills propose that maintenance is terminated when the spouse remarries or misuses the principal residential holding.

It is the Committee's considered opinion that the spouse's right to maintenance from the estate of the deceased person has nothing to do with his or her occupancy of the principal residential holding. The Committee notes that the spouse has, in most cases, contributed or is taken to have contributed to the acquisition of the residential holding and should not therefore be taken into account in determining whether the spouse should receive or continue receiving maintenance from the estate or not.

On the issue of the maintenance of persons after 18 years of age, it is unfair to stop maintaining a person's child merely because they have reached the age of 18 years. The reality is that parents still take care of their children even after they clock 18 years of age so, the proposal to stop at 18 is not in line with the reality in most cases since children tend to stay under the care of their parents.

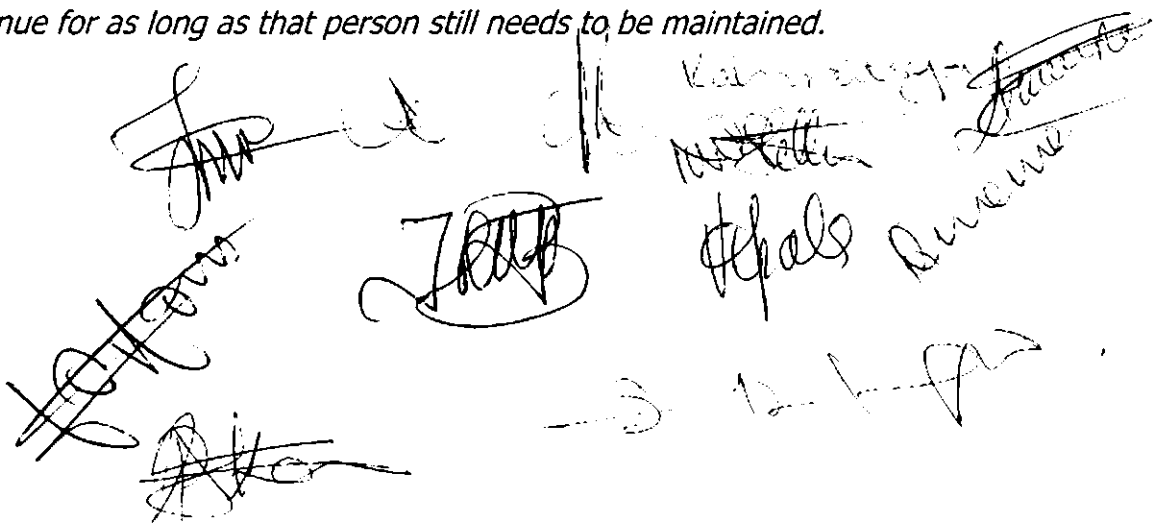
Recommendation

The Committee recommends that section 38 be expanded to provide for the maintenance of a spouse and lineal descendants of a deceased person.

The Committee further recommends that the-

(a) Maintenance of a spouse should only be terminated only if he or she remarries.

(b) Maintenance of a lineal descendant of a person should not stop at 18 years but should continue for as long as that person still needs to be maintained.



4.1.9. Guardianship of children of a deceased person

Clauses 20, 21, 22, 23 and 24 of the 2018 Bill and 16, 17, 18 and 19 of the 2019 Bill propose to amend sections 43, 44, 45 and 46, provisions that relate to the appointment, powers and removal of a guardian.

Both Bills propose to-

(a) expand section 43 to grant both parents powers to appoint a guardian to a minor and also prescribes the circumstances in which a testamentary guardian may be appointed;
(b) amend section 44 by limiting the persons who have priority to be appointed guardians, being, the surviving parents and a person appointed by the surviving parent;
(c) amend section 45 by removing the reference to magistrate court grade III as the court of competent jurisdiction to grant guardianship;
(d) amend section 46 by defining the powers that can be exercised by a guardian;

The Committee notes that the above sections of the Succession Act relating to guardianship are in need of amendment to reflect the current position of the law and to reflect changes in government policy. For instance, the Committee notes that some of the provisions relating to guardianship are not in harmony with the Constitution since they only make provision for male persons to the exclusion of female persons.

The Committee further notes that sections 43, 44 and 45 of the succession Act were affected by the amendments made to the Children Act, as prescribed in part VIA of the Children Act. Part VIA of the Children Act specifically-

(a) Prohibits the grant of guardianship to a person other than the citizen of Uganda (see section 43A);

(b) requires an application for legal guardianship to be made to the High Court, by a person above 18 years; (see section 43B)

(c) Allows family members of a child to appoint a customary guardian for a child in accordance with their custom, culture or tradition. (see section 43C)

(d) provides for the appointment of a guardian by agreement or deed by the parents of a child;

(e) provides the conditions upon which guardianship may be granted by court;

(f) revocation of guardianship order; and

(g) Registration of guardian order.

It is the considered opinion of the Committee that sections 43, 44, 45 and 46 are no longer good law as far as the appointment, powers and removal of a guardian of a child is concerned. For instance, whereas the Children Act limits the appointment of a guardian to a Ugandan Citizen, section 43 and 44 allow the appointment of any person guardian of a child. Furthermore, whereas the Children Act has bestowed onto the High Court, the jurisdiction over the grant of guardianship as well as the revocation of the same, section 45 of the Succession Act empowers a magistrate Court to grant and revoke guardianship orders.

The Committee has also examined the Bills and finds some of the proposals to be contrary to the Children Act. For instance the 2019 Bill proposes to amend section 45 and allow guardianship to be granted by a court that granted probate. This amendment assumes that guardianship orders are made during the same process of granting probate yet this is not true since the provision in section 45 applies to both testate and intestate succession. Furthermore, this provision is contrary to the provisions of the Children Act which restricted the grant of guardianship to be exclusively made by the High Court.

The Committee observes that there is need to harmonize the provisions relating to guardianship in the succession Act with those in the Children Act in order to have a clear law book and to prevent the succession Act from being used to circumvent the strict

provisions of the Children Act which were enacted to guard against abuse of guardianship processes.

Recommendation

In light of the above, the committee recommends that the proposed amendments to sections 43, 44, 45 and 46 should be harmonized with the provisions of Part VIA of the Children Act.

4.1.10. Implied inclusion of illegitimate and adopted children in a will

Clause 28 of the 2018 Bill and clause 22 of the 2019 Bill propose to amend section 87 of the Succession Act.

Section 87 of the Succession Act is to the effect that in the absence of any intimation to the contrary in the will, "child", "son" or "daughter" or any word which expresses those relationships is to be understood as including an illegitimate child and an adopted child.

The 2018 Bill proposes to delete section 87 in its entirety while the 2019 Bill proposes to amend section 87 of the Succession Act by removing the matters that make the provision that create a distinction between legitimate and illegitimate children of a deceased person.

The Committee notes that section 87 of the Succession Act is one of those sections that need to be harmonised with the decision of court in the cases of *Kabali Vs Kajubi* and *law and advocacy for women in Uganda Vs Ag.* These cases struck down provisions which had the effect of creating a distinction based on gender or marital status of the parents of a child.

The Committee however disagrees with the proposal to contained in the 2019 wherein the Bill proposes to replace the word "illegitimate child" with "any, child, son or daughter whom the deceased acknowledges as his or her child, son or daughter, as the case may be, whether in his or her life time or in the will".

The Committee observes that the proposal will create practical challenges if a parent does not acknowledge his or her child. The amendment appears to suggest that the only legitimate children are those children who are acknowledged by the parent yet it's judicially recognised that parents at times refuse to acknowledge their children notwithstanding that they are the real or putative parents of those children. This provision will therefore be abused.

The Committee also disagrees with the amendment proposed in the 2018 Bill since the deletion of section 87 will leave a lacuna in the law as to what amounts to children of a deceased in a will, especially were the deceased person merely makes reference to his or her children in the will without enumerating the names of the children he or she is referring to. The deletion of the section 87 might result in children adopted or begotten by a deceased person outside wedlock to be prevented from benefiting from the estate of a deceased person, especially where a person reads a will with bad intentions or due to application of cultural believes which may not recognise such children as children of the deceased person.

Recommendation

In light of above, the Committee recommends that section 87 should be retained in the Succession Act and should instead be amended to remove the matters that make the provision unattainable at law.

4.1.11. Property transferable by gift made in contemplation of death

Clause 29 of the 2018 Bill and clause 23 of the 2019 Bill make provision for the amendment of section 179 of the Succession Act.

Section 179 of the Succession Act makes provision for property transferable by gift made in contemplation of death and allows a man to dispose, by gift made in contemplation of death, of any movable property which he could dispose of by will.

The 2018 Bill proposes to amend section 179 of the Bill by-

(a) Excluding the residential holding and chattels therein from being transferred by way of a gift in contemplation of death;
(b) Defines when a gift is made in contemplation of death;
(c) Allows for the redemption of a gift made in contemplation of death;

The 2019 Bill on its part proposes to delete section 179 of the Succession Act.

Section 179 of the Succession Act grants a right to a person the right to transfer property to any person in contemplation of death.

The Committee has examined section 179 and is agreeable that it is in need of amendment since section 179 currently discriminates against women in so far as reserving the application of that section to men only. The Committee also notes that this section was affected by the decision of Court in the case of *law and advocacy for women in Uganda Vs Ag.*

The Committee objects to the proposed amendment contained in the 2019 Bill since it will unreasonably affect the enjoyment of the right to property by a person guaranteed under Article 26 and may be changed for infringing on Article 21 (1) of the Constitution. It should be noted that the Constitution, in Article 26, recognizes the right of a person to own and deal with his or her property as he or she deems fit. The deletion of section 179 as proposed in the 2019 Bill will therefore bar a person who is contemplating death to transfer his or her property yet other persons are free to transfer their property by way of gift. If the amendment proposed in the 2019 Bill is adopted, the law will not be applying equally as required in Article 21 (1) of the Constitution.

It is the Committee's considered opinion that section 179 be amended as proposed in the 2018 Bill since it recognizes the right to dispose of property in all circumstances, even in contemplation of death as well as subjecting it to section 26 and 29, meaning that property that constitute the matrimonial property are exempted from disposal.

The Committee however notes that it is difficult to prove that a person delivered the property without some form of collaboration from a third party. In this regard therefore,

the Committee proposes that the transfer should be effective only were it is witnessed by an independent person.

Recommendation

In light of the above, the Committee recommends that the proposal made by the 2019 Bill is rejected and instead, the proposal in the 2018 Bill is adopted with an amendment to subject it to sections 26, 29 and 36 (6)".

Equally, the donor may redeem the property within six month of the recovery.

4.1.12. Administration during minority of sole executor or residuary legatee

Clause 35 of the 2018 Bill and clause 30 of the 2019 Bill propose to amend section 215 of the Succession Act.

Section 215 deals with Administration during minority of sole executor or residuary legatee and is to the effect that when a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of the minor or to such other person as the court shall think fit, until the minor shall have completed the age of twenty-one years, at which period, and not before, probate of the will shall be granted to him or her.

The 2019 Bill proposes to delete section 215 while the 2018 Bill proposes to change the nomenclature from "minor" to "child."

The Committee observes that section 215 deals with administration of property during minority and it allows-

(a) a minor to be appointed an executor in a will;
(b) a guardian of a minor to be granted letters or probate to administer the estate on behalf of a minor;
(c) the minor to be granted letters of probate upon such a person attaining the age majority.

The Committee observes that section 215 is in need of amendment since it currently conflicts with section 184 of the Succession Act. Section 184 of the Succession Act bars a person from being appointed executor if he or she is a minor. Section 215 conflicts with section 184 of the Succession Act in so far as allowing the appointment of a minor as executor in contravention of the specific provisions which bars such appointment or grant.

Whereas section 215 conflicts with section 184, the committee is of the considered opinion that the deletion of section 215 as proposed in the 2019 Bill will create a lacuna in law since the law will be silent as to when a minor sole residue legatee or sole beneficiary may be granted letters or probate to administer his or her property. The provision also serves the purpose of directing court to whom letters or probate can be granted in case of a minor beneficiary. The Committee therefore notes that apart from the words "sole executor" the other provisions of the law are lawful since the allow the appointment of the guardian of a child as administrator until the child attains majority age, then probate is granted to him.

The Committee there rejects the proposed amendment by the 2019 Bill in favour of the amendment proposed by the 2018 Bill.

Recommendation

In light of the above, the Committee recommends that –

(a) clause 30 of the 2019 Bill is rejected;

(b) section 215 is amended as proposed in clause 35 of the 2018 Bill, albeit with the following amendments-

- *Delete subsection (2)*
- *The provision should only apply in circumstances were the child is the sole beneficiary or sole residue legatee of the estate of the deceased person,*

- *Probate or Letters of administration to be granted to the guardian of the child until the sole beneficiary or sole legatee attains the age of majority, at which point letters or probate is granted to that person;*

4.1.13. Revocation or annulment of letters of administration or probate for just cause

Clause 36 of the 2018 Bill and clause 32 of the 2019 Bill propose to amend section 234 of the succession Act.

Section 234 of the succession Act allows the revocation of letters of administration or probate for just cause.

The 2018 Bill proposes to amend section 234 by including, among the grounds for revocation of letters or probate the ground that the person to whom the grant was made has mismanaged the estate or not complied with the conditions of the grant. On its part, the 2019 Bill proposes to amend section 234 by inserting new subsections (3) and (4) to create an offence on a person against whom letters of administration are cancelled for just cause. The provision further proposes to impose an obligation on a person who, while being administrator, letters of administration granted to him or her are cancelled for just cause, to make good any loss or damage caused to the estate.

The Committee observes that section 234 of the Succession Act currently prescribes the grounds upon which letters of administration may be cancelled. The provision currently does not provide for a penalty against a person when letters of administration are cancelled. The Committee has examined the proposals contained in both Bills and is of the considered opinion that the proposals will pose some implementation challenges and are unfair since they propose to punish a person for conduct he or she did not have control over.

For instance, the Committee observes that section 234 lists about 5 grounds under which court may cancel letters of administration. Some of the grounds are based on the conduct of the person to whom letters of administration are granted to. These include grounds

listed in-paragraphs (b) and (e) which provide that letters of administration may be terminated if -

> "(b) that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case;
>
> "(e) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with Part XXXIV of this Act, or has exhibited under that Part an inventory or account which is untrue in a material respect"

The Committee further observes that there are other grounds which relate to procedures for which the person to whom letters of administration are granted might not have participated in breaching. These include a ground listed in paragraph (a) which require that letters of administration may be terminated is the proceedings to obtain the grant were defective in substance.

There are also other grounds which relate to points of law which the person to whom letters of administration are granted might not have put across. For instance paragraph (c) which requires the termination of letters of administration where the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though the allegation was made in ignorance or inadvertently.

There are also other grounds where there is criminal conduct. For instance, paragraph (d) allows the cancelling of letters of administration in case the grant becomes useless and inoperative through circumstances. By this provision, a grant may be inoperative or useless if there is no property to administer or if there are no beneficiaries. In such a situation the Bill proposes that if court cancels the letters for having become inoperative or useless, then the person to whom it was granted should be punished. This would be absurd.

The proposal therefore to criminalise all the conduct prescribed in subsection 234 (2) may result in punishing a person to whom letters of administration are granted for conduct he

or she did not commit. It might also be challenged for infringing Article 28 (12) since the conduct constituting the offence, including the ingredients of the offence are incapable of exact definition. In light of the above, the proposal to create an offence as proposed in 2019 Bill should be rethought.

The Committee however supports the amendment proposed as contained in the 2018 Bill since the conduct it proposes include a ground for determination of letters of administration is rampant and yet it is not a ground upon which letters of administration may be determined.

Recommendations

In light of the above, the Committee recommends that-

(a) the proposed amendment to section 234 as proposed in clause 36 of the 2018 Bill be adopted.

(b) the amendment to section 234 as proposed in the 2019 Bill be adopted with the modification that the proposed subsection (3) only applies to paragraphs (b), (e), and the proposed paragraph (f).

4.1.14. Validity of a grant of Probate and Letters of Administration

Clause 38 and 39 of the 2018 Bill and clause 35 and 36 of the 2019 Bill propose to amend section 258 and 259 of the Succession Act.

Sections 258 and 259 of the Succession Act allow court to grant probate and letters of administration.

Administration of an estate refers to the management of the affairs and property of the deceased person. This is done in order to make sure that estates are looked after properly and that those persons who are entitled to receive shares from them do not suffer hardships because of mismanagement or dishonesty.

The way a person dies, whether testate or intestate, determines the way of dealing with his or her estate. There are different ways of management of a deceased person's estate viz-vie; management by probate, management by Letters of Administration, management by the Administrator General, management by Public Trustee and, management by a trust corporation among others. There are also cases where a person disappears and his or her whereabouts are not known or a person becomes of unsound mind, in such situations there is legislation in place detailing what should be done. This section deals with these different ways of management of a deceased person's estate and issues arising there under that may necessitate reform of the law.

If a person dies leaving a will, the person named in the will looks after the wishes of the dead person. However, such person cannot do this until he or she has lodged the will with the court and received a document called a 'probate'. This is his or her legal evidence of his or her right to look after the dead person's last wishes. This legal evidence is in form of a certificate signed and sealed by a competent court. This person is called an 'executor'. The executor can be a natural person or a legal person or can be a public office e.g. Administrator General.

Where a person makes a will or leaves an invalid will, the property is to be distributed in accordance with the scheme of arrangement found in the Succession Act. Prior to the distribution, an application for Letters of Administration is required to be made to court.

Letters of Administration gives powers to whoever holds them to deal with the estate of the intestate as if he/she was a personal representative of the deceased. According to the Act, the person who is entitled to the biggest share in the property of the dead person would be appointed by court to look after the administration and distribution of the property. Upon appointment of an administrator or executor, the person is required to file with court, an inventory of the affairs of their office, within six months of grant.

The Committee notes that the Bills propose to amend section 258 and 259 by prescribing the validity period of a grant of probate and letters. The 2018 Bill proposes that probate

is valid for a period of 3 years while the 2019 Bill propose that the validity period is 2 years. Both Bills propose to grant court powers to extend the validity period.

The Committee has examined both proposals and is of the considered opinion that prescribing a validity period may not deal with the mischief the amendment intends to deal with. The Committee notes that currently the law does not prescribe the duration within which a person who is granted probate must exercise the powers authorised by the grant.

The Committee further notes that since the Succession Act gives, without sufficient checks, a lot of powers to the administrator or executor by vesting all property in their hands yet such powers can easily be abused to the detriment of the beneficiaries, there is need to protect the estate of the deceased from abuse by the administrator or executor.

The Committee is aware that many a times, persons to whom probate or letters are granted have abused their powers by unreasonably holding on to the office of executor or administrator to the detriment of the estate and the beneficiaries of the estate and therefore, the proposals in the Bill are intended to ensure that when court appoints an administrator or grants probate to a person, the person so granted undertakes their duties within a specified time period.

The Committee is of the considered opinion that prescribing a validity period will not remedy the mischief the amendment proposes to cure since a validity period does not amount to an obligation to exercise the powers of the grant within the period of validity.

The Committee is also aware that there are instances where the prescription of a validity period will do more harm than good especially in estates were the beneficiaries are persons below the age of majority or where for any reason, the beneficiaries cannot administer their own property. In such a situation the expiry of the grant will result in additional costs on the estate to renew the validity of the probate or letters of administration especially where the estate is complex or where there are minor children. This will expose the estate to additional costs thereby eroding the beneficiaries' legacy.

The Committee is aware that since the role of executors or administrators is usually limited to collecting, getting in and receiving the estate and doing acts necessary for its preservation, the lapsing of the probate or letters within 3 years from the date of grant will expose the estate to abuse, by allowing a person to hold onto the estate of the deceased for 3 years instead of distributing the estate expeditiously

One way of protecting the estate from abuse is by imposing a duty of care on the executor or administrator. The other way is to impose a statutory obligation on the executor or administrator to administer the estate within a defined period of time, like three years and to impose grounds upon which the administration or execution of the estate may be extended.

The Committee observes that whereas there is need to limit the duration of execution so that a person executes the estate in the shortest time possible rather than holding onto the estate indefinitely, the easier thing to do is to impose a duration within which a person may execute the estate of the deceased rather than imposing a validity period as proposed in both Bills.

Recommendations

In light of the above, the Committee recommends that-

(a) instead of prescribing a validity period for letters or probate, the provision should impose an obligation on the administer or executor to comply with the duties of those offices within 3 years from the date of grant.

(b) the provision should not apply to estates that have minor children, estates where the sole beneficiary is a minor or estates administered by the administrator General.

(c) the period within which to execute or administer the estate should be limited to 3 years so that a person is given enough time to collect and distribute the property of the estate.

(d) The grounds under which court may extend the period should be specified and limited.

(e) The provision should specifically impose a duty of care on the executor or administrator for his or her actions.

4.1.15. Disposal of property by executor or administrator

Clause 42 of the 2018 Bill and clause 38 of the 2019 Bill propose to amend section 270 of the Succession Act.

Section 270 of the Succession Act deals with disposal of property belonging to the estate by an executor or administrator and empowers an executor or administrator to dispose of the property of the deceased, either wholly or in part, in such manner as he or she may think fit, subject to section 26 and the Second Schedule.

The Bills on their part propose to make changes to this section. For instance, the 2018 Bill proposes to require the consent of the surviving spouse and all other beneficiaries of the estate before the executor or administrator disposes of property belonging to the estate. On the other hand, the 2019 Bill proposes to amend section 270 by requiring the consent of the surviving spouse and all other beneficiaries of the estate before the executor or administrator disposes of property belonging to the estate. It also goes further to require the consent, in case of a beneficiary who is a child, to be given by the guardian of the Child md where the guardian is the executor, the authorization to dispose of the property is to be given by court.

The Committee has examined the current legislation on disposal of property by executors and administrators as contained in section 270 and is of the considered opinion that the provision is in need of amendment. In reaching this decision, the Committee observed that currently section 270 gives unfettered discretion to the executor or administrator of an estate to dispose of property belonging to the estate as he or she deems fit.

This unfettered discretion, coupled with the fact that upon grant of probate or letters of administration, all the property of the deceased person is transferred to the executor or administrator to hold for the benefit of the beneficiaries, has meant that executors and administrators have continuously dispose of property belonging to the estate with the prior consent or authorization of the beneficiaries of the estate.

This sad turn of events has affected women, children and other vulnerable members of society where the estate is stripped of its assets and properties, leaving the beneficiaries in a precarious situation, with no provision on their welfare, thereby making them destitute.

The Committee also notes that even after disposing of property, the executor or administrator do not have the obligation to account for the proceeds of the disposal to the beneficiaries. Usually the executor or administrator assumes that such proceeds of sale are his or her property and if he or she is to distribute to the intended beneficiaries in the estate, he or she does so out of courtesy, unjustly enriching him or herself, at the expense of the intended beneficiaries.

The committee is also aware that the law does not provide for mechanisms that would enable the beneficiaries under an estate to stop an intended sale which is not in their favor or even have meaningful remedy. The Committee notes that many at times beneficiaries are not assisted by courts of law or the police to recover their property or the proceeds of sale. Court has always argued that a person cannot interfere with the executor or administrator until after six months have elapsed from the time letters or probate are granted., yet by that time, the estate has been irrecoverably plundered.

The Committee is also aware that cultural beliefs and norms have also negatively affected the application of section 270, especially in places where the cultural norms and traditions allow the appointment of a customary heir. The heir assumes that all the property in the estate belongs to him and goes on to dispose of the property with little regard to the wishes, consent and aspirations of all the other beneficiaries of the estate.

The Committee is therefore of the considered opinion that there is need to amend section 270 to ensure transparency, equity, fairness and accountability in the disposal process and ensure a duty of care is imposed to an executor or administrator to deal with property in a manner that ensures that-

(a) the sale is beneficial to the estate and the beneficiaries of the estate;
(b) there is accountability to the estate for the proceeds of sale, and
(c) the need to get value for money;

The Committee further observes that the provision should also ensure specific and qualified consent of the beneficiaries of the estate especially that of the surviving spouse and lineal descendants is sought and granted prior to the disposal of the property of the estate.

On the proposals to amend section 270 as proposed by the Bills, the Committee observes that whereas both Bills proposed to require the consent of the spouse and other beneficiaries in the estate to the proposed disposal of property belonging to the estate, the provisions do not go far enough to remedy the situation described above. For instance, there is no there is no obligation on the executor or administrator to ensure transparency, equity, fairness and accountability in the disposal process. Furthermore, the provisions do not impose a duty of care on the executor or administrator to deal with property in a manner that ensures that-

(a) the sale is beneficial to the estate and the beneficiaries of the estate;
(b) there is accountability to the estate for the proceeds of sale, and
(c) the need to get value for money;

Recommendation

In light of the above, the Committee recommends that clause 38 of the 2019 is adopted instead of clause 42 of the 2018 Bill albeit with the following amendments-

i. *the disposal should be beneficial to the estate and the beneficiaries,*
ii. *the disposal should be necessary to cater for the basic needs of the persons entitled to benefit under the estate;*
iii. *the disposal should recognize the property rights of the surviving spouse,*
iv. *the executor or administrator should account for the proceeds of sale;*
v. *the sale is subject to sections 26 and 36 (6) which exempts the residential holding from the same.*
vi. *The sale is on market value terms;*
vii. *The disposal to be void ab initio if not carried out in a transparent manner;*

The Committee also recommends that for completeness, Repeal section 271 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.

4.1.16. Powers of several executors or administrators

Clause 43 of the 2018 Bill and clause 39 of the 2019 Bill propose to amend section 272 of the succession Act.

Section 272 of the Succession Act deals with the exercise of powers where there are more than one executors and it requires that when there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administration.

The Bills on the other hand propose to amend section 272 of the Succession Act to require that where there are several executors, or administrators, the powers granted to them, shall be exercised jointly.

The Committee observes that a person is free to appoint any number of executors to execute the estate and when this happens, the Succession Act, in section 185, allows court to grant probate to all of them simultaneously or at different times.

The Committee further observes that once the grant has been made to several executors, the issue of how they operate and carry out their functions becomes crucial. Section 272 then comes into play and prescribes that these exercise their powers jointly by those that proved the will and were granted probate by Court.

The Bills are all proposing to change this by requiring that where there are more than one executor or administrator, the powers of those administrators or executors are to be carried out by all the executors or administrators jointly.

The Committee has examined the proposal in both Bills and is of the opinion that it is rejected. The Committee has based its opinion on the fact that the proposal by both Bills will create some implementation challenges. The proposals by both Bills assumes that once more than one person has been appointed as executor in the Will, probate can only be granted to all of them jointly. This is impractical since it assumes that all of them will be interested in executing the will and administer the estate yet it is known that a person may be appointed but does not take up the appointment through applying for probate within the prescribed time. This will cause a delay in executing the estate since probate can only be granted if all of those appointed by the will of a deceased person have applied.

Section 272 currently requires that where more than one person is appointed executor, probate is not granted to all of them that have been appointed, but to only those that have applied to court and proved the will. This means that if several people are appointed executor in a will but only one applies to court for probate within the time prescribed, probate is not granted to all of those appointed in the will but to only that person who has applied for the grant.

The proposals in the Bills will also have the effect of interfering with the discretion of the judge in granting of probate or letters, thereby resulting in making the application process for probate superfluous. The grant of probate or letters is an exercise of judicial discretion as prescribed in section 258 and 259 wherein, the Succession Act allows a judge to grant letters or probate only where it appears to a judge of the High Court or a district delegate that probate or letters should be granted. The proposal that letters or probate be granted

to all means that the judge cannot exercise his or her discretion to remove any person from the list of those appointed if the judge thinks such a person is not a fit and proper person to be granted letters or probate to. The proposal will also mean that where several executors or administrators are appointed, all of them do not have to apply for probate or letters. If one of them makes an application and a grant is made, then all those so appointed can exercise those powers without a grant being specifically made to them by court.

The proposals, especially which is contained in the 2019 Bill, will have an effect on section 273 of the Succession Act. Section 273 of the succession Act is to the effect that upon the death of one or more of several executors or administrators, all the powers of the office become vested in the survivors or survivor. Section 273 assumes the principle of survivorship and allows an executor or administrator to continue administering the estate of the deceased person and to exercise all the powers of all the other executors or administrators without hindrance. The proposal by the 2019 Bill, especially the requirement for administrators or executors to sign all the documents necessary for the administration of the estate will affect, by implication, section 273, since upon death of one or several executors or administrators, this is not possible. This will then result in additional costs to the estate to apply to replace the dead executors or administrator, thereby consuming time and resources to the detriment of the beneficiaries under the will.

Recommendation

In light of the above, the committee recommends that the amendment to section 272 as proposed in clause 43 of the 2018 Bill and clause 39 of the 2019 Bill be rejected.

4.1.17. Procedure where a person leaves property outside Uganda

Clause 48 of the 2018 Bill and clause 40 of the 2019 Bill proposes to amend section 331 of the Succession Act.

Section 331 requires a person applying to the High Court for a grant of probate or letters of administration shall, if at that time or at any time after he or she has reason to believe that the deceased has left property in Tanzania or Kenya, notify the court to that effect.

The 2018 and 2019 Bills propose to amend section 331 of the succession Act by expanding the provision to apply to all countries and not just the countries of Kenya, or Tanzania.

The Committee notes that currently, section 331 is limited in scope since it only applies to the countries of Kenya and Tanzania, yet a Ugandan might have property in other countries which the provision does not apply to. This means that property located in any other country other Kenya and Tanzania does not form part of the estate of a deceased person. This provision therefore needs to be amended to reflect the current situation and keep within the spirit of Article 26 of the Constitution.

Recommendation

In light of the above, the Committee recommends that section 331 of the Succession Act is amended as proposed in clause 40 of the 2019.

4.1.18. Liability of executor or administrator for devastation

Clause 49 of the 2018 Bill and clause 41 of the 2019 Bill seek to amend section 332 of the Succession Act. Section 332 of the Succession Act imposes liability on an executor or administrator for devastation and it requires that when an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he or she is liable to make good the loss or damage so occasioned.

On the other hand, the Bills propose to amend section 332 by imposing criminal sanction against a person who causes loss or damage to the estate of a deceased person.

The Committee notes that currently, section 332 of the Succession Act obligates an administrator who damages or causes loss or misapplies the estate of a deceased person to make good the loss caused without imposing criminal sanctions against the person

who causes the loss or damage to the estate. The Committee further notes that in order to enhance the effectiveness of this section, there is need to impose criminal liability against persons who misapplies the estate of a deceased person or proceeds from the disposition of the estate, or subjects it to loss or damage.

The Committee notes that incidents of administrators or executors acting in a manner that is detrimental to the estate have caused untold plight and suffering. The Committee notes that the law does not effectively deal with such conduct since it does not criminalise it, and does not effectively define what amounts to devastation as used in section 332 and the provision is limited in scope since it only deals with misapplication of the estate and does not include misapplication of proceeds of disposal of property belonging to the estate or general loss arising from the actions and omissions of actions of the executor and administrator. Therefore the proposal to amend section 332 to impose criminal liability on an administrator or executor who causes loss or damage to the estate of a deceased person, in addition to the obligation to make good the loss caused is welcome and should be supported.

The Committee however notes that whereas both Bills in principle propose to impose criminal liability, they are divergent on the penalty to be prescribed. Indeed, whereas the 2018 Bill proposes to impose a penalty of imprisonment for a period not exceeding 7 years or a fine of ten thousand currency points, the 2019 Bill proposes a penalty of imprisonment of three years or a fine not exceeding 72 currency points. The Committee is of the considered opinion that the penalty prescribed in the 2018 Bill is too harsh and not justified if one considers the offence committed.

Furthermore, the Committee notes that the proposals contained in the 2018 Bill are broader when compared to the proposals made in the 2019 Bill. For instance, the 2018 Bill proposes to criminalise the misapplication of the estate of the deceased person or the proceeds from the disposition of the estate or subjects it to loss or damage, while the 2019 Bill criminalizes the misapplication of the deceased estate, subjects it to loss or damage, leaving out proceeds from the disposal of property.

The Committee further notes that the Bill and the current provisions tend to protect the estate from loss or damage and not individual beneficiaries under the estate. The Committee observes that it is possible to cause loss or damage to an individual beneficiary and not the entire estate of a deceased person. This begs the question as to whether an administrator or executor has a duty of care towards an individual beneficiary of the estate of a deceased person, thereby making him or her liable for the loss occasioned to an individual beneficiary.

Recommendation

In light of the above, the Committee recommends that clause 49 of the 2018 Bill is adopted albeit with the following amendment-

(a) to the prescribed penalty, by substituting the penalty prescribed with three years imprisonment and a fine of 72 currency points and expanding the provision to include executrix;

(b) to include the loss or damage caused to individual beneficiary in addition to the general estate.

4.1.19. Liability of executor or administrator for neglect.

Clause 50 of the 2018 Bill and clause 42 of the 2019 propose to amend section 333 of the succession Act.

Section 333 of the succession Act deals with liability of executor or administrator for neglect and is to the effect that when an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he or she is liable to make good the amount lost.

The Bills on the other hand propose to amend section 333 of the Succession Act in identical order by the imposition of criminal liability on an executor or administrator who neglects the estate of a deceased person.

The Committee observes that section 333 currently does not impose criminal liability on an administrator or executor for neglect although it obligates such a person to make good the loss occasioned to the estate. The committee further notes that section 333 is limited in scope, only applying in circumstances where an administrator or executor neglects to get in any part of the property of the deceased. This means that for an administrator or executor to be liable, he or she should have been negligent in collecting the property belong to the estate and not for any action done negligently.

The Committee is of the considered opinion that in order to enhance the effectiveness of the provision, there is need to punish all actions done negligently since in principle, the core concept of negligence is that people should exercise reasonable care in their actions by taking into account of the potential harm they might cause to the estate or the beneficiaries by their actions or omission.

The Committee also notes that section 333 is limited in scope since it only imposing a duty of care towards the estate and not individual members of the estate.

On the proposals in the Bill, the Committee notes that the Bills differ in the prescription of a penalty. The 2018 Bill proposes a penalty of 1 year term of imprisonment or a penalty of ten thousand currency points while the 2019 Bill proposes a penalty of three year term of imprisonment or a fine not exceeding 72 currency points. The Committee notes that the penalty prescribed in this section should be harmonised with the one proposed in the amendment to section 332 of the Succession.

Recommendation

In light of the above, section 333 of the succession should be amended as proposed in both the 2018 and 2019 Bills albeit with the following amendments-

(a) the prescribed penalty should be three years imprisonment and a fine of 72 currency points;

(b) The provision should include cover all the duties and obligations of the executor or administrator including neglecting to get any part of the property of the deceased person.

(c) The provision should include loss occasioned to the estate as well as to individual beneficiary under the estate.

4.1.20. Surrender of revoked probate or letters of administration.

Clause 52 of the 2018 Bill and clause 43 of the 2019 Bill propose to amend section 335 (2) of the Succession Act. Section 335 (2) currently provides as follows-

> *"(2) If that person wilfully and without reasonable cause omits to deliver up the probate or letters, he or she shall be punished with a fine which may extend to two thousand shillings or with imprisonment for a period not exceeding three months or with both."*

The provision imposes a fine on a person who wilfully and without reasonable cause omits to deliver up the probate or letters when probate or letters of administration is revoked or annulled by court.

On the other hand the Bills propose to amend section 335 (2) by imposing criminal sanctions against a person who wilfully or without reasonable cause omits to deliver probate or letters when revoked and propose, for the case of the 2019 Bill, a term of imprisonment of three years or a fine not exceeding 72 currency points. The 2018 Bill however proposes to allow court to order, in addition to the penalty already prescribed, an obligation on the person to make good the loss or damage occasioned to the estate or beneficiaries.

The Committee has examined section 335 and found that whereas it imposes an obligation on a holder or a person in possession of letters or probate that are revoked or annulled by court to deliver the same to the court that made the grant, the penalty it imposes is not deterrent enough to ensure compliance. The lack of deterrent criminal

sanction meant that people continuously ignore the provision and continue to hold onto revoked letter or probate without any lawful justification. These people cause loss to the estates of deceased persons either by passing off as executors or administrators and carrying transactions that are detrimental to the estate and its beneficiaries. The committee is therefore agreeable in principle that section 335 is need of amendment, specifically to provide for a more deterrent sentence.

The Committee has also examined both the proposals in the Bill and is in agreement with the proposal except that the provision needs to be a strict liability offence as proposed in the 2018 Bill rather than obligating the prosecution to prove that the action or omission of the person who fails to deliver letters or probate upon cancellation is willful or without justifiable reasons as proposed in the 2019 Bill.

The Committee is in agreement with the penalty proposed in the 2019 Bill, being a term of imprisonment for three years or to a fine not exceeding seventy two currency points, or both since it is commensurate with the gravity of the offence.

The Committee is also agrees with the proposal to obligate a person who continues to hold letters or probate when revoked by court to make good the loss occasioned to the estate and beneficiaries in the estate.

Recommendations

In light of the above, the Committee recommends that the proposals contained in clause 52 of the 2018 Bill and clause 43 of the 2019 Bill are merged into one provision which should-

(a) make the provision a strict liability offence;

(b) impose a penalty of imprisonment for a term of three years or to a fine not exceeding seventy two currency points, or both;

(c) make provision for the making good any loss occasioned to the estate and the beneficiaries of the estate.

PART B: PROPOSALS THAT ARE UNIQUE TO THE 2018 BILL

This sub-part will examine the proposals that are unique to the 2018 Bill, examining the legality, effect and effectiveness of each proposal in light of the Constitution, existing public policy, court decisions, other laws and the mischief it intends to cure.

5.2.1. Acquisition of domicile, domicile of a married woman

The 2018 Bill proposes in clauses 5, 6, 7 and 9 to make changes to section 9, 13, 14, 15 and 16 of the succession Act to make changes to the law relating to domicile.

The Bill proposes in clause 5 to amend section 9 to make the provision for the acquisition of a new domicile by both men and women. Clause 6 proposes to amend section 13 to make provision for the acquisition of domicile by a child from his or her parent, guardian or any person with parental responsibility over the child. Clause 7 proposes to amend section 14 of the succession Acct to expand the provision to include both spouses. The Bill proposes to amend the succession Act by deleting section 15 which deals with the domicile of a married woman. Clause 9 proposes to amend section 16 of the succession Act to provide for acquisition of a new domicile by a minor.

The committee has examined the provisions and found as follows-

(a) on the proposal to amend section 9 of the succession Act, the Committee is of the considered opinion currently section 9 is limited in scope since it applies to men exclusively. The Committee also notes that this provision was affected by the decision in Law and Advocacy for Women in Ugandan Vs AG and is therefore in need of amendment to expand its application and remove the discrimination against women;

(b) on the proposal to amend section 13, the Committee noted that section 13 of the succession Act deals with domicile of a minor and it requires that the domicile of a minor follows the domicile of the parent from whom the minor derived his or her domicile of origin. The Committee further noted that the provision further provided that the domicile of a minor does not change with that of the minor's parent if the

minor is married, or holds any office or employment in the service of the Government, or has set up, with the consent of the parent, in any distinct business. The Committee is of the considered opinion that section 13 is need of urgent amendment, especially subsection (2), since it appears to suggest that a minor can marry or be employed by government yet that is not legally permissible. There is need to amend section 13 to harmonize it with the Constitution, the children Act and employment Act.

(c) On the proposal to amend section 14, the Committee notes that currently, section 14 deals with domicile of a married woman and it obligates the woman to take up the domicile of her husband upon marriage. The committee further notes that the amendment now proposes to give the discretion to the spouses to choose which domicile to take up upon marriage. The Committee is of the considered opinion that the provision is progressive since it is in line with Article 21 (1) on equality before the law.

(d) On the proposal to amend section 15, the Committee notes that currently section 15 only provides for the domicile of a married woman and does not make provision for a married man. The Committee further notes that the provision obligates the wife to follow the domicile of the husband at marriage, without giving the wife the option of opting out or consent to the imposition of that requirement. The committee finds that the current provision is not in tandem with Article 31 of the Constitution which guarantees equal rights between men and women during and after marriage. The Committee further notes that the provision is not in harmony with Article 21 (1) on equality before the law. The Committee is however not agreeable to the deletion of section 15 (2) which deals with the domicile of a person after marriage, since this is not provided for anywhere, therefore deleting it will create a lacuna in the law.

(e) On the proposal to amend section 16, section 16 of the Succession Act deals with the acquisition of a new domicile by a minor and it requires that a minor cannot acquire a new domicile except as provided in section 13. On its part, section 13 currently requires that minor's domicile follows that of his or her parents. The

Committee has considered the proposal to delete section 16 and is of the view that this should be rejected since it will create a lacuna in the law as to whether a minor can acquire a new domicile other than as prescribed in section 13. The Committee is aware that that a minor (child) cannot on his or her own change his or domicile except where the domicile of the person from whom he acquires his or her domicile changes.

Recommendation

In light of the above, the Committee recommends that-

(a) *The amendment proposed in clause 5 be adopted;*

(b) Clause 6 should be redrafted to ensure that the domicile of a child follows the domicile of the parent, guardian or any other person with parental responsibility over the child, from whom the child derived his or her domicile of origin.

(c) Clause 7 of the Bill should be adopted.

(d) clause 8 should be adopted but subsection (2) of section 15 be inserted in clause 7 as sub clause (2) and amended to read as follows "a spouse may upon dissolution of a marriage or upon judicial separation or any other separation recognised under customary law acquire any other domicile"

(e) the amendment proposed in Clause 9 should be rejected.

5.2.2. Succession to movable property in Uganda

Clause 10 of the Bill seeks to amend section 18 of the principal Act. Section 18 of the Principal Act is to the effect that if a man dies leaving movable property in Uganda, in the absence of proof of any domicile elsewhere, succession to the property is regulated by the law of Uganda.

The Bill proposes to amend section 18 to make the provision broadly apply to both women and men.

The Committee is in support of the proposal made in the Bill since section 18 currently discriminates against women, thereby infringing the provisions of Article 21 (1) and 31 of the Constitution in so far as it prescribes different treatment for men and women.

Recommendation

The Committee recommends that clause 10 is adopted as proposed in the 2018 Bill.

5.2.3. CONSANGUINITY.

The Bill in clause 11 proposes to delete Part III of the Succession Act. Part III deals with consanguinity or the connection or relation of persons descended from the same stock or common ancestor.

Part III provides for two types of consanguinity, namely, lineal consanguinity which is that which subsists between two persons, one of whom is descended in a direct line from the other as between a man and his father, grandfather, great-grandfather and so upwards in the direct ascending line, or between a man, his son, grandson, great-grandson and so downwards in the direct descending line and collateral consanguinity which subsists between two persons who are descended from the same stock or ancestor, but neither of whom is descended in a direct line from the other.

The Committee observes that Part III currently contains provisions which provide for the various degrees of consanguinity and guides so many matters in succession such as who may administer the estate of a deceased person, who may benefit from the estate of a deceased person, which persons are held for the purpose of succession to be similarly related to the deceased and the mode of computing degrees of kindred.

The Committee however notes that Part III contains provisions that infringe Article 21 of the Constitution in as far as prescribing a different treatment based on a person's gender. The Committee therefore agrees that some of the provisions contained in Part III need to be amended to harmonize them with the Constitution.

The Committee has examined the proposal to delete Part III and is the considered opinion that deleting Part III will leave a lacuna in the law, thereby creating an absurdity.

Recommendations

In light of the above, Part III of the Principal Act should be retained except that sections 20 and 22 be amended to remove any discrimination based on a person's gender.

5.2.4. Reservation of a principal residential holding from distribution

Clause 15 of the Bill proposes to amend section 29 of the succession Act. Section 29 of the succession Act currently reserves the principal residential holding from distribution and bars a person from bringing a residential holding into account in assessing any share in the property of an intestate to which the wife or child may be entitled under section 27.

The Bill on the other hand proposes to expand the provision to apply to spouses generally and to create a penalty on a person who unlawfully evicts a person from the residential holding.

The Committee has examined the amendment proposed in clause 29 and is of the considered view that it should be supported since it enhances the protection given to a person occupying the residential property and shields such a person from eviction.

The Committee however notes that in section 26, lineal descendants of a deceased person have a right to occupy the residential property. The Committee is concerned that in the amendment proposed in clause 15, this category of people are left out. This means that such lineal descendants can be evicted from the residential holding or even have their occupancy of the residential holding brought into play when assessing their share in the estate. This is absurd considering that a lineal descendant is a child of a deceased person only that he or she has attained the age of majority. There is therefore need to protect

this category of people from eviction as well as bringing their occupancy into play when the estate is being shared.

Recommendations

The Committee recommends that section 29 is amended as proposed in clause 15 of the Bill, albeit with an amendment to include lineal descendants among the categories of people who are protected as proposed in the Bill.

5.2.5. Relationship between a surviving parent and appointed guardian.

The Bill, in clause 22 proposes to insert a new section in the Succession Act to deal with the relationship between a surviving parent and a guardian. The Bill proposes that a guardian appointed under section 43 shall act jointly with the surviving parent of the child unless the court otherwise directs and it also allows a guardian of a child to appoint another person as guardian to the child. The Bill also proposes to allow a parent or guardian, as the case may be, to apply to court to revoke the guardianship granted to a parent or a guardian of the child.

The Committee has examined the amendment proposed to the succession Act and is in support of the proposal since it will guide the relationship between the person appointed guardian and the surviving parent of the child.

The Committee is however concerned about the proposal to allow a guardian of the child to appoint another person guardian. The Committee is aware that various amendments were made to the Children Act wherein, a person can only be appointed guardian by Court, although it recognizes a customary guardian and a testamentary guardian can be appointed by the parent of the child.

The proposal to allow a guardian appoint another person guardian of a child may be abused to allow persons who do not qualify for appointment as guardians under the Children Act to be appointed guardian under this provision. The Committee is also further concerned that the achievements of the Children Act may be watered down by the

provisions of the succession Act to allow persons who do not qualify for appointment to be appointed guardians.

The Committee is however alive to the reality that there may be situations where a person appointed guardian dies before the child attains the age of majority. In such a situation, it would be absurd for a child, especially where there is only one guardian appointed, to be left without care.

Recommendation

In light of the above, the committee recommends that clause 22 stands part of the Bill albeit with the following amendments-

(a) a person should only be eligible for appointment as a guardian if he or she is above eighteen years of age and is a citizen of Uganda.

(b) a person appointed guardian should before taking up guardianship of a child apply to court to confirm or reject the guardianship.

(c) the proposed subsection (1) should be expanded to apply to all circumstances were a guardian is appointed under the Act and not restricted to appointments made in section 43.

5.2.5. A Will obtained by fraud, coercion or importunity

Clause 25 of the Bill proposes to amend section 47 of the succession Act. Section 47 of the succession Act deals with grounds that make a will void and it requires that a will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void.

The Bill proposes to amend section 47 of the Succession Act by expanding the grounds voiding a will to include undue influence, duress, coercion and mistake of fact.

The Committee has examined this proposal and is support of the proposal due to the increased cases of wills being obtained by undue influence, duress, coercion and mistake

of fact. The Committee however notes that there are other grounds that also invalidate the free will of a person making a will.

One such ground is abuse of position of vulnerability. Wills obtained through abuse of a position of vulnerability are numerous and involves the taking advantage of a person's vulnerability, arising from physical or mental to benefit from a will. For instance, if a person caring for a sick person or an aged person takes advantage of such a person to benefit from the will, such a will should be void since abuse of a position of vulnerability is not expressly provided for.

Recommendation

The committee recommends that clause 25 stands part of the Bill albeit with an amendment to include, as grounds for voiding a will, "abuse of position of trust and abuse of position of vulnerability.

5.2.6. Witness not disqualified by interest or by being executor.

Clause 26 of the Bill proposes to amend section 55 of the succession Act. Section 55 of the succession Act is to the effect that no person, by reason of interest in, or of his or her being an executor of a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity of the will.

The Bill on the other hand proposes to continue the principle in section 55 but also proposes to insert a provision, disqualifying a person who participated in the preparation of a will from being a witness to prove the validity of a will.

The Committee has examined the amendment proposed in clause 26 and is in support. The Committee notes that section 55 currently allows a person who is also a beneficiary in the will to prove the validity of a will. The Committee observes that this may be abused since the person proving the will does so because of the benefit he or she is to receive if the will is upheld as valid. This creates a conflict of interest on the part of a person proving the will.

The Committee is also in support of the proposal in sub clause (2), barring a person who participated in preparing a will from proving its validity is welcome since it also enables the validity of a will to be proved by an independent person, who is not biased or conflicted so that the court or any other person before whom a will is being proved is comforted with the fact that the evidence given is not tainted with the interest of the person making the will.

Recommendation

The Committee recommends that clause 26 is adopted as proposed in the Bill.

5.2.7. Priority of surviving spouse to administer the estate of a deceased person

Clauses 30, 31, 32 and 33 of the Bill propose to amend the succession Act by inserting a new provision on priority of the surviving spouse to be granted letters of administration.

The Succession Act, in sections 201 and 202, outline the persons who are entitled to administer the estate of a deceased person. These section are reproduced below-

> *"201. Order in which connections entitled to administer.*
>
> *When the deceased has died intestate, those who are connected with the deceased either by marriage or by consanguinity are entitled to obtain letters of administration of his or her estate and effects in the order and according to the provisions hereafter contained.*
>
> *202. Entitlement to administration.*
>
> *Subject to section 4 of the Administrator General's Act, administration shall be granted to the person entitled to the greatest proportion of the estate under section 27"*

The above provisions limit the grant of letters of administration to only persons who are connected with the deceased either by marriage or by consanguinity are entitled to obtain

letters of administration of his or her estate. Court is further guided that in granting letters of administration, letters shall be granted to the person entitled to the greatest proportion of the estate under section 27.

The Bill now proposes to insert a new section to grant priority to the surviving spouse to letters of administration.

The Committee has examined the provision and is of the considered view that this provision should be supported since it recognizes the spouse as having proprietary interest in the property of the deceased arising from his or her marriage to the deceased person. It also recognizes that the surviving spouse is better placed to care for children of the deceased spouse, especially where they are below the age of minority. This position was upheld in the Kenyan case of **Re Kibiego (1972)**. Where High court held that:-

> *"A widow of whatever race is the proper person to obtain letters of administration to her husband's estate particularly where the children are underage. This position has been cited as good law in many Ugandan cases".*

The Committee is however concerned that whereas a surviving spouse is given priority to be granted letters of administration, this priority is subject to obtaining a certificate of no objection from the Administrator General. The process of obtaining a certificate of objection will water down the priority given to the surviving spouse since it does not take into account the fact that the property for which the letters are being sought also belong to the surviving spouse and the surviving spouse has contributed to the acquisition and protection of the same.

The Committee notes that whereas the rationale for obtaining the certificate from the Administrator General is to protect the interests of the children of the deceased, there is need to balance the needs to protect the interests of the children as well as the right to administer a person's property. It appears therefore that a surviving spouse's proprietary rights are subject to wishes of the Administrator General. This is unfair and calls for legal reform.

Recommendations

The Committee recommends that clauses 30, 31, 32 and 33 are adopted as proposed in the Bill. The Committee further recommends that in order to make the priority of the surviving spouse meaningful, he or she should be excused from obtaining a certificate of no objection from the Administrator General.

5.2.8. Citations or notice by persons applying to administer estate

The Bill proposes to amend the succession Act by inserting a new section, 204A, imposing an obligation on a person applying for letters of administration to notify in writing lineal descendants, the surviving spouse and dependent relatives, 30 days before applying for letters of administration. The provision also requires the notification to be witnessed and allows substituted notification where physical notification is not possible.

The Committee has examined the provision and is in support of the same since it enhances transparency in the grant of letters of administration. The Committee notes that currently, there is no requirement to notify the other beneficiaries of the estate before a person applies for letters. This has resulted in the grant of letters to persons who are not entitled to receive them, the grant of letters to property not constituting the estate, the distribution of property of the estate to the detriment of all the beneficiaries and a lack of transparency, fairness and equity in the administration of the estate of the deceased person.

The Committee notes that in most cases, beneficiaries of the estate become aware of the application process either at the time the public is informed through a newspaper of wide circulation or at the tail end of the process when their objections or wishes may have become irrelevant. The Committee is therefore of the considered opinion that the proposed amendment is supported.

Recommendation

The Committee recommends that the succession Act is amended as proposed in clause 34 of the Bill.

5.2.9. Formal Courts and the power of registrars

The Bill, in clause 40, proposes to amend the succession Act to provide for powers of registrars. The Bill proposes to empower a judge of the High Court to transfer to the Registrar an application for grant or revocation of probate or letters of administration for the registrar to make the grant. A person aggrieved by the decision is empowered to appeal to the High Court.

The Committee has examined the amendment proposed in clause 40 and is of the considered opinion that this should be supported.

The Committee notes that Administrator General's Act provides that no person may administer the estate of a deceased person without legal authority. Section 235 of the Succession Act provides that jurisdiction to grant probate and letters of administration shall be exercised by the High Court and Magistrates Courts in accordance with the provisions of the Administration of Estates (Small Estates) (Special Provisions) Act. The Act confers jurisdiction on Magistrate's courts to grant probate or letters of administration in respect of small estates of deceased persons.

The Committee further notes that currently all the court processes relating to the grant or revoking of letters or probate are done by judges and magistrates exclusively. This has caused delays in determining those processes due to inaccessibility of those judicial officers or some other intervening factors such as backlog.

Whereas the Committee supports the principle of granting some form of powers to registrars in the application, grant or revocation of letters and probate, the proposal to allow them grant letters or probate may be granting them jurisdiction over matters that are beyond their jurisdiction. The Committee observes that registrars, under the Civil Procedure Act and Rules have procedural jurisdiction over certain matters such as issuance of interim orders and the like.

The Committee is therefore of the considered opinion that whereas there is need to have registrars deal with certain procedural matters like identification, effecting service, citation proceedings and issuance of protection orders, the proposal to have original jurisdiction to determine administration and probate issues is taking too far.

Recommendation

The committee recommends that the powers envisaged to be granted to registrars should be limited to those that are by law vested in them in relation to any civil suit or proceeding pending before court.

5.2.10. Intermeddling in the estate of a deceased person

Clause 41 of the Bill proposes to amend section 268 of the Succession Act. Section 268 of the Succession Act bars the intermeddling in the estate of a deceased person except where the intermeddling is for purposes of preserving the estate of a deceased person.

The Bill in clause 41 proposes to amend section 268 by criminalizing the intermeddling in the estate of a deceased person.

The Committee has examined the amendment proposed to section 268 of the Act and is agreeable with the principle to criminalize the intermeddling since it will enhance the effectiveness of this provision and protects the estate of a deceased from interference, waste and abuse.

However the Committee is concerned that the amendment proposed in the Bill does not effectively deal with the other shortcomings that negatively impact on the effectiveness of section 268.

For instance, section 268 and the Bill assume, wrongly, that intermeddling can only be committed where there is no executor or administrator appointed to the estate yet this is not true. Currently section 268 deems intermeddling to occur when a person does any act which belongs to the administrator or executor of the estate when there is no substantive administrator or executor. The Committee is aware that incidents of

intermeddling in the estate of a deceased person can occur even when there is a substantive executor or administrator yet these are not currently treated as intermeddling and are not effectively prohibited. The Committee notes that since intermeddling provisions are intended to protect the estate of a deceased from unlawful interference, abuse or waste by persons without lawful authority, there is need to expand the provision to include actions done by any person who is not executor or administrator irrespective of the existence of a substantive executor or administrator.

The Committee notes that the circumstances where the intermeddling may be allowed are too broad and have been abused to the detriment of the estate and the beneficiaries in that estate. The Committee notes that section 268 allows for the intermeddling in the estate of a deceased person if the intermeddling is-

(a) with the goods of the deceased for the purpose of preserving them,
(b) providing for his or her funeral, or for the immediate necessities of his or her own family or property; or
(c) dealing in the ordinary course of business with goods of the deceased received from another.

The Committee notes that the above exceptions are abused since they appear to allow a person, irrespective of their relationship to the deceased person, to intermeddle in the estate of the deceased and collect property belonging to the estate, provide for funeral and collection of goods. Since the people who can exercise the above rights are not limited, unscrupulous people have taken advantage to interfere in the estate of a deceased person. The Committee notes that if there is need to create exemptions, these should only be exercised by a person who is related to the deceased either by blood or marriage, such as a parent, spouse or children of the deceased and not any person as proposed in the Bill.

To make matters worse the law does not restrict the duration for which the person who can lawfully intermeddle in the estate, meaning that such a person may end up intermeddling for an unlimited duration. This, coupled with the fact that a person who

intermeddles in the estate of a deceased is not under any legal obligation to make good the loss he or she causes to the estate makes the current provision an ineffective deterrent provision.

The provision also does not provide an effective remedy to a person or beneficiary who is affected by the interference in the estate. The Committee observes that the law currently has no effective remedy to stop a person from interference. For instance, where a person interferes in the estate of a deceased person prior to the grant of letters or probate, the beneficiaries of the estate cannot take action since they have no locus standi in court owing to the fact that they are not administrators or executors.

The Committee is of the considered opinion that the provisions on intermeddling should be amended to make them deterrent enough in order to deal decisively with the rampant incidents of intermeddling in deceased persons estate in order to protect and preserve the estates of deceased persons from abuse or plunder by unscrupulous people.

Recommendation

In light of the above, the Committee recommends that section 268 is amended in the following instances-

(a) the definition of intermeddling should be expanded to include instances were court has appointed an administrator or executor;

(a) 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.

(b) the provision should limit lawful intermeddling by a spouse, lineal descendants or partner, to six months.

(c) The provision should provide a beneficiary or any person the right to an effective remedy through courts of law or the general protection of the Administrator General in order to end the intermeddling of any person.

(d) The provision should create an offence against a person who intermeddles in the estate of a deceased person and to require that person to make good any loss suffered as a result of his or her actions.

5.2.11. Procedure in respect of share of minor in intestacy

Clause 47 of the Bill proposes to amend section 331 of the Succession Act. Section 331 of the succession Act is to the effect that where any person entitled to a share in the distribution of the estate of an intestate is a minor, the personal representative shall pay or deliver the share into the court by which probate or letters of administration were granted to the account of that minor, and the share may be invested in such securities as are authorized by law.

The Bill now proposes to guide how the person appointed by court to hold the property of a child is to be appointed and the considerations that have to be had before the appointment.

The Committee has examined the proposal made in clause 47 and is of the considered opinion that the matters contained in both the succession Act and the Bill are not in consonance with the provisions of the Children Act.

The Committee observes that the position of the law as enumerated in Part VIA of the Children Act is that where a minor is a beneficiary, a guardian is appointed to take charge of the property of the minor during minority and to relinquish such property when the minor attains majority age.

Therefore, in light of the above, section 311 should be amended to reflect the current position of the law as espoused in Part VIA of the Children Act.

Recommendation

The Committee recommends that clause 47 of the Bill stand part of the Bill albeit with the amendment-

(a) Where a child is a beneficiary in the estate of an intestate, the executor or administrator shall deliver the share of the child to the guardian of the child.

(b) The guardian of the Child should manage the property delivered to him or her in a prudent manner and should only-

i. apply the property for the benefit of the child;

ii. take reasonable steps to safeguard the property of the child from loss or damage; and

iii. annually account in respect of the child's property to the surviving parent in any, court or any other person as court may direct.

(c) A Guardian should within six months of the child attaining the age of eighteen years, transfer all the property in his or her custody to the child except where there is an order of court to the contrary.

(d) Afford a guardian or any person to, with the order of court, continue administering the property of a child who attains the age of majority for a determined period, in circumstances were such a person cannot manage his or her property.

PART B: PROVISIONS THAT ARE UNIQUE TO 2019 BILL

5.3.1. Short title and commencement

The Succession (Amendment) Bill, 2019 proposes in clause 1 to provide for the short title and commencement of the Act once enacted into law. The Bill proposes that the Bill once enacted into law is to be cited as the Succession (Amendment) Act, 2019 and it will come into force on the date of publication in the gazette.

The Committee considered this clause and found that it is un-necessary and redundant in light of the current legislative style adopted in Uganda and the existing legislation.

The Committee notes that section 3 of the Acts of Parliament Act, Cap 2, requires every Act to bear at the head, a short title immediately followed by a long title describing the leading provisions of the Act. Furthermore, section 15 of the Acts of Parliament Act further requires that the citation of the short title to an Act shall be sufficient to identify the Act.

On commencement of the Bill, section 14 of the Acts of Parliament Act requires that an Act commences on the date as is provided in or under the Act, or where no date is provided, the date of its publication as notified in the Gazette.

From the foregoing, it is evident that clause 1 is redundant since it proposes to provide for the citation of the Act which is already provided for in section 15 of the Acts of Parliament Act as well as prescribing the commencement of the Act on publication, yet the same is already prescribed in section 14 of the Acts of Parliament Act. Since clause 1 does not introduce anything new beyond what is provided for in the Acts of Parliament Act, the Committee sees no need for it to be included in the Bill.

Secondly, the Committee is also aware that for a long time, Acts of Parliament have not prescribed a citation section in any Act. Citations clauses are only used in the statutory instruments and not in Acts of Parliament. Unless this is a new policy that Parliament should be aware of, the Committee sees no need of having a citation clause in the Bill.

Recommendation

In light of the above, the Committee recommends that clause 1 is deleted with the justification that it is redundant in light of section 14 and 15 of the Acts of Parliament Act, Cap 2.

5.3.2. Repeal of provisions that are spent, redundant or affected by court

The Bill variously makes provisions for the amendment of sections of the succession Act which are obsolete, redundant or affected by decision of court.

The Committee notes that the Constitutional Court, in the case of Law Advocacy for women in Uganda v Attorney General, Constitutional Petitions No. 13/05 and 05/06, declared provisions of the Succession Act relating to the distribution of estates of intestate persons unconstitutional and discriminatory against the female gender.

The Committee also notes that the succession Act also contained provisions which are obsolete and redundant. The amendments will bring clarity to the law and will remove ambiguity in the law.

The committee notes that the clauses 10, 11 and 12 repeal sections 31, 34 and 35 of the succession Act since they are obsolete. Furthermore, clause 50 deletes the words "district delegate" and "lunatic" because the words are obsolete, making their existence in the succession Act redundant. More so, the Committee also notes that clauses 30 and 31 repeal sections 215 and 216 which provide for administration of estates by minors because they are obsolete and therefore redundant.

The Committee notes that clauses 6,7,13 which were affected by the decision of court in the case of Law Advocacy for women in Uganda v Attorney General, and the amendments are intended to bring them in harmony with the Constitution of the Republic of Uganda.

Recommendation

The Committee recommends the adoption of the above provisions as proposed in the Bill.

5.3.3. Provision for the maintenance of dependents to be made in every will.

Clause 14 of the 2019 Bill proposes to amend section 37 of the succession Act. Section 37 is to the effect that where a person, by his or her will, disposes of all his or her property without making reasonable provision for the maintenance of his or her dependent relatives, section 38 shall apply.

The Bill proposes to amend section 37 to impose an obligation on a person who makes a will to make reasonable provision for the maintenance of his or her spouse, lineal descendants and dependent relatives. The provision further empowers a person where a testator makes a will without making provision for the maintenance of a spouse, lineal descendant, or dependent relative, to apply to court for redress.

The committee has examined the proposal and is in support of the same since it now imposes an obligation to for the maintenance of his or her dependent relatives in addition

to his or her spouse and lineal descendants. The Committee notes that the provision as it stands now only imposes an obligation on a testator to make provision for the maintenance of his dependent relative yet there is no obligation for the maintenance of the deceased person's surviving spouse or children. This provision is unreasonable in so far as putting the dependent relatives on a higher pedestal than the deceased's person children or surviving spouse. The provision will therefore remove the unreasonableness in this provision by imposing similar obligations to the spouse or child of the deceased person.

Recommendation

The Committee recommends that clause 14 is adopted albeit with amendments to comply section 26 and 38 of the principal.

5.3.4. Attestation of wills

The Bill in clause 20 proposes to amend section 50 (c) of the Succession Act. Section 50 (c) of the Succession Act deals with the attestation of wills and it requires that the will shall be attested by two or more witnesses, each of whom must have seen the testator sign or affix his or her mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator.

The Bill proposes to amend section 50 (c) to require that each of the witness attesting to the will to, in the presence of the testator, write his or her name and address on the last page of the will.

The Committee has examined the proposal and it supports the proposal since it will enhance transparency and help in identifying the witnesses of a will and validating the authenticity of a will. The requirement to indicate a person's name and address will ensure that the person who attested to the will can be ascertainable since his or her name and address will be indicated. The Committee notes that currently, persons who are attesting to wills normally sign their names in Latin character without providing any other matters that can identify them if need arises to prove the authenticity of the Will.

Recommendation

The Committee recommends that section 50 (c) of the Succession Act is amended as proposed in clause 20 of the Bill.

5.3.5. Effect of gift to attesting witnesses

Clause 21 of the Bill proposes to amend section 54 of the succession Act. Section 54 of the succession Act is to the effect that 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 wife or her husband, but the bequest or appointment shall be void so far as concerns the person so attesting, or the wife or husband of that person, or any person claiming under either of them. The provision further provides that a legatee under a will shall not lose his or her legacy by attesting a codicil which confirms the will.

The Bill proposes to amend section 54 of the Succession Act by-

(a) validating the appointment or bequest given to a witness of a will only if the will meets the requirements of attestation as required in section 50 (c) and if the will is sufficiently attested to if the person's signature is removed from the signatures required in section 50 (c);

(b) inserting a new provision on hand written or typed wills which are produced by a person other than the testator and that person producing it is given a benefit, such a person is barred from taking such a benefit, including his or her spouse and other persons.

The Committee has examined the Bill and the succession Act and is of the view that the provision should be supported.

The Committee observes that section 54 currently requires that where a person who attests to a will is at the same time or his or her wife or husband, a beneficiary under that will either through appointment or any other gift given in the Bill, the will shall be

taken to be sufficiently attested to as required in section 50 but the gift or appointment shall not take effect and shall be taken to be void. This means that a person who attests to a will does not benefit from the will by way of gift or appointment.

This was intended to ensure that wills are proved and their authenticity validated by persons who are not beneficiaries in the under the will in order to ensure that the attestation, proof and authenticity is proved by a person who is not conflicted arising from being a beneficiary from the will.

The Bill now propose to amend this provision to allow a person who attests to a will to benefit from the will only were-

(a) the provisions of the section 50 (c) is complied with; and
(b) the will be fully attested to even if the signature of the beneficiary is not included in the signatures required in section 50 (c).

The Committee is the considered opinion that voiding someone's benefit or appointment in a will merely because that person attested to a will is unfair since there is a valid will through which all those mentioned thereunder as beneficiaries, take their appointment or gift except the person so attesting the will. The Committee therefore believes that the proposed amendment to section 54 will bring equity and fairness to the provision by ensuring that were there is a valid will as required in section 50, then all appointments and gifts are valid.

The Committee is also of the considered opinion that section 54 currently unreasonably interferes in testamentary freedom of a person by refusing a person a benefit granted a will merely because he or she is a witness of the will.

The committee also agrees with 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 welcome since the authenticity and validity of such a will is questionable and there is also an issue of conflict of interest in proving such wills.

The Committee however cautions that this provision should not include the spouse, lineal descendant or dependent relatives of a deceased person from benefiting simply because such a person has been a witness of a handwritten or typed will.

Recommendation

In light of the above, the Committee recommends that section 54 of the Succession Act is amended as proposed in clause 21 of the 2019 Bill.

5.3.6. Appointment of executor where the sole beneficiary is a child

Clause 24 of the 2019 Bill proposes to amend section 183 of the succession Act. Section 183 is the effect that the appointment of an executor may be express or by necessary implication.

The Bill proposes to amend section 183 of the succession to require that where a testator who is survived by a minor child, does not expressly appoint an executor but appoints a guardian for the minor child under section 43, the guardian shall act as the executor.

The committee has examined the proposal and is agreeable to the proposal to amend section 183 as proposed in clause 24 since it will harmonize the provisions of this Act with those of the Children Act in as far as recognizing that were a guardian is appointed, he or she, will be granted probate to administer the estate of a deceased person where the beneficiaries are all below the age of minority.

The Committee is of the considered opinion that the principle in the proposed amendment to section 183 should be supported since it recognizes the current position of the law as far as the appointment of guardian and execution of estates for children is concerned.

However, the committee cautions that the provision is too broad since it might be interpreted to allow a guardian appointed over minors to administer estates were there are children and other persons above the age of majority.

The Committee notes that subsection (2) of section 183 should only be invoked in estates where there are only persons who are below the age of minority and not to estates that have a mixture of children and persons above the age of majority.

Recommendations

In light of the above, the Committee recommends the adoption of clause 24 of the Bill.

5.3.7. Persons to whom probate and letters cannot be granted.

Clauses 25 and 27 of the Bill propose to amend sections 184 and 190 of the Succession Act. The Bill proposes to amend section 184 and 190 by replacing the nomenclature used to refer to a person of unsound mind as well as allowing court to grant probate to a person who is fit and proper.

The Committee has examined the Bill and agrees with the proposal to change the nomenclature of used to refer to a person of unsound mind. The Committee however does not agree with the proposal to introduce a fit and proper person test without guiding the person making such a decision on who this fit and proper person is.

The Committee notes that the imposition of a fit and proper person's test is an infringement of testamentary freedom in so far as it limits a person on who should be appointed to execute the estate or administrator.

The Committee also notes that the law already imposes a fit and proper person test when it guides that persons below the age of 18 years as well as those who suffer from mental disability may not be fit and proper persons to be appointed executers or administrators. It is the considered opinion of the Committee that prescribing a fit and proper test as proposed in the Bill will be redundant.

Recommendation

In light of the above, the proposal to introduce a fit and proper person test in section 184 and 190 is rejected unless justifiable reasons are given for the imposition of a fit and proper person test as well as prescribing the grounds upon which that test will be made.

The proposal to change the nomenclature used to refer to a person of unsound mind is however supported.

5.0. GENERAL OBSERVATIONS ON THE 2018 AND 2019 BILLS

During consideration of the 2018 and 2019 Bills, several stakeholders who interacted with the Committee made two observations which the Committee would like to comment on. The First observation was that the succession Act does not apply to un-married persons and the second one was that it infringes on religious freedoms guaranteed under the Constitution. The Committee examined the above general observations and wishes to report as follows-

5.1. Application of the Succession Act to unmarried persons

The Committee notes whereas the succession Act does not have an application section, it can be discerned from the various provisions of the Act that it only applies to married persons and not persons who are un-married.

For instance, the Committee noted the Succession Act uses the word "wife" to mean a person who at the time of the intestate's death was— (i) validly married to the deceased according to the laws of Uganda; or (ii) married to the deceased in another country by a marriage recognized as valid by any foreign law under which the marriage was celebrated. The Bills on their part use the word "spouse" to mean a husband or wife who is married under a law which is recognized by the Constitution of the Republic of Uganda"

The Committee notes that the use of the word "wife", "husband" and "spouse" connotes that a recognized marriage exists between parties under the laws of Uganda. The Committee notes that succession Act also recognizes polygamous marriages through the use of the word "senior wife" which means the wife who was married first in time to the deceased intestate.

The Committee also notes that the Succession Act does not regulate any matter arising out of a relationship that is not recognized as a marriage under the laws of Uganda.

For instance, when it comes to administering the estate of a deceased person and inheriting from the deceased person, the relationships that are recognized are blood relations, where a person is related to the deceased as belonging to the same ancestors or marriage, that a person has a subsisting and legal marriage with the deceased person.

The above means that persons who are cohabiting with the deceased are not entitled to administer the estate of a deceased person and are not as of right, entitled to benefit from the estate of a deceased person except where they are specifically provided for in the will. This state of affairs is unfair to persons who are not married but are living together as husband and wife but are unmarried.

Indeed if cohabiting partner dies without leaving a will, the cohabitant does not inherit any property from the estate of the deceased irrespective of his or her contribution to the acquisition or protection of such property since the inheritance is limited to the legal wife, children and dependent relatives.

The lack of legal protection to persons who are cohabiting has led to the loss of proprietary rights by the surviving cohabiting partner of the deceased person. Usually the property of the deceased is taken by the deceased's relatives who normally argue that no marriage existed between the deceased person and the surviving cohabitee. The irony of this all is that a child borne out of such a relationship is recognized and protected under the laws of Uganda since all distinction between children based on the marital status of their parents are outlawed.

The failure to make provision for unmarried partners of a deceased person leaves out a big chunk of Uganda's population from application of the law and protection, thereby going against the dictates of Article 21 (1) on equality for all before the law.

The Committee notes that whereas the issue of cohabitation is not legislated for in Uganda, the reality is that there are many people who live under this arrangement. The Committee is aware that there are proposals made in the Marriage and Divorce Bill to

recognize cohabitation in Uganda and give such relationships legal protection. This therefore signifies changes in government policy.

Recommendation

In light of the above, the succession Act should specifically state that it does not apply to un-married persons and legislative measures should be put in place to guide succession by un-married partners in order for such estates to be protected in the law and to protect them from abuse.

5.2. Application of the distribution scheme and processes to persons professing the Islamic faith

The distribution scheme provided in section 27 of the Succession Act and the 2018 and 2019 Bills does not take into account religious requirements, especially of persons professing the Muslim faith, during distribution of property.

The Committee notes that whereas Uganda is a secular state, Article 29 (1) (c) of the Constitution guarantees a person's freedom to practice any religion and manifest such practice which shall include the right to belong to and practice in the practices of any religious body or organization.

The Committee further notes that religious practices have been recognized as an influential factor in determining succession matters among certain sects of people. The Committee observes that Muslims in Uganda follow religious provisions of 'Sharia law and hadith as stipulated in the Koran' in determining succession matters.

The Committee also notes that Article 129 (1) (d) of the Constitution Parliament to establish Qadhi Courts for purposes of dealing with matters involving marriage, divorce, and inheritance of property and guardianship.

It is the committee's considered opinion that the distribution scheme as prescribed in section 27 is not in accordance with the Koran and hadith and is further a contravention

of Article 129 (1) (d) which directs Parliament to prescribe a separate court to handle matters of Islamic inheritance.

The Committee was reliably informed by the Muslim Supreme Council that the distribution of property of a deceased among the Muslims is believed to have been determined by God in such a way that a widow is entitled to a quarter of the man's wealth, in case the couple did not have children. Where there are children, the wife is entitled to one eighth of the husband's wealth. The girl children receive half of what the boys receive.

This distribution takes place after settlement of a deceased's death. Property distribution is done by an experienced Sheikh who is appointed by the Uganda Muslim Supreme Council. The recipients are expected to sign an agreement showing that they are contented with the distribution of property. In cases where a Moslem believer makes a will and it is deemed to favour some children, the will is disregarded (destroyed) and the property is distributed according to Sharia law.

The Committee is of the considered opinion that given the differences between distribution of property of a deceased professing the Islamic faith in the Quran and the distribution scheme in the Succession Act, the Committee is of the considered view that the provision should not apply to the distribution of the estate of an intestate professing the Islamic faith as is the case in other countries such as Kenya, Tanzania, Malaysia, India, Pakistan, Singapore, Sri Lanka, Sudan and Nigeria where Islamic succession has its own distinct legislation.

The Committee is aware the proposal to have a distinct legislation to cater for intestate succession of persons professing the Islamic faith will not be unique in Uganda considering that in Legal Notice[1] Mohammedans were excluded from the operations of part V of the Succession Ordinance of 1906 which provided for distribution of an intestate's property and were allowed to entirely left to rely on the Sharia law in cases of intestate. Therefore, unless the distribution scheme is structured in a manner that takes

[1] Laws of Uganda 1951 Vol 7 , Subsidiary Legislation caps 31-101 and Buganda native Laws

into account the views and aspirations of persons professing the Muslim faith, the distribution scheme will continue facing challenges of implementation.

Recommendation

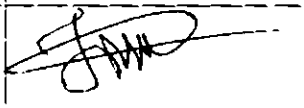
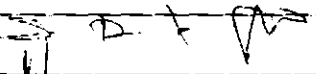
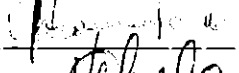
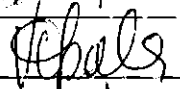
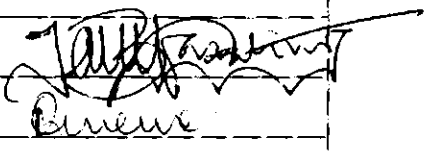
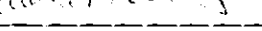
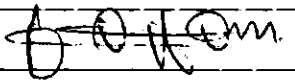
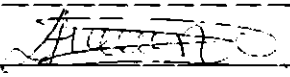
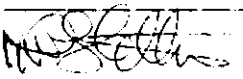
- *The Committee recommends that persons professing the Islamic faith should be exempted from the application of section 27 of the succession Act.*
- *The Committee further recommends that Parliament operationalizes Article 129 (d) of the Constitution and enacts a law to regulate the inheritance and succession of property belonging to persons professing the Islamic faith.*

6. CONCLUSION AND RECOMMENDATION

In light of the above, the Committee proposes that the Succession Act is amended as proposed in in the selected instances proposed both in the 2018 and 2019 Bills.

The Committee recommends that the Succession (Amendment) Bill, 2018 and the Succession (Amendment) Bill 2019 be read the second time and do pass with the following consolidated amendments.

SIGNATURE OF MEMBERS ENDORSING THE CONSOLIDATED REPORT ON THE SUCCESSION (AMENDMENT) BILL, 2018 AND 2019

SN	NAME	CONSTITUENCY	SIGNATURE
1.	Hon. Jacob Marksons Oboth (Chair)	West Budama South	
2.	Hon. Bitangaro Sam Kwezira	Bufumbira South	
3.	Hon. Jovah Kamateeka	Mitooma DWR	
4.	Hon. Isala Eragu Veronica	Kaberamaido County	
5.	Hon. Kajara Aston	Mwenge South	
6.	Hon. Mwiru Paul	Jinja East County	
7.	Hon. Basalirwa Asuman	Bugiri Municipality	
8.	Hon. Gureme R. Rwakoojo	Gomba West	
9.	Hon. Ongalo Kenneth Obote	Kalaki County	
10	Hon. Agaba Abbas Mugisha	Kitagwenda County	
11	Hon. Azairwe Dorothy. K	DWR Kamwenge	
12	Hon. Mugoya Kyawa Gaster	Bukooli North	
13	Hon. Akamba Paul	Busiki County	
14	Hon. Otto Edward Makmot	Agago County	
15	Hon. Adeke Anna Ebaju	NFY MP	
16	Hon. Nsereko Muhammed	Kampala Central Division	
17	Hon. Wilfred Niwagaba	Ndorwa East	
18	Hon. Abdu Katuntu	Bugweri County	
19	Hon. Ssemujju Ibrahim	Kira Municipality	
20	Hon. Medard Ssegona Lubega	Busiro East	
21	Hon. Mathias Mpuuga	Masaka Municipality	
22	Hon. Byarugaba Alex	Isingiro County South	
23	Hon. Akello Rose Lilly	DWR, Karenga	
24	Hon. Asamo Hellen Grace	PWD Eastern	
25	Hon. Namoe Stella	Napak DWR	

26	Hon. Akampulira Prosy	DWR Rubanda	
27	Hon. Suubi Brenda Asinde	DWR Iganga	
28	Hon. Amoding Monica	DWR Kumi	
29	Hon. Silwany Solomon	Bukooli County West	

CONSOLIDATED AMENDMENTS TO THE SUCCESSION (AMENDMENT) BILL, 2018

CLAUSE 1: AMENDMENT OF SECTION 2

Clause 1 is amended-

(a) in paragraph (a), by substitute for the definition of the word "child" the following-

> "child" means a person below the age of eighteen years and includes a child adopted by the deceased under the laws of Uganda."

(b) in the definition of 'currency points' substitute for the word 'fifth' the word 'first'

(c) **in the definition** of the phrase "lineal descendant", substitute for the word "off spring" the word " child"

(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) 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;";

(f) By inserting immediately after paragraph (g), the following-

> "by inserting immediately after paragraph (m) the following-

"(ma) "land or house from which the deceased person or surviving spouse was deriving his or her sustenance means-

(a) in the case of land, land which is owned by the deceased person and -
    (i) which the deceased person farmed prior to his death; or
    (ii) the deceased person or his or her surviving spouse, children or lineal descendants treat or voluntarily agrees to treat as the principal place which provides the livelihood of the family including as a source of income or food.
(b) in the case of a house, a house that the deceased person or the surviving spouse, children or lineal descendants treat or voluntarily agrees to treat as the principal place which provides the livelihood of the family including as a source of income or food.

(g) **By substituting for the definition of** "other residential property", the following-

"(pa) "other residential property" means the residence owned by a deceased person which the deceased person has, prior to his or her death, been occasionally occupying with his or her spouse, children or lineal descendants and includes-
(a) the chattels in the house;
(b) land on which the house is located; and
(c) a house or land from which the deceased person or surviving spouse was deriving his or her sustenance.

(h) By substituting for the definition of "principal residential property", the following-

"(ra) "principal residential property" means the residential property normally occupied by the deceased person prior to his or her death with his or her spouse, children or lineal descendants as their principal residential property and includes-
(a) the chattels in the house;
(b) land on which the house is located; and
(c) a house or land from which the deceased person or surviving spouse was deriving his or her sustenance.

(i) In the definition of the word "separation", delete the words "for a period of at least six months consecutively" ;

(j) By inserting a new paragraph immediately after paragraph (q) as follows-

'by repealing paragraph (w);

(k) By inserting the following new paragraphs as follows

(i) By repealing paragraph (l);

(ii) By repealing paragraph (n);

(iii) By repealing paragraph (u);

Justification:

- *for consistency, to define the word child as defined in the children's Act and the 1995 Constitution of Uganda;*
- *In the definition of the word "lineal descendant, to use the word that is defined, rather the word off spring which is not defined in the Bill or the principle act.*
- *The deletion of words "under the age of eighteen years" is to allow the children of the deceased person, irrespective of age, to occupy the 'other residential property or the residential property in recognition of the changes in social- economic conditions where in the children now stay longer with their parents beyond their 18th birthday.*
- *to remove the ambiguity in the definition of the word separation and to include other instances when a person is taken to have separated;*
- *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,*
- *To remove in the definitions, any inequality based on gender*

CLAUSE 2: REPEAL OF SECTION 3 OF THE PRINCIPAL ACT

For clause 2, there is substituted the following-

"**3. Interests and powers not acquired nor lost by marriage.**

(1) A person shall by marriage acquire an interest in the property of a person whom he or she marries.

(2) Except as may be agreed by the parties prior to marriage, a spouse does not acquire any interest in the property acquired by the other spouse prior to marriage.

(3) A spouse may during the substance of a marriage exclude any property from being deemed to be matrimonial property.

Justification:

- *To allow spouses to acquire interest in each other property except were parties agree otherwise.*
- *To allow a spouse exclude any property, save the residential holding, from being deemed to be matrimonial property*
- *To remedy an ambiguity in the current provision which appears to exclude a spouse from acquiring interest in the property of spouse acquired prior and during marriage.*
- *Section 3 is no longer good law as far as acquisition of rights over property acquired before and during the substance of a marriage since this was affected by the decision of Court in the case of* ***Julius Rwabinumi Vs Hope Bahimbisomwe Civil Appeal No. 30/2007 where*** *Justice Twinomujuni held that Matrimonial property is joint property between husband and wife and should be shared equally on divorce, irrespective of who paid for what and how much was paid... However, the application of the principle may vary depending on the nature of the marriage contract the spouses agreed to contract...Like in all other contracts, parties to a marriage have a right to exclude any property from those to be deemed as matrimonial property. This can be made expressly or by implication before marriage or at the time of acquisition of the property by any spouse. Otherwise the joint trust principle will be deemed to apply to all property belonging to the parties to the marriage at the time of the marriage and during its subsistence.'*
- *To create a joint trust over property acquired during the substance of a marriage as was held in the case of* ***Julius Rwabinumi Vs Hope Bahimbisomwe Civil Appeal No. 30/2007***

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.**

"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."

Justification

- *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"

"DELETION OF SECTION 23 OF THE PRINCIPAL ACT

Section 23 of the principal Act is deleted."

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 by-

(a) substituting for subsection (1), the following-

"(1) The residential holding or any other residential holding normally occupied by a person dying intestate prior to his or her death as his or her principal residence or owned by him or her as a principal residential holding, including the house chattels therein, shall devolve to the surviving spouse."

(b) substituting for subsection (2), the following-

"(2) Notwithstanding (1), the lineal descendants of a deceased person shall have a right of occupancy in the residential holding or any other residential holding normally occupied by a person dying intestate prior to his or her death as his or her principal residence or owned by him or her as a principal residential holding, subject to terms and conditions set out in the Second Schedule to this Act."

(c) 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 surviving 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.

Justification

- *The proposal in both the 2018 and 2019 Bills to devolve the residential holding or any other residential holding to both the lineal descendant and the surviving spouse will create practical challenges and may result in conflict.*
- *The proposes in the 2018 and 2019 Bills do not recognize the rights of the spouse of a deceased person over the property of his or her deceased husband or wife, as the case may be, which right he or she acquired at marriage as recognized in the amendments made to section 3 of the principal Act and the case of* ***Julius Rwabinumi Vs Hope Bahimbisomwe Civil Appeal No. 30/2007.***
- *The proposal is therefore to devolve the residential holding or any other residential holding to the surviving Spouse and grant the children rights of occupancy subject to the terms and conditions set out in the second schedule.*
- *For completeness 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.*

CLAUSE 13: REPLACEMENT OF SECTION 27 OF THE PRINCIPAL ACT

Clause 13 is amended by inserting immediately after sub clause (1) the following new sub clauses and renumbering the existing clauses accordingly-

"(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.

(9) Where the customary heir is a lineal descendant of the deceased and is entitled to benefit under subsection (1), he or she shall elect to benefit either as a lineal descendant or a customary heir.

(10) The administrator shall as far as possible ensure that there is equity and fairness in the distribution of property of the deceased person.

(11) Except as may otherwise be agreed, this section shall not apply to persons professing the Islamic faith.

(12) Parliament shall by law regulate the inheritance and succession to property belonging to persons professing the Islamic faith.

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 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 exempt persons professing the Islamic faith from the application of section 27 of the succession Act since some provisions of the Succession Act, especially on inheritance contravene the Quran and Hadith. The Constitution recognizes religious freedoms and specifically and also, It's an international best practice for separate laws to regulate the*

succession and inheritance of persons professing different religions, taking into account the unique religious views of those religions.

- *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) In distributing property of a deceased person among members of the same class, the administrator shall consider the circumstances of each beneficiary and take into account the age of the beneficiary, the contribution of the beneficiary to the acquisition of property of the deceased person, the duration of marriage, if the beneficiary was married to the deceased person and the degree of dependency of the beneficiary to the deceased person.

(2) Where a person 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.

(3) 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

- *To ensure fairness and equity in the distribution of the estate of the deceased person amongst members of the same class by considering the circumstances of each beneficiary and taking into account the age of the beneficiary, the contribution of the beneficiary to the acquisition of property of the deceased person, the duration of marriage, if the beneficiary was married to the deceased person and the degree of dependency of the beneficiary to the deceased person.*
- *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-

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

(b) 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, the surviving spouse-

(a) was separated from the intestate as a member of the same household;

(b) was separated from the intestate as a member of the same household and had, during the separation, contracted another marriage; or

(c) had deserted the matrimonial home for a period exceeding six months prior to the death of the intestate.

(2) Subsection (1) shall not apply where the surviving spouse is -

(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) Section 38 (5) shall, with the necessary modifications, apply to an application made under subsection (3).

(5) A declaration made under subsection (3) shall authorize the applicant to take-

(a) no more than 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 intestate as a member of the same household.

(6) 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 bar a spouse who had deserted the matrimonial home from benefiting from the estate of a deceased person.*
- *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), the proposed sub section (3), by substituting for the words "not incapacitated from" the words "capable of"

(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 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. Maintenance of spouse, lineal descendants and dependent relatives to be made in every will.

(1) A person who makes a will shall make reasonable provision for the maintenance of his or her spouse, lineal descendants and dependent relatives.

(2) 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 descendants or dependant relatives.

Justification

- *To impose a specific obligation on the testator to make provision for the maintenance of the surviving spouse, 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 attains the age of eighteen years or as the court may determine;

(iii) 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

(iv) 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 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.

(3) 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 in ineligible of being appointed guardian; or

(c) the child gas 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 were 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-

(i) in paragraph (c) by –

(a) 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 all pages of the will and": and

(b) by deleting all the words appearing after the words "same time" appearing in the second last line.

(ii) **By renumbering the current provision as subsection (1) and inserting immediately after the following-**

"(2) Notwithstanding subsection (1), a person referred to in subsection (1) (a), (b) and (c) may, in accordance with the Electronic Signatures Act, sign or attest a will. "

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 all the pages of the will, in the presence of the testator for ease of identification of such witnesses and to enhance the authenticity of wills.*
- *To allow electronic signatures in the execution or witnessing of wills.*
- *The words proposed for deletion in paragraph (c) are redundant in light of the amendment to require the signing of each page of the will by the persons attesting 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 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 28: REPEAL OF SECTION 87 OF THE PRINCIPAL ACT

For clause 28, there is substituted the following-

"Replacement of section 87 of the principal Act

The principal Act is amended by substituting for section 87 the following-

87. **Implied inclusion of all lineal descendants**

In the absence of any intimation to the contrary in the will, "child", "son" or "daughter" or any word which expresses those relationships is to be understood as including all lineal descendants of the deceased person"

Justification

To remove the words that create a distinction in children based on the marital status of the parents of a child instead of deleting the entire provision since its essential in understanding words used in will.

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 to 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-

Insertion of new section 182A

Immediately after section 189, insert the following new section-

"189A. Execution of a will without order of court

Notwithstanding section 182, where a person is appointed executor in the will of a deceased person, the person so appointed may execute the will, without the order of court, where the estate of a deceased person is in the form of cash, cash in the bank, death gratuity, house hold assets, vehicles or any other movable property and does not exceed a gross value of two thousand five hundred currency points."

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

(b) 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, or subjects it to loss or damage, is 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 190 of Principal Act

Section 190 of the principal Act is amended by-

(a) numbering the existing provision as subsection (l) 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 (l) 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."

Insertion of new section 199A

Immediately after section 199, insert the following new clause

"199A. Administration of the estate without order of court

(1) Where a person dies intestate, the family of the deceased person may appoint an administrator from amongst persons who are related to the deceased by blood or affinity.

(2) Notwithstanding section 199, a person appointed under subsection (1) may administer the estate of the intestate, without order of court, where the estate of a deceased person is in the form of cash, cash in the bank, death gratuity, house hold assets, vehicles or any other movable property and does not exceed a gross value of two thousand five hundred currency points."

"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 insertion of a new section 182A and 189A is to empower the execution or administration of the estate of a deceased person without order of court where the property is in form of movable property and not exceeding 50 million shillings. The proposal will guard estates of any value below 50 million from wastage arising from non-administration due to the high costs involved in obtaining probate and letters of administration.*

- *The amendment is in recognition of the current position of the law as far as the appointment of guardians and execution of estates for children is concerned.*
- *The amendment is also a consequential amendment arising from amendments made to section 215.*
- *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 a 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.*
- *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, in the proposed section 201A, insert the following new subsection immediately after subsection (2) as follows-

"(3) For avoidance of doubt, section 5 of the Administrator General's Act shall not apply to a surviving spouse."

Justification

- *To ensure that the surviving spouse is not unduly fettered in applying for the grant of letters of administration since, upon marriage, the spouse acquires an interest in the property of the other spouse and the requirement to obtain a certificate of no objection to administer such property does recognize the surviving spouse's proprietary rights which are protected by law and under article 26 of the Constitution.*

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

In clause 32, substitute for the proposed section 203, with the following-

"203. Citation of persons entitled in priority to administer.

Subject to section 201A, letters of administration shall not be granted to a person other than a person entitled to a greater proportion of the estate except where a citation is issued and published in the manner prescribed under this Act calling on the person entitled to a greater proportion of the estate to accept or refuse the letters of administration."

Justification

- *For clarity*
- *For consistency to remove any reference to relatives of a deceased person since the word relative has not been defined.*
- *To ensure that letters of administration are always granted to a person who is entitled to the largest share of the estate of the deceased person.*

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

In the proposed subsection (1) of section 204A, delete the words "in the presence of a witness"

Justification

- *The requirement to give written notification in the presence of a witness is impractical since it assumes that the person giving notice must do so in the presence of a witness. Since the notice envisaged in the provision is to be written, proof of receipt of the notice is sufficient thereby making the requirement to give notice in the presence of a witness unreasonable and impractical.*

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 safe guard 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 mismanaged the estate or has not compiled with any condition of grant;

(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), (c), (e) 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) For avoidance of doubt, the 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, untrue allegations as well as persons who do not file an inventory as prescribed in sections 234 (2) (b), (e) and (f);*
- *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

Delete section 236 of the Principal Act

Justification

- *This is a consequential amendment arising from the deletion of the word delegatee, which makes the provision redundant.*
- *To adopt amendments proposed in clause 33 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 three years.

(3) Notwithstanding subsection (2), court may on application extend the duration prescribed in subsection (2) for a further period of three 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.*
- *The provision is likely to be abused, as is currently the case, by allowing the executor to indefinitely execute the estate instead of distributing the estate as soon as practical which is in fact the sole reason for his or her appointment.*

- *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 carryout the duties and functions authorised by the letters of administration for a period not exceeding three years.

(3) Notwithstanding subsection (2), the court may on application extend the duration prescribed in subsection (2) for a further period of three 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 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.*

- *The provision is likely to be abused, as is currently the case, by allowing the executor to indefinitely execute the estate instead of distributing the estate as soon as practical which is in fact the sole reason for his or her appointment.*
- *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** (l) 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.

In clause 40, substitute for the proposed section 267A the following-

"267A. Powers of Registrar

(1) Except for the granting or revoking of probate or letters of administration, a judge may refer to the registrar for determination, any matter in relation to the granting or the revoking of probate or letters of administration.

(2) A person aggrieved by an order made by the Registrar under subsection (l) or (2) may appeal to the High court within fourteen days from the date the order was issued.

(3) In this section, "registrar" means a registrar of the High Court."

Justification

- *To restrict the powers proposed to be granted to the registrar to only those that are by law vested in him or her in relation to any civil suit or proceeding pending before court.*

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 intermeddling with the estate of the deceased person pursuant to subsection (4) shall forthwith 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 were 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 were 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 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 executer 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, 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 12, 13 and 56 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 SCHEDUTE 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-