



PARLIAMENT OF UGANDA

**REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY
AFFAIRS ON PROBATE RESEALING (AMENDMENT) BILL, 2019**

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OFFICE OF THE CLERK TO PARLIAMENT
PARLIAMENT BUILDINGS, KAMPALA

February, 2021

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1.0. Background

On 12th August, 2019, Government introduced in Parliament, the Probate Resealing (Amendment) Bill, 2019 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.

2.0. Objects of the Bill

The object of the Bill is to amend the Probate (Resealing) Act, Cap 160 in order to repeal any reference to the Commonwealth and British Courts in the Act and to align the Act to the Constitution

3.0. Methodology

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 Minister of Justice and Constitutional Affairs
- b. The Attorney General
- c. Uganda Law Reform Commission
- d. The Equal Opportunity Commission
- e. The Justice Centre Uganda
- f. Foundation for Human Rights Initiative

of the Republic of Uganda.

4.0. Resealing of probate and letters of administration in Uganda

The Probate (Resealing) Act is the law that governs the enforcement of letters of administration and probate granted in any part of the Commonwealth in any foreign country, or a British court in a foreign country and their enforcement in Uganda

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When letters of administration or probate are granted in any part of the Commonwealth in any foreign country, or a British court in a foreign country, an interested person may produce the letters or probate, deposit with the High Court a copy of the letters or probate and have them sealed with the seal of the High Court and thereupon shall be of the like force and effect, and have the same operation in Uganda as if granted by that court.

Before letters or probate can be enforced, section 3 of the Act requires that the person must pay duty for the probate or in case of letters of administration, provide security in the amount to cover the property, if any, in Uganda to which the letters of administration relate, and prove the domicile of the deceased person.

Section 4 of the Act also allows court to, if it thinks fit, on the application of any creditor, require, before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in Uganda.

The Chief Justice is required to, with the approval of the Minister, make rules of court for regulating the procedure and practice, including fees and costs, in the High Court, on and incidental to an application for sealing a probate or letters of administration under this Act.

5.0. Need for the Bill

The probate (Resealing) Act Cap 160 came into force on the 30th May 1936. The Committee notes that due to passage of time, some aspects of it have become outdated, especially in light of the Constitution, Government policies, emerging international best practices and the legal environment.

The Probate (Resealing) Act has been found over the years to be limited in scope, only applying to the enforcement of letters of administration and probate granted in any part of the Commonwealth or a British court in a foreign country.

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The Committee notes that the limitation has meant that letters or probate granted by a court other than a court of a country belonging to the Commonwealth cannot be enforced in Uganda. This limitation means that Ugandans in those countries cannot benefit from the provisions of this Act and succession laws generally.

This Act therefore needs to be expanded to reflect Uganda's position in the global world and also, reflect the fact a Ugandan can stay or obtain letters or probate from any country in the world yet face difficulty in enforcing the same in Uganda under the provisions of the probate (Resealing) Act.

This Bill therefore seeks to remove the limitation inherent in the Act in order to give it broader application.

6.0. GENERAL ANALYSIS, OBSERVATION, FINDINGS AND RECOMMENDATIONS

The Committee examined the amendments as proposed in the Bill, its legality, effect and effectiveness in light of the Constitution, existing public policy, court decisions, other laws and the mischief it intends to cure and recommend its adoption, deletion or amendment.

6.1. SHORT TITLE AND COMMENCEMENT

The Bill proposes in clause 1 to provide for the short title and commencement of the Bill once enacted into law.

The Bill proposes that the Bill once enacted into law is to be cited as the Probate (Resealing) (Amendment) Act, 2019 and it will come into force on the date of publication in the gazette.

The Committee observes that this provision is redundant in light of section 3, 14 and 15 of the Acts of Parliament Act.

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

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Act. Furthermore, section 15 of the Acts of Parliament 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, then 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

- *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.*

6.2. INTERPRETATION OF SPECIFIED WORDS USED IN THE ACT

The Bill proposes in clause 2 to amend section 1 of the principal Act by deleting the definition of the words for the words "British court in a foreign country" and "probate" and "letters of administration."

The Committee has examined the proposal by the Bill and whereas it is in agreement that in light of the amendments made to the principal Act, the inclusion of the word

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"British court in a foreign country" is redundant, the proposal to delete the definition of the word "probate and letters of administration" should be rejected.

The Committee observes that deleting the word probate and letters of administration" will create a lacuna as to the extent of the principal Act, considering that the principal Act deals with the sealing of probate and letters of administration.

The Committee notes that the object of the amendment to the principal Act is to expand the application of the Act beyond countries in the Commonwealth. The Committee further notes that whereas countries in the Common wealth use the terminology "probate or letters of administration" to refer to the authority given to a person by court to administer the estate of a deceased person, countries applying the civil law system, use a different terminology. For instance, in France the same document is called a "notaire", while other countries call it a different name. Therefore, if the definition of the word "probate or letters of administration" is deleted, there will be confusion as to which document the Act relates to.

The Committee is of the considered opinion that the definition should be amended to reflect the new broader application of the Act instead of being deleted as proposed.

Recommendation

- *In light of the above, the Committee recommends that clause stands part of the Bill albeit the definition of the word "probate and letters of administration" is made broader in application instead of being deleted.*

6.3. APPLICATION OF PRINCIPAL ACT BEYOND COMMONWEALTH COUNTRIES

The Bill proposes to amend section 2 of the principal Act by deleting the words "of probate in any part of the Commonwealth in any foreign country, or a British court in a foreign country, has either before or after the passing of this Act granted" and substitute it with the following words "of any country other than Uganda, grants".

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It is the considered opinion of the Committee that the amendment should be supported since it expands the Act beyond the countries that are in the Commonwealth and probate issued from British Courts.

The expansion of the provisions of the Act will result in the enforcement of probate and letters from any country in the world.

This is practical and reasonable since it takes into account the fact that a Ugandan or a person domiciled in Uganda may have property in Uganda as well as in any other country in the world. This therefore grants such a person the ability to have his or her property managed in Uganda or in any other country as long as there is a letter or probate from such a country or Uganda.

Recommendation

- *In light of the above, the Committee recommends for the adoption of clause 3 of the Bill*

6.4. CONDITIONS TO BE FULFILLED BEFORE RESEALING OF PROBATE OR LETTERS

Clause 4 of the Bill proposes to amend section 3 of the principal Act by inserting a new sub clause (2), to require that letters and probate cannot be resealed in Uganda unless the relevant laws of the country that issued them are in conformity with the Constitution of Uganda.

The Committee has considered the amendment and is of the considered view that the proposed amendment is ambiguous in so far as it requires the laws of another country to conform to our Constitution.

The Committee is aware that the Constitution of Uganda does not make provision for the resealing of letters and probate in Uganda. The Committee is also aware that laws of a country are made with the uniqueness of that country in mind and to require

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another country's law to conform to the Constitution, yet the same does not guide on the resealing of probate or letters granted by a foreign court is ambiguous. The Committee is of the considered opinion therefore that this amendment should be rejected.

The Committee notes that since the provisions of this Act have been expanded to allow for the resealing of letters and probate from countries across the globe, there is need to ensure that Ugandans can get similar treatment as provided in the Bill when they wish to enforce letters and probate issued in Uganda. The Committee reasons that this can only be achieved by requiring that for a person to enjoy such rights as envisaged in the Act, the country that issued the letters or probate should also be able to give reciprocal arrangement to letters and probate issued by courts in Uganda.

The Committee notes that such an arrangement is akin to the process that exists in the Reciprocal Enforcement of Judgments Act Cap 21 wherein, only judgments from countries that give reciprocal arrangements to judgments in Uganda may be enforced in Uganda.

Recommendation

In light of the above, the Committee recommends that clause 3 is amended to ensure that countries provide reciprocal enforcement of letters or probate issued by courts in Uganda before they can have letters or probate issued by courts in that particular country enforced in Uganda.

7.0. CONCLUSION AND RECOMMENDATION

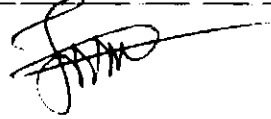

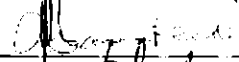





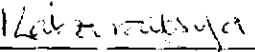
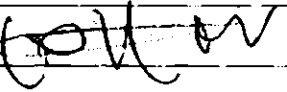
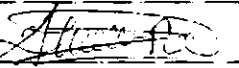
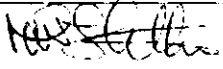
In light of the above, the Committee proposes that the Probate (Resealing) Act, Cap 160 is due for amendment as explained above.

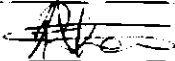
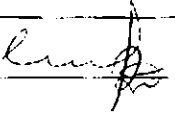
The Committee recommends that the Probate (Resealing) Act, is read the second time and does pass.

I beg to report.

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SIGNATURE OF MEMBERS ENDORSING THE REPORT ON THE PROBATE RESEALING (AMENDMENT) BILL, 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	

PROPOSED AMENDMENT TPO THE PROBATE RESEALING (AMENDMENT) BILL, 2019

CLAUSE 1: SHORT TITLE AND COMMENCEMENT

Delete clause 1

Justification

- *Clause 1 is redundant in light of section 14 and 15 of the Acts of Parliament Act, Cap 2.*

CLAUSE 2: AMENDMENT OF SECTION 1 OF THE PROBATE (RESEALING) ACT

For clause 1, there is substituted the following-

"1. Amendment of section 1 of the probate (resealing) Act

The Probate (Resealing) Act, in this Act referred to as the principal Act is amended in section 1-

(a) by repealing paragraphs (a);

(b) in paragraph (c), by substituting for the definition of the word "probate and letters of administration" the following-

""probate" or "letters of administration" include any instrument having in any country other than Uganda the same effect given to probate or letters of administration under the Succession Act Cap 162, the Administration of Estates (Small Estates) (Special Provisions) Act, Cap 156 and the Estate Of Missing Persons (Management) Act Cap 159.;

Justification

- *The proposal to delete the definition of the word probate and letters of administration will leave a lacuna in the law as regards the instruments that the law applies to considering that the word "probate" and "letters of administration" only has universal understanding and application in commonwealth countries and not in all other countries.*
- *Consequential amendment arising from expansion of the application of the law from only applying to commonwealth countries to apply to all countries of the world generally.*

CLAUSE 4: AMENDMENT OF SECTION 3 OF PRINCIPAL ACT

Clause 4 of the Bill is amended by-

(a) Substituting for the proposed subsection (2) the following-

"(2) Probate or letters of administration granted by a court of a country other than Uganda shall only be resealed in a court in Uganda where the relevant law under which the letters of administration or probate was granted is not contrary to the Succession Act Cap 162, the Administration of Estates (Small Estates) (Special Provisions) Act, Cap 156 or the Estate Of Missing Persons (Management) Act Cap 159."

(b) Inserting the following subsections immediately after subsection (2) as follow-

"(3) Probate or letters of administration granted by a court of a country other than Uganda or a Partner State of the East African Community, shall only be resealed in Uganda where the relevant laws of that country allow the enforcement, within that country, of Letters of administration or probate obtained in courts of law in Uganda.

(4) For avoidance of doubt, letters of administration or probate obtained from a court of a Partner State of the East African Community shall be enforced as if the same was obtained in a court of law in Uganda.

(5) A Partner States of the East African Community means the Republic of Kenya, the Republic of Uganda and the United Republic of Tanzania and any other country granted membership to the Community under Article 3 of the Treaty Establishing the East African Community”

Justification

- *To require a country give reciprocal enforcement of letters and probate issued by courts of law in Uganda;*
- *To require the resealing of probate or letters only where where the relevant law under which the letters of administration or probate was granted is not contrary to the Succession Act Cap 162, the Administration of Estates (Small Estates) (Special Provisions) Act.*
- *To apply the application of the Act to Partner State of the East African Community*
- *For completeness, to define "partner states of the East African Community.*

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