



PARLIAMENT OF UGANDA

**REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY
AFFAIRS ON THE ADMINISTRATION OF ESTATES (SMALL ESTATES) (SPECIAL
PROVISIONS) (AMENDMENT) BILL, 2019**

**Office of the Clerk to Parliament
Parliament Buildings, Kampala**

February, 2021

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1.0. Introduction

On the 12th August, 2019, Government introduced in Parliament, the Administration of Estates (Small Estates) (Special Provisions) (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. 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

3.0. Object of the bill

The object of the Bill is to amend the Administration of Estates (Small Estates) (Special Provisions) (Amendment) Bill, 2019 to revise the monetary jurisdiction of Magistrate courts to conform to the Magistrate Courts Act and to provide for the revocation of probate or letters of administration for want of jurisdiction.

4.0. Administration of small estates in Uganda

The Administration of small estates is governed under the Administration of Estates (Small Estates) (Special Provisions) Act, Cap 156, the Administrator General's Act Cap 157 and the Succession Act Cap 162.

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A small estate is an estate of a value prescribed in section 2 of the Administration of Estates (Small Estates) (Special Provisions) Act. Section 2 limits a small estate to an estate whose total value does not exceed one Hundred thousand shillings.

The jurisdiction of grant letters of administration or probate in small estates is the preserve of magistrate courts wherein-

- (a) a magistrate grade II, has jurisdiction over a small estate whose total value does not exceed ten thousand shillings;
- (b) a magistrate grade I, has jurisdiction over a small estate whose total value does not exceed fifty thousand shillings;
- (c) a chief magistrate, has jurisdiction over a small estate whose total value does not exceed one hundred thousand shillings.

The Administration of Estates (Small Estates) (Special Provisions) Act is intended to ensure the just administration of all estates in Uganda, irrespective of their size. The Administration of Estates (Small Estates) (Special Provisions) Act and the Rules made thereunder ensure that small estates are administered with little modalities in order to reduce the cost of administering such estates as well as ensuring that the beneficial interest in the estate is maintained.

The processes of applying for probate or letters over a small estate is simple, based on standardised forms prescribed in the Administration of Estates (Small Estates) (Special Provisions) Act and the Rules made thereunder and can be undertaken without the need for a lawyer or any form of legal training. Priority for grant of letters or probate is given to the children of the deceased, the surviving spouse, the father or mother of the deceased and other persons related to the deceased by full or half blood.

The Administrator General may also be granted letters of administration over a small estate in two instances. The first instance is where the people to whom priority is granted do not apply for the grant. The other instance is where the Administrator General or an agent of the Administrator General, pursuant to section 2(5) and 4 (5) of

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the Administrator General's Act, takes over and administers the estate with or without a grant made by court.

5.0. Need for the Bill

The Administration of Estates (Small Estates) (Special Provisions) Act Cap 156 is the law that governs the administration and execution of small estates in Uganda. This Act commenced on the 6th June 1972 and 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 Committee notes that the object of the Bill is to amend the Administration of Estates (Small Estates) (Special Provisions) (Amendment) Bill, 2019 to revise the monetary jurisdiction of Magistrate courts to conform to the Magistrate Courts Act and to provide for the revocation of probate or letters of administration for want of jurisdiction.

The Committee notes that the amendment is premised on the need to expand the pecuniary jurisdiction of the magistrate Court in granting or revoking letters and probate in small estates to align the jurisdiction with the jurisdiction granted to such courts under the Magistrate Court Act Cap 16.

Furthermore, the Committee observes that the values prescribed in section 2 of the Administration of Estates (Small Estates) (Special Provisions) Act are too low to be effectively administered in the current economic situation. The Committee observes that under the law, a small estate is one that has a value of not more than UGX 100,000 Shillings. This value was significant at the time the law was enacted but has, with the passage of time, been eroded by inflation, making the provisions redundant and ineffective since the cost of obtaining probate or letters exceeds the value of estate as well as the beneficial interest in the estate.

The Committee further observes that since the provisions of section 2 have been made redundant by the passage of time, many estates have been wasted or un-administered

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owing to the cost of obtaining letters of administration or probate from the High Court being higher than the value or the beneficial interest of the estate.

The Committee takes cognizant of the **Administrator General's Cause No. 493 of 2003**, wherein the deceased maintained Shs. 200,000/= as her bank balance with Bank of Baroda. When the Administrator General requested the bank to send the funds to him for transmission to the beneficiaries, the bank replied that letters of administration had to be obtained before the funds could be sent. Since it was 200,000/=, the application had to be made to the High Court and the Administrator General charges Shs. 200,000/= to make the application. Given that all the funds were going to be consumed in the process, the beneficiaries abandoned the money in the bank¹.

Therefore, the proposal to expand the values of small estates under the Administration of Estates (Small Estates) (Special Provisions) Act is intended to bring services closer to the people, reduce the cost of obtaining letters or probate in estates whose values fall within their jurisdiction, ensure that the beneficiaries draw as much value from estate and allow for the just and effective administration of estates of deceased persons irrespective of their value.

6.0. GENERAL ANALYSIS, OBSERVATION, FINDINGS AND RECOMMENDATIONS

This part of the report will examine the amendment proposed made by 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.

¹ See pg 66 of the Uganda Law Reform Commission Study Report on the review of laws on Succession in Uganda, 2014

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The Bill proposes that the Bill once enacted into law is to be cited as the the Administration of Estates (Small Estates) (Special Provisions) Act and it will come into force on the date of publication in the gazette.

The Committee finds this provision to be 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 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, the Committee sees no need for it to stand part of the Bill.

Secondly, the Committee is aware that for a long time, Acts of Parliament have not prescribed a citation section in any Act. The Committee is also aware that citations clauses have, in the recent past, been 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 finds no value in having a citation clause in the Bill.

Recommendation

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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.

6.2. Delineation of small estate and Jurisdiction of court

The Bill proposes to amend section 2 of the principal Act-

- (a) by removing magistrate Grade II from the Administration of Estates (Small Estates) (Special Provisions) Act;
- (b) by expanding the values a magistrate grade I has jurisdiction over from ten thousand to twenty Million
- (c) by expanding the value a chief magistrate has jurisdiction over from fifty thousand shillings to fifty Million.
- (d) To empower court revoke letters or probate when the same have been granted by a court without jurisdiction.

The Committee has reviewed the proposed amendments and it find the amendment, especially the proposal to remove the magistrate Grade II as well as expanding the value of estates magistrates have jurisdiction over, to be in line with the Magistrate Court Act Cap 16. The Committee notes that Magistrate Grade IIs are being phased out, making the reference to such a court under the principal Act redundant.

The Committee further notes that the pecuniary Jurisdiction of Magistrate Courts was revised in 2007 through an amendment to section 207 of the Magistrate Court Act and the Administration of Small Estates (Small Estates) (Special Provisions) (Amendment of Jurisdiction Magistrates Courts) Order, S.I 20 and 21 of 2009. Through that amendment, a chief Magistrate’s jurisdiction was increased from 5 million Shillings to 50 million shillings while that of a Magistrate Grade 1 was increased from 2 million to 20 million shillings. The Committee therefore supports the amendment since it will

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- A signature that looks like "H. H. H.". *2017* written below it.

harmonise the provisions of the principal Act with the Magistrate Court Act making the law book easy to use.

The Committee also notes that the amendment proposed in paragraph (d), of revoking letters or probate granted by a court without jurisdiction is welcome and should be supported.

The Committee notes that for a long time, courts without jurisdiction have been granting and revoking probate and letters of administration of small estates. Such courts have been basing their decisions on section of the Administration of Estates (small estates) (special provisions) Act. The Bill propose to delete section 2 (5) of the Administration of Estates (Small Estates) (Special Provisions) Act, a provision which is to the effect that a grant of probate or letters of administration shall not be revoked or annulled for want of jurisdiction if during the administration of the estate it is subsequently discovered that the total value of the estate is greater than the total value of the estate declared in an application for the grant unless the court is satisfied that the interests of the beneficiaries are thereby prejudiced.

The effect of this provision was to allow a court decision issued by a court without jurisdiction to stand, contrary to settled legal principles and various decisions of court.

The Committee notes that it is a settled principle of law that a court cannot exercise jurisdiction over matters unless the law empowers it to do so. This principle was discussed in the case of the *Owners of Motor Vessel Lillian "s" v Caltex Oil Kenya Limited [1989] KLR 1* in which Nyarangi JA, held:

By jurisdiction, is meant the authority which a court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted and may be extended or restricted by the like means. If no restriction or

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limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it had jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

The Court of Appeal further held that:

Jurisdiction is everything without it; a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

The Committee notes that there has been mixed signals from court as far as section 2 (5) is concerned, with some courts following the command of section 2 (5) while others have completely rejected the provision. Those that have refused to follow the command of section 2 (5) of the Administration of Estates (Small Estates) (Special Provisions) Act have reasoned that a court cannot exercise jurisdiction over matters the law does not empower it to exercise and a decision of courts acting without jurisdiction is a nullity and should not stand.

Recommendation

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- *The Committee recommend that clause 2 is adopted albeit, the value of the estate should be expressed in currency points and a currency point should be defined.*
- *This is intended to shield the value from being eroded by inflation.*

6.3. Other matters in need of amendment

The Committee has reviewed the Administration of Estates (Small Estates) (Special Provisions) Act and found that there are provisions that needed to be amended in order to modernise them. For instance, section 7 (2) of the Act which currently bars appeals to the Court of Appeal where the value of the estate does not exceed ten thousand shillings is in need of amendment since it also contains a value that is redundant and ineffective.

Furthermore, Section 10 (4) of Administration of Estates (Small Estates) (Special Provisions) Act is also in need of amendment since it excludes the application of part XXXI of the succession Act from application made under the principal Act. This creates a lacuna in the application process and may result in fraudulent applicants owing to the revision in the value of estates that may be handled by magistrate Courts.

Recommendation

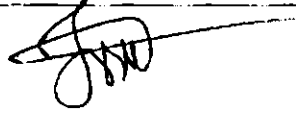
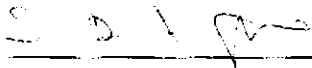
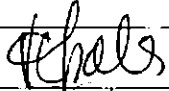

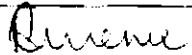
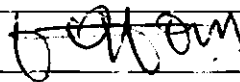
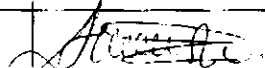
In light of the above, the Committee recommends that section 7 (2) is deleted and section 10 (4) is amended to allow the application of the succession Act to applications under the Administration of Estates (Small Estates) (Special Provisions) Act.


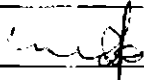
7.0. CONCLUSION AND RECOEMENDATION



In light of the above, the Committee proposes that the Administration of Estates (Small Estates) (Special Provisions) Act is due for amendment as explained above.

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SIGNATURE OF MEMBERS ENDORSING THE REPORT ON THE ADMINISTRATION OF ESTATES (SMALL ESTATES) (SPECIAL PROVISIONS) (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	

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PROPOSED AMENDMENTS TO THE ADMINISTRATION OF ESTATES (SMALL ESTATES) (SPECIAL PROVISIONS) (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.*

INSERTION OF NEW CLAUSE IMMEDIATELY AFTER CLAUSE 1

Immediately after clause 1, insert the following new clause -

“Amendment to section 1 of the principal Act

The Administration Of Estates (Small Estates) (Special Provisions) Act, in this Act referred to as the principal Act is amended in section 1 inserting the following definition immediately before paragraph (a)-

“(a) currency point” has the value assigned to it in the Schedule to this Act”;

Justification

- *To insert a schedule on currency points.*
- *To express all values in the Act in currency points as is adopted in all other laws*
- *To shield the values prescribed in the Act from inflation.*

CLAUSE 2: AMENDMENT OF SECTION 2

Clause 2 of the bill is amended in-

(a) Paragraph (b) by substituting for the words "twenty Million shillings" the words "one thousand currency points"

(b) In paragraph (c), by substituting for the words "fifty million" the words "two thousand five hundred currency points"

Justification

- *To express the values in form of currency points in order to shield the values in clause 2 from being eroded by inflation.*

INSERTION OF NEW CLAUSE IMMEDIATELY AFTER CLAUSE 2

Insert the following new clauses immediately after clause 2 as follows-

"Amendment of section 7 of the principal Act

Section 7 of the principal Act is amended by deleting subsection (2).

Amendment of section 10 of the principal Act

Section 10 of the principal Act is amended by substituting for subsection (4) the following-

"(4). The provisions of Part XXXI of the Succession Act shall, with the necessary modifications, apply to the administration of small estates.

"Insertion of Schedule in principal Act

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

"Schedule

Section 1

A currency point is equivalent to twenty thousand shillings.

Justification

- *A consequential amendment arising from the amendment of section 2 of the Act*
- *Section 7 (2) is deleted since it is redundant in light of the increase in the value of small estates. This will allow appeals to the Court of Appeal since the values of estates have been enhanced.*
- *Section 10 (4) is amended in order to strengthen the application process in the administration of small estates in light of the increase in the value of small estates.*
- *The insertion of a new schedule is a consequential amendment to section 1 of the principal Act wherein a definition of a currency point was introduced. This will prescribe the value of a currency point.*

TITLE OF THE BILL

The title of the Bill should be "The Administration of Estates (Small Estates) (Special Provisions) (Amendment) Act"

Justification

- *For clarity as to the title of the Bill since in some instances, such as in the memorandum, the title of the Bill is different from how it is cited in the main body of the Bill*