PARLIAMENT OF UGANDA

REPORT OF THE SECTORAL COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON THE SUCCESSION (AMENDMENT) BILL, 2021

OFFICE OF THE CLERK TO PARLIAMENT

PARLIAMENT BUILDING

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1.0. INTRODUCTION

The Succession (Amendment) Bill, 2021 was read for the first time on 5th October, 2021 and pursuant to Rule 129 (1) of the Rules of Procedure of Parliament of Uganda, the Bill was referred to the Sectoral Committee on Legal and Parliamentary Affairs for scrutiny. In accordance with Rule 129 (2) of the Rules of Procedure of Parliament of Uganda, the Committee has exhaustively examined the Bill and hereby presents its report with observations and recommendations.

2.0. BACKGROUND

Succession is defined in the Black's Law Dictionary, Bryan Garner, 9th Edition, 2009 to mean the acquisition of rights and/or property of a deceased person by law. The terms "Succession" and "inheritance" are commonly used interchangeably.

Succession is provided for under various laws, including, the Constitution of the Republic of Uganda, 1995, the Succession Act, Cap. 162, the Administrator Generals Act, Cap.157, the Estates of Missing Persons (Management) Act, Cap.159, the Administration of Estates (Small Estates) (Special Provisions) Act, Cap. 156, the Local Council Courts Act, 2006, the Probate (Resealing) Act, Cap.160, the Trustees Incorporation Act, Cap. 165, the Public Trustee Act, Cap 161, the Administration of Estates by Consular Officers Act, Cap. 154, the Administration of Estates of Persons of Unsound Mind Act, Cap. 155, the Church of England Trustees Act, Cap. 158 and the Local Governments Act, Cap 243, of the laws of Uganda.

These laws set out the substantive law and regulate the procedures and processes for succession matters such as: the succession rights of widows/widowers and children in case of both testate and intestate succession, protection accorded to the different sexes in succession matters, powers and duties of the office of the Administrator General; powers and duties of an administrator or executor of an estate; jurisdiction of courts; procedure for

obtaining letters of administration or grant of probate; and offences arising there from.

3.0. THE SUCCESSION ACT, CAP. 162

The Succession Act, Cap 162, which is the principal 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 Due to passage of time, some aspects of the Succession Act have become outdated, especially in light of the Constitution, Government policies, emerging international best practices and the legal environment.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 spouses.

The Succession Act has witnessed a number of reviews to improve its implementation and reflect the wishes of the people of Uganda, at the time, as well as the prevailing Government policy.

For instance, in 1965, the Government instituted the Kalema Commission of Inquiry to review the Succession Act. The Kalema Commission of Inquiry Review culminated into the 1972 Succession (Amendment) Decree, which among others,-

(a) provided for succession to estates of Ugandans dying intestate and restricted the disposal of property by will among other things;
(b) recognised the rights of illegitimate and adopted children;
(c) introduced dependent relatives as a category of beneficiaries to a deceased's estate;
(d) recognised polygamy, the concept of customary and legal heir; and
(e) introduced the concept of a male preference to the female when choosing a legal heir.

In 2012, the Uganda Law Reform Commission commissioned a review of the Succession laws in Uganda. The review culminated in the study ***Report on the Review of Laws on Succession in Uganda of 2013*** which examined succession laws in Uganda for purposes of ensuring among others that, the provisions of the laws of succession are in conformity with the 1995 Constitution of the Republic of Uganda, national laws and international and regional human rights standards and practices. The study also examined succession laws with a view of updating them in light of the changing socio-economic circumstances of Uganda, and to make the law accessible to the people in order to enhance its implementation.

The study undertaken by the Law Reform Commission-

(a) identified gaps and anomalies within the law of succession and proposed various amendments to remedy the identified gaps and anomalies;

(b) identified challenges which hinder the effective implementation of the laws of succession and proposed various changes to the law to remove such challenges; and

(c) examined various customary and religious practices in the area of succession that fall short of the human rights standards with a view to proposing their elimination and identifying best practices from other jurisdictions to improve on the nature and substance of the law.

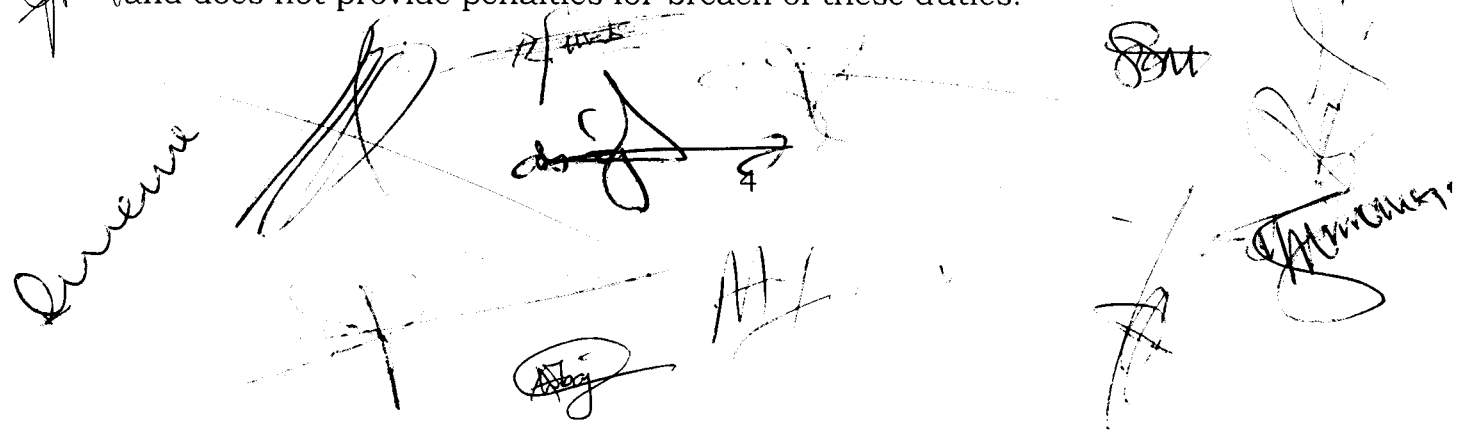
The study report of the Law Reform Commission found, among others, that the provisions in the current succession laws are outdated and do not reflect the contemporary social and economic changes of the day and the changes in other laws specifically the equality and non-discrimination guarantees enshrined in the 1995 Constitution of the Republic of Uganda.

The findings of the study report of the Law Reform Commission did inform and influence the amendments being proposed to the Succession Act, under the Succession (Amendment) Bill, 2021.

Furthermore, there are several court decisions that progressively interpreted the Succession Act, while taking into account values and trends in developments and aspirations of the Ugandan society. 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 remedied if the Act is to be effective. One such gap as found out by court in the case of ***Administrator General Vs. Charles Acirer & Another. HCCS. 235/1994,*** where 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 of the Children Act, specifically 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;
- provides for revocation of a guardianship order;
- provides for the registration of guardian order; and
- Provides for the 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 of the Succession Act are no longer good law as far as the appointment, powers and removal of a guardian of a child are concerned.

There is therefore a 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. THE OBJECT OF THE BILL

The object of the Succession (Amendment) Bill, 2021 is to;-

(a) align the Succession Act to Article 31 (Rights of the family), Article 32 (affirmative action in favour of marginalised groups) and Article 33 (Rights of women) of the Constitution of the Republic of Uganda;

(b) provide for the distribution of estates of intestate deceased persons in accordance with Article 33 (Rights of women) of the Constitution of the Republic of Uganda;

(c) provide for the guardianship of minor children of deceased persons; to provide for the discretion of courts in the grant of probate and letters of administration;

(d) provide for an expiry period of two years for grants of probate and letters of administration;

(e) provide for the requirement of the consent of spouses and lineal descendants prior to disposal of estate property by administrators;

(f) provide for the joint administration of executors and administrators of estates; and

(g) remove from the Act, all the obsolete terms used therein.

The Succession (Amendment) Bill, 2021 contains 73 clauses, wherein, it proposes to amend 68 Sections out of 339 Sections currently in the Succession Act and insert 9 additional Sections in the Succession Act.

5.0. METHODOLOGY

In the process of analyzing the Bill, the Committee;

(a) met and held discussions with the following stakeholders;-

(i) Attorney General;

(ii) Administrator General;

(iii) Uganda Law Reform Commission (ULRC);

(iv) Equal Opportunities Commission (EOC);
(v) Family Division of High Court;
(vi) Uganda Law Society (ULS);
(vii) Uganda Association of Women Lawyers(FIDA-Uganda);
(viii) Uganda Women Parliamentary Association (UWOPA);
(ix) OXFAM International;
(x) Foundation for Human Rights Initiative (FHRI);
(xi) Uganda Muslim Supreme Council (UMSC);
(xii) Law Development Centre (LDC); and
(xiii) School of Law, Makerere University.

(b) held consultative meetings and received submissions from the following districts;

(i) Bugweri;
(ii) Bugiri;
(iii) Butaleja;
(iv) Gomba;
(v) Sembabule;
(vi) Kiruhura and;
(vii) Lyatonde.

Owing to financial constraints, the Committee was able to conduct consultative meetings in only seven (7) districts.

(c) reviewed the following relevant documents;

(i) The Constitution of Republic of Uganda, 1995;
(ii) The Succession Act, Cap 162;
(iii) The Study Report on the Review of Laws on Succession in Uganda conducted by Uganda Law Reform Commission;
(iv) Court decisions/rulings;

(v) the Administrator Generals Act;

(vi) the Estates of Missing Persons (Management)Act;

(vii) the Administration of Estates (Small Estates) (Special Provisions)Act;

(viii) the Local Council Courts Act;

(ix) the Probate (Resealing) Act;

(x) the Trustees Incorporation Act;

(xi) the Public Trustee Act;

(xii) the Administration of Estates by Consular officers Act;

(xiii) the Administration of Estates of Persons of Unsound Mind Act,

(xiv) the Church of England Trustees Act,

(xv) the Local Governments Act,

(xvi) Mental Health Act.

6.0. ANALYSIS OF THE SUCCESSION (AMENDMENT) BILL, 2021

This part of the report examines the proposed amendments contained in the Succession (Amendment) Bill, 2021, their legality, effect and effectiveness in light of the Constitution and other relevant laws, existing public policy, relevant court decisions and the mischief it intends to cure. The analysis is on the thematic areas in the Bill.

6.1. Interpretation

Clause 1 of the Bill seeks to amend Section 2 of the Act which is the interpretation Section and it defines some of the major words used in the Act. The Bill proposes to-

(a) repeal words that create a distinction between children based on the marital status of their parents. These words include "legitimate" and "illegitimate" used in the definition of the word "child" and the definition of the phrases "illegitimate child" and "senior wife". This is in compliance with the decision of ***Kabali vs. Kajubi [1944] 11 EACA***

and Law & Advocacy for Women in Uganda Vs. Attorney General of Uganda, Constitutional Petition No. 13 of 2005 ;

(b) make the definitions of words and phrases gender neutral in order to comply with Article 21 of the Constitution on equality before the law and non-discrimination and the decision of court in ***Law & Advocacy for Women in Uganda Vs. Attorney General of Uganda, Constitutional Petition No. 13 of 2005***

(c) remove absurdities created by the definition of certain words and phrases, such as definitions of the phrase "dependent relative" which had included a wife, a husband, a son or daughter, which would have entitled such persons to benefit twice under Section 27 in the case of intestate succession, first, in their own right and later as dependent relatives; and

(d) remove provisions that would allow the application of foreign laws in determining the validity of a marriage, contrary to Article 31 of the constitution such as those found in the definition of the words "husband" and "wife" wherein, the definitions had defined a "husband" or "wife" to mean a person married to the deceased in another country by a marriage recognized as valid by any foreign law under which the marriage was celebrated. This would have recognized marriages celebrated in foreign countries which would not qualify as a valid marriage under the Constitution and applicable laws in Uganda.

Recommendation

The Committee recommends that clause 1 should be adopted albeit with an amendment to introduce a definition of the phrase "lineal descendant" with the justification that the phrase "lineal descendants" ought to be defined since it is numerously used in the Bill and in the Principal Act without definition

and to restrict "depedent relatives" to persons who are wholly dependent on the deceased person.

6.2. Ownership of property before and during marriage

Clause 2 of the Succession (Amendment) Bill 2021,proposes 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 subsistence of a marriage.

The Committee has examined the provision and it is of the considered opinion that Section 3 should be deleted since it is misplaced.

Section 3 deals with matrimonial property, a matter that is relevant to Marriage and Divorce Laws and not to succession. The Succession Act does not deal with matrimonial property since by the time the Succession Act becomes applicable, the marriage between the couples is already terminated due to the death of one of the parties to the marriage.

Furthermore, the proposal to delete Section 3 is supported by the decision of the Supreme Court in ***Julius Rwabinumi vs. Hope Bahimbisomwe (Supreme Court Civil Appeal No. 10 of 2009*** where the Supreme Court held that a

party to a marriage does not acquire an interest in the property acquired before marriage by the person he or she marries. Property acquired before marriage shall be held solely by the spouse who acquired it. In property acquired during the subsistence of a marriage, a person can only benefit from such property only where the spouse has directly or indirectly contributed to its acquisition, either through monetary or non-monetary contributions, including where a spouse offers domestic services.

Recommendation

In that regard therefore, the proposal to delete Section 3 should be supported since the provision is misplaced.

6.3. Domicile of origin of a person, domicile of a child, domicile of a married woman, etc

Clauses 3, 4, 5, 6, 7, 8 and 9 of the Succession (Amendment) Bill, 2021 propose various amendments to Sections 6, 7, 9, 13, 14 15 and 18 of the Succession Act.

These provisions relate to domicile of origin of a child of legitimate and illegitimate birth, acquisition of new domicile, minor's domicile, wife's domicile during marriage and succession to movable property.

The Bill proposes to-

(a) delete Sections 6, 7 and 15 of the Act, relating to domicile of origin of a child of legitimate birth and illegitimate birth and domicile of a married woman and;

(b) amend Sections 9, 13 and 14 to make the provisions gender neutral.

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 other provisions also make provision for the domicile of a man without prescribing the domicile of a woman and in some instances, like Section 15, obligates a woman to acquire the domicile of her husband, without giving such a woman a choice.

The above provisions have been found to be unconstitutional for infringing Article 21 of the Constitution since they do not apply equally to all persons in Uganda, irrespective of gender or marital status. For instance, Sections 6 and 7 create a distinction between children of legitimate and illegitimate birth when determining domicile, which makes the current provision discriminatory and contrary to the decision of court in the case of ***Kabali vs. Kajubi [1944] 11 EACA*** where court declared as such that there are no illegitimate children.

The proposal to amend Section 13 should also be supported since it will remove a repugnant distinction between children in determining their domicile based on their parent's marital status.

Recommendation

In light of the above, the proposal to amend Sections 6, 7,9,13, 14, 15 and 18 of the Succession Act contained in clauses3, 4, 5, 6, 7, 8 and 9 of the Succession (Amendment) Bill, 2021 should be supported since they harmonize the provisions with Article 21 of the Constitution by removing the repugnant provisions that had created a distinction between persons based on gender and the marital status of their parents.

6.4. Reservation of residential holding

Clause 13 and 21 of the Bill make provisions reserving the Principal Residential Property and any other property from distribution.

Clause 13 proposes to amend Section 26 of the Act to devolve the residential holding and any other residential property to the surviving spouse and lineal descendants. The clause further creates an offence against a person who attempts to evict a beneficiary in occupation of the residential holding.

On the other hand, **clause 21** proposes to amend Section 36 of the Act to require a married person or a person who has children to, while making a Will, reserve the principal residential property and any other residential property from being disposed of by a Will.

The provision further allows a person making a Will to dispose of the residential property only if he or she has provided alternative reasonable accommodation of the surviving spouse or children.

The Committee however notes that clause 21 needs to be amended to harmonize the term used to refer to the principal holding as well as making the provision broader to cater for the manner of holding the residential holding as well as determining other matters that are incidental thereto.

The Committee observes that clause 21 uses terminology that is ambiguous and incapable of exact definition. For instance, the proposed Section 36 (6) makes reference to the phrase "residential property", a phrase that is incapable of exact definition since the Bill and the Principal Act use the phrase "residential holding" which means the property 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. The use of the phrase "residential property" will create enforcement challenges since it will not be possible to determine which property is being referred to in the circumstance.

Furthermore, the amendment proposed to Section 36 (6) does not go far enough to prescribe the manner of holding of the residential property and how the property is to be occupied, shared and disposed of by the surviving spouse and lineal descendants. Indeed, the proposals contained in clause 21 are akin to those proposed in clause 13, to section 26, the only difference being that

clause 13 broadly prescribes the manner of holding of the residential property and how the property is to be occupied, shared and disposed of by the surviving spouse and lineal descendants.

The failure to prescribe the earlier mentioned matters will create enforcement challenges and make the resolution of disputes impossible. It will also affect the security of tenure of the surviving spouse and lineal descendants in the sense that these can be evicted any time and also, the chattels contained in the principle residential holding can be disposed off since the provision does not offer any protection to them.

Recommendations

The amendments proposed to Section 26 and 36 in clause 13 and 21 of the Bill should be supported save that Section 36 should be amended to-

i. *remove any reference to Section 26 since the provision does not apply in the circumstance;*
ii. *create penal sanctions against a person who disturbs the occupancy of the surviving spouse or lineal descendant in order to enhance the security of occupancy of such persons;*
iii. *harmonize the language and nomenclature used in the proposed section 36 to that used in Section 26 on reservation of residential holding and other residential holdings occupied by the testator;*
iv. *provide for the manner of occupying the residential holding by the surviving spouse and lineal descendants.;*
v. *provide for the devolution of the residential holding upon the death of any of the persons who are entitled to occupy it;*
vi. *for completeness, to allow the lineal descendants dispose of the residential holding and any other residential holding where the surviving spouse dies.*
vii. *provide for powers to court to determine disputes arising from disputes on distribution of residential holdings.*

6.5. Distribution of property of an intestate

Intestacy occurs when one dies without making provision for distributing his or her estate or without making a valid Will disposing of his or her property.

Intestacy 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 a Will while a partial intestacy exists where the deceased effectively disposes of some, but not all of the beneficial interest in his property by a Will. Where a person dies intestate, the intestacy rules take effect subject to the provisions contained in the Will.

The law on intestacy in Uganda is contained under Section 27 of the Succession Act. Section 27 of the Succession Act provides for the distribution of the estate of an intestate in the following manner;

(a) **where the intestate is survived by a customary heir, wife, lineal descendant and a dependent relative under Section 27 (1) (a)**

Class	**Percentage entitlement**
Customary heir	1
Wives	15
Dependent relative	9
Lineal descendants	75

(b) where the intestate leaves no surviving wife (s) or dependent relative (other relatives) capable of taking a proportion of his or her property under Section 27 (1) (a)

Class	**Percentage entitlement**
Lineal descendants	100

(c) where the intestate is survived by a customary heir, wife and dependent relative (other relatives) but no lineal descendants (children)under Section 27 (1) (b)

Class	**Percentage entitlement**
Customary heir	1
Wife	50
dependent relatives	49

(d) where the intestate is survived by a customary heir, wife or a dependent relative (other relatives) but no lineal descendants (children) under Section 27 (1) (c)

Class	**Percentage entitlement**
Customary heir	1
Spouse/ dependent relatives	99

(e) **where the intestate leaves no person surviving him or her other than a customary heir capable of taking a proportion of his or her property under Section 27 (1) (a, b, and c): Section 27 (1) (d)**

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 under Section 27 (1) (a), (b) (c) and (d): Section 27 (1) (e)

Class	**Percentage entitlement**
Customary heir	100

Class	Percentage entitlement
Legal heir	100

The above distribution schedule was declared unconstitutional in the case a ***Law and Advocacy for Women in Uganda vs. A.G,*** thereby 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 for a female intestate. As such it fell short of the guaranteed Constitutional standard of equality between men and women.

Clause 13 of the Bill now proposes to replace Section 27 of the Act by-

(a) expanding the provision to apply to both male and female intestates as well as to spouses in a marriage;

(b) reserving 20% of the estate to be held in trust for the education, maintenance and welfare of the lineal descendants and minor children;

(c) increasing the entitlement of the surviving spouse in case the deceased is survived by a spouse, lineal descendants and customary heir from 15% to 20% and reducing the entitlement of dependent relatives from 9% to 4%;

(d) entitling the surviving spouse who remarries before the estate of a deceased person is distributed to share in the estate of his or her deceased husband or wife, respectively; and

(e) giving priority to the parents of a deceased person, when available, in distributing the estate to dependent relatives and customary heir.

In light of the above, since the Bill has taken into account the matters that had led to the nullification of Section 27 by Court in the case of ***Law and***

Advocacy for Women in Uganda vs. A.G as well as the matters that led to the President returning the Succession (Amendment) Act to Parliament for reconsideration, the Committee is of the considered opinion that clause 13 should stand part of the Bill.

It should be noted however that the Bill removes the entitlement of the customary heir from paragraphs (b), (d), (e) and (f) of the Bill yet Section 27 currently makes provision for the entitlement of such customary heir.

According to most Ugandan traditions, the customary heir is appointed either by Will or by the family in accordance with the cultural rites and practices of that particular culture and is recognized by the rites and customs of the tribe or community of a deceased person as being the customary heir of that person.

The position of a customary heir was fashioned to ensure cohesion and continuity within a clan and is in most cases the successor of the deceased person.

The removal of the customary heir from the distribution scheme in Section 27 will create an absurdity since this person is actually appointed in most cultures and he or she is entitled to benefit from the estate of a deceased person.

This will therefore create a conflict between the practice and law, wherein, whereas in practice the customary heir is appointed, the law would not recognize such a person. This would infringe on cultural practices which still recognize the central importance and role of a customary heir.

Recommendations

The Committee recommends that clause 13 stands part of the Bill albeit with amendment to-

i. include the entitlement of the customary heir in the distribution scheme;

ii. *empower a customary heir benefit as a customary heir in addition to his or her entitlement as a lineal descendant since in some cases, the customary heir is appointed from amongst lineal descendants; and*

iii. *remove an absurdity which had allowed the Administrator General to share in the estate of an intestate while excluding the customary heir.*

6.6 Separation and its effect on marriage

Clause 17 proposes to amend Section 30 of the Act relating to separation.

Currently, Section 30 bars a spouse of the intestate from taking an interest in the estate of an intestate if, at the time of death of the intestate, the spouse had separated from the intestate as a member of the same household. The Section further empowers a spouse to, during the life or within 6 months after the death of spouse, make an application to court to disapply the provision on the surviving spouse.

Clause 17 of the Bill proposes to amend Section 30 to-

(a) change the nomenclature used from "husband" or "wife" to a "spouse";

(b) expand the grounds for misapplying the provision on the surviving spouse upon application, to include as material, the intestate being the one who had separated from the surviving spouse as a member of the same household;

(c) restrict the time for applying to court to misapply the provision, to six months after the death of the intestate;

(d) empower the surviving spouse, if separated, to take a portion of the property that was acquired before separation; and

(e) empower the children of the intestate to benefit from the estate notwithstanding the disinheritance of their parent.

The Committee has reviewed the proposals made by the Bill and it is of the considered opinion that these amendments should be supported.

It should be noted that the current Section 30 of the Succession Act has a number of shortcomings which make the provision unfair and in some instances, absurd. For instance-

(a) the provision did not take into account or consider as material, the spouse at whose instance the separation occurred. Separation may be factual, where a person abandons the other spouse, or constructive, where a spouse is forced, due to torture or the actions of the other spouse, to abandon the matrimonial home. Section 30, currently does not 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.

(b) Section 30 is too broad and 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. Separation under Section 30 is a matter of fact, meaning, if a person has separated from the intestate, irrespective of the duration of separation, one would be disinherited.

Similarly, Section 30 is unfair since it 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.

Also in ***Elizabeth Nalumansi Wamala Vs Jolly Kasande, Nabukeera Esther And Ronnie M. Lutaaya Supreme Court Civil***

Appeal No. 10/2015, the High Court and Court of Appeal had barred a wife from benefiting from the estate of her deceased husband since the husband had been deported from the UK yet the wife remained in the UK. The Supreme Court however reversed the decision to allow the wife benefit from the estate of the deceased husband, reasoning that although the parties had separated as members of the same household, the surviving spouse (wife) could still benefit from the estate since the separation was forced upon the parties by application of the UK immigration laws and not by the conduct of the parties.

(c) Section 30 is further unfair since it does not allow a separated spouse to take the property that he or she acquired before separation. This provision totally disinherits the separated spouse without taking into account any contributions made by the other spouse prior to separation.

The amendments proposed in clause 17 to Section 30 are therefore welcome since they bring fairness to the provision by allowing the separated spouse to inherit property he or she contributed to its acquisition and also allowing the children, arising from such a marriage to benefit, notwithstanding the separation of their parents.

The provision also allows victims of gender based violence to have redress since it makes material, the person or circumstances under which a person separated from the intestate unlike currently, where such is immaterial.

The provision also removes an ambiguity from the law by restricting the application to court by the surviving spouse to be made six months after the death of a deceased and not any time before the death of the intestate since as is currently the case, before death, the Succession Act does not apply to such persons.

The Committee however noted that the grounds proposed in proposed Section 30 (2) are limited in scope and exclude other justifiable grounds. The proposed

Section 30 (2) only allows a surviving spouse to inherit from the estate of a deceased person, notwithstanding his or her separation as a member of the same hold where-

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

(b) the intestate was, at the time of his or her death, the one who had separated from the surviving spouse as a member of the same household

These two grounds are limited in scope and do not take into account other justifiable grounds which may prevent married persons from being members of the same household such as ill-health, employment or application of immigration laws and many other grounds.

Given the effect of separation on the right of a surviving spouse to share in the property of a deceased intestate and considering that separation is a matter of fact as was found by the Supreme Court in the case of ***Elizabeth Nalumansi Wamala Vs Jolly Kasande, Nabukeera Esther and Ronnie M. Lutaaya Supreme Court Civil Appeal No. 10/2015,*** there is need to make the provision as broad as possible to cater for any justifiable ground that is humanly possible *to* ensure that persons are not unreasonably disinherited merely because the ground for their separation is not envisaged by law.

Recommendation

Clause 17 should stand part of the Bill albeit with amendment to expand the grounds upon which court may allow a surviving spouse to benefit from the estate of a deceased intestate to include other justifiable grounds.

6.7 Making of a Will and maintenance to be provided in a Will

Clauses 21, 22 and 23 of the Bill propose to amend Sections 36, 37 and 38 of the Principal Act relating to the making of a Will.

Clause 21 proposes to amend Section 36 of the Principal Act relating to persons capable of making a Will. Section 36 currently allows every person of sound mind and not a minor to dispose of his or her property by a Will.

The provision also allows a married woman to dispose of any property by a Will which she could alienate by her own act during her life. The provision further allows a person who is deaf or dumb or blind to dispose of his or her property by Will if he or she is able to know what he or she does by it.

Clause 21 now proposes to amend Section 36-

(a) to make the provision gender neutral in order to apply to all parties in a marriage; and

(b) to change the nomenclature used to refer to persons of unsound mind, the deaf, dumb or blind in order to adopt non-stigmatizing language in reference to such people being, persons suffering a mental illness, persons with hearing impairment, physical impairment, speech impairment and visual impairment.

Clause 22 proposes to amend Section 37 of the Principal Act. Section 37 currently imposes an obligation on a testator to makes provision, in a Will, for the maintenance of dependent relatives. The Bill now proposes to amend the provision to extend the obligation to the surviving spouse and lineal descendants.

Clause 23 proposes to amend Section 38 of the Principal Act. Section 38 currently allows a dependent relative to apply to court and for court to order provision to be made in a Will where none was made for the maintenance of a dependent relative.

The Bill now proposes to expand the provision and specifically direct a testator to make provision in a Will for the maintenance of his or her spouse and children in addition to dependent relatives. The Bill also proposes that the maintenance order by Court terminates, in the case of,-

(a) a spouse, upon him or her remarrying;

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

(c) lineal descendant who is by reason of mental or physical disability, upon ceasing of the disability or marriage, which ever first occurs; and

(d) a dependent relative, as may be ordered by court.

The Committee has considered the proposals and it is of the considered opinion that these should be supported since they are progressive.

Recommendations

The Committee recommends that clauses 21, 22 and 23 of the Bill as proposed, be adopted

6.8 Guardianship of children of a deceased person

Clauses 24, 25, 26, 27, 28 and 29 of the Bill propose to amend Sections 43, 44, 45 and 46 of the Principal Act and to insert new Sections 44A, 44B, 46A and 46B in the Principal Act.

Clause 24 proposes to amend Section 43 of the Principal Act to grant both parents of a minor, power to appoint a guardian to a minor and also to bar the deprivation of any person parental responsibility over a child. Section 43 currently only allows a father of a child to appoint a guardian by a Will, depriving the mother of such a child the ability to do so. This provision falls short of the standards of equality between male and female person prescribed in the Constitution and is one of those provisions that were affected by the decision in ***Law & Advocacy for Women in Uganda Vs. Attorney General of Uganda***.

Clause 25 proposes to amend Section 44 of the Principal Act by making the provision gender neutral in so far as appointing guardianship is concerned. Just like Section 43 and Section 44 had also restricted the appointment of a

guardian by the father only. The Bill now proposes to expand the provision to include the mother of a minor and to further restrict the appointment of a statutory guardian to Ugandan citizens only.

Clause 26 proposes to insert new Sections 44A and 44B in the Principal Act to provide for the appointment of a customary guardian as well as regulating the relationship between the surviving spouse and the person appointed guardian.

The proposed Section 44A allows the family members of a minor to appoint a guardian in accordance with their customs, culture or traditions where both parents of the minor are dead, the surviving parent is incapable of being appointed a guardian or is ineligible for appointment as a guardian. The provision adopts a practice that is common in most communities in Uganda where a customary guardian is appointed by the family upon the death of one or both parents of a minor.

The proposed Section 44B proposes to regulate the relationship between a guardian and the surviving parent of a minor. The provision requires that-

(a) a guardian and the surviving parent of the minor must act jointly, except where court directs otherwise; and

(b) a guardian may by a Will appoint another guardian and such a person so appointed must be a citizen of Uganda and above 18 years of age and must apply to court to take up guardianship.

Clause 27 proposes to amend Section 45 by restricting the removal of a guardian to only the High Court as is currently provided. The provision also expands the grounds for removing a guardian by Court to include fraud, misrepresentation, failure of a guardian to undertake guardianship, neglect and the interests of the minor.

Clause 28 proposes to amend Section 46 by defining the powers that can be exercised by a guardian, including being the personal representative of the minor and where directed by Court, to have custody of the minor and disposal

of a minor's property. The provision further obligates a guardian to safe guard the property of a minor and account for such property in his or her custody. The provision also punishes a guardian who misapplies the property of a minor with imprisonment for a period of five years as well as making good the loss caused to the minor.

Clause 29 proposes to insert new Section 46A and 46B, providing the termination of guardianship and the application of the Children Act Cap 59 to matters of guardianship.

The Committee has examined the provisions and it is of the considered opinion that these should be supported. Currently in Uganda, the appointment of a guardian of a minor is regulated by the Children Act and the provisions of the Succession Act.

The provisions of the Children Act were amended to-

(i) prohibit the grant of guardianship to a person other than a citizen of Uganda (see Section 43A);

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

(iii) allow family members of a child to appoint a customary guardian for a child in accordance with their custom, culture or tradition. (see Section 43C);

(iv) provide for the appointment of a guardian by agreement or deed by the parents of a child;

(v) provide the conditions upon which guardianship may be granted by court;

(vi) provide for revocation of guardianship order; and

(vii) provide for registration of guardian order.

Whereas the provisions of the Children Act were amended, the provisions of the Succession Act have not been amended, thereby creating a conflict between the Succession Act and the Children Act. This means that Sections 43, 44, 45 and 46 of the Succession Act 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, Sections 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 proposals in the Bill will therefore harmonize and modernize the provisions of the Succession Act with those of the Children Act, thereby bring consistency to the law book. The proposed amendments will also amend provisions that are affected by the decision in ***Law & Advocacy for Women in Uganda Vs Attorney General of Uganda*** and will incorporate in the Succession Act, standards of equality enshrined in Article 21 of the Constitution.

Recommendation

The Committee recommends that clauses 24, 25, 26, 27, 28 and 29 stand part of the Bill.

6.9 Attestation of a Will and gifts and appointment to attesting witnesses

Clauses 31, 32 and 33 of the Bill propose to amend Sections 50, 54 and 55 of the Succession Act relating to attesting a Will and gifts to attesting witnesses.

Clause 31 proposes to amend Section 50 of the Succession Act relating to execution of unprivileged Wills. Section 50 requires, among others, every will to 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, or have received from the testator a personal acknowledgment of his or her signature or mark, or of the signature of that other person. The provision further requires that each of the witnesses must sign the Will in the presence of the testator.

The Bill now proposes to amend Section 50 (c) to require the attesting witness to write his or her name and address on every page of the Will, in the presence of the testator. It should be noted that the Succession Act did not guide on the placing of the attesting signature. In most cases, the attesting witness would sign or place a mark on the last page of the Will, thereby making such Wills susceptible to forgery by removing or distorting those pages that are not signed by the attesting witness or the testator.

The Committee has examined this provision and it is of the considered opinion that it should be supported since it will enhance the identification of the attesting witness and also, enhance authenticity of Wills by ensuring that each page is signed by the attesting witness, thereby preventing rampant cases of forged Wills.

Whereas the provision will enhance authentication of Wills, provision should be made to clarify the effect of non-compliance to the Will. The requirement to attest each page of the Will may lead to the invalidation of Wills merely because a single or few pages were not attested as required by Section 50. Courts in Uganda have applied strictly the provisions of Section 50 by invalidating Wills that are not attested as required there under. Indeed, in the ***Matter of Administrator General Vs Norah Nakiyaga and others, Administration cause No. 554/90*** **Ongom J** held a Will invalid for the reason that it was not attested as required by Section 50 of the Succession Act.

Applying this strict interpretation to Wills and invalidating a Will merely because a single page of it was not attested as required in Section 50 may be unfair and may cause injustices to the intended beneficiaries. There is

therefore need to make provision holding Wills that are not attested on each page as valid but disregarding the parts of the Will that are not attested to as required in Section 50. This means that those parts that are not attested to as required in Section 50 shall be severed from those parts that are otherwise validly attested to as required in Section 50.

On the other hand, **Clause 32** proposes to amend Section 54 relating to effects of gifts to attesting witnesses. Section 54 currently provides 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 above provision bars the taking of a gift, benefit or appointment by a person who witnesses a Will or that person's husband or wife or any person who claims under such persons. This means that an attesting witness cannot take a benefit, be it by appointment or by bequest, from a Will he or she attests to. The provision however made such Will sufficiently attested to, notwithstanding any gift or appointment made to the attesting witness being void.

The Bill now proposes to amend that provision to-

(a) hold a Will as sufficiently attested and to allow an attesting witness to take any benefit from a Will, be it a gift or appointment where the attesting witness is given a gift, appointment or any other benefit under the Will provided that the Will-

(i) meets the requirements of Section 50 (c), being that it was attested to by two or more witnesses who signed their names and address on each of the pages of the Will; and

(ii) be sufficiently attested to if the signature of that witness who attests is not included in the number of signatures required under Section 50 (c).

(b) allow a person who signs a codicil which confirms a Will to take his or her benefit or appointment under the Will;

(c) save where the Will is produced by a spouse, lineal descendant or dependent relative and it meets the requirements of Section 50 (c), the provisions bars a person who writes or produces a Will to take any benefit from the Will, by way of appointment or otherwise, where the Will is produced in a typed format or hand written.

The Committee has examined the proposed amendment in clause 32 and is of the considered opinion that it should be rejected. The Committee notes that the proposal to allow an attesting witness to take a benefit from a will is likely to affect the authentication of wills by court.

It should be noted that the role of an attesting witness is to authenticate the will by adducing evidence that proves the will. This means that attesting witness should be trusted by court that the evidence he or she will adduce to prove the authenticity of a will is not influenced by any benefit made to that person by will.

The proposal to allow an attesting witness to benefit from a Will will therefore affect the authentication of wills since that person's evidence is likely to be influenced by the benefit made to him or her under the will. The evidence of the attesting witness will not be fully trusted by court since the attesting witness will have a conflict of interest owing to the benefit made to him or her under the will and is likely to adduce evidence that tends to support the will in order to take the benefit granted to him or her under the will. In order to ensure that attesting witnesses remain credible during the processes of authenticating a will, there is need to bar such persons from drawing any benefit from the will.

Clause 33 proposes to amend Section 55 of the Act which requires 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. This provision had allowed a person who was appointed executer in a Will to prove the execution of the Will or to prove the validity or invalidity of the Will.

The Bill now proposes to amend Section 55 to allow a person who has participated in writing or preparing a Will, save an advocate, from being a witness to prove the execution of a Will or to prove the validity of a Will if that person is appointed executor in the Will.

The Committee has examined the above provisions and it is of the considered opinion that it should be supported.

Recommendations

i. *In light of the above, the Committee recommends that clauses 31, and 33 should be adopted albeit with amendments to clause 31 to allow the severance of parts of a Will that do not comply with the attestation requirements in Section 50.*

ii. *The Committee further recommends that clause 32 be deleted with the justification that the proposal to allow an attesting witness to benefit from a will creates a conflict of interest and affects the authentication of the Will.*

6.10 Implied inclusion of illegitimate and adopted children in a Will

Clause 35 of the Bill proposes 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 Bill proposes to amend Section 87 of the Succession Act by removing the matters between children of a deceased person. The Bill proposes that Section 87 be amended to substitute the word "illegitimate" wherever it appears in the provision, for "acknowledged".

The effect of this amendment will require that a son or daughter borne out of wedlock can only be granted any benefit in a Will if such a son or daughter was acknowledged by the parent during his or her lifetime or when making a Will.

The Committee notes that proposal by the Bill needs to be examined to understand the practical and legal challenges it creates, if adopted in its current form. The Committee observes 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 [1944] 11 EACA and Law & Advocacy for Women in Uganda Vs. Attorney General of Uganda, Constitutional Petition No. 13 of 2005.*** 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 notes that the proposal in the Bill, 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 is 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 by parents to run away from parental responsibility.

The Committee also notes that the provision does not provide the form of proof that will be adduced by a son or daughter to prove that it was acknowledged by the deceased parent, especially in cases where the Will is silent on the existence of such a child. This will create practical challenges in proving that such a child was acknowledged by the parent.

Similarly, the Bill will create legal challenges in situations where a child is discovered after the death of his or her parent. In such a situation, the parent might have died without realising that the child existed and did not acknowledge such a child. This would mean that such a child cannot benefit from estate since he or she was not acknowledged by the parent. To make matters worse, such a person cannot even rely on scientific means of proving parentage, including through Deoxyribonucleic Acid (DNA) tests, since the provision is limited to only the acknowledgement of the parent and not through any other means.

The provision is also redundant in light of the amendments proposed in the Bill. For instance, the Bill proposes in clause 1 to amend various definitions including the definition of words like "son", "daughter" which have all been defined to include adopted children without necessarily creating a distinction in children, as clause 35, proposes, based on the marital status of their parents.

Recommendations

i. *The Committee recommends that the amendment in clause 35 be rejected with the justification that it will continue the discrimination between children based on the marital status of their parents.*
ii. *The Committee further recommends that Section 87 of the Principal Act be deleted.*

6.11 Property transferable by gift made in contemplation of death

Clause 36 of the Bill proposes to amend 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 provision also allows the resumption of such property when the donor recovers.

The Bill now proposes to amend Section 179 by-

(a) excluding movable property contained in the principle residential holding, such as chattels, from being transferred by way of a gift in contemplation of death;

(b) defining when a gift is made in contemplation of death becomes effective; and

(c) allowing for the redemption of a gift made in contemplation of death within six months of the recovery of the donor.

The Committee has examined Section 179 and it is of the considered opinion that it is in urgent need of amendment since it discriminates against women in so far as reserving the application of that section to men only. This Section is one of those that were affected by the decision of Court in the case of ***Law & Advocacy for Women in Uganda Vs. Attorney General of Uganda, Constitutional Petition No. 13 of 2005.*** The proposed amendment to Section 179 reaffirms a person's right to own and dispose of property as recognized in Article 26 of the Constitution.

However, whereas the Committee is agreeable with the principle set out in the amendment proposed in Section 179, there is need to harmonize the proposed Subsections (3) and (4) of Section 179 to ensure that the property donated by a person contemplating death only takes effect within six months from the date of recovery of the donor from the illness during which the gift was made.

Currently the proposed Subsections (3) and (4) wherein, Subsection (3) directs that a gift made in contemplation of death may, within six months of the recovery of the donor, be resumed by the donor while the proposed Subsection (4) requires that a gift made in contemplation of death does not take effect if the donor recovers from the illness during which it was made or if he or she survives the person to whom it was made.

There is a disconnect between the proposed Subsections (3) and (4) owing to the fact that the proposed Subsection (4) does not take into account the time for resumption of the gift prescribed in Subsection (3) and a lay user of the law might assume that a person may assume the gift under Subsection (4), beyond the time prescribed in Subsection (3), yet this is not the case.

Recommendation

In light of the above, the Committee recommends that clause 36 stand part of the Bill albeit with amendment to require every donation of a gift made in contemplation of death of a value exceeding five hundred thousand shillings to be in writing and to delete the proposed Subsection (4) which is redundant in light of the proposed Subsection (3).

6.12 Eligibility to administer estates and priority of the surviving spouse to Administer estate of a deceased person

Clauses 37, 38, 40, 42, 43, 44 and 45 of the Bill propose to make various amendments to Sections 184, 189, 190, 192, 200, 202 and 204 of the Succession Act to, among others; prescribe the eligibility and priority for administering estates of deceased persons.

Clause 37 of the Bill proposes to amend Section 183 of the Succession Act to declare a person appointed guardian in a Will where the only beneficiary is a child to be the executer of the Will. Section 183 currently provides that the appointment of an executor may be express or by necessary implication.

The Committee has examined the amendment proposed in clause 37 and it is of the considered opinion that it should be supported since it is consistent with the role of a guardian as prescribed in the Children Act, which includes, among other, being the personal representative of the child. This principle has been introduced in the Succession Act in the amendment proposed to Section 46.

Clauses 38 and 40 of the Bill propose to amend Section 184 and 190 of the Succession Act. Section 184 and 190 prescribe the eligibility for grant of

probate and letters of administration and bar the grant of probate to any person who is a minor or is of unsound mind.

The Bill proposes to change the term used to refer to a person of "unsound mind" to "mental illness" and also to prescribe a fit and proper person test to the grant of probate.

The Committee has examined the Bill and it is of the considered opinion that the proposal should be supported since they prescribe a fit and proper person test before a grant of probate.

The Committee notes that the change from "unsound mind" to "mental illness" should be supported since it harmonizes the provision with the Mental Health Act, 2018 which recognizes mental illness as certifiable diseases by a mental practitioner rather than unsound mind which is a finding by court. This means that one must prove existence of a certifiable disease before another person is barred from being granted probate. Further, the proposal to include a fit and proper person test will grant court discretion to determine whether a person appointed is fit to administer the estate properly.

Clause 42 of the Bill proposes to amend Section 200 of the Succession Act. The Bill proposes to amend Section 200 by substituting for the words "next of kin" the word "the spouse and lineal descendants of the deceased person"

Section 200 currently requires that letters of administration shall not be granted to any legatee other than a universal or a residuary legatee, until a citation has been issued and published in the manner hereafter provided, calling on the next of kin to accept or refuse letters of administration. This provision requires the next of kin of a deceased person to first renounce the administration of an estate before letters are granted to any person.

Whereas the phrase next of kin is used in this provision, this person is not known to succession and neither was the phrase defined by law. This makes

the person fitting the description of next of kin incapable of being ascertained, thereby making the provision impractical.

Furthermore, under the Succession Act, the grant of letters of administration is limited to persons who are related to the deceased person by blood as provided in Part III of the Act or by marriage. Considering that a next of kin may be any person chosen by the deceased, granting letters of administration to such a person where he or she is not related to the deceased by blood or marriage will infringe the principles on grant of letters espoused in the Act.

In light of the above, the proposed amendment which requires a person applying for letters of administration to inform the spouse or lineal descendants should be supported since it concurs with the principles of grant of letters of administration. Furthermore, since lineal descendants and a surviving spouse are the most entitled persons to benefit from the estate of a deceased person under Section 27 of the Act, it is just proper that these are informed before letters can be granted.

Clause 43 of the Bill proposes to insert a new Section 201A in the Principal Act granting preference to the surviving spouse the right to administer the estate of his or her deceased spouse. The proposed Section 201A grants the surviving spouse preference over any other person in the administration of the estate of a deceased spouse. The provision also allows the Administrator General to disregard this preference where the surviving spouse is not a fit and proper person or where the Administrator General finds it necessary to grant administration to another person.

The Committee has examined this proposal and it is of the considered opinion that this provision should be supported since it is a recognition of the fact that the surviving spouse is, in most cases, the biggest beneficiary of the estate of his or her deceased spouse in Section 27. Indeed, according to the proposed amendment to-

(a) Section 27 (1) (a), the surviving spouse is granted 20% of the estate in case the intestate is survived by a spouse, lineal descendants and dependent relatives;

(b) Section 27 (1) (c), the entitlement of the surviving spouse increases to 50% in case the intestate is survived by a spouse and dependent relatives but no lineal descendants; and

(c) Section 27 (1) (d), the entitlement of the surviving spouse increases to 100% in case he or she is the only beneficiary in the estate of the deceased person.

Furthermore, the proposed amendment codifies a practice of court and the Administrator General where administration may be granted to another person other than the surviving spouse. In some instances, court has, especially in polygamous relationships, granted administration to another person other than the surviving spouse. In that regard therefore, since the provision grants preference to a surviving spouse but also recognizes that administration can be granted to another person, then the provision is balanced and should be supported.

Clause 45 of the Bill seeks to amend Section 204 of the Principal Act. Section 204 of the Act requires that if there are two or more persons who are entitled to the same proportion of the estate, those persons are equally entitled to administration, and a grant may be made to any one or some of them without any citation of the others.

The Bill now proposes to amend that Section to require the citation of a person who is equally entitled to letters of administration before a grant of administration is made. This provision should be supported since it is progressive and it amends Section 204 which was unfair, in the sense that, the letters could be granted to a person without informing all the persons who are equally entitled to administer the estate of a deceased person. This meant that

the person to whom letters are granted would disinherit the other beneficiaries or would not be considered before a grant was made.

In light of the above, this provision should also be supported since it enhances fairness, transparency, equity and openness in the processes leading to a grant of letters of administration.

Recommendations

In light of the above, the Committee recommends that clauses 37, 38, 40, 42, 43, 44 and 45 do stand part of the Bill.

6.13 Administration during minority

Clause 47 of the Bill proposes to delete Section 216 of the Principal Act.

Section 216 provides that when there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them shall have completed the age of twenty-one years.

Section 216 of the Act empowers the grant of letters or probate to a minor.

The Committee has examined this provision and it is of the considered opinion that this provision should be deleted as proposed in the Bill since it allows a minor to be granted probate in contravention of Section 184 of the Act.

Section 184 of the Succession Act bars a person from being appointed executor if he or she is a minor. Section 216 conflicts with Section 184 of the Succession Act to the extent that it allows the appointment of a minor as executor in contravention of the specific provisions which bar such appointment or grant.

The deletion of Section 216 will harmonize the provisions and remove an absurdity which allowed a minor to be granted probate in contravention of the specific prohibition in Section 184.

Recommendation

The Committee recommends that clause 47 do stand part of the Bill.

6.14 Revocation, annulment and duration of letters of administration or probate

Clauses 48, 52 and 53 of the Bill propose to amend Section 234, 258 and 259 of the Succession Act to make various changes to the revocation, annulment and duration of letters or probate.

Clause 48 of the Bill seeks to amend Section 234 of the Act. Section 234 allows the revocation of the grant of probate or letters of administration for just cause. This Section defined just cause to include procedural and substantive grounds relating to the grant and administration of the estate.

Clause 48 of the Bill proposes to include, amongst the grounds for revocation of probate or letters of administration to include, mismanagement of the estate. The Bill also proposes to create criminal sanctions against an executor or administrator where grant of probate or letters of administration is revoked on grounds that the grant was obtained fraudulently by making a false suggestion, or by concealing from the court something material to the case or for mismanagement to the estate.

The Bill also proposes to require an executor or administrator against whom criminal sanctions have been imposed to, in addition to serving 3 years imprisonment, make good the loss suffered to the estate. The Bill further empowers Court to appoint another executor or administrator in the same process of revoking letters or probate.

The Committee has examined the proposal in the Bill and it is of the considered opinion that this should be supported since it will enhance compliance and ensure proper administration of estates by executors and administrators who have used their positions to defraud and mismanage

estates without any criminal sanctions or making good the loss they cause to the beneficiaries. The proposals in clause 48 are all progressive and should be supported.

Clauses 52 and 53 of the Bill proposes to amend Sections 258 and 259 of the Act to, among others-

(a) prescribe a duration for carrying out the functions of administrator or executor within 2 years from the date of grant; and

(b) allow court to extend the time for carrying out the functions of administrator or executor for further period of 2 years on the consent of the beneficiaries and where it is in the best interest of the beneficiaries.

The Committee has examined the provisions and it is of the considered opinion that these proposals are progressive and should be supported.

The Committee notes that the proposals will protect the estates from abuse by administrators or executors who refuse to carry out their functions within a reasonable time and end up unreasonably holding on to the office of executor or administrator to the detriment of the estate and the beneficiaries of the estate.

Since the Act does not prescribe a time within which a person should have exercised the powers and functions of an administrator or executor, many a time executors and administrators have abused their positions to hold onto the estate without distributing it to the beneficiaries as they are required by their appointment.

The proposals in the Bill will therefore ensure that when court appoints an administrator or grants probate to a person, the person so granted undertakes their duties within a specified period of time.

However, notwithstanding the above, the Committee is of the considered opinion that the proposal to have the grants made to the Administrator General

unlimited will lead to abuse of the functions of the administrator and empower the Administrator General hold onto those estates in perpetuity yet the grant of probate requires the Administrator General to distribute the estate to the beneficiaries.

The provision also needs to take into account grants made over estates with beneficiaries who are below the age of majority which are likely to suffer if the functions of the administrator are terminated after 2 years.

It should be noted that for intestate succession, clause 14, amending Section 27 of the Principal Act reserves 20% of the estate from distribution and directs that such a portion is held in trust for the education, maintenance and welfare of a minor child, lineal descendant below the age of 25 years and unmarried, or with disability if the latter was wholly dependent on the deceased. Letters granted to such estates should not ordinarily terminate within the time proposed in clause 53 since that termination will create a lacuna as to who is supposed to administer the trust created in that provision after the expiry of the time prescribed in clause 53. The termination of the letters before all the beneficiaries under the estate have ceased to be entitled to benefit from the trust will result in challenges of managing the trust as well as disentitling those beneficiaries since the authority granted to the administrator will have ceased.

In light of the above, there is need, in clause 53, to exempt the application of that Section on estates where the proposed Section 27 (2) applies in order to ensure that such estates are adequately administered until all the beneficiaries cease to qualify to benefit from the trust created under the proposed Section 27(2).

Recommendations

In light of the above, the Committee recommends that clauses 48, 52 and 53 stand part of the Bill albeit with amendments to clauses 52 and 53 to remove the

exemption granted to estates managed by the Administrator General since it will allow the Administrator General to hold onto those estates in perpetuity yet the grant of probate requires the Administrator General to distribute the estate to the beneficiaries and in clause 53, to cater for estates with minor children to which the proposed Section 27 (2) applies.

6.15 Intermeddling and other acts

Clause 55 proposes to amend Section 268 relating to intermeddling in the estate of a deceased person.

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 Section however allows the intermeddling with the goods of the deceased for the purpose of preserving them, or providing for his or her funeral, or for the immediate necessities of his or her own family or property; or dealing in the ordinary course of business with goods of the deceased received from another person.

The Bill now proposes to amend Section268 to;-

(a) create an offence against a person who intermeddles with the estate of a deceased person;

(b) expand the definition of intermeddling to include instances where an administrator or executor is in existence;

(c) allow a spouse or lineal descendants to intermeddle in order to preserve the estate, provide for the funeral of a deceased person, to provide for the immediate necessities of the family;

(d) limit the intermeddling to six months and obligates the spouse or lineal descendants to inform the Administrator general of the intermeddling; and

(e) require a person who intermeddles in the estate and causes loss to make good the loss caused to the estate.

The Committee has examined the proposal in the Bill and it is of the considered opinion that this provision should be supported since it will protect estates of deceased persons from being wasted by dishonest people who unlawfully interfere in estates of deceased persons to abuse and waste those estates. The provision is also progressive since it expands the definition of intermeddling to include acts done even after letters and probate have been granted.

The Committee however noted that whereas the provision should be supported, there are matters that create an absurdity that need to be corrected. For instance, the Bill creates an absurdity in so far as allowing a person to commit an offence. Indeed, whereas intermeddling is an offence, the continued use of the word intermeddling in sub clauses (4), (5), (6), (7), (8) and (9) creates an absurdity since their actions are criminal.

Since the principle in sub clauses (4), (5), (6), (7), (8) and (9) is to empower a surviving spouse and lineal descendant to protect and manage the estate before letters of administration or probate are granted, the use of the word "intermeddling" which denotes a criminal act, creates an absurdity since it allows a person to commit that offence.

In the circumstances, the Committee is of the considered opinion that the provision should be redrafted to remove the absurdity identified above.

Recommendation

Clause 55 should be adopted, with amendments to sub clauses (4), (5), (6), (7), (8), and (9) to change the nomenclature used from "intermeddling" to management.

6.16 Disposal of property by executor or administrator

Clauses 56 and 57 of the Bill propose to amend Section 270 and 271 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.

Section 271 of the Act provides that if an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

The above provisions had given unfettered discretion to the executor or administrator to dispose of property belonging to the estate, including selling to himself or herself and sale of such property would be voidable at the instance of any other person interested in the sale.

The Bill on its part proposes to amend Section 270 to-

(a) allow the executor or administrator to sell property of the estate with the written consent of the surviving spouse and lineal descendants;
(b) allow a guardian to consent to the sale of property where the beneficiary is a minor;
(c) require the administrator or executor to account to the beneficiaries the proceeds from sale;
(d) give the beneficiaries the first option to buy the property being sold and;
(e) bar the executor or administrator to purchase the property of the estate.

The Bill proposes to delete Section 271 of the Act.

The Committee has examined the proposals contained in the Bill and it is of the considered opinion that these should be supported since the Section 270 has been abused by executors and administrators to the detriment of the beneficiaries of the estates they manage.

For instance, the discretion granted to executors and administrators is unfettered and has allowed the administrators and executors to sell off the property belonging to the estate without the consent of the beneficiaries at prices which are below the market value and without accounting to the beneficiaries the proceeds arising from such sale.

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 disposed of property belonging to the estate without 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.

It should be noted 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.

Currently, Section 270 does not provide for mechanisms that would enable the beneficiaries under an estate to stop an intended sale which is not in their favor. In most cases, 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.

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.

Whereas the Committee is in agreement with the amendments proposed in clauses 56 and 57, there are some practical challenges that may be posed by the proposed amendment in clause 56. Clause 56 proposes to amend Section 270 to among others, require the written consent of the surviving spouse and all the lineal descendants of the estate before disposing off property belonging to the estate.

The Committee observes that whereas the principle of the intended amendment is to ensure transparency in disposing off of the property belonging to the estate, the proposal to have all lineal descendants consent to the transaction without providing a remedy in situations where consent is withheld unreasonably by a lineal descendant is likely to affect the efficient and effective administration of estates since decision making will be difficult, especially in situations where decisions must be made as a matter of urgency.

The Committee is therefore of the considered opinion that the provision should be amended to provide a remedy where consent is unreasonably withheld.. This will enhance decision making and ensure that administration and execution of estates is not unreasonably impeded by want of consent..

Recommendations

In light of the above, clauses 56 and 57 should stand part of the Bill albeit with an amendment to clause 56 to;-

i. *empower a person aggrieved by the decision to dispose of property belonging to the estate of a deceased person to apply to court for redress; and*

ii. *empower court to grant consent to the disposal of property belonging to an estate where consent is unreasonably withheld.*

6.17 Powers of several executors or administrators

Clauses 58 and 59 of the Bill proposes to amend Sections 272 and 273 of the Act.

Section 272 of the Act is to the effect 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 anyone of them who has proved the Will or taken out administration.

The Bill now proposes in clause 58 to amend Section 272 to insert a new Subsection requiring that where there is 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.

The Committee has examined the provision and it is of the considered opinion that this provision should be supported. The Committee noted that Section 272 currently allows a single executor or administrator to apply to court for probate or letters notwithstanding that the Will had appointed a number of executors or the beneficiaries have appointed more than one administrator.

Section 272 has been abused in situations where a single executor or administrator applies and is granted letters or probate of an estate without the consent of the other persons appointed executor or administrator. This not only

contravenes testamentary privilege in the sense that the deceased person had a reason for appointing more than one executor in a Will but it is also in total disregard of the intentions of and free will of the beneficiaries who normally have a reason for opting to appoint more than one administrators.

The proposal in clause 58 will therefore require a single executor or administrator to seek the consent of the other executors or administrators before singularly being granted letters of probate, thereby protecting testamentary privilege and the free will and consent of beneficiaries in an estate who have the right to determine who administers the estate in which they draw their interest.

Indeed, the Supreme Court, in the case of ***Silver Byaruhanga V Fr. Emmanuel Byaruhanga & Rudeja Civil Appeal No. 09 of 2014*** declared that Section 272 of the Succession Act does not confer powers on a single executor or administrator to singularly exercise powers vested in the joint executors or administrators with respect to conveyancing of land belonging to the estate of a deceased without the express consent or authority of the co-executors or co-administrators.

Whereas the Committee is agreeable to the principles espoused in clause 58, there is need to address one of the biggest challenges faced by administrators or executors of estates in situations where there exists more than one administrator or executor. This challenge is decision making and how to settle such disputes.

The Committee notes that currently, the Succession Act makes no provision for settlement of disputes amongst multiple executors and administrators. Apparently, administration of estates can generate disputes between administrators or executors, leading to paralysis in the performance of the functions of those offices. In most cases, where such disputes arise, the estate and beneficiaries significantly suffer since there is currently no mechanism for settling such disputes amicably and in a timely manner.

In order to remedy this lacuna, there is need to provide for a timely mechanism for settlement of disputes between executors and administrators in order to enhance the protection afforded to estates under the law as well as the beneficial interests of beneficiaries.

On the other hand, Section 273 requires 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.

The Bill now seeks to amend Section 273 by requiring the consent of the beneficiaries and the leave of court before a single executor or administrator can continue as executor or administrator following the death of the other executor or administrator.

The Committee has examined this provision and it is of the considered opinion that this provision should be rejected.

The Committee noted that Section 273 currently allows a surviving executor or administrator to continue in administration or execution of an estate following the death of the other executor or administrator.

The proposal to require consent of the beneficiaries as well as leave of court, will make the administration of estates very expensive and tedious since every time an executor or administrator dies, the surviving executor or administrator will have to seek the consent of the beneficiaries and leave of court before continuing.

Currently, where a grant is made to more than one person and any one or more of the persons to whom the grant was made dies, the survivor continues in administration without the need for consent or court authorization. This situation also applies even where the original executors had been entered onto a land title as proprietors since Section 192 of the Registration of Titles Act directs that upon the death of any person registered with any other person as joint proprietor of any land or of any lease or as joint proprietor of any

mortgage owned on a joint account in equity, the registrar, on the application of the person entitled and proof to his or her satisfaction of the death, may register the applicant as the proprietor thereof and the applicant shall, upon being registered in the manner herein prescribed for the registration of a like estate or interest, become the transferee of the land, lease or mortgage and be deemed its proprietor.

Furthermore, Section 134 (3) of the Registration of Titles Act (RTA) also recognizes the principle of survivorship in as far as joint grant of letters of administration or probate has been made and requires that if in any case probate or letters of administration is granted to more than one person, all of them for the time being shall join and concur in every instrument, surrender or discharge relating to the land, lease or mortgage.

It is the considered opinion of the Committee that the proposal to amend Section 273 as proposed in clause 59 should be rejected since it creates unnecessary additional and tedious processes which will erode the resources of the estate and the beneficiaries, and is contrary to provisions in other laws like the Registration of Titles Act which all recognize the principle of survivorship.

Recommendations

In light of the above, the Committee recommends that-

i. *clause 58 stands part of the Bill, albeit with amendment to provide for settlement of disputes between executors or administrators of an estate where there are more than one executor or administrator and between the executor or administrator and a beneficiary of the estate; and*

ii. *Clause 59 should be rejected with the justification that it creates unnecessary additional and tedious processes which will erode the resources of the estate and the benefit of the beneficiaries and is contrary to provisions in other laws like the Registration of Titles Act which all recognize the principle of survivorship.*

6.18 Liability of executor and administrators

Clause 64 and 65 of the Bill propose to amend Section 332 and 333.

Clause 64 proposes to amend Section 332 of the Act. Section 332 provides 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.

The Bill proposes to amend Section 332 to-

(a) expand the provision to include instances were an executor or administrator misappropriates or fails to account to the beneficiaries or the estate the proceeds accruing to the estate;
(b) create an offence against an executor or administrator who causes damage to the estate and proposes a punishment of three years or to a fine not exceeding one thousand currency points, or both; and
(c) grant court the discretion to order an executor or administrator to make good the loss or damage occasioned to the estate or beneficiary.

The Committee has examined the proposed amendments to Section 332 and it is of the considered opinion that these should be supported.

The Committee noted that the proposals contained in the Bill will enhance the effectiveness of this Section and ensure that administrators and executors are adequately punished for their actions and omissions. It should be noted that incidents of administrators or executors acting in a manner that is detrimental to the estate have caused untold plight and suffering yet the law does not effectively deal with such conduct.

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 since it creates a fiduciary relationship

between the executor or administrator and the estate and the beneficiaries of the estate.

Clause 65 of the Bill proposes to amend Section 333 of the Act. Section 333 of the Act provides 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.

The Bill proposes to amend that Section by expanding it beyond merely neglecting to get in any part of the property of the deceased, to include all acts and omissions which occasion loss to the estate. The provision also provides criminal sanctions against such administrator or executor and obligates him or her to make good the loss occasioned to the estate or beneficiary.

The Committee has examined this provision and it is of the considered opinion that it should be supported since it creates fiduciary relationship between the executor or administrator and the beneficiary of the estate. The provision should also be supported since it is broader compared to the current provision which limits its application to the failure to collect all properties belonging to the estate yet in reality, there are many instances where an executor or administrator may neglect to comply with his or her obligations arising from grant of letters or probate.

Recommendation

The Committee recommends that clauses 64 and 65 do stand part of the Bill.

7.0. NEW EMERGING MATTERS

During consultation undertaken by the Committee, a number of new matters where brought to the attention of the Committee. These new matters which are currently not provided for in the Bill or the Principal Act have been considered by the Committee in accordance with Rule 129 of the Rules of Procedure of Parliament and reports as follows.

7.1. Application of principal act to Muslims

The Committee received memoranda and met with the Uganda Muslim Supreme Council, the Uganda Muslim Lawyer's Association as well as other Muslim scholars and clerics who proposed that the Succession Act should not apply to Muslims.

They justified their proposal on grounds that the current Succession Act contravenes the distribution of property of a deceased person ordained by Allah in the Quran.

According to Uganda Muslim Supreme Council, the distribution of property of a deceased among the Muslims was determined by Allah in the Quran and cannot be amended or departed from. The distribution of property ordained in the Quran requires 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. In cases where a Moslem believer makes a will and it is deemed to favour some children, the will is disregarded and the property is distributed according to Sharia law.

They further 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 in the practices of any religious body or organisation.

They also averred that the Constitution, in Article 129 (1) (d), directed for the establishment of subordinate courts as Parliament may by law prescribe, including Qadhis Courts for marriage, divorce, inheritance of property and

guardianship and any attempts to have the Succession Act applied to Muslims without complying with the directive in Article 129 (1) (d) contravenes the Constitution.

They also contended that in the past, the Succession Act did not apply to persons professing the Islamic faith. For instance, Mohammedans were excluded from the operations of Part V of the Succession Ordinance of 1906 which provided for distribution of an intestate's property. Therefore, the Mohammedans were entirely left to rely on the Sharia law in cases of intestacy.

The Committee has examined the proposals from Uganda Muslim Supreme Council and observes that religious practices have been recognized as an influential factor in determining succession matters among certain sects of people.

In Uganda, the Succession Act determines Succession matters and applies to all persons in Uganda. That notwithstanding, the Committee notes that whereas the Succession Act is a law of general application, persons, including Muslims, may by Will elect to follow religious provisions of 'Sharia law and hadith as stipulated in the Koran' in distributing their estates.

The Committee observes that the proposal to exempt the application of the Succession Act to Mohammedans has some legal and practical challenges. For instance, the distribution scheme contained in the Quran might, when examined critically, not meet the standards of equality prescribed in the Constitution since it discriminates against person based on their gender contrary to Article 21 of the Constitution.

Furthermore, the proposal will create a lacuna in the law since it will exempt the application of the Succession Act to Mohammedans yet there is currently no law as envisaged in Article 29 (1) (d). In such a situation, If a Muslim leaves no Will, how shall that estate be handled between the period when this Bill is passes into law and the enactment of a law envisaged in Article 29 (1) (d). This

will make estates of intestate Mohammedans subject to abuse and un-regulated.

The Committee is also concerned that exempting the application of the Succession Act to Mohammedans will have the effect of fettering the discretion of persons professing the Islamic faith who may wish to distribute their estates in accordance with the Succession Act.

The Committee is of the considered opinion that the Succession Act should continue applying to Mohammedans until such a time when Parliament enacts the law envisaged in Article 129 (1) (d). This will also give Government an opportunity to examine the proposal with a view of ensuring that the standards of equity enshrined in the Constitution are guaranteed.

The Committee is further of the opinion that Mohammedans should continue electing to apply the distribution scheme in the Quran, as they do today, by making Wills providing for distribution under Sharia or otherwise handling their estates under the Succession Act. Once the law is passed concerning succession in respect of Muslims, the same may contain appropriate provisions ousting the application of any part of the Succession Act if that is the preference of the Muslim Community.

Recommendations

i. *The Committee therefore recommends that this proposal be rejected.*
ii. *The Committee further recommends that Government expeditiously introduces in Parliament a Bill for an Act envisaged in Article 129 (1) (d) of the Constitution.*

7.2. Procedures arising from lodging of caveats

Sections 253 to 255 of the Succession Act empower a person to lodge a caveat against the grant of probate or letters of administration to an estate. The above

provisions prescribe the form of caveat and prevent any proceedings in the matter until after the caveator has been notified.

During the Bill's scrutiny, the Committee was informed that the provisions in Sections 253 to 255 of the Succession Act are in need of urgent amendment owing to the legal and practical challenges embedded in them.

For instance, the Judiciary informed the Committee that Sections 253 to 255 of the Succession Act are inadequate in dealing with the proceedings that arise after a caveat has been lodged. The lack of procedural guidance has impeded the quick disposal of succession disputes.

The Judiciary observed that whereas caveating affords an aggrieved person an avenue of settling matters that arise before the grant of probate or letters, these have been used frustrate the just and quick disposal of petitions for award of probate and letters since there are no time lines on the duration of a caveat as well as the procedure for disposing of such a caveat.

The Judiciary also observed that Section 255 also has creates implementation challenges since it bars any proceedings in the matter until after the caveator has been notified. The Judiciary noted that the biggest challenge with this is that court has given it differing interpretations, resulting in forum shopping by court users.

In addition to the above, the Committee observes that the provision makes it mandatory to give notification to the caveator before any proceedings can take place but does not prescribe the nature of notification. It is also redundant and makes the proceedings litigious and unnecessarily long in the sense that it requires the caveator to be served with notice compelling him/her to remove the caveat if he/she does not lift it on his/her own. When the notice expires before the caveator has removed the caveat, the applicant would then file a suit, serving the caveator with court process as well as an intention to sue.

Indeed, the above interpretation has been recognised by court in various decisions, including the cases of ***Namungo V Kiryankusa [1980] HCB 66 and Margret Kabahunguli V Eliazali Tibekinga & Another HCAC 08/95*** where court held that before the suit is filed, the caveator must be served with notice of the intended suit to compel him/her to remove the caveat if he/she does not lift it on his/her own. The notice is served to the caveator/intended defendant, stating the matter in dispute and referring to the caveat. When the notice expires before the caveator has removed the caveat, the applicant would then file the suit becoming the plaintiff against the caveator who would become the defendant. The suit would then proceed as a normal suit as envisaged by Section 265 of the Succession Act.

Recommendation

The Committee therefore recommends that Sections 253 to 255 of the Succession Act be amended to prescribe the procedure that must be followed upon the filling of a caveat, and the duration within which the caveat shall lapse, if not removed.

7.3. Time within which to apply for probate and letters of administration

During Bill's scrutiny, the Committee was informed that one of the biggest challenges faced in the administration of estates, was the delay in applying for letters or probate.

The Committee was informed that since the Succession Act does not prescribe the time within which a person may apply for letters of administration or probate, there is delay in applying for those grants which not only affects the beneficial interests of the beneficiaries, but also occasions loss to the estate.

The Committee was further informed that in most cases, people only apply for probate or letters long after the death of the deceased, which gives unscrupulous people the opportunity to strip the estate of its beneficial value.

The Committee was informed that it is common for a person to apply for letters or probate over estates of persons who died long time ago, making it difficult for court to determine the authenticity of a Will or the interests of beneficiaries since in most cases, the interests of those beneficiaries have been affected by third party interests or the original beneficiaries have long died, making it impossible to ascertain the interests of such beneficiaries.

The Committee has examined the proposal and is of the considered opinion that the prescription of time should only apply to grants of probate rather than to grants of letters of administration. The Committee notes that applying the provision to the letters of administration is impractical since there are many processes that must accrue before a letters can be granted. In most of these estates, the beneficiaries might not be easily ascertained and the extent of the estate might not be ascertained. In such situations, imposing a timeline might cause practical challenges.

Recommendations

The Committee agrees with the proposal to prescribe a time line within which a person must have applied probate and further recommends that Section 244 of the Principal Act is amended-,

i. *To prescribe a time within which to apply for probate.*

ii. *To empower a beneficiary under the will to apply for letters of administration where no application is made for probate within 1 year from the date of death of the testator.*

iii. *To provide a remedy in situations where executors appointed in the will refuse or neglect to apply for probate.*

8.0. CONCLUSION

Rt. Hon. Speaker and Honourable Members, the Committee recommends that the Succession (Amendment) Bill, 2021 be passed into law subject to the attached proposed amendments.

I beg to report.

SIGNATURES OF MEMBERS ENDORSING THE REPORT OF THE COMMITTEE ON LEGAL AND PARLIAMENTARY AFFAIRS ON SUCCESSION (AMENDMENT) BILL, 2021

NO	NAME	CONSTITUENCY	PARTY	SIGNATURE
1	Hon. Rwakoojo Robina Gureme	Gomba West County	NRM	
2	Hon. Mutembuli Yusuf	Bunyole East	NRM	
3	Hon. Okiror Bosco	Usuk County	NRM	
4	Hon. Nkwasiibwe Zinkuratire Henry	Ruhaama County	NRM	
5	Hon. Odoi Benard	Youth Eastern	NRM	
6	Hon. Odoi Oywelowo Fox	West Budma North East	NRM	
7	Hon. Oseku Richard Oriebo	Kibale County	NRM	
8	Hon. Baka Stephen Mugabi	Bukooli County North	NRM	
9	Hon. Cherukut Emma Rose	DWR Kween	NRM	
10	Hon. Kajwengye Twinomugisha Wilson	Nyabushozi County	NRM	
11	Hon. Okia Joanne Aniku	DWR Madi Okollo	NRM	
12	Hon. Obigah Rose	DWR Terego	NRM	
13	Hon. Achayo Lodou	Ngora County	NRM	
14	Hon. Kasaija Stephen	Burahya County	NRM	
15	Hon. Teira John	Bugabula North County	NRM	
16	Hon. Silwany Solomon	Bukhooli Central	NRM	
17	Hon. Ssekikubo Theodore	Lwemiyaga County	NRM	
18	Hon. Kwizera Paul	Kisoro Municipality	NRM	

19	Hon. Werikhe Christopher	Bubulo West	NRM	
20	Hon. Malende Shamim	DWR Kampala	NUP	
21	Hon. Lubega Medard Ssegona	Busiro East	NUP	
22	Hon Ssekitoleko Robert	Bamunanika County	NUP	
23	Hon. Ssemujju Ibrahim	Kira Municipality	FDC	
24	Hon. Adeke Ann Ebaju	DWR Soroti	FDC	
25	Hon. Nantongo Fortunate	DWR Kyotera	DP	
26	Hon. Lt. Gen. James Mugira	UPDF		
27	Hon. Asuman Basalirwa	Bugiri Municipality	JEEMA	
28	Hon. Alum Santa Sandra Ogwang	DWR Oyam	UPC	
29	Hon. Shartsi Musherure Nayebare Kutesa	Mawogola North County	INDEP.	
30	Hon. Abdu Katuntu	Bugweri county	INDEP.	
31	Hon. Acrobert Kiiza Moses	Bughendera County	INDEP.	
32	Hon. Niwagaba Wilfred	Ndorwa County	INDEP.	

PROPOSED AMENDMENTS TO THE SUCCESSION (AMENDMENT) BILL, 2021

CLAUSE 1: AMENDMENT OF SECTION 2 OF THE SUCCESSION ACT

Clause 1 of the Bill is amended-

(a) in paragraph (e), in the definition of "dependent relative", delete the phrase "or substantially";

(b) by inserting immediately after paragraph (j), the following-

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

"lineal descendant" means a person who is descended in a direct line from the deceased person and includes a child and grandchild of the deceased and any person related to the deceased in a direct descending line up to six degrees downwards;"

Justification

- *to restrict dependent relatives to only persons who are wholly dependent on the deceased person and not as proposed in the Bill.*
- *to define who a lineal descendant is since the phrase is used extensively in the Bill and the principal Act without being defined.*

CLAUSE 13: AMENDMENT OF SECTION 26 OF PRINCIPAL ACT

Clause 13 is amended-

(a) by substituting for the proposed subsection (2b), the following-

"(2b) A person who evicts or attempts to evict a surviving spouse, lineal descendant or dependent relative who is entitled to occupy the residential holding or any other residential holding commits an offence and is liable to a fine not exceeding one hundred and sixty eight currency points or imprisonment not exceeding seven years or both."

(b) in the proposed subsection (2c), by substituting for the words "joint tenant" for the words "tenancy in common";

Justification

- *To ensure that the principle of survivorship applies in the circumstances and ensure that the ownership of the lineal descendants in the devolved property can be inherited rather than being extinguished upon death as is the case of joint tenancy.*
- *To enhance the interests of the surviving spouse, lineal descendant and dependent relative, if any, in the residential holding of an intestate.*

CLAUSE 14: AMENDMENT OF SECTION 27 OF PRINCIPAL ACT

Clause 14 of the Bill is amended in the proposed section 27-

(a) in the proposed section 27 (1)-

- by substituting for the words "principal residential property or other residential property" appearing in the proposed subsection (1), the words "residential holding or other residential holding"

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

"(b) Where the intestate leaves no surviving spouse or dependent relative under paragraph (a) (i) or (ii) capable of taking a proportion of his or her property the-

(i) lineal descendants shall receive 99 percent;
(ii) customary heir shall receive 1 percent;"

- **By substituting for paragraph (d), the following-**

"(d) Where the intestate is survived by a customary heir, a spouse or a dependent relative but no lineal descendant—

(i) the customary heir shall receive 1 percent; and
(ii) the surviving spouse or the dependent relative, as the case may be, shall receive 99 percent,

of the whole of the property of the intestate;"

- **in paragraph (e),** by inserting immediately before the word "capable" the words "other than a customary heir,";

- by deleting paragraph (f);

(b) by deleting the proposed subsection (8);

(c) by inserting immediately after the proposed subsection (8), the following-

"Where the customary heir is at the same time a lineal descendant of the intestate, the customary heir shall in addition to his or her share as a customary heir, be entitled to share as a lineal descendant.

Justification

- *To include a share of the customary heir in paragraphs (b), (d), (e) and (f).*
- *Paragraph (f) is redundant in light of section 32 of the Act which allows the state to take the property where there are no relative of a deceased person.*
- *To harmonize the language and nomenclature used to refer to residential holding occupied by the testator.*
- *To empower a customary heir benefit as a customary heir in addition to his or her entitlement as a lineal descendant since in most cases, customary heir is appointed from amongst lineal descendants;*
- *To remove an absurdity which had allowed the Administrator General to share in the estate of an intestate while excluding the customary heir.*
- *To codify a customary practice which exists in most cultures where a customary heir is appointed to succeed the intestate and is entitled to benefit from the estate of a deceased person.*
- *to empower the surviving spouse to share in the trust created in the proposed section 27 (2).*
- *The proposed subsection (8) is redundant since all dependent relatives take an equal share in the property of the intestate.*
- *For consistency and clarity, to refer to a deceased intestate rather than to a deceased since the provision deals with intestate succession.*
-

CLAUSE 15: REPLACEMENT OF SECTION 28 OF PRINCIPAL ACT

Clause 15 is amended in the proposed section 28-

(a) by inserting immediately before the proposed subsection (1), the following-

"All lineal descendants, spouses and dependent relatives of an intestate shall share their proportion of a deceased intestate's property referred in section 27 (1), in equal share."

(b) by substitute for the proposed subsection (2) the following-

"A person aggrieved by the distribution of property under this section may challenge the decision of the administrator in a court of competent jurisdiction.

Justification

- *To ensure equity between beneficiaries in sharing the portion reserved for each class of beneficiaries in section 27 in equal share.*
- *To remove a lacuna in the proposed section 28 wherein, provision was not made as to the manner of sharing the estate of an intestate by each of the beneficiaries referred in section 27.*
- *To empower a person aggrieved by the decision of the administrator to challenge such a decision in a court of competent jurisdiction*

CLAUSE 17: REPLACEMENT OF SECTION 30 OF PRINCIPAL ACT

Clause 17 is amended-

(a) in the proposed subsection 30 (2), by inserting immediately after paragraph (b), the following new paragraph-

"(c) the intestate is the one who caused the separation."

(b) In the proposed section 30 (3), by inserting immediately after the phrase "court may" the words "for good cause,"

Justification

- *To expand the grounds upon which court may allow a surviving spouse to benefit from the estate of a deceased person, notwithstanding the separation of the surviving spouse from the intestate person, to include other justifiable grounds since the existing provision is limited in scope and does not take into account other justifiable grounds, including ill-health, education and employment.*

- *To allow a surviving spouse to benefit from the estate of the intestate if the intestate was the one who caused the separation, for instance, victims of domestic violence, who may have sought refuge in shelters.*
- *To grant court the discretion to determine, on a case by case basis, justifiable grounds upon which a surviving spouse may be allowed to benefit from the estate of an intestate notwithstanding the separation of the surviving spouse from the intestate.*
- *The deletion of paragraph (b) is a consequential amendment arising from the amendment of paragraph (a) which expanded the provision to cater for matters proposed in paragraph (b).*

CLAUSE 21: AMENDMENT OF SECTION 36 OF THE PRINCIPAL ACT

Clause 21 is amended in paragraph (d)-

(i) by substituting for the proposed subsection (6), the following-

"(6). Notwithstanding subsection (2), where a person making a will is married or has children, the residential holding normally occupied by that person as a principal residence or owned by him or her as a principal residential holding or any other residential holding possessed by that person, including the chattels therein, shall not form part of the property to be disposed of in the will and shall be held by his or her personal representative upon trust for his or her spouses and lineal descendants subject to the rights of occupation and terms and conditions set out in the Second Schedule to this Act."

(ii) by inserting immediately after the proposed subsection (6), the following new subsections-

"A person who evicts or attempts to evict a surviving spouse, lineal descendant or dependent relative who is entitled to occupy the residential holding or any other residential holding commits an offence and is liable to a fine not exceeding one hundred and sixty eight currency points or imprisonment not exceeding seven years or both.

Where the residential holding or any other residential holding devolves to the lineal descendants under this section, the lineal descendants shall be deemed to be entitled to the residential holding or any other residential holding as tenants in common."

(iii) by substituting for the proposed subsection (7), the following-

"(7) Subsection (6) shall not apply where the testator has made reasonable provision for the accommodation of the surviving spouse, lineal descendants or dependent relatives who are entitled to occupy his or her residential holding."

Justification

- *To harmonize the language and nomenclature used to refer to "residential holdings" occupied by the testator as used in section 26 of the Principal Act instead as proposed in the Bill since the nomenclature used in the Bill is incapable of exact definition. It should be noted that in succession, the phrase "residential holding" is preferred to "residential property" since the phrase "residential holding" broadly refers to two types of "residential holdings" known to succession law which are the "residential holding" being that residence normally occupied by a person prior to his or her death as his principal residential holding or that residence which is owned by him or her as a principal residential holding. There is however a third type of "residential holding" being the "other residential holding" possessed by the person prior to his or her death.*
- *To provide for the manner of occupying the residential holding by the surviving spouse and lineal descendants as prescribed in the second schedule to the Act;*
- *To ensure that the principle of survivorship applies in the circumstances and ensure that the ownership of the lineal descendants in the devolved property can be inherited rather than being extinguished upon death in case of joint tenancy.*
- *To provide for the devolution of the residential holding upon the death of any of the persons who are entitled to occupy it;*
- *To enhance the protection and security of occupancy for the surviving spouse and lineal descendants by creating penal sanctions against a person who evicts or attempts to evict the surviving spouse and lineal descendants.*
- *to remove the reference to section 26 (1) since that section does not apply in the circumstances owing to its application to intestate succession while section 36 deals with testate succession.*
- *To expand the proposed subsection (7) to empower a testator to make provision for the accommodation of his or her beneficiaries and to remove*

the requirement of providing accommodation at the same station in life since such a benchmark is subjective and difficult to achieve.

CLAUSE 22: REPLACEMENT OF SECTION 37 OF PRINCIPAL ACT

In clause 22, in the head note of the proposed section 37, substitute for the word "dependents" the phrase "dependent relative"

Justification

- *For consistency with the body of the provision and the entire Bill, wherein the word used is "dependent relative" and not "dependents".*

CLAUSE 31: AMENDMENT OF SECTION 50 OF PRINCIPAL ACT

For clause 31, there is substituted the following-

"31. Amendment of section 50 of principal Act

Section 50 of the principal Act is amended-

(a) In paragraph (c), by substituting for all the words appearing after the words "each of the witnesses must", the words, "in the presence of the testator, sign and write his or her name and address on every page of the will except that it shall not be necessary that more than one witness be present at the same time."

(b) by numbering the existing provision as subsection (1) and inserting immediately after, the following-

"Where a person attesting a will does not write his or her name or address on a page of a will as required in subsection (1) (c), the will shall be valid except that the page of the will which does not bear the name or address of the testator shall, unless otherwise directed by Court, be void."

Justification

- *the proposal in paragraph (a) is to impose two obligations on the witness to sign each page of the Will and write his or her name and address on every*

page of the will, instead of the proposal in the Bill which only obligates the attestation to be by writing the witness's name and address on every page of the will without the obligation to sign the Will.

- *To provide for the validity of the rest of the will where a page of a will is not attested to as required in section 50 (1) (c).*
- *To allow court deal with the validity of a will where a page or any part of a will does not bear the name or address of the person witnessing a will.*

CLAUSE 32: REPLACEMEMT OF SECTION 54 OF PRINCIPAL ACT

Delete clause 32.

Justification

- *The proposal to allow an attesting witness to benefit from the Will creates a conflict of interest and will affect the authentication of the will since the evidence of that attesting witness will not be trusted by court since such evidence is likely to be influenced by the benefit due to that person in the will .*

CLAUSE 34: AMENDMENT OF SECTION 86 OF PRINCIPAL ACT

Clause 34 is amended in the proposed section 86 (1) (a) by substituting for the words "lineal descendant" the words "son or daughter of a deceased person;"

Justification

- *To restrict a reference to a child in a will to apply only to the biological and adopted children of the testator since the word "lineal descendant" is broad and includes all persons who are descended in a direct line from the deceased person and includes a grandchild of the deceased and any person related to the deceased in a direct descending line up to six degrees downwards.*

CLAUSE 35: AMENDMENT OF SECTION 87 OF PRINCIPAL ACT

For clause 35, there is substituted the following-

"35. Replacement of section 87 of principal Act

Section 87 of the principal Act is repealed.

Justification

- *The proposal to substitute the words "illegitimate" and "legitimate" with "acknowledged" will maintain an unlawful distinction between children, based on whether they have been acknowledged by their parent or not, a matter that was declared unconstitutional in the case of* ***Law & Advocacy for Women in Uganda Vs. Attorney General of Uganda, Constitutional Petition No. 13 of 2005***
- *The amendment is inconsistent with other provisions of the Bill which have removed any unlawful distinction between children yet this provision attempts to maintain it.*
- *The provision will create practical challenges if a parent does not acknowledge his or her child, thereby resulting in absurdity wherein a child may be disinherited merely because he or she was not acknowledged by the parent. Notwithstanding that the parent is the actual parent of the child.*

CLAUSE 36: REPLACEMENT OF SECTION 179 OF PRINCIPAL ACT

Clause 36 is amended in the proposed section 179 by-

(a) inserting immediately after the proposed subsection (3), the following-

'Notwithstanding subsection (1), every donation of a gift made under this section the value of which exceeds twenty-five currency points, shall be in writing."

(b) deleting the proposed subsection (4).

Justification

- *To require every donation of a gift made in contemplation of death of a value exceeding five hundred thousand shillings to be in writing.*
- *To delete the proposed subsection (4) which is redundant in light of the proposed subsection (3)*

CLAUSE 46: REPLACEMENT OF SECTION 215 OF PRINCIPAL ACT

Clause 46 is amended in the proposed section 215 (2) by deleting paragraph (b);

Justification

- *A person who is not a fit and proper person cannot be given a grant to administer an estate.*
- *The Administrator General cannot supervise an administrator of an estate since a grant of letters or probate places the administrator of an estate in the same position as the deceased person, at law.*

INSERTION OF NEW CLAUSE IMMEDIATELY AFTER CLAUSE 50

Immediately after clause 50, insert the following new clause-

Amendment of section 244 of principal Act

Section 244 of the principal Act is amended by-

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

(b) inserting immediately after, the following-

"(2) The Application referred to in subsection (1) shall be made within one year from the date of death of the testator.

(3) Where a person named as executor in a will does not apply for probate within the time prescribed in subsection (2), a beneficiary under the will may, with the will annexed, apply for letters of administration."

Justification

- *To prescribe a time within which to apply for probate.*
- *To empower a beneficiary under the will to apply for letters of administration where no application is made for probate within 1 year from the date of death of the testator.*
- *To ensure the just and timely administration of estates of deceased persons.*
- *To provide a remedy in situations where executors appointed in the will refuse or neglect to apply for probate.*

INSERTION OF NEW CLAUSE IMMEDIATELY AFTER CLAUSE 51

Immediately after clause 51, insert the following new clauses-

Amendment section 255 of principal Act

The principal Act is amended by substituting for section 255, the following-

"255. Proceedings suspended if caveat received

(1) A person who lodges a caveat under section 253 shall, within fourteen days of lodging the caveat, serve a copy of the caveat to the petitioner for probate or letters of administration.

(2) Where a caveat is lodged in respect of a petition for probate or letters of administration, court shall suspend the proceedings in the matter until the caveat has been withdrawn, lapsed or a suit for the removal of the caveat has been filed and determined by court."

Insertion of sections 255A

The principal Act is amended by inserting immediately after section 255, the following-

"255A. Caveat and petition to lapse

(1) A petitioner for probate or letters of administration in respect of which a caveat has been lodged shall, within six months from the date the caveat was lodged, file a suit for removal of the caveat.

(2) Notwithstanding subsection (2), a person who lodges a caveat in respect of a petition for probate or letters of administration shall, within six months from the date the caveat was lodged, take proceedings to prove the objections contained in the caveat.

(3) Where a person who lodges a caveat or a petitioner for probate or letters of administration does not comply with subsection (2) or (3), the caveat and the petition for probate or letters of administration shall lapse.

Justification

- *To clarify on the proceedings that accrue after a caveat is lodged against the grant of letters or probate and to bring finality to caveat proceedings by requiring the caveat to lapse after six months from the date of lodging of the caveat unless proceedings are taken, by the petitioner for probate or letters or the caveator to remove the caveat or prove the objections in the caveat or upon an order of court, on petition, by the petitioner for letters or probate.*

CLAUSE 52: AMENDMENT OF SECTION 258 OF PRINCIPAL ACT

Clause 52 is amended-

(a) in the proposed section 258 (3) by inserting immediately after the words "two years" the words "or any other reasonable time as determined by court";

(b) in the proposed section 258 (4) by-

(i) deleting paragraph (b); and

(ii) inserting a new paragraph immediately after paragraph (b), as follows-

"an executor of the estate of a deceased person whose estate is entitled to receive pension until the pension has been fully paid".

Justification

- *To remove the exemption granted to estates managed by the Administrator General since it will allow the Administrator General to hold onto those estates in perpetuity yet the grant of probate requires the Administrator General to distribute the estate to the beneficiaries.*
- *To allow court grant additional time for expiration of probate beyond two years where it deems necessary in order to cater for exigencies that arise during administration which may necessitate the administration of estate beyond two years as proposed in the Bill.*
- *To ensure that estates probate granted over estates receiving pension does not terminate until the pension obligations have been fully settled.*

CLAUSE 53: AMENDMENT OF SECTION 259 OF PRINCIPAL ACT

Clause 53 is amended-

(a) in the proposed section 259 (3), by inserting immediately after the words "two years" the words "or any other reasonable time as determined by court";

(b) in the proposed section 259 (4)-

(i) by changing the numbering of the paragraphs to alphabetical letters;

(ii) in paragraph (i), by substituting for the word "subsection" the word "section";

(iii) by inserting immediately after paragraph (i), the following-

"an administrator in respect of an estate to which section 27 (2) applies except that for cases falling under section 27 (2), letters of administration shall remain valid only in respect of the trust created under section 27 (2); or

"an administrator of the estate of a deceased person whose estate is entitled to receive pension until the pension has been fully paid".

(iv) by deleting paragraph (ii).

Justification

- *To remove the exemption granted to estates managed by the Administrator General since it will allow the Administrator general to hold onto those estates in perpetuity yet the grant of probate requires the Administrator General to distribute the estate to the beneficiaries.*
- *To allow court grant additional time for expiration of letters beyond two years where it deems necessary in order to cater for exigencies that arise during administration which may necessitate the administration of estate beyond two years as proposed in the Bill.*
- *To cater for estates where some of the beneficiaries are lineal descendants by ensuring that the letters terminate upon the descendants ceasing to qualify under section 27 (2) as well as those receiving pension.*
- *to correct a clerical mistake in the proposed paragraph (i);*

CLAUSE 54: AMENDMENT OF SECTION 265 OF PRINCIPAL ACT

Clause 54 is amended by substituting for paragraph (a), the following-

"(a) by numbering the existing provision as subsection (l) and deleting all the words appearing after the words "civil procedure";

Justification

- *The proposal to have either person before court in a contentious case either be the petitioner or defendant causes practical challenges since the provision does not prescribe who will make this determination.*
- *The proposal presupposes a typical suit yet this is not the case. Usually, when a person registers a caveat against the grant of probate or administration, a person aggrieved may apply for the removal of the caveat. In dispensing with this application, Court may inquire into the contention, adopting the procedures laid out in the civil procedure laws and regulations.*
- *To expand the provision to provide a procedure for dealing with contentious matters before the High Court.*

CLAUSE 55: REPLACEMENT OF SECTION 268 OF PRINCIPAL ACT

Clause 55 is amended in the proposed section 268,-

(a) in the proposed subsection (2), by inserting immediately after the word "deceased" appearing in the second line of the provision, the word "person";

(b) by deleting the proposed subsection (3);

(c) by substituting for the proposed subsection (4), the following-

"(4) Notwithstanding subsection (1), a person may, before grant of letters of administration or probate, take possession of the property of the deceased person for the purpose of-

(a) preserving the estate of a deceased person;
(b) providing for the funeral of the deceased person;
(c) providing immediate necessities of the family of the deceased person;

(d) preserving and prudent management of the business of the deceased person, including preserving the goods of trade of the deceased person; or

(e) receiving money or other funds belonging to the deceased person."

(d) by deleting the proposed subsection (5);

(e) in the proposed subsection (6) by,-

(i) substituting for the words "intermeddle in" the words "take possession of";

(ii) substituting for the words "six months" the words "three months";

(f) in the proposed subsection (7), by substituting for the words "intermeddles with" the words "takes possession of";

(g) by substituting for the proposed subsection (8), the following-

"(8) A person who has reason to believe that the person who has taken possession of the estate of a deceased person pursuant to subsection (4) has caused loss or damage to the estate may seek redress from the Administrator General or his or her agent."

(h) by substituting for the proposed subsection (9) the following-

"(9) A person who intermeddles in the estate of a deceased person or takes possession of the property of the deceased person shall be personally liable for any loss occasioned to the estate and shall make good the loss occasioned to the estate."

(i) by deleting the proposed subsection (10);

(j) in the proposed subsection (11), by substituting for the words "intermeddles in the estate" the word "takes possession of the property";

Justification

- *To remedy an absurdity that had been created by allowing a person to "intermeddle" in the estate of a deceased person yet "intermeddling" was an offence.*
- *To remove redundant provisions*
- *For better drafting.*

CLAUSE 56: REPLACEMENT OF SECTION 270 OF PRINCIPAL ACT

Clause 56 is amended in the proposed section 270-

(a) by inserting immediately after the proposed subsection (2), the following-

"Where a surviving spouse, lineal descendant or a guardian of a minor withholds his or her consent to the dispose of the property belonging to a deceased person, the executor or administrator, as the case may be, may apply to a court of competent jurisdiction for redress.

Where the surviving spouse, lineal descendant or the guardian of a minor has withheld his or her consent, court may, if satisfied that the disposal of the property is beneficial to the estate or to a beneficiary of the estate, authorize the sale of the property, with or without conditions."

(b) by substituting for the proposed subsection (3), the following-

"(3) The executor, executrix or administrator shall account for the proceeds of sale to-

(a) in the case of a sale under subsection (1), to the beneficiaries; and

(b) in the case of a sale pursuant to subsection (2), to the court that granted the consent."

Justification

- *To empower a person aggrieved by a decision to dispose of property belong to the estate of a deceased person to apply to court for redress.*
- *To empower court to grant consent to dispose of property belonging to an estate where consent is unreasonably withheld.*

CLAUSE 58: AMENDMENT OF SECTION 272 OF PRINCIPAL ACT

Clause 58 is amended-

(a) in the proposed section 272 (2), by deleting the words "or letters of administration" "or administrator" and "or administrators" wherever they appear in the provision;

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

"Where in an estate with more than one executor or administrator, a dispute arises between the executors or administrations or between the executor or administrator and a beneficiary of the estate, the dispute shall be referred for arbitration by the Registrar of the High Court or a Chief Magistrate.

A person aggrieved by the decision of the Registrar or Chief Magistrate under this section may appeal the decision in accordance with the law relating to civil procedure.

The Chief Justice shall issue practice directives to regulate the arbitration proceedings undertaken by a Registrar or Chief Magistrate under this section.

Justification

- *To restrict the provision to executors and not administrators since the later are nominated by the beneficiaries and cannot delegate that appointment.*
- *To provide a mechanism for settling disputes between executors and administrators of estates.*

CLAUSE 59: AMENDMENT OF SECTION 273 OF PRINCIPAL ACT

Delete clause 59.

Justification

- *The proposal to require consent of the beneficiaries as well as leave of court every time a an executor or administrator dies will make the administration of estates very expensive and tedious the surviving*

executor or administrator will have to seek the consent of the beneficiaries and leave of court before continuing to administer or execute the estate;

- *The amendment is redundant in light of section 187 of the Succession Act which empowers a surviving executor to continue upon the death of one or more executors and contravenes the provisions of the Registration of Titles Act, especially sections 134 and 192 which all recognise the principle of survivorship.*

CLAUSE 68: MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT

In clause 68 is amended-

(a) by deleting paragraph (a) (i);

(b) in paragraph (a) (v), by deleting the words "lunatic and;"

Justification

- *The proposal to substitute for the word "minor" for "infant" introduces a foreign word in the law of succession. The law on succession uses the words "minor" "child" or "minor child" and not the word "infant" which is incapable of exact definition.*
- *The amendment is also redundant since a minor, means a person below 18 years of age, a definition that includes an infant.*
- *The deletion of the words "lunatic and" is intended to remedy a conflict between paragraph (a) (v) and (c) (ii) wherein, the word "lunatic" is defined twice and differently, thereby creating an ambiguity.*

CLAUSE 69: INSERTION OF SECTIONS 340, 341 AND 342 IN PRINCIPAL ACT

Clause 69 of the Bill is amended-

- **in the proposed section 341 by-**

(a) substituting for the head note, the following-

"Savings and Transitional"

(b) numbering the existing provision as subsection (1);

(c) inserting immediately after, the following new subsections-

"(2) A grant of probate or letters of administration issued to a person by a court of competent jurisdiction before the coming into force of this Act, shall remain valid for a period of three years after the coming into force of this Act.

(3) A grant of probate or letters of administration issued to the Administrator General before the coming into force of this Act, shall remain valid for a period of five years after the coming into force of this Act.

(4) A grant of probate or letters of administration referred to in subsections (2) and (3) may, on application to court by the executor or an administrator of an estate, be extended for a reasonable period as determined by court."

(5) A will made before the coming into force of this Act shall not be affected by the provisions of Section 50(c)."

Justification

- *To prescribe a time within which letters of administration and probate granted to estates prior to the commencement of this Act shall terminate.*
- *A consequential amendment arising from the amendments proposed in sections 258 and 259 to require the exercise of the powers of administrator or executor, for grants made prior to the commencement of this Act, to be within 3 years from the date of commencement of this Act.*
- *To save wills that are in existence at the commencement of this Act from the strict application of the provisions of the Section 50 (c) since such wills can be deemed invalid due to the new requirements for attesting wills proposed under Section 50 (c) which requirements were not in existence at the time of making of such a will.*

The End